

COPY

CAHILL, GORDON, ZACHRY & REINDEL
(Cotton & Franklin)

Sixty-Three Wall Street

New York 5

September 23, 1946.

Dear Mr. Chief Justice:

The case of Electric Power & Light Corporation v. Securities and Exchange Commission, which is No. 5 on the calendar of the Court for the October Term, 1946, was argued in November, 1945, but due to the lack of a quorum resulting from the death of the late Chief Justice Stone, remains undecided. It has been set for reargument on October 14, 1946. I am counsel for the petitioner in that case, Electric Power & Light Corporation.

The appeal involves an order issued by the Securities and Exchange Commission on August 22, 1942, requiring the dissolution of Electric Power & Light Corporation pursuant to Section 11 of the Public Utility Holding Company Act.

Since the prior argument of the appeal, a plan for compliance by Electric with that Act was formulated after lengthy conferences with the staff of the Commission, and was filed with the Commission. Hearings on the plan have been closed and the oral argument on the plan before the Commission has been completed. If the plan is carried out, the appeal in this Court will become moot. There is enclosed a memorandum outlining the status of the plan proceeding in this regard.

I have discussed this matter with the Solicitor for the Commission, who tells me that he has discussed it with representatives of the Solicitor General's office, and both he and the Solicitor General desire argument on October 14th. This is entirely satisfactory to me.

However, I felt it my duty as an attorney to call to the attention of this Court, before argument, the possibility that this case may become moot before decision. I am not requesting the Court to take any action with respect to postponing the argument or otherwise, but I felt that the Court was entitled to be advised in advance of the argument of the status of the case in this regard.

I am sending copies of this letter to the Solicitor General, the Solicitor for the Commission, and counsel for American Power & Light Company, the petitioner in the companion case, No. 4 in the October Term, 1946.

Respectfully yours,

(Signed) DANIEL JAMES.

Honorable Frederick M. Vinson,
Chief Justice of the United States,
Supreme Court of the United States,
Washington 13, D. C.

(Enclosure)

COPY

MEMORANDUM

September 23, 1946.

Re: Electric Power & Light Corporation
v. Securities and Exchange Commission

No. 5, October Term, 1946

This appeal involves a decision of the Circuit Court of Appeals for the First Circuit affirming an order issued by the Securities and Exchange Commission on August 22, 1942, requiring the dissolution of Electric Power & Light Corporation (herein called Electric) pursuant to Section 11 of the Public Utility Holding Company Act of 1935.

In connection with subsequent proceedings before the Securities and Exchange Commission (SEC Docket No. 54-139), a plan for compliance by Electric with Section 11 of the Public Utility Holding Company Act was proposed on July 1, 1946, by Electric and its parent company, Electric Bond and Share Company. That Plan, as its first paragraph recites, is a compromise arrived at by the managements of the two proponent companies in the light of conferences with the staff of the Commission.

The Plan also adverts to the appeal in the Supreme Court, referred to above, and says that, since the carrying out of the Plan will render that appeal moot, Electric will consent to the dismissal of the writ of certiorari or will take other appropriate steps to terminate the appeal.

The Plan involves, as one step in its accomplishment, the formation of a new company, to which are to be transferred the holdings of Electric in four electric utility subsidiaries operating in Arkansas, Louisiana and Mississippi. With respect to the time when the dissolution appeal will become moot, Electric has informed the Commission that the appeal may be dismissed with Electric's consent upon the carrying out of the foregoing step in the Plan.

Hearings on the Plan were closed in August, 1946, and oral argument before the Commission was held on Friday, September 20th. The Plan awaits decision by the Commission on the question of whether it should be approved.

The program for carrying out the Plan contemplates that after approval by the Commission, the Plan will be submitted to a United States District Court for enforcement under the provisions of Section 11(e) of the Public Utility Holding Company Act. It will then be submitted to the preferred stockholders of Electric, and under its provisions it will become effective when 60% or more of the outstanding preferred stock is deposited under the Plan or when declared effective by the proponents upon the deposit of a smaller percentage of shares. In that connection, therefore, it is relevant to point out that a question as to the feasibility of the

Plan exists in the present unsettled state of stock market conditions, because the major changes in the market have taken place since the closing of the record in August.

However, the staff of the Commission has agreed in principle with the Plan as a method of complying with the Public Utility Holding Company Act, including the formation of the new company and the transfer to it of the electric utility subsidiaries in Arkansas, Louisiana and Mississippi, but the staff has stated that it feels such transfer should coincide with the taking of the other steps for compliance which are provided for in the Plan. The statement to the Commission of the staff's position, as shown by the transcript of the oral argument before it, is set forth in the appendix to this memorandum. For an understanding of the statement by Commission counsel set forth in the appendix, it may be noted that the ALMNO companies referred to by him are the subsidiaries mentioned in this paragraph.

In view of the fact that the Plan was worked out in the light of conferences with the staff of the Commission and in view of the staff's agreement in principle with the Plan, the solution of problems under the Public Utility Holding Company Act presented by the Plan would seem to have more than an ordinary chance for approval by the Commission.

C O P Y

APPENDIX

STATEMENT OF COUNSEL FOR SECURITIES AND EXCHANGE
COMMISSION REGARDING PLAN OF ELECTRIC POWER & LIGHT
CORPORATION.

The staff desires to address itself to only one aspect of the joint plan filed by Electric and Bond and Share -- the aspect which relates to the transfer of Electric's interest in its ALMNO subsidiaries; i.e., Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service, Inc., to a newly organized holding company. The staff desires to make the following statement:

We believe that there is nothing in the order of the Commission directing the dissolution of Electric which prevents the creation of a new holding company which would acquire such of Electric's properties as the Commission found would constitute a retainable system or systems under the Act and which would thereafter be disposed of by Electric. For Example, the Commission recently approved the formation of a new holding company by American Power & Light Company, which is also under order of dissolution, and permitted the transfer of securities to the new holding company after finding that the properties to be controlled constituted an integrated system, subject to the requirement that American dispose of the securities of such new holding company within a period of one year.

Generally speaking, under the applicable standards of Section 10 of the Act, such transfers to and acquisitions by such new holding company should not be permitted by the Commission unless the properties proposed to be acquired are found by the Commission to constitute a utility system or systems retainable by such new holding company under the integration standards of the Act. In the present case, however, the staff of the Commission, in

the light of the reservation of jurisdiction with respect to all 11(b)(1) problems contained in the joint plan, has no objection to those aspects of the joint plan which provide for the creation of a new holding company and the acquisition by it of the ALMNO companies prior to a determination of what properties can ultimately be retained by such holding company under the integration standards of the Act. Such acquisitions by the new holding company are to coincide with, are an integral part of, and appear to be necessary to facilitate and expedite the accomplishment of other major steps required by Section 11: the separation from common control with the ALMNO companies of United Gas Corporation and its subsidiaries, the satisfaction and retirement of Electric's preferred stocks with their heavy arrearages, the dissolution of Electric, and the divestment by Bond and Share of its interests (present and to be acquired pursuant to the plan) in Electric and its subsidiaries. In view of the fact that the joint plan proposes steps which represent major steps toward compliance with Section 11, we believe that the Commission should conclude that it is appropriate, as an aid to the expeditious accomplishment of these steps, to defer its decision as to the status under Section 11 of the properties proposed to be acquired by the new company. Under the circumstances and assuming that the transfer by Electric of ALMNO's securities to a new holding company as contemplated by the joint plan coincides with the taking of the other major steps toward compliance with Section 11 contemplated by the plan and notwithstanding that Section 11 problems as to the status of the new holding company and its subsidiaries remain, the staff has no objection to the creation of the new holding company.