

Appalachian power company, et al

against

American institute of CPAs

Order to show cause (United States District
court for the Southern district of New York)

April 1959

For Reference
Do Not Take
From the Library

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS
LIBRARY
475 JAMES WASHINGTON
NEW YORK, N.Y.

----- x

APPALACHIAN POWER COMPANY, :
OHIO POWER COMPANY and :
INDIANA & MICHIGAN ELECTRIC COMPANY, :
Plaintiffs, : ORDER TO
SHOW CAUSE
against : Civ 145-161
AMERICAN INSTITUTE OF CERTIFIED :
PUBLIC ACCOUNTANTS, L.H. PENNEY, :
WILLIAM W. WERNITZ and CARMAN G. :
BLOUGH, :
Defendants. :
----- x

Upon the verified complaint herein and the
annexed affidavit of ROBERT O. WHITMAN, duly sworn to on
April 15, 1959,

EP

LET the defendants herein, or their attorneys,
show cause, at a Motion Term of this Court, to be held
at Room 506 of the United States Court House, Foley
Square, New York, N.Y., on the 17 day of April, 1959,
at ³ten o'clock in the ^{after}forenoon of that day, or as soon
thereafter as counsel can be heard, why an order,
~~pursuant to Rule 65 of the Federal Rules of Civil~~
Procedure, should not be made and entered herein, granting
a preliminary injunction enjoining the defendants as
requested in the prayer for relief in the verified
complaint herein and in the said moving affidavit of
Robert O. Whitman annexed hereto, and why the plaintiffs
should not have such other, further and different relief
as to the Court may seem just and proper in the premises.

It appearing from the verified complaint herein and the said affidavit of Robert O. Whitman that plaintiff has no adequate remedy at law, and it appearing therefrom that the distribution of the letter and opinion proposed to be distributed by the defendants to the members of the defendant American Institute of Certified Public Accountants, to the effect that the defendant American Institute of Certified Public Accountants or its Committee on Accounting Procedure is of the opinion or recommends that charges made to income in recognition of the deferral of income taxes should not or may not, in accordance with generally accepted accounting principles be credited to earned surplus or to any other account included in the stockholders' equity section of the balance sheet, will cause substantial numbers of accountants, financial institutions, investment banking concerns, rating services, financial analysts and governmental agencies to question the continued inclusion of credits for deferred taxes in the earned surplus accounts of plaintiffs and will seriously interfere with plaintiffs in their dealings and relationships with such persons and institutions and will raise questions as to the validity of the announced debt ratios of the plaintiffs which are the basis upon which plaintiffs have in the past, and propose in the future, to borrow funds and sell securities to finance their respective current construction programs, and it appearing that such irreparable injury, loss and damage will result to the plaintiffs herein before notice can be served and a hearing had herein,

unless the defendants are restrained from the acts hereinafter set forth, and the plaintiffs having given and filed the undertaking required by law in the sum of *Five hundred* Dollars,

IT IS ORDERED that, pending the hearing and determination of plaintiffs' application for a preliminary injunction herein, the defendants, their agents, servants and employees and any other persons acting in concert with or on behalf of any of the said defendants, be and they hereby are enjoined and restrained from adopting, issuing, promulgating, circulating, printing or in any manner publishing to the members of the defendant American Institute of Certified Public Accountants or to any members of the accountancy profession, the aforesaid proposed letter or any utterance, opinion, recommendation, promulgation or statement to the effect that the defendant American Institute of Certified Public Accountants or its Committee on Accounting Procedure is of the opinion or recommends that charges made to income in recognition of the deferral of income taxes should not or may not, in accordance with generally accepted accounting principles, be credited to earned surplus or to any other account included in the stockholders' equity section of the balance sheet, until such time as the defendant American Institute of Certified Public Accountants and its Committee on Accounting Procedure have:

(a) Submitted a draft of the proposed letter to the persons to whom the exposure draft of Accounting Research Bulletin No. 44 was submitted.

~~(b) Permitted such reasonable period of~~ time, not less than 60 days, to have elapsed subsequent to said submission in order that such persons may have the opportunity of submitting for the consideration of the Committee on Accounting Procedure their views and opinions.

(c) Otherwise complied with the defendant American Institute of Certified Public Accountants' and its Committee on Accounting Procedure's practices and procedures with respect to the publication of Accounting Research Bulletins.

Sufficient reason appearing therefor, let service of a copy of this order, together with a copy of the papers upon which it is based, upon the defendants, at or before o'clock on the day of April, 1959, be deemed good and sufficient service thereof.

Dated, April 15th, 1959.

at 4:30 P.M.

EDWARD L. PALMIERI
U.S.D.J.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

APPALACHIAN POWER COMPANY, :
OHIO POWER COMPANY and :
INDIANA & MICHIGAN ELECTRIC COMPANY, :
 Plaintiffs, :

-against- :

AMERICAN INSTITUTE OF CERTIFIED :
PUBLIC ACCOUNTANTS, L.H. PENNEY, :
WILLIAM W. WERTZ and GARMAN G. :
BLOUGH, :
 Defendants. :

AFFIDAVIT

- - - - - x

STATE OF NEW YORK) :
) : ss.
COUNTY OF NEW YORK) :

ROBERT O. WHITMAN, being duly sworn, deposes
and says that:

1. I reside at 35 Riverview Road, Irvington-on-
Hudson, New York. I am the Treasurer of each of the
plaintiff corporations and am fully familiar with all the
facts and matters hereinafter stated.

2. This affidavit is submitted in support of
~~plaintiffs' application, pursuant to Rule 65 of the~~
Federal Rules of Civil Procedure, for an order granting a
preliminary injunction herein and in support of plaintiffs'
application for an order to show cause bringing on the
plaintiffs' said application for a preliminary injunction
and in support of plaintiffs' application for a temporary
restraining order pending the hearing and determination of
said application for a preliminary injunction.

3. I have since 1940 been a certified public accountant, have had more than twenty years' experience concentrated in accounting in the electric public utility field, and for sixteen and a half years was associated with Niles & Niles, a certified public accounting firm, a substantial portion of whose practice was devoted to the public utility field. I have been a member of ~~the defendant American Institute of Certified Public Accountants~~ since 1942. I am also a member of the New York State Society of Certified Public Accountants.

4. Annexed as Exhibit "A" hereto and made a part hereof is a true copy of the verified complaint in this action. Said complaint was verified by me and I hereby adopt and incorporate in this affidavit each and every statement and allegation contained in said verified complaint as if such allegation were repeated in full herein. I have personal knowledge of all of the matters alleged in the complaint, except those alleged to have been made on information and belief. The sources of my information and belief with respect to such allegations are transcripts of testimony given at official proceedings of Federal and State administrative bodies, examination of official publications and statements of the defendant ~~American Institute of Certified Public Accountants and~~ its Committee on Accounting Procedure, correspondence with members of the said Committee on Accounting Procedure and examination of records of the plaintiff corporations.

5. The reason that this application for a preliminary injunction is sought to be brought on by order to show cause and the reason for the application

for a temporary restraining order pending the hearing on said application is that the plaintiffs, as more fully appears hereinafter, will suffer immediately all of the irreparable injuries more fully alleged in the verified complaint herein unless the defendants are immediately restrained from effecting the proposed acts complained of in the complaint.

6. The Director of Research of the defendant Institute of Certified Public Accountants, the defendant Carman G. Blough, publicly stated on April 8, 1959, that the proposed letter and opinion complained of in the complaint was at that time being prepared for distribution to the thirty-three thousand members of the defendant Institute of Certified Public Accountants. Its distribution is, therefore, imminent. The fact is that during the course of a meeting held between representatives of the plaintiffs and defendants Werntz and Blough immediately prior to the execution of this affidavit, plaintiffs were unable to secure from defendants Werntz and Blough any commitment to delay the distribution of the said proposed letter and opinion.

7. Unless this Court grants plaintiffs' application for a temporary restraining order prohibiting the defendants from the distribution of said proposed letter and opinion, it will forthwith be distributed to the membership of the defendant Institute of Certified Public Accountants and immediately upon

said distribution, the irreparable harm alleged in the verified complaint and incorporated in this affidavit will ensue. Once the said distribution has occurred, this application and indeed, this action for equitable relief, will have been rendered moot, and plaintiffs will be unable to secure from this Court, or any other court, the relief necessary to protect them from the consequences of the said distribution.

8. No harm, damage, loss or injury can occur to the defendants from the granting of the relief sought herein, which will at most delay the challenged activity until such time as defendants' have justified their conduct. There is no reason why the defendants must distribute their letter and opinion with such undue haste. No benefits will accrue to defendants or anyone else by reason of an early distribution and no harm by reason of a later distribution if the same is determined to be justifiable. The sole interests affected one way or the other are those of the plaintiffs.

9. The summons and verified complaint herein are being filed in this Court simultaneously with the presentation of this application for an order to show cause, and it is the intention of the plaintiffs to cause the service of the summons and complaint herein simultaneously with the service of the order to show cause and temporary restraining order sought herein.

10. No previous application has been made to any Court or Judge for the relief sought herein.

11. By reason of the foregoing, plaintiffs respectfully request that an order to show cause be signed herein bringing on plaintiffs' application for

a preliminary injunction and that, pending the hearing and determination of said application for a preliminary injunction, a temporary restraining order be granted, restraining and enjoining the defendants, their agents, servants and employees and any other persons acting in concert with or on behalf of any of the said defendants, from adopting, issuing, promulgating, circulating, printing or in any manner publishing to the members of the defendant American Institute of Certified Public Accountants, or to any members of the accountancy profession, the aforesaid proposed letter or any utterance, opinion, recommendation, promulgation or statement to the effect that the defendant American Institute of Certified Public Accountants or its Committee on Accounting Procedure is of the opinion or recommends that charges made to income in recognition of the deferral of income taxes should not or may not, in accordance with generally accepted accounting principles, be credited to earned surplus or to any other account included in the stockholders' equity section of the balance sheet, until such time as the defendant American Institute of Certified Public Accountants and its Committee on Accounting Procedure have:

(a) Submitted a draft of the proposed letter to the persons to whom the exposure draft of Accounting Research Bulletin No. 44 was submitted.

(b) Permitted such reasonable period of time, not less than 60 days, to have elapsed subsequently to said submission in order that such persons may have the opportunity of submitting for the consideration of the Committee on Accounting Procedure their views and opinions.

(c) Otherwise complied with the defendant
American Institute of Certified Public Accountants'
and its Committee on Accounting Procedure's
practices and procedures with respect to the
publication of Accounting Research Bulletins,

ROBERT O. WHITMAN
Robert O. Whitman

Sworn to before me this
15th day of April, 1959.

STEPHEN E. DAVIS
Notary Public, State of New York
Qualified in Bronx County
Cert. filed in New York County
No. 03-5941025
Commission Expires March 30, 1960

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

----- X
APPALACHIAN POWER COMPANY, :
OHIO POWER COMPANY and :
INDIANA & MICHIGAN ELECTRIC COMPANY, :
Plaintiffs, :
- against - : VERIFIED
AMERICAN INSTITUTE OF CERTIFIED PUBLIC : COMPLAINT
ACCOUNTANTS, L. H. PENNEY, WILLIAM W. :
WERNTZ and CARMAN G. BLOUGH, :
Defendants. :
----- X

Plaintiffs, by Messrs. SIMPSON THACHER & BARLETT,
their attorneys, complaining of the defendants, allege that:

1. Jurisdiction of this action is based upon diversity of citizenship. The amount in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.
2. Plaintiff Appalachian Power Company (hereinafter "Appalachian") is, and at all times mentioned in this complaint has been, a corporation duly organized and existing under and by virtue of the laws of the Commonwealth of Virginia, with its principal place of business in Roanoke, Virginia.
3. Plaintiff Ohio Power Company (hereinafter "Ohio") is, and at all times mentioned in this complaint has been, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, with its principal place of business in Canton, Ohio.
4. Plaintiff Indiana & Michigan Electric Company (hereinafter "Indiana") is, and at all times mentioned in

EXHIBIT A

this complaint has been, a corporation duly organized and existing under and by virtue of the laws of the State of Indiana, with its principal place of business in Fort Wayne, Indiana.

5. Upon information and belief, defendant American Institute of Certified Public Accountants (hereinafter "the Institute") is, and at all times mentioned in this complaint has been, a corporation duly organized and existing under and by virtue of the laws of the District of Columbia, with its principal place of business in New York City, New York.

6. Upon information and belief, the Institute is an organization of certified public accountants formed for the purpose of uniting the accountancy profession in the United States and, among other things, to advance accounting research; it is the only national organization of certified public accountants; the Institute's Committee on Accounting Procedure (hereinafter "the Committee") has as its objective the narrowing of areas of difference and inconsistency in accounting practices and the furthering of the development and recognition of generally accepted accounting principles, through the issuance of opinions and recommendations which serve as the criteria for determining the suitability of accounting practices; there are more than 33,000 certified public accountants who are members of the Institute, including every well known and reputable accounting firm experienced and active in electric public utility accounting.

7. Upon information and belief, defendant L. H. Penney is the President of the Institute; defendant William W. Werntz is the Chairman of the Committee; defendant Carman

G. Blough is Director of Research of the Institute; none of the individuals named as defendants are citizens of Virginia, Ohio or Indiana.

8. Appalachian, Ohio and Indiana are all operating electric public utility companies.

9. Appalachian, as of December 31, 1958, had recorded on books of account maintained by it pursuant to requirements of the State Corporation Commission of Virginia and the Public Service Commission of West Virginia a total capitalization of \$425,012,331, including a common stock equity of \$152,089,098, of which \$22,622,432 was recorded in an account designated as "earned surplus restricted for future federal income taxes".

10. Ohio, as of December 31, 1958, had recorded on books of account maintained by it pursuant to the requirements of the Public Utility Commission of Ohio a total capitalization of \$447,921,130, of which \$26,107,537 was recorded in an account designated as "earned surplus restricted for future federal income taxes".

11. Indiana, as of December 31, 1958, had recorded on books of account maintained by it pursuant to the requirements of certain orders of the Public Service Commission of Indiana and the Michigan Public Service Commission a total capitalization of \$266,689,187, including a total common stock equity of \$98,504,027, and an earned surplus of \$35,389,162, of which \$17,054,429 was recorded in an account designated as "earned surplus restricted for future federal income taxes".

12. The amounts recorded in such restricted earned surplus accounts of Appalachian, Ohio and Indiana, totaling \$65,784,398, have been accrued in accordance with generally accepted accounting principles over a period of years and represent credits to such balance sheet accounts arising from charges made in the income statement (normalization charges) to provide for federal income taxes which may have to be paid in the future but which are currently deferred, measured by the difference between actual income taxes and the amount such taxes would have been if such companies had not elected to take for tax purposes accelerated amortization deductions under Section 168 and liberalized depreciation deductions under Section 167 of the Internal Revenue Code. Said accounting principles have been used by the plaintiffs, as well as by many, if not all, electric public utility companies, for a number of years, and financial statements prepared on the basis of said accounting principles have been certified by all of the certified public accounting firms experienced in electric public utility accounting as being in accordance with generally accepted accounting principles.

13. The Committee publishes, from time to time, Accounting Research Bulletins. Upon information and belief, opinions, recommendations and pronouncements of the Committee, as published in its Accounting Research Bulletins, are generally accepted by the members of the accountancy profession as establishing the accounting principles to be followed by the accountancy profession.

14. The form and content of financial statements of plaintiffs which are distributed to the public in

connection with the sale of securities for capital purposes is prescribed by the Securities and Exchange Commission under the various statutes administered by said Commission. Said Commission permits financial statements to be prepared on the basis of the accounts prescribed by state regulatory authorities having jurisdiction over plaintiffs, only if the accounting principles reflected in such statements be in accordance with generally accepted accounting principles. Opinions of the Committee are accepted by the Securities and Exchange Commission as persuasive authority in determining whether principles of accounting are generally accepted.

15. The Institute, recognizing the aforesaid results of the opinions, recommendations and pronouncements of the Committee, has had adopted certain procedures prerequisite to the publication of such an opinion, including the following:

(a) Any opinion or recommendation before issuance must be submitted in final form to all members of the Committee either at a meeting or by mail.

(b) No such opinion or recommendation is to be issued unless it has the approval of two-thirds of the entire Committee.

(c) Any member of the Committee dissenting from an opinion or recommendation issued under the preceding rule is entitled to have the fact of his dissent and his reasons therefor recorded in the document in which the opinion or recommendation is presented.

(d) Before reaching any conclusion, the

Committee must give consideration to prior opinions, to prevailing practices, and to the views of professional and other bodies concerned with accounting procedures.

Upon information and belief, the practice of the said Committee has been at all times and is to circulate to a very considerable group what is known as an "exposure draft" of any proposed opinion, recommendation or pronouncement and to give consideration to the views of said group before such an opinion, recommendation or pronouncement is adopted in final form and published in the Accounting Research Bulletin.

16. In November, 1952, the Committee issued Accounting Research Bulletin No. 42 and in June, 1953, issued Accounting Research Bulletin No. 43.

17. Said Accounting Research Bulletin No. 42 contained, and said Accounting Research Bulletin No. 43 adopted without change, an opinion of the Committee with respect to the practice of normalization of income in connection with the tax aspects of accelerated amortization of capital expenditures. The Committee, at all times mentioned herein, has recognized such treatment of the income account, i.e., normalization of income by charges to the income account resulting from accelerated amortization or liberalized depreciation, as in accordance with generally accepted accounting principles. With respect to the credit resulting from such treatment of the income account, the Committee, in said Accounting Research Bulletin No. 43, recognized that the credit in such cases should properly be made to "an account for deferred income taxes". The said restricted earned surplus accounts of the plaintiffs, totaling \$65,774,398, are accounts which reflect

such credits and for balance sheet purposes are and have been treated as part of common stock equity.

18. Upon information and belief:

(a) In 1957 the Committee determined that it would be desirable to formulate and distribute an opinion with respect to accounting for the income tax effect of the liberalized depreciation provisions which had been contained, for the first time, in the Internal Revenue Act of 1954. An exposure draft of a proposed opinion was prepared and distributed to members of the Committee and other interested persons for comment. The exposure draft indicated, with respect to liberalized depreciation, that accounting recognition should be given in the income account to the deferral of federal income taxes. No mention was made in the exposure draft of any required credit to a balance sheet account.

(b) In June, 1958, after consideration of comments which had been received with respect to the proposed opinion and after rejection of an attempt by certain members of the Committee specifically to prescribe a balance sheet account for such a credit, a ballot draft of the proposed opinion to be published as Accounting Research Bulletin No. 44 was prepared and distributed to members of the Committee for formal action. This draft again contained no reference to any required balance sheet treatment of the credit resulting from the said normalization of income.

(c) In July, 1958, Accounting Research

Bulletin No. 44 was published and distributed to the entire membership of the Institute. Accounting Research Bulletin No. 44, as distributed, contained, for the first time, a provision that under certain circumstances it would be alternatively appropriate, "instead of crediting a deferred tax account" to recognize the taxes deferred as additional amortization or depreciation. Neither the members of the Committee as it was then constituted, nor the members of the Institute, had an opportunity to vote upon, or to express an opinion as to the desirability of adopting, the quoted phrase. Accounting Research Bulletin No. 44 did not, even with the unauthorized insertion of the quoted phrase, specify any required balance sheet treatment of the normalization credit.

19. It was not the intention of the Committee in adopting its Accounting Research Bulletin No. 44 to specify the proper balance sheet account for recording the credit arising from a charge for deferred taxes.

20. At the time of the adoption and publication of Accounting Research Bulletins Nos. 43 and 44, the Institute and the Committee knew that the plaintiffs, other electric public utility companies, and the certified public accounting firms experienced and active in electric public utility company accounting were and for some time had been recording the credits arising from normalization charges as restricted earned surplus and, therefore, as a part of common stock equity.

21. On information and belief, the Chairman of the Committee and the Director of Research of the Institute

defendants Werntz and Blough, are about to mail to the 33,000 members of the Institute under the purported authority of the Institute and the Committee, a letter to the effect that:

"The committee used the phrase (deferred tax account) in its ordinary connotation of an account to be shown in the balance sheet as a liability or a deferred credit. A provision in recognition of the deferral of income taxes, being required for the proper determination of net income, should not at the same time result in a credit to earned surplus or to any other account included in the stockholders' equity section of the balance sheet."

22. On information and belief, the purported purpose of the publication of said proposed letter is to state the intent of the Committee in using the phrase "deferred tax account" in Accounting Research Bulletin No. 44. Said purported purpose is false and is not the true purpose of issuing said proposed letter. The members of the Committee, as aforesaid, never had the opportunity to consider or pass upon the inclusion of that phrase in Accounting Research Bulletin No. 44 and therefore could have had no intent in connection with its unauthorized insertion therein.

23. Upon information and belief, the actual purpose of the proposed letter is not to specify any prior intent of the Committee but to promulgate a new accounting rule without permitting interested parties, including plaintiffs and members of the Institute who have requested it, a reasonable opportunity to be heard. There is no justification for such unreasonable procedures and haste.

24. The distribution of the proposed letter would result in arbitrary, unreasonable and unjustifiable

distinction between accounting for deferred taxes with respect to accelerated amortization and liberalized depreciation since the letter does not purport to modify or otherwise act with respect to Accounting Research Bulletin No. 43.

25. On information and belief, the Committee's own aforesaid procedures prerequisite to the issuance of an opinion or the publication of such an opinion in an Accounting Research Bulletin have not been complied with in connection with the said proposed letter, nor has the Committee taken any other steps reasonably designed to ascertain the propriety of adopting the opinions contained in the proposed letter; no exposure draft of said letter has been submitted to the members of the Institute, and the Committee has not given proper consideration to its own prior opinions, to prevailing generally accepted accounting practices and to the views of professional bodies concerned with accounting procedures.

26. The said proposed letter purports to be for universal application in the accountancy profession and contains no exception for businesses in which the adoption of such a practice would conflict with generally accepted accounting principles in said industry. The proposed practice of treating such deferred income tax credits as liabilities or deferred credits for balance sheet purposes rather than as part of earned surplus is in conflict with the generally accepted accounting principles which the plaintiffs have been specifically authorized to employ by state regulatory agencies and which are employed by many electric public utility companies and accounting firms

specializing in such work for many years up to the present.

27. Upon information and belief, a majority of the members of the Committee have no experience in electric public utility company accounting as such.

28. The members of the Committee have been informed and are on notice that the adoption and publication of the proposed opinion will cause great, immediate and irreparable injury, loss and damage to the plaintiffs and other electric public utility companies.

29. The distribution to the 33,000 members of the Institute, and to others, of the proposed opinion will, because of the aforesaid prestige and authority of the Institute and the Committee, cause substantial numbers of accountants, financial institutions, investment banking concerns, rating services, financial analysts and governmental agencies to question the continued inclusion of credits for deferred taxes in the earned surplus accounts of plaintiffs with the result that plaintiffs will be seriously interfered with in their dealings and relationships with such persons and institutions. The question which will be raised as to the propriety of including \$63,784,398 as a part of earned surplus will raise additional questions as to the validity of the announced debt ratios of the plaintiffs which are the basis upon which plaintiffs have in the past, and propose in the future, to borrow funds and sell securities to finance their respective current construction programs for which there has been budgeted more than \$100,000,000 for the year 1959 alone.

30. The Institute and the Committee know that

the foregoing will result from the publication of the opinion expressed in the proposed letter, that irreparable injury, loss and damage will result to plaintiffs therefrom and intend that such irreparable injury, loss and damage shall occur. The actions of the defendants in connection with the proposed distribution of the said letter and the opinion contained therein are in wanton, reckless and wilful disregard of the said consequences of their proposed action.

31. Plaintiffs have no adequate remedy at law.

WHEREFORE plaintiffs demand judgment against the defendants:

1. Pending the hearing and final determination of this Court and permanently, restraining and enjoining the defendants, their agents, servants and employees and any other persons acting in concert with or on behalf of any of the said defendants, from adopting, issuing, promulgating, circulating, printing or in any manner publishing to the members of the Institute or to any members of the accountancy profession, the aforesaid proposed letter or any utterance, opinion, recommendation, promulgation or statement to the effect that the Institute or the Committee is of the opinion or recommends that charges made to income in recognition of the deferral of income taxes should not or may not in accordance with generally accepted accounting principles be credited to earned surplus or to any other account included in the stockholders' equity section of the balance sheet, until such time as the Institute and the Committee have:

(a) Submitted a draft of the proposed letter

to the persons to whom the exposure draft of Accounting Research Bulletin No. 44 was submitted.

(b) Permitted such reasonable period of time, not less than 60 days, to have elapsed subsequent to said submission in order that such persons may have the opportunity of submitting for the consideration of the Committee their views and opinions.

(c) Otherwise complied with the Institute's and the Committee's practices and procedures with respect to the publication of Accounting Research Bulletins.

2. Granting such other, further and different relief as to this Court may seem just and proper in the premises, together with the costs and disbursements of this action.

SIMPSON THACHER & BARTLETT

By (signed) Richard M. Dicke
A Member of the Firm

Attorneys for Plaintiffs,
Office and Post Office Address,
120 Broadway,
New York 5, New York.

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

ROBERT O. WHITMAN, being duly sworn, deposes
and says, that:

I am the Treasurer of Appalachian Power Company,
Ohio Power Company and Indiana & Michigan Electric Company,
the plaintiffs in the above-entitled action; I have read
the foregoing Complaint and know the contents thereof; the
same is true to my own knowledge and belief, except as to
the matters therein stated to have been alleged upon in-
formation and belief and as to those matters, I believe it
to be true; the reason that this verification is made by
me rather than by plaintiffs is that the plaintiffs are
corporations.

Sworn to before me this }
 day of April, 1959 }

(signed) Robert O. Whitman

Notary Public