

July 12, 1935

My dear Mr. Pettengill:

Your letter of July 10<sup>th</sup> regarding my communication with Senator Wheeler is at hand.

When Senator Wheeler requested an expression of my views on certain phases of the House Bill, I purposely refrained from expressing any opinion on the issues of legislative policy between the House and the Senate. Rather did my letter confine itself strictly to the practical problems of administration in three phases of the House Bill.

You state that I was entirely inaccurate in saying "the phrase 'public interest' is not defined and the Bill furnishes no effective standard". Let me quote you my exact words. Speaking of the Commission's task under Section 11 of limiting the operations of Holding Companies to such members of integrated public utility systems as are in the "public interest", I wrote: "The phrase 'public interest' is not defined in the House Bill. Thus this Bill furnishes no effective standard to guide the Commission in the momentous decisions it must make as to which of the Holding Company systems are to be broken up and how such process is to be effected".

After a very careful reconsideration of the House Bill in the light of your letter, I am bound to adhere to my original conclusion.

In support of your contention that my statement was incorrect, you rely upon the provisions of Section 1, particularly Sections 1 (a) and 1 (b) and 1 (c) (referred to in your letter as subsection (6)). Let me deal with these seriatim.

(1) I am unable to comprehend in what respect Section 1 (a) can be held to define "public interest" so as to furnish a standard for administering Section 11. Section 1 (a) merely discloses that public utility holding companies and their subsidiaries are affected with a national public interest because, among other things, their securities are widely distributed and their service and other contracts are performed through the mails and instrumentalities of interstate commerce and their practices affect interstate commerce and make effective state regulation impossible. It is hardly sensible to urge that a Congressional declaration that a business is affected with a public interest is equivalent to a definition of the public interest which should guide the Commission in permitting or prohibiting the continuing of existent Holding Company systems.

(2) Section 1 (b) declares that in view of the disclosures in the investigations conducted by the Federal Trade Commission and the House Committee on Interstate and Foreign Commerce, the national public interest and the interest of investors and consumers may be adversely affected by abuses of the Holding Company systems as set forth in five subparagraphs. This recital of abuses will be helpful in determining the nature and scope of the rules and regulations which the Commission is authorized to make in order to correct abuses within limited and specified fields. But no definition of "public interest" can be drawn from these abuses which will afford to the Commission any effective standard for determining the fundamental economic policy as to the number of integrated systems a holding company should be allowed to retain.

(3) Section 1 (c) declares that when the abuses enumerated in 1 (b) become widespread the holding company, unless regulated, becomes injurious to investors, consumers and the general public. A general policy is stated interpreting the whole Act to prevent these adverse effects and to eliminate the abuses of public utility holding company systems. But this declaration gives the Commission no practical assistance in deciding the particular problems under Section 11. There is nothing in the language to which you have referred me or for that matter in the whole House Bill which can guide the Commission in determining whether the public interest requires that a given holding company system should embrace one or ten public utility systems.

Because of the above considerations and your failure to point out that the Bill furnishes an effective standard or a definition of "public interest" for the application of Section 11, I must insist, Sir, that my statements to Senator Wheeler were entirely accurate.

In view of the publicity you have given your letter, I assume of course you will be good enough to read my reply in the House.

Respectfully yours,

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Joseph P. Kennedy  
Chairman

Honorable Samuel B. Pettengill  
House of Representatives  
Washington, D.C.

JJB/arh/A