

April 8, 1955

MEMORANDUM FOR THE CONFERENCE

Re: No. 153

The petition for rehearing states that §12(d) of the Holding Company Act does not apply to this case because Electric is not a “public utility company” within the meaning of the Act. The argument and the opinion assumes the contrary. The point was not crucial in the case. First control over fees is explicit in §10. Second, even if §12(d) is not applicable, §12(c) and (f) concededly are, and obviously the control of fees may be one of the controls appropriate to the protection of the financial affairs of companies in holding company systems.

In order to save a ruling on the abbreviated record as to the status of Electric, I propose adding a footnote at the end of the first full paragraph on p. 4 of the slip opinion:

A petition for rehearing states that Electric is not a “public utility company” within the meaning of the Act and therefore §12(d) is inapplicable. We do not prejudice that position by this opinion, for whether or not Electric is a “public utility company”, §12 of the Act is concededly applicable. Sec. 12 (c) provides:

“It shall be unlawful for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems, to safeguard the working capital of public-utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.”

Sec. 12(f) provides:

“It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this chapter, with any company in the same holding-company system or with any affiliate of a company in such holding-company system in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules and regulations thereunder.”

The broad powers granted the Commission under these provisions are plainly adequate to give it the control it reserved in this case over the fees incident to the exchange of the old securities.

William O. Douglas