

March 8, 1935

Mr. Walter Lippman,
Anna Maria, Florida.

Dear Mr. Lippman:

After I had completed a cursory examination of the public utility bill, I procured from Mr. Cohen a mimeographed copy of his analysis which I am enclosing. It says about everything that can be said from a lawyer's point of view in explanation of the provisions of the bill interpreted sympathetically.

While most of the opposition to the present bill centers around Section 10 which provides for the mechanism of abolishing the holding companies, there are spirited objections urged by the utility people against Title II and III, which deal with the grant of jurisdiction to the Federal Power Commission in the control of rates through supervision of interstate transmission.

If the policy of elimination is sound, Section 10 as now drafted provides the most painless and effective way of attaining this end. Ones feeling about federal jurisdiction in general and the extent to which the Federal Trade Commission disclosures appear important, will determine the slant of a would be critic. Therefore numerous issues are presented.

1. Is the holding company device an evil per se;
2. Are the admitted evils incapable of eradication without abolition;
3. Should this initiative for abolition come from a commission supervision or should it be through the exercise of taxing power;
4. Should the attainment of the complete elimination of holding companies be brought about through the Commission or by way of judicial process.

The Commission and its employees are precluded from expressing any opinion about the particular policy which should prevail in legislation. However, the bill as drawn might prove to be a source of unmerited ill will as far as the Commission is concerned, because investors are very likely to blame the Commission for the losses which have been caused by stock watering operations in the gay 20's. It will be analogous to the wave of criticism which greeted Mr. Justice Brandeis'

expose of the financial condition of New Haven. He was taken to be the cause when actually he was but the decisive factor in breaking the bad news.

There is a practical consideration arising out of the present financial condition of many of the larger wildcat systems. With the current drive for reduced rates, the TVA yardstick, etc., there is little in the way of sustenance to reach the top stories of these systems. New public utility financing is out of the question in the present state of public resentment. I believe many of these insane structures will topple in the very near future and simplification will be an inevitable process. The Securities and Exchange Commission may be forced to assume the responsibility for collapses which are almost inevitable.

A point could be made that with the elimination of management contracts, the supervision of new issues (despite the statement in the enclosed analysis with reference to Section 6 the Commission actually has power to approve or disapprove security transaction) and the other limitations on holding company control, there will be little reason for the perpetration of the grotesque setups which now obtain. It may be that the five year period is too short and that a longer period of grace, even with the compulsory features, would permit the various systems to have an effective "locus poententiae".

On the other hand, it can be urged very effectively that the present system is senseless and represents the creations of promoters who expected to make their fortunes in the security field and not in the utility business; that the unscrambling process can never be a painless one; that pressure in the form of a dead line is essential, otherwise we will have a repetition of our experience with the railroads under the Transportation Act of 1920 which entreated consolidations but did not compel.

As in nearly all problems of government, one's preference is determined largely by considerations that are not factual, I believe the present bill is workable. I can be sympathetic with those who think otherwise.

I have been unable as yet to locate any small pamphlet dealing with holding companies which would conform to your requirements of sober and accurate. If Bonbright's book is available, I think it might prove very useful. I shall be glad to write you further about this if you seek other information. Should I come across a good document on holding companies, I will mail it to you.

Sincerely yours,

John J. Burns,
General Counsel.