July 8, 1935.

My dear Senator:

In accordance with your request of this morning, I am writing to express my views regarding the Holding Company Bill as it passed the House. This is to be taken merely as an expression of my individual views on the administrative features of this Bill and is in no sense intended to be an expression of opinion regarding the legislative policy implicit in the draft passed by either branch of Congress.

As you know, the Bill which passed the Senate and the House Bill propose to give our Commission a variety of duties and confer, even apart from Section 11, wide powers of discretion in the administration of this Act. These Bills, among other things, require us to register holding companies, to regulate all security transactions, with power to supervise even the underwriting arrangements. In addition, the Commission is to regulate the acquisition of all securities and capital assets of companies subject to the Act.

These duties while enormous can be discharged, I believe, with reasonable efficiency, by a trained and competent personnel; but the burden cast upon us by Section 11 of the House Bill is simply staggering. I cannot be too vehement in urging upon you my feeling that this Section, as now drawn, is most unfortunate. I urge my objections to this Section upon two grounds. The first is simply the limitations on human capacity to achieve results. The second objection is based upon my conception of what is wisdom in government.

The task with which the Commission is confronted under Section 11 of the House Bill is that of determining whether it is "necessary in the public interest" to limit the operations of a holding company system to a single "integrated" public-utility system. If the Commission finds that such limitation is not necessary it is then under a duty to require limitation to "such number of integrated public-utility systems as it finds may be included in such holding company system consistently with the public interest".

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. I do not believe it is fair or practical to expect any five men to shoulder the grave responsibility for deciding which of these systems are to be reorganized and into what size and character the ultimate groupings shall evolve.

The administrative burden involved in the duties required under Section 11 will just be overwhelming, no matter what the appropriation,

no matter the size or the technical equipment of the staff.

The second reason and by far the more important one is my strong conviction that it is not a wise policy to vest in any one group of men the tremendous responsibility involved in this grant of power. Certainly, this is true unless such a grant is hedged with precise and defined standards set up by the Congress itself.

I have an appreciation of the great need in our modern life of flexible language in statutes, so that the administration of the law may be responsive to an everchanging existence. Both bills wisely contain grants of discretionary power over the details of implementing the statute. This discretion is desirable in order to attain a practical and efficient administration. But so far as the vital decisions as to the size and character of the Holding Company systems of the future are concerned, which decisions will affect the interests of millions of people, investors and the consuming public alike, I do not believe that any Commission should be given unfettered discretion to decide matters of such transcendent importance.

It is also my opinion that from an administrative point of view Section 13 of the House Bill is open to serious objection. The comparable section in the Senate Bill was very definite and explicit to the effect that intra-system service transactions should be on a cost or mutual basis. The administration of such a law involves no great burden. Section 13 of the House Bill, however, while intending doubtless to reach a similar result provides that profits may be realized in inter-company transactions. The language of Section 13 seems to indicate that our Commission is required to pass on inter-company service contracts to determine whether their terms are fair and involve no unreasonable profit. It appears to me that this task which will devolve upon the Commission will be an impossible one. There is no objective standard as to what is a fair and reasonable profit. There are not comparable precedents on which the Commission may rely. As you know, most of the large holding companies have an elaborate system of service contracts and the companies furnishing the services are merely corporate shells controlled by the group dominating the holding company system. These service companies have little capital and normally there is a complete absence of arm's length dealing. All these factors prompt me to urge very strongly the undesirablility of retaining the language of the House Bill in these sections.

One further thought occurs to me in connection with the attainment of the statutory objectives, to-wit: the simplification of holding company structures. The Senate Bill provides machinery whereby voluntary reorganizations and simplifications can be attained under the control of the Commission. The House Bill has no such provision. This omission is unfortunate because it appears to me to be highly desirable that efficient and expeditious machinery be made available in order to facilitate the voluntary simplification of the corporate structures of holding companies.

I am sure that if the machinery for voluntary reorganizations were enacted into law many systems promptly upon passage of the Bill would proceed to simplifying their organizations on their own initiative under the Commission's direction. This should have a beneficial effect upon the investors whose anxieties would thereby be resolved. It should be advantageous to the companies themselves whose permanent status will thereby the sooner be determined.

The Commission will be prepared at a later date, if requested, to furnish specific recommendations affecting the administrative problems of the proposed legislation.

Respectfully submitted,

Joseph P. Kennedy,
Chairman

Honorable Burton K. Wheeler, Chairman,
Senate Committee on Interstate Commerce,
Washington, D. C.