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GEOGRAPHIC INTEGRATION UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT

SECTION 11(b)(1) of the Public Utility Holding Company Act of 1935¹ orders the Securities and Exchange Commission to reduce gas and electric holding companies to the control of a "single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically

1. 49 STAT. 803 (1935), 15 U. S. C. § 79 (Supp. 1940). See Comments (1936) 45 YALE L. J. 468, (1935) 30 ILL. L. REV. 509, 648.

Section 11(b), the so-called death sentence provision, is a compromise between the original bill which limited holding companies to a single integrated system [see *Hearings before Committee on Interstate Commerce on S. 1725*, 74th Cong., 1st Sess. (1935) 20] and a House amendment which authorized retention of as many integrated systems as was consistent with the "public interest" [79 CONG. REC. 10823 (1935)]. For the Conference Report on the final bill see 79 CONG. REC. 14600 (1935).

Under Section 11(b)(2), the SEC is ordered to simplify corporate structures, redistribute voting power, and telescope holding company pyramids so that only two degrees of holding companies remain over the operating companies.

necessary or appropriate" to its operations.² Retention of additional integrated systems is allowed, however, if the Commission finds under Clauses (A), (B), and (C) that they cannot be independently operated without the loss of substantial economies;³ that the "advantages of localized management, efficient operation, or the effectiveness of regulation" are not impaired by their retention;⁴ and, under Clause B, that all the additional systems are located "in one State, or in adjoining States, or in a contiguous foreign country."⁵

Because of ambiguities in the final form of the "death sentence" provision, no definitive standard was presented to the utilities to which they would be required to conform;⁶ but it was apparent that any administration of Section 11 would involve wholesale divestment of control over operating companies. Postponement of the effective date of the Commission's duties until after January 1, 1938,⁷ however, afforded an opportunity for voluntary programs of integration.⁸ Thus while the problems of large-scale, compulsory emancipation have awaited affirmative administrative action, methods of compliance with future integration orders have been tested.⁹ Reconstructive intra-system consolidations of operating companies¹⁰ and cash sales of isolated properties, in spite of valuation problems and complications in corporate

2. 49 STAT. 820 (1935), 15 U. S. C. 79k(b) (1) (Supp. 1940). In § 2 (29) the term "integrated public-utility system" is defined as applied to electric utility companies and to gas utility companies.

3. § 11(b) (1) (A).

4. § 11(b) (1) (C).

5. § 11(b) (1) (B).

6. Clause B, the most important provision for additional systems, is particularly ambiguous. See p. 1052 *infra*.

7. The Commission must carry out its integration and corporate simplification programs "as soon as practicable after January 1, 1938." § 11(b).

8. Section 11(e) authorizes the submission of plans for compliance with § 11(b). If the Commission finds the plan necessary to effectuate the provisions of § 11(b) and fair and equitable to the persons affected, it may apply to a court to enforce and carry out its terms and provisions.

The Commission has control over less comprehensive programs than those submitted under § 11(e) through its jurisdiction over the issuance of securities [§§ 6 and 7], the acquisition of securities and utility assets [§§ 8-10] and the sale of utility securities and assets [§ 12(d)]. For other phases of the Commission's broad powers under the Holding Company Act, see Comments (1939) 49 YALE L. J. 65 (reorganizations); (1940) 49 YALE L. J. 492 (control over corporate distributions); Note (1940) 49 YALE L. J. 746 (security issues).

9. For discussions of various possible methods, see *Hearings before Committee on Interstate Commerce on S. 1725*, 74th Cong., 1st Sess. (1935) 204-214, 934-946.

10. Mergers and consolidations within systems have accomplished the most progressive steps towards corporate simplification as well as integration. See, e.g., National Gas & Electric Corp., Holding Company Act Release No. 2385, Nov. 19, 1940; Engineers Public Service Co., 3 S. E. C. 580 (1938); Utility Service Co., 1 S. E. C. 966 (1936). See SEC, THIRD ANNUAL REPORT (1937) 37.

structure, have progressed under Commission supervision.¹¹ Divestment of control has been engineered by distributing subsidiary company stock through underwriters to the public¹² or as dividends to stockholders.¹³ Reduction of debt in conjunction with divorcement was embraced in a recent plan to offer stock in a subsidiary to holders of the parent's notes and debentures.¹⁴ Holding company plans for sterilization of voting control¹⁵ and transformation into investment companies are under way.¹⁶ To facilitate the liquidation of holdings, moreover, the addition of added tiers to corporate pyramids destined for eventual simplification has won Commission approval.¹⁷ In its supervision of these transactions the Commission has emphasized the advantages of an evolutionary program of reconstruction¹⁸ and indicated adherence

11. Purchasers apparently have been difficult to find. See American Utilities Service Corp., 5 S. E. C. 880, 882 (1939); Peoples Light & Power Co., 5 S. E. C. 461, 464 (1939). Minor sales to unaffiliated individuals have been the most frequent deals, but for a transaction between two holding companies, see The United Light & Power Co., 6 S. E. C. 670 (1940).

12. *E.g.*, Cities Service Power & Light Co., Holding Company Act Release No. 2386, Nov. 20, 1940; Charles True Adams, Trustee, Holding Company Act Release No. 2001, April 2, 1940.

13. Washington & Suburban Cos., Holding Company Act Release No. 2056, May 14, 1940 (liquidating dividend); Penn Western Gas & Electric Co., 3 S. E. C. 280 (1938). See N. Y. Times, March 11, 1941, p. 29, col. 4.

14. Standard Gas & Electric Co., Holding Company Act Release No. 2262, Aug. 26, 1940.

15. See plans of The United Corporation and Standard Power & Light Corp., Holding Company Act Release Nos. 2596, March 5, 1941, and 2369, Nov. 6, 1940; *cf.* N. Y. Times, March 9, 1941, § 3, p. 19, col. 6.

This method has been recommended by the administrators and proponents of the Act. Frank, *Integration and Public Utility Investors* (1940) 55 THE ANNALIST 779; Cohen in Round Table Discussion (1940) 21 SAVINGS BANK JOURNAL 8, 49. The holding companies, however, have had difficulty in carrying it out. H. M. Byllesby & Co. failed to sterilize its control of Standard Power & Light to the Commission's satisfaction by setting up a voting trust. H. M. Byllesby & Co., 6 S. E. C. 639 (1940). Subsequently, it transferred its voting shares to Standard, which contracted to give Byllesby a proportionate share upon any distribution of Standard's assets. Standard Power & Light Corp., Holding Company Act Release No. 2140, July 1, 1940. An attempt to sterilize control by pledging voting stock as additional security for outstanding debentures has been held unsuccessful. Cities Service Co., Holding Company Act Release No. 2444, Dec. 23, 1940. See N. Y. Times, March 12, 1941, p. 29, col. 8.

16. Utilities Power & Light Corp., 5 S. E. C. 483, 516 (1939). For the subsequent progress of this plan, see Charles True Adams, Trustee, Holding Company Act, Release No. 2001, April 2, 1940; Ogden Corp., Holding Company Act Release No. 2153, July 3, 1940.

17. The Commonwealth & Southern Corp., 5 S. E. C. 665 (1939) (new company formed to free subsidiaries from liens and transfer to TVA); States Electric & Gas Corp., 2 S. E. C. 392 (1937). See Walnut Electric & Gas Corp., 6 S. E. C. 338 (1939).

18. Peoples Light & Power Co., 2 S. E. C. 829, 836 (1937): "The problem of consummating integrated public utility systems under the Act is of necessity in many cases an evolutionary rather than a revolutionary process. As a practical matter, it will often be necessary to accomplish the ultimate objective of the Act by a series of steps rather

to a policy of returning operating companies to local jurisdiction even at the expense of revolutionary integration under continued federal control.¹⁹

In spite of the need for revamping the utilities map, however, extensive exchanges between important systems have failed to materialize.²⁰ Voluntary submission of comprehensive integration plans for the Commission's approval is authorized by Section 11(e),²¹ but the holding companies have been reluctant to take the initiative.²² Partly responsible for their hesitancy is the uncertainty which has continued to surround the meaning of Section 11(b) (1). Although the statute requires a finding that all acquisitions of securities and utility assets tend towards the development of an integrated public-utility system,²³ the Commission's treatment of these transactions has revealed no clarification of the death sentence.²⁴ Aside from a natural inclination to postpone enforcement, moreover, the holding companies have hesitated to assume the burden, which the statute fails specifically to allocate, of selecting a principal system and subsequently proving the justification for retaining additional systems.²⁵

In an effort to combat this inertia, the Commission, in response to an early Section 11(e) application, went beyond the specific question it was required

than by one direct and final step." But *cf.* *Genesee Valley Gas Co., Inc.*, 3 S. E. C. 104, 117 (1938), 38 COL. L. REV. 680.

19. See *Houston Natural Gas Co., Holding Company Act Release No. 2072*, May 27, 1940; *Republic Electric Power Corp.*, 3 S. E. C. 992 (1938); Meck and Cary, *Regulation of Corporate Finance and Management under the Public Utility Holding Company Act of 1935* (1938) 52 HARV. L. REV. 216, 234, n. 40. *Cf.* *Central U. S. Utilities Co., Holding Company Act Release No. 2588*, March 1, 1941, p. 10 (Commission refused to sanction scatteration merely because the scatteration would ultimately be outside its jurisdiction).

20. For intrastate exchanges, however, see *Northern Indiana Public Service Co., Holding Company Act Release No. 2121*, June 20, 1940; *Massachusetts Utilities Associates*, 2 S. E. C. 98 (1937).

21. See note 8 *supra*.

22. The first § 11(e) plan was filed by *American Water Works & Electric Co.* in August, 1937. *Holding Company Act Release No. 793*, Aug. 25, 1937. On August 3, 1938, 66 registered holding companies were asked to submit tentative plans for compliance with § 11(b). On December 2, 1938, 64 had done so. See *Holding Company Act Release No. 1336*, Dec. 2, 1938. Few formal integration programs, however, have been submitted and approved.

23. § 10(c) (2). Section 10(c) (1), moreover, forbids approval of an acquisition which "is detrimental to the carrying out of the provisions of Section 11."

24. If the Commission was developing a policy on integration, it fails to appear in the reported cases under § 10(c). The criteria it publicly adopted in 10(c) cases were liberal. See *Holding Company Act Release No. 54*, Dec. 23, 1935; *Consumers Power Co.*, 6 S. E. C. 444, 487 (1939) (separate opinion of Commissioners Healy and Mathews). However, the Commission has recently defined its policy in stricter terms. *Central U. S. Utilities Co., Holding Company Act Release No. 2588*, March 1, 1941; *Hudson River Power Corp., Holding Company Act Release No. 2415*, Dec. 9, 1940.

25. See Healy, *Section 11 of the Public Utility Holding Company Act (1940)* 26 P. U. FORR. 616, 622.

to decide and issued an overall opinion that a utility conformed to the integration formula of Section 11(b)(1).²⁶ American Water Works and Electric Company controlled widespread electric properties in five eastern states, small gas operations within the same area, and extensive non-utility businesses. The Commission not only authorized retention of the system's water, coal and transportation subsidiaries, but issued the first definitive interpretation of the death sentence. Stressing the close geographical and economical relations between the electric and gas properties, it concluded that the combination of the two utilities constituted a single integrated public-utility system within the terms of the statute.²⁷

Despite this indication that the interpretation and administration of Section 11 would be liberal,²⁸ the large holding companies remained passively resistant, and action by the Commission awaited the formulation of an effective enforcement program.²⁹ Early in 1940, however, the major recalcitrant companies were ordered to answer allegations of nonconformity to Section 11(b)(1).³⁰ Four of the respondents demanded more adequate notice.³¹ The

26. American Water Works & Electric Co., Inc., 2 S.E.C. 972 (1937). Section 11(e) merely requires the Commission to find a plan necessary to effectuate the provisions of §11(b) and fair and equitable to the persons affected. The decision to give an overall finding of compliance was obviously made to encourage other holding companies to submit plans. American Water Works & Electric Co., Inc., *supra* at 987. See Comment (1938) 36 MICH. L. REV. 1360, 1372.

27. 2 S.E.C. 872, 983 (1937). The Commission also approved a plan for corporate simplification under §11(b)(2) but objected to the distribution for voting power. See Meck and Cary, *supra* note 19, at 233.

28. The lack of any developed policy may have been responsible for the liberality. For evidence of this lack, see the conclusions on which the Commission based its approval of a plan which failed to effectuate a satisfactory integration. Republic Electric Power Corp., 3 S.E.C. 992, 1003 (1938).

29. The Commission was also delayed by the need for establishing the constitutionality of the statute's registration provisions. Electric Bond & Share Co. v. Securities and Exchange Comm., 303 U.S. 419 (1938).

30. Electric Bond & Share Co., Holding Company Act Release No. 1944, Feb. 29, 1940; Engineers Public Service Co., Holding Company Act Release No. 1945, Feb. 29, 1940; The Middle West Corp., Holding Company Act Release No. 1950, March 1, 1940; The United Gas Improvement Co., Holding Company Act Release No. 1953, March 5, 1940; Cities Service Power & Light Co., Holding Company Act Release No. 1954, March 5, 1940; The Commonwealth & Southern Corp., Holding Company Act Release No. 1956, March 6, 1940; Standard Power & Light Corp., Holding Company Act Release No. 1957, March 6, 1940; The North American Co., Holding Company Act Release No. 1960, March 9, 1940; The United Light & Power Co., Holding Company Act Release No. 1961, March 9, 1940.

The Commission's orders include maps and detailed lists of subsidiaries, but make only a general charge that the described system does not satisfy the requirements of §11(b)(1).

31. The United Gas Improvement Co., Holding Company Act Release No. 2055, May 23, 1940; The Commonwealth & Southern Corp., Holding Company Act Release No. 2083, July 3, 1940; Engineers Public Service Co., Holding Company Act Release

Commission refused to accept the procedural arguments advanced, but consented to make tentative findings before shifting the burden of going forward.³² By thus assuming the initiative, it has moved towards a definition of the integration formula and its ultimate effectuation.

The first step in moulding the death sentence into a practical implement for integration has recently been taken.³³ Columbia Gas & Electric Corporation applied under Section 11(e) for approval of a plan of corporate simplification and a declaration that part of its system conformed to Section 11(b)(1). Columbia's properties are chiefly gas utilities serving areas in eight eastern states. Electric service is provided in a smaller area within the general boundaries of the gas operations, but for the most part is operated separately. The applicant, relying on the American Water Works decision,³⁴ sought an overall finding that its gas and electric properties constituted one integrated public-utility system. The Commission indicated that the inclusion of several properties remote from the principal service area and the exclusion of important subsidiaries involved in anti-trust litigation³⁵ would in themselves preclude a favorable finding. Distinguishing its earlier position, however, it rested its disapproval of the application on the legal conclusion that a combination of electric and gas properties cannot constitute a single inte-

No. 2084, June 3, 1940; Electric Bond & Share Co., Holding Company Act Release No. 2098, June 10, 1940.

The respondents argued from § 11(a) ("It shall be the duty of the Commission to examine" each holding company system "to determine the extent to which . . . the properties and business thereof [are] confined to those necessary or appropriate to the operations of an integrated public-utility system,") and from § 11(b)(1) (Commission may order companies to integrate only "after notice and opportunity for hearing") that the Commission must state its conclusions in the affirmative and must specify what action it proposes to order. In addition, Electric Bond & Share contended that § 30 requires the Commission to create the standards by which an integrated public utility system is to be measured and determined, and that the Federal Power Commission had not discharged its duty to formulate a program for interconnecting and coordinating electric facilities under § 202(a) of the Federal Water Power Act as amended in 1935 [49 STAT. 848 (1935), 16 U. S. C. § 824a (Supp. 1940)]. Holding Company Act Release No. 2098, June 10, 1940. For a potential conflict between the SEC's powers under § 11(b)(1) and the authority of the FPC to unify electric operating facilities, see Plum, *The Federal Power Act of 1935* (1938) 14 J. OF LAND & P. U. ECON. 147, 153.

32. The Commission considered that the notice it had given was adequate but consented to amplify it in the interest of expedition. Commissioner Healy emphasized that any designation or description of integrated systems should be tentative. The United Gas Improvement Co., Holding Company Act Release No. 2065, May 23, 1940.

33. Columbia Gas & Electric Corp., Holding Company Act Release No. 2477, Jan. 10, 1941, revised in Holding Company Act Release No. 2585, March 1, 1941.

34. American Water Works & Electric Co., Inc., 2 S. E. C. 972 (1937).

35. See *United States v. Columbia Gas & Electric Corp.*, 36 F. Supp. 488 (D. Del. 1941). This case was decided after the Commission's opinion was issued. An anti-trust suit involving other subsidiaries remains unsettled. Holding Company Act Release No. 2477, Jan. 10, 1941, p. 15.

grated system, and may be retained only if the ABC standards for additional systems are satisfied.³⁶

Because most holding companies and many subsidiaries operate both gas and electric services,³⁷ the impact of the decision is severe. The authority for it, moreover, is not unquestionable. The statute itself includes no explicit provision for divorce of the two services. The original bill expressly dictated the separation of gas transportation and production operations from the control of electric companies, and prohibited composite control of distribution facilities in the absence of approval by state commissions.³⁸ In the enacted bill, however, state approval is demanded only for acquisitions of assets and securities which would result in common control of gas and electric companies serving the same area.³⁹ From the inclusion of this specific provision and the omission of the original divorce decree, there might be inferred a legislative intent to allow composite integrated systems.⁴⁰

On the other hand, the norm prescribed by Section 11 is a "single integrated public-utility system." By providing separate definitions of the term as applied to each type of utility⁴¹ the statute clearly differentiates between gas and electric operations. If further justification is needed for the Commission's conclusion, it rests on arguments of policy. Separation of the two utilities was recommended to Congress by advocates of holding company legislation.⁴² Although certain economies are achieved by the combination,⁴³

36. Since the applicant did not argue that its electric properties could be retained as additional systems, the Commission made no finding on that point. The Commission distinguished its holding in the *American Water Works* case on the ground that the opinion therein is "susceptible to the construction that the conclusion was rested . . . upon the standards applicable to additional integrated public-utility systems." Holding Company Act Release No. 2477, Jan. 10, 1941, p. 20.

The Commission negatively approved a minor plan for corporate simplification under 11(b)(2), but found the distribution of voting power in three system companies unfair and inequitable. Holding Company Act Release No. 2477, Jan. 10, 1941, pp. 21-24.

37. See the facts recited in the Commission's show cause orders under § 11(b)(1) cited *supra* note 30, and MOODY'S PUBLIC UTILITIES (1939) a95-a104.

38. *Hearings before Committee on Interstate Commerce on S.1725*, 74th Cong., 1st Sess. (1935) 17; *Legis.* (1935) 23 *Geo. L. J.* 813, 817.

39. § 8. Cf. Buchanan, *The Public Utility Holding Company Problem* (1937) 25 *CALIF. L. REV.* 517, 549, n. 134.

40. The Commission apparently thought so in 1937. See *American Water Works & Electric Co., Inc.*, 2 *S. E. C.* 972, 983, n. 3: "The question of public policy as to the common ownership of gas and electric facilities in the same state is apparently left by the statute to the decision of the states . . ." In the *Columbia Gas* case, however, the Commission said that § 8, expressing "the policy that state law shall control acquisitions of properties which may result in combined operations," has no bearing on § 11 which is "concerned with retentions of properties." Holding Company Act Release No. 2477, Jan. 10, 1941, p. 20.

41. § 2(29) (A) and (B).

42. *UTILITY CORPORATIONS* (FTC Rep., SEN. DOC. NO. 92, pt. 84-A, 70th Cong., 1st Sess., 1935) 617; *NATIONAL POWER POLICY, REPORT* (H. R. DOC. NO. 137, 74th Cong.,

the subservience of one type of service to a system predominantly interested in the other militates against the maximum of efficiency.⁴⁴ Rehabilitation of competition between the two services would benefit the consumer and provide an automatic and constructive ally for the ordinary methods of rate regulation.⁴⁵ In some cases, of course, the separation might result in loss of substantial advantages in efficiency and economy of operations. To prevent serious dislocation, however, the ABC standards for additional systems provide the Commission with the discretion, which it has carefully reserved, to allow retention of composite control.⁴⁶

That the chief function of the ABC clauses may be to allow composite gas and electric companies is suggested by the Commission's tentative statutory construction promulgated in the proceedings against The United Gas Improvement Company.⁴⁷ Under the standard established by Clause B the Commission is authorized to allow retention of one or more integrated public-utility systems in addition to the principal system if it finds that "all of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country." The possible resolutions of the ambiguities of the clause revolve about a choice of grammatical antecedent.⁴⁸ A conceivable hybrid construction would limit additional systems to states adjoining the area of the principal system except where the former are all confined within a single state. Isolated, on the other hand, from the single-system rule to which it provides the exception, the phrase could be liberally construed to limit all additional systems to one state or to states adjoining each other, without any requirement of proximity to the location of the principal system. If the word "all" means "each," wider multiple-area variations from the single-system norm might be allowed.⁴⁹ The narrowest interpretation, demanding extensive interpolation, would limit additional systems to the same

1st Sess., 1935) 10. See Bullard, *Let There be Free Competition* (1938) 21 P. U. FORT. 143.

43. Field, *Composite Public Utility Companies: Some Causes and Effects on Public Utility Corporation Systems* (1930) 6 J. OF LAND & P. U. ECON. 74, 76.

44. BONBRIGHT AND MEANS, *THE HOLDING COMPANY* (1932) 195; BEHLING, *COMPETITION AND MONOPOLY IN PUBLIC UTILITY INDUSTRIES* (1938) 135.

45. See Comment (1941) 50 YALE L. J. 875; cf. BEHLING, *op. cit. supra* note 44, at 137; BONBRIGHT AND MEANS, *op. cit. supra* note 44, at 196-7.

46. This result was foreseen in Ostrander, *The Public Utility Holding Company Act of 1935* (1936) 12 J. OF LAND & P. U. ECON. 49, 55.

47. The United Gas Improvement Co., Holding Company Act Release No. 2500, Jan. 22, 1941. See SEC, PUBLIC UTILITIES DIVISION, REPORT CONCERNING APPLICATION OF SECTION 11(b)(1) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 TO THE UNITED GAS IMPROVEMENT COMPANY AND ITS SUBSIDIARY COMPANIES (1941).

48. See Healy, *supra* note 25, at 620.

49. See (1940) 26 P. U. FORT. 35; (1938) 21 P. U. FORT. 738. Since clause A expressly uses the word "each," the failure to use it in clause B seems to destroy this argument.

state or states in which the principal system operates or to states adjoining thereto.⁵⁰

It is the narrow, single-area interpretation, ominous for the holding companies, that the Commission has tentatively adopted. Apart from the grammatical insertions which it entails,⁵¹ the construction presents difficulties in the light of Section 11's legislative history.⁵² The Barkley compromise of polar Congressional positions would be warped into a comparative victory for the single-system Senate bill over a liberal House amendment which authorized additional systems subject only to a "public interest" limitation.⁵³ A two-area interpretation, adopted in recognition of the legislative compromise, would provide a flexible exception to the rigid death sentence. Decisive integration, furthermore, would not be precluded, since the survival of scateration could be prevented by the Commission's refusal to find the requirements of Clauses A and C satisfied.⁵⁴

To rest the issue of additional systems on the imponderable criteria established in Clauses A and C, however, would foster interminable debate and impede administrative despatch.⁵⁵ The single-area definition of Clause B, once established in the courts,⁵⁶ would enable the Commission to carry the policy of integration to its logical conclusion with a minimum of argumentative resistance. Read in conjunction with the principal-system rule and the policy that the statute expresses,⁵⁷ the clause is readily susceptible to the narrow interpretation. Strict construction, moreover, of any exception to the single-system norm is supported by traditional canons of statutory interpretation.⁵⁸

50. The arguments in favor of this interpretation are advanced in the Public Utilities Division's memorandum to the Commission, Jan. 8, 1941. 3 C. C. H. Fed. Sec. Law Serv. ¶75,123 (2d ed. 1940).

51. If the Commission makes the construction final, it will be confronted with the argument that if Congress had intended the rigid limitation, it would have enacted it. See *Union Electric Co. of Missouri*, 5 S. E. C. 252, 262 (1939).

52. For the importance which the Commission attaches to the legislative history of the Act, see *Cities Service Co., Holding Company Act Release No. 2444*, Dec. 23, 1940, p. 10.

53. See note 1 *supra*.

54. The Commission tentatively applied these clauses to exclude some of UGI's electric and gas subsidiaries in Pennsylvania. *Holding Company Act Release No. 2500*, Jan. 22, 1941, pp. 6-7. See also *Engineers Public Service Co., Holding Company Act Release No. 2607*, March 11, 1941, p. 5; *The Commonwealth & Southern Corp., Holding Company Act Release No. 2626*, March 19, 1941, p. 6.

55. Healy, *supra* note 25, at 621.

56. The case is apparently being set up for a constitutional test. See *Statement by Jerome N. Frank*, 3 C. C. H. Fed. Sec. Law Serv. ¶75,124 (2d ed. 1940); *N. Y. Times*, Jan. 24, 1941, p. 25, col. 7.

57. In particular, §1(b)(4).

58. *Spokane & Inland R. R. v. United States*, 241 U. S. 344, 350 (1916); *Houston Natural Gas Corp.*, 3 S. E. C. 664, 669 (1938).

Whatever the final word on Clause B, the Commission has indicated its purpose to effectuate a decisive geographical integration. Dicta in the *Columbia Gas* case threaten the applicant with loss of outlying subsidiaries,⁵⁹ and the tentative reduction of the United Gas Improvement system to a small area centered in Philadelphia marks a definite departure from the liberal treatment accorded the American Water Works system.⁶⁰ A similar stiffening of attitude is imminent toward interests in other businesses. The contribution of a stable source of revenue and close management relations were invoked by the Commission to justify the survival of water operations in the American Water Works gas and electric system, and transportation businesses were condoned as historical inheritances.⁶¹ The adoption of more stringent criteria seems assured from the Commission's interpretation of Section 11's provisions for other businesses and their application to the United Gas Improvement empire.⁶²

Decisive as the recent steps are, they leave a host of questions unanswered. The status of gas production and transmission facilities, logically part of an integrated system but conspicuously unincorporated by the statute, remains undefined.⁶³ Doubt has been cast on plans under Section 11(e) which fail to

59. While the Commission did not find it necessary to decide the question, it hinted broadly that some of Columbia's subsidiaries are too remote from the major service area to come within an integrated system. Holding Company Act Release No. 2477, Jan. 10, 1941, p. 18.

60. The UGI faces confinement to territory approximating eighty miles by thirty miles in area. Holding Company Act, Release No. 2500, Jan. 22, 1941, p. 5. The area permitted the American Water Works Company covers roughly 300 square miles. American Water Works & Electric Co., Inc., 2 S. E. C. 972, 975 (1937). While the particular economics of each system may be partly responsible for the difference, the trend is apparently towards uncompromising integration. See the Commission's discussion of the size limitations of § 2(a)(29) and § 11(b)(1)(C) with respect to systems extending over the major part of a state in The Commonwealth & Southern Corp., Holding Company Act Release No. 2626, March 19, 1941, p. 5.

61. American Water Works & Electric Co., Inc., 2 S. E. C. 972, 983-5 (1937).

62. A holding company may control a single system and "such other businesses as are reasonably incidental, or economically necessary or appropriate" to its operations. Following subdivisions (A), (B), and (C) is a provision authorizing the Commission to "permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems." Applying these tests to UGI's interests, the Commission sanctioned retention only of minor steam operations and real estate holdings. Holding Company Act Release No. 2500, Jan. 22, 1941, p. 6. Bus and traction businesses were thus excluded. See PUBLIC UTILITIES DIVISION, *op. cit. supra* note 47, at 104. Investments in other public utility companies are also tentatively slated for divestment. Holding Company Act Release No. 2500, Jan. 22, 1941, p. 7. See also The Commonwealth & Southern Corp., Holding Company Act Release No. 2626, March 19, 1941, p. 6.

63. The definition of "gas utility company" confines the term to companies which own or operate facilities used for the retail distribution of gas. § 2(a)(4). The term

include every subsidiary. If Commission approval is precluded because subsidiaries are involved in anti-trust suits, affirmative action by the Commission might also have to await not only the settlement of litigation, but perhaps the restoration of normal operations.⁶⁴ Furthermore, despite the Commission's willingness to take the initiative by tentatively identifying the holding company's principal system and determining what additional utilities and other businesses may be retained, the proper procedure, including the burden of selection of principal system and proof of additional systems, is unsettled.⁶⁵ The quantum of evidence needed to overthrow or support the Commission's failures to find Clauses A and C satisfied await determination by a reviewing court.⁶⁶ The legal issues involved in the review and enforcement of orders,⁶⁷ and the economic problems which will arise in wholesale programs of divestment loom increasingly large. As a firm basis from which to progress towards solution of the statute's riddles, however, and as manifestations of a mature administrative process, the recent decisions mark a notable advance.

"integrated public-utility system" is defined as "applied to gas utility companies." § 2(a) (29) (B).

64. As applied to electric utility companies, the term "integrated public-utility system" means "a system . . . whose utility assets . . . under normal conditions may be economically operated . . ." Moreover, as the Commission pointed out, an integrated system of gas or electric facilities must not be "so large as to impair . . . efficient operation, and the effectiveness of regulation." § 2(a) (29). It would be difficult to apply these standards until the effects of an anti-trust decision could be gauged.

65. UGI could raise these issues by refusing to select its principal system. In its second statement of tentative conclusions on another company, the Commission recommended the designation of one group of properties as the principal system, but, assuming that another group alternatively might be so regarded, applied the provisions of § 11(b) (1) to each possibility. *Engineers Public Service Co., Holding Company Act Release No. 2607, March 11, 1941, pp. 4-6.* See also *The Commonwealth & Southern Corp., Holding Company Act Release No. 2626, March 19, 1941, p. 4* (three alternative principal systems designated).

66. Clause A, in particular, will be a source of trouble, assuming B and C can be satisfied. The holding companies can introduce masses of evidence showing the economies which would be lost by divestment of additional systems. But the Commission may fail to find that there would be loss of economies, or may fail to find the economies substantial.

67. See Healy, *supra* note 25, at 623.