

76TH CONGRESS
3D SESSION

H. RES. 439

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1940

Mr. THORKELOSON submitted the following resolution: which was referred to the
Committee on Rules

RESOLUTION

Whereas the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1934, chapter X of the Bankruptcy Act, and the Trust Indenture Act of 1939 were enacted by Congress for the purpose of supervising the registration of security issues and suppression of fraudulent practices in the sale of securities; the supervision and regulation of transaction and trading in outstanding securities, both on the stock exchanges and in the over-the-counter markets; and the regulation of public utility holding companies; preparing advisory reports on plans and participation in corporate reorganizations; and the supervision of indentures used in the public offering of new security issues; and

Whereas the National Power Policy Committee was organized under authority of letters from the President to the Secretary of the Interior, dated July 9, 1934, and January 18,

1937, and reconstituted October 13, 1939, when the National Defense Power Committee was merged with it, for the purpose of developing a national power policy in the interest of national defense as well as peacetime need; and

Whereas the business of supplying private capital to American industry, which is in great need of plant modernization and plant expansion now suspended owing to uncertain Government policies and burdens, has been the hardest hit of all American industries due to high stock transfer taxes, maladministration of the Securities and Exchange Act of 1934, and to the abuses sought to be remedied by the above Acts of Congress, with the actual rate of turn-over on the New York Stock Exchange at a forty-year low; and with some two hundred thousand fewer workers employed in this country's largest security market area; indicating serious defects in the administration of the above Acts of Congress, and of the Committee, insofar as effecting their alleged purposes are concerned; and

Whereas the said Acts are of an experimental nature and necessarily require amendments and correction, as indicated by experience and the effect of their operation upon the economic system of the country; and

Whereas it has been frequently charged that the said Acts have contributed to the economic maladjustment now existing, and that the Securities and Exchange Commission has attempted by interpretations or regulation to write into said Acts intents and purposes not justified by the language of said Acts; and

Whereas the Director of the Public Utilities Division of the Commission stated in a letter of February 29, 1940, that—

“By express provisions of the Public Utility Holding Company Act of 1935 the Securities and Exchange Com-

mission is charged with 'maintenance of competitive conditions' and directed to construe that Act so as to assure the 'elimination of the evils which result in the absence of arm's-length bargaining or from restraint of free and independent competition' in the distribution of securities of registered public-utility companies and their public-utility company subsidiaries,"

but careful reading of the Act fails to disclose that it contains any provisions charging the Commission generally, apart from intrasystem transactions, or transactions by a registered holding company in selling any security or any "utility assets", which it owns of any public-utility company, with "maintenance of competitive conditions" in the distribution of securities of registered public-utility holding companies and their public-utility company subsidiaries, or directing the Commission to construe the Act in the manner stated; nor is it an exact quotation of the language of the Act, but rather a transposition of certain provisions of the recital set forth in section 1 (b) (2) and section 1 (c) of the Act, separated from their context and presented in such manner as to be misleading, according to the charges, which allege that in section 1 (b) (1) Congress was concerned exclusively with transactions involving "securities" and that no evils resulted from absence of arm's-length bargaining or the lack of competition are recited, while in section 1 (b) (2), where such evils are recited, it deals with "intercompany" relationships, that is, with the relationships between holding companies, their subsidiary public-utility companies and other companies in the same holding-company system, Congress not making any reference to transactions involved in the sale of public-utility securities to investment bankers or others in the general market, but referred to transactions involving excessive

charges for “services, construction work, equipment, and materials” or to “transactions in which evils result from an absence of arm’s-length bargaining or restraint of free and independent competition” to which subsidiary companies might be subjected by the affiliated or controlling holding company; and

Whereas it was not the intention of Congress that the mere existence of a relationship between a holding company and a subsidiary would be *prima facie* evidence of evil, nor has Congress proceeded on the assumption that all business relationships are essentially an evil and antisocial process; and

Whereas the Investment Bankers Association of America has requested a hearing before a committee of Congress; and

Whereas it is essential to the successful operation of said Acts and said committee that they be administered fairly, impartially, and with a due regard to the language of the Acts, to the Constitution of the United States, and to the recognition of the vital principle that all citizens have equal rights before the law; and

Whereas there has been an insistent demand both from the country and from individual Members of both branches of Congress for amendments to said laws with the view of correcting manifest injustices, erroneous interpretation, and unauthorized regulations; and

Whereas it is desirable that said Acts should be perfected, to the end that all persons affected thereby should receive equal justice and that the intent of Congress regarding the same should be respected in their administration; and

Whereas it is now apparent that this purpose can be effectuated only through an investigation by a special committee ap-

pointed to investigate and ascertain the facts and recommend legislation for that purpose: Now, therefore, be it

1 *Resolved*, That a committee of five Members of the
2 House of Representatives be appointed by the Speaker of
3 the House to take testimony, investigate, and report to the
4 House as follows:

5 1. Whether the Securities and Exchange Commission
6 and the National Power Policy Committee have been fair
7 and impartial in their conduct, in their decisions, in their
8 interpretation of the law, and in their dealings with private
9 citizens;

10 2. What effect, if any, the said Acts have had upon
11 the ability of private industry to raise capital; upon increas-
12 ing or decreasing employment and upon the general eco-
13 nomic conditions of the country;

14 3. What amendments, if any, are desirable to the Acts
15 in order to more effectively carry out the intent of Congress,
16 bring about better relations between business and Govern-
17 ment, and what changes if any are desirable in the personnel
18 of those charged with the administration of said laws;

19 4. Whether the Power Policy Committee and the Secu-
20 rities and Exchange Commission have by interpretation or
21 regulation attempted to write into said Acts intents and pur-
22 poses not justified by the language of the Acts.

23 The said committee shall recommend to the Con-

1 gress such changes as they deem desirable in said Acts or in
2 the personnel of those administering said Acts and shall
3 report and recommend such legislation either by way of
4 amendments to existing law or by way of new legislation as
5 they may deem desirable.

6 The committee, or any subcommittee thereof, shall have
7 power to hold hearings and to sit and act anywhere within
8 or without the District of Columbia; to require by subpena
9 or otherwise the attendance of witnesses and the production
10 of books, papers, and documents; to administer oaths; to
11 take testimony; to have printing and binding done; and to
12 make such expenditures as it deems advisable within the
13 amount appropriated therefor. Subpenas shall be issued
14 under the signature of the chairman of the committee and
15 shall be served by any person designated by him. The pro-
16 visions of section 102 to 104, inclusive, of the Revised
17 Statutes shall apply in case of any failure of any witness
18 to comply with any subpena or to testify when summoned
19 under authority of this resolution.

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To investigate the Securities and Exchange Commission and the National Policy Committee.

By Mr. THORKE

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