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BILL OF COMPLAINT,

Filed June 16, 1927.

IN CHANCERY OF NEW JERSEY

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainants, R. Irving Outwater of Passaic, New Jersey, and H. Prescott Wells of Tenafly, New Jersey, partners trading as Outwater and Wells, and W. Emlen Roosevelt, George Emlen Roosevelt, Philip J. Roosevelt, Fairman R. Dick and Archibald B. Roosevelt, of New York City, partners trading as Roosevelt & Sons, who bring this suit in their own behalf and in behalf of all other stockholders of Essex & Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, and Somerset, Union and Middlesex Lighting Company, who shall come in and contribute to the expenses of this suit, respectfully show that:

1. The complainants Outwater and Wells as partners are and were prior to April 26, 1927, holders of record of the following shares of stock of the par value of $100 each in the following named companies:

50 shares of stock of Essex and Hudson Gas Company
150 shares of stock of Hudson County Gas Company
124 shares of stock of The Paterson and Passaic Gas and Electric Company.

The complainants Roosevelt & Sons as partners are and were prior to April 26, 1927, holders

of record of—88 shares of stock of the par value of $100 each in Somerset, Union and Middlesex Lighting Company.

2. Essex and Hudson Gas Company is a corporation organized and existing under the laws of the State of New Jersey. It was organized on or about November 30, 1898, under the act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896") and the several supplements and amendments thereto (hereinafter sometimes referred to as the "Corporation Act of 1896"). The authorized capital stock of said corporation is $6,500,000, divided into 65,000 shares of the par value of $100 each, all of which has been issued and is outstanding.

3. Hudson County Gas Company is a corporation organized and existing under the laws of the State of New Jersey. It was organized on or about October 31, 1899, and was formed as a new corporation by the consolidation of The People's Gas Light Company of Jersey City, The Jersey City Gas Light Company, The Consumer's Gas Company of Jersey City, The Hudson County Gas Light Company and The Bayonne and Greenville Gas Light Company, under and pursuant to a joint agreement for their merger and consolidation dated October 5, 1899.

4. Under the provisions of said joint agreement the authorized capital stock of said Hudson County Gas Company is $10,500,000, divided into 105,000 shares of the par value of $100 each, all of which has been issued and is outstanding.

5. New Brunswick Light, Heat and Power Company is a corporation organized and existing

under the laws of the State of New Jersey and was organized on or about December 6, 1899, under the Corporation Act of 1896. Its total authorized capital stock is $500,000, divided into 5,000 shares of the par value of $100 each, of which 4,000 shares have been issued and are outstanding.

6. The Paterson and Passaic Gas and Electric Company is a corporation organized and existing under the laws of the State of New Jersey. It was organized on or about February 28, 1899, being formed as a new corporation by the consolidation of The People's Gas Light Company of the City of Paterson, Paterson Gas Light Company, The Edison Electric Illuminating Company of Paterson, Passaic Lighting Company, The Lodi Light, Heat and Power Company and The Passaic and Bergen Gas Company, under and pursuant to a joint agreement of merger and consolidation dated February 6, 1899.

7. As provided in said joint agreement, said The Paterson and Passaic Gas and Electric Company has an authorized capital stock of $5,000,000, divided into 50,000 shares of the par value of $100 each, all of which has been issued and is outstanding.

8. Somerset, Union and Middlesex Lighting Company was organized on or about December 1, 1903, being formed as a new corporation by the consolidation of Plainfield Gas and Electric Light Company, Somerset Lighting Company and Citizens Electric Company, under and pursuant to joint agreement of merger and consolidation dated November 11, 1903. Under the provisions of said joint agreement the authorized capital stock of said Somerset, Union and Middlesex

Lighting Company is $1,050,000, divided into 10,500 shares of the par value of $100 each, all of which has been issued and is outstanding.

9. Public Service Corporation of New Jersey was incorporated under the General Corporation Act of 1896 in the year 1903 with broad general powers and objects.

10. Public Service Corporation of New Jersey for a number of years after its organization operated both gas and electric properties. It is now primarily a holding company, and owns all of the common stock, and a part of the preferred stock, of Public Service Electric and Gas Company, which now operates the gas and electric properties throughout the more populous section of the State of New Jersey, all of the common stock of Public Service Railway Company, which directly, or through subsidiaries, operates street railway properties throughout a large part of the more populous section of the State of New Jersey, all of the common stock of Public Service Transportation Company, which in recent years has undertaken the operation of bus service in certain important municipalities within the State of New Jersey, all of the common stock of Public Service Production Company, which is engaged in contracting and engineering activities, and the stock of other smaller companies engaged in business in the State of New Jersey.

11. Upon organization, Public Service Corporation of New Jersey effected the unification of the operation of the gas and electric properties partly through the medium of subsidiary companies, but chiefly through a series of leases made by theretofore existing companies. The principal leases are hereinafter mentioned.

12. On June 1, 1903, Hudson County Gas Company leased all of its properties and franchises then owned and thereafter acquired by it, except certain property expressly reserved, for a term of 900 years from June 1, 1903, to Public Service Corporation of New Jersey. Said lease provided for the payment by the lesseee of all taxes, charges for the maintenance of the organization of the lessor, the payment of the interest on the funded debt of the lessor, and a net cash rental on a sliding scale. The maximum net cash rental, amounting to $840,000 per annum, was reached on December 1, 1910, and has since been regularly paid at that rate. A true copy of said lease is hereto annexed and made a part hereof, marked Exhibit 3.

13. Said rental is sufficient to pay dividends at the rate of 8% per annum on the outstanding stock of said lessor, consisting as aforesaid of 105,000 shares of the par value of $100 each, and has been regularly and periodically disbursed in dividends at that rate to its stockholders.

14. On June 1, 1903, said Essex and Hudson Gas Company leased to Public Service Corporation of New Jersey for a term of 900 years from June 1, 1903, all of its properties and franchises then owned or thereafter acquired by it, except certain property expressly reserved.

15. Under said lease the lessee agreed to pay the organization expenses of the lessor, all of the rental reserved in the Newark Consolidated Gas Company lease hereinafter mentioned, which leasehold estate was embraced within the lease by said Essex and Hudson Gas Company to Public Service Corporation of New Jersey, all taxes, assessments and like charges, and a net cash rental on a sliding scale. The maximum net cash rental

therein provided was $520,000 per year, and the said maximum was reached on December 1, 1908, and has since been regularly paid at that rate. Essex and Hudson Gas Company had no funded debt directly issued by it, and has not at any time thereafter created any funded debt.

16. Said net maximum cash rental is sufficient to pay dividends at the rate of 8% per annum on the outstanding stock of the said Essex and Hudson Gas Company, consisting as aforesaid of 65,000 shares of the par value of $100 each, and said net cash rental has been regularly and periodically disbursed in such dividends. A true copy of the relevant and material portions of said lease is hereto annexed and made a part hereof, marked Exhibit 4.

17. Newark Consolidated Gas Company was formed by the consolidation of certain theretofore existing companies on or about November 30, 1898, under and by a joint agreement of merger between the constituent companies dated November 4, 1898.

18. Under date of December 1, 1898, said Newark Consolidated Gas Company leased its properties and franchises to the United Gas Improvement Company, a corporation of Pennsylvania, for a term of 999 years from the date thereof.

19. The United Gas Improvement Company assigned said lease to the said Essex and Hudson Gas Company on or about December 1, 1898.

20. Said lease provided for the maintenance and extension of the leased properties, for termination of the lease in case of default in payment of rent or other default in the performance

of the provisions thereof by the lessee, for payment by the lessee of taxes and like charges, expenses of maintenance of the organization of the lessor, etc.

21. The net cash rental reserved in the lease was on a sliding scale, the maximum rental amounting to $300,000 per annum net. The maximum rental was reached in the year 1909, and is being regularly paid at that rate.

22. The authorized capital stock of said lessor is $6,000,000, divided into 60,000 shares of the par value of $100 each. Said maximum net rental of $300,000 per annum is sufficient to pay dividends on the capital stock at the rate of 5% per annum, which rental has for many years been regularly disbursed in dividends at that rate to the stockholders of said Newark Consolidated Gas Company.

23. Said lease also provides for further payment, as rental, of the interest on the funded indebtedness of the lessor and certain underlying bonds issued by Newark Gas Company, one of the constituent companies.

24. New Brunswick Light, Heat and Power Company prior to January 2, 1905, was and still is the owner of all of the outstanding capital stock of The Gas Light Company of the City of New Brunswick, and as such owner joined in and consented to a lease by The Gas Light Company of the City of New Brunswick of gas properties and franchises owned and operated by the latter in and adjacent to the City of New Brunswick, Middlesex County, New Jersey, dated January 2, 1905, to Public Service Corporation of New Jersey, for a period of 900 years from its date. The said

lease provided likewise for the maintenance of the organization of the lessor, the payment of all taxes and charges on its property, the payment of interest on funded debt of said New Brunswick Light, Heat and Power Company and of a net cash rental on a sliding scale. The maximum net cash rental, amounting to $20,000 per annum, was reached on July 1, 1914, and has since been regularly paid at that rate. Said cash rental is sufficient to pay dividends on the outstanding stock of New Brunswick Light, Heat and Power Company, consisting of 4,000 shares of the par value of $100 each, at the rate of 5% per annum, and has been regularly and periodically disbursed as dividends at said rate to its shareholders. A copy of portions of and summary of other portions of said lease is hereto annexed and made a part hereof, marked Exhibit 5.

25. On June 2, 1903, The Paterson and Passaic Gas and Electric Company leased all of its properties and franchises then owned or thereafter acquired by it, except certain property expressly reserved, to Public Service Corporation of New Jersey for a term of 900 years from June 1, 1903. Said lease likewise provided for the maintenance of the organization of the lessor, the payment of taxes and charges on the leased property, the payment of interest upon the funded debt of said lessor and its constituent companies, and for a net cash rental on a sliding scale. The maximum net cash rental of $250,000 per annum was reached on December 1, 1909, and since been regularly paid at that rate. A true copy of the relevant and material portions of said lease is hereto annexed and made a part hereof, marked Exhibit 6.

26. Said cash rental is sufficient to pay dividends at the rate of 5% per annum on the out-

standing capital stock of said lessor, consisting as aforesaid of $4,999,516, and has been regularly and periodically disbursed as dividends at that rate to its shareholders.

27. On December 31, 1903, Somerset, Union and Middlesex Lighting Company leased all of its properties and franchises then owned or thereafter acquired by it, except certain property expressly reserved, to Public Service Corporation of New Jersey for a period of 900 years from said date. Said lease likewise provided for the maintenance of the organization of the lessor, the payment by the lessee of all taxes and charges on the leased properties, the payment of interest on the funded debt of the lessor and of its constituent companies, and for a net cash rental on a sliding scale. The maximum net cash rental, amounting to $42,000 per annum, was reached on June 1, 1912, and has since been regularly paid at that rate. A true copy of the relevant and material portions of said lease is hereto annexed and made a part hereof, marked Exhibit 7.

28. Said rental is sufficient to pay dividends on the outstanding capital stock of said lessor, consisting of 10,500 shares of the par value of $100 each, at the rate of 4% per annum, and said rental has been regularly and periodically disbursed as dividends at that rate to its shareholders.

29. The Ridgewood Gas Company was incorporated on or about April 24, 1900, under the Gas Companies Act of 1876. On July 1, 1910 it leased all of its properties and franchises then owned and thereafter acquired to Public Service Gas Company for 999 years from the date of said lease.

30. Said lease likewise provided for the maintenance of the organization of the lessor, the payment by the lessee of taxes and other charges on the leased properties, for the payment of interest on the funded debt of the lessor and the payment of a net cash rental of $2,000 per annum.

31. Said cash rental is sufficient to pay dividends at the rate of 2% per annum upon the outstanding capital stock of said lessor, consisting of 1,000 shares of the par value of $100 each, and said rental has been regularly and periodically disbursed as dividends at said rate to its shareholders.

32. South Jersey Gas, Electric and Traction Company was organized on or about August 31, 1900, being formed as a new corporation by the consolidation of certain theretofore existing companies. Since the organization of said South Jersey Gas, Electric and Traction Company certain other companies have been merged into and with it.

33. On June 1, 1903 said South Jersey Gas, Electric and Traction Company leased all of its properties and franchises then owned or thereafter acquired by it, except certain property expressly reserved, to Public Service Corporation of New Jersey for a term of 900 years from the date of said lease.

34. Said lease likewise provided for the maintenance of the organization of said lessor, for the payment of all taxes and charges upon the leased properties, for the payment of interest on the funded debt of the said lessor and of its constituent companies, and for the payment of a net cash rental on a sliding scale. The maximum cash

rental, amounting to $480,000 per annum, was reached on December 1, 1908, and has since been regularly paid at that rate.

35. Said cash rental is sufficient to pay dividends at the rate of 8% per annum on the outstanding capital stock of said lessor, consisting of 60,000 shares of the par value of $100 each, and such rental has been regularly and periodically disbursed as dividends at that rate to the shareholders of said lessor.

36. The Gas and Electric Company of Bergen County was incorporated on or about May 31, 1899, being formed as a new corporation by the consolidation of certain theretofore existing companies.

37. On March 30, 1905 said The Gas and Electric Company of Bergen County leased all of its properties and franchises then owned or thereafter acquired by it, except certain property expressly reserved, to Public Service Corporation of New Jersey for a period of 999 years from January 1, 1905.

38. Said lease likewise provided for the maintenance of the organization of the lessor, the payment by the lessee of all taxes and charges on the leased properties, the payment of interest on the funded debt of the lessor and constituent companies, and the payment of a net cash rental on a sliding scale. The maximum rental, amounting to $100,000 per annum, was reached on July 1, 1914, and has since been regularly paid at that rate.

39. Said cash rental is sufficient to pay dividends at the rate of 5% per annum on the outstanding capital stock of said lessor, consisting

of 20,000 shares of the par value of $100 each. Said rental has been regularly and periodically disbursed as dividends at that rate to its shareholders.

40. United Electric Company of New Jersey (which as hereinafter stated was subsequently merged with Public Service Gas Company and Public Service Electric Company to form Public Service Electric and Gas Company) was incorporated on or about March 4, 1899 under the Corporation Act of 1896.

41. On or about July 1, 1907, United Electric Company of New Jersey leased its properties for a term of 999 years to Public Service Corporation of New Jersey. The maximum net cash rental amounted to $1,000,000 per annum, was reached in 1912, and was sufficient to pay dividends at the rate of 5% per annum on its capital stock, consisting of 200,000 shares of the par value of $100 each.

42. Essex and Hudson Gas Company at the time of making said lease operated the gas properties in the City of Newark and most, if not all, of the territory in the County of Essex outside of the City of Newark, as well as in other municipalities nearby, and in Harrison, East Newark, Kearney and Arlington, in the County of Hudson. Valuable portions of said property were owned by Essex and Hudson Gas Company, and other valuable portions thereof were vested in Newark Consolidated Gas Company, which had theretofore been leased to Essex and Hudson Gas Company as aforesaid, or in some one or more other companies owned and controlled by the Newark Consolidated Gas Company.

43. Hudson County Gas Company at the time of making said lease owned and operated valuable gas properties in Jersey City, Hoboken, Bayonne and other important municipalities within the County of Hudson.

44. Gas Light Company of the City of New Brunswick at the time of making said lease owned and operated valuable gas properties in the City of New Brunswick and adjacent territory in the County of Middlesex.

45. The Paterson and Passaic Gas and Electric Company at the time of making said lease owned and operated valuable gas and electric properties in the cities of Paterson, Passaic and adjacent territory in the County of Passaic.

46. Somerset, Union and Middlesex Lighting Company at the time of making said lease owned and operated valuable gas and electric properties in certain portions of the counties of Somerset, Union and Middlesex, including Plainfield, Somerville, Metuchen, Perth Amboy, Rahway, Bound Brook, and the electric properties in the City of New Brunswick.

47. South Jersey Gas, Electric and Traction Company at the time of making said lease owned and operated valuable gas and electric properties in portions of the counties of Mercer, Burlington, Camden and Gloucester, including Trenton, Camden, Burlington, Mount Holly, and many other smaller municipalities.

48. The Gas and Electric Company of Bergen County at the time of making said lease owned and operated valuable gas and electric properties in the County of Bergen, including Hackensack,

Englewood and many other smaller municipalities.

49. Ridgewood Gas Company at the time of making said lease owned and operated gas properties in Ridgewood and adjacent territory in the County of Bergen.

50. United Electric Company at the time of making said lease owned and operated valuable electric properties in the Counties of Essex, Hudson, Union, Bergen and Morris.

51. On and after the date of the delivery of said leases to Public Service Corporation of New Jersey, the latter entered into the possession and enjoyment of the respective demised premises. In the year 1909 Public Service Corporation of New Jersey assigned all of the said leases, in-so-far as they pertained to the manufacture and distribution of gas, to Public Service Gas Company, a corporation of New Jersey, and the latter expressly assumed the obligations of the lessee under said leases and thereafter operated, possessed and enjoyed the respective demised premises so far as they consisted of gas works and properties. At said time, and at all times thereafter, Public Service Corporation of New Jersey owned all of the capital stock of Public Service Gas Company.

52. In the year 1910, Public Service Corporation of New Jersey assigned all of said leases, in-so-far as they pertained to the generation and distribution of electricity, to Public Service Electric Corporation of New Jersey, and the latter assumed all of the obligations of the lessee of the said leases and thereafter operated, possessed and enjoyed the respective demised premises so

far as they consisted of electric light, heat or power plants and properties. At said time, and at all times thereafter, Public Service Corporation of New Jersey owned all of the capital stock of Public Service Electric Company.

53. In the year 1924, as hereinafter more particularly stated, Public Service Gas Company, Public Service Electric Company and United Electric Company of New Jersey were consolidated to form a single new corporation known as Public Service Electric and Gas Company. By the consolidation of said United Electric Company of New Jersey into and with said other two corporations the leasehold estate of Public Service Electric Company in the properties of United Electric Company of New Jersey was merged with the reversionary interest therein and the annual net cash rental charge of $2,000,000 per annum under the lease of United Electric Company of New Jersey was thereby extinguished.

54. By virtue of said consolidation, Public Service Electric & Gas Company has succeeded to all of the rights and all of the estate of Public Service Gas Company, Public Service Electric Company and United Electric Company of New Jersey in and to the respective demised premises, as well as all other property and assets of said three corporations. By force of the statute Public Service Electric and Gas Company has become expressly bound upon and has assumed all of the obligations of Public Service Corporation of New Jersey, Public Service Gas Company and Public Service Electric Company under said leases and has since its organization operated, enjoyed and possessed the respective demised premises. At all times since the organization of Public Service

Electric & Gas Company all of its common capital stock and $20,000,000 par value of its 7% cumulative preferred stock (except a few shares of the latter) has been owned by Public Service Corporation of New Jersey.

55. Public Service Electric and Gas Company, in respect to gross earnings and number of customers, is believed to be the largest operating public utility company of its kind in the world. It owns or controls electric and gas systems serving a rapidly growing population in New Jersey estimated at over 2,900,000, or over 80% of the population of the State. The territory served includes the larger cities and more populous sections of the State and is noted for its great industrial activity and growth. In it is located more than 90% of the manufacturing of New Jersey, which is the sixth State in value of manufactured products and the first in diversity of manufactures. The territory extends from the Hudson River opposite New York City, southwest across the State to the Delaware River opposite Philadelphia, and includes Newark, Jersey City, Paterson, Trenton, Camden, Elizabeth, Bayonne, Hoboken, Passaic, the Oranges, Perth Amboy, Union City and New Brunswick.

56. Since said leases were first made the gross and net revenues derived from the operation of the gas and electric properties have enormously increased and there has been a great growth in the population and the activity of the territory served by said companies, and the amount of capital invested in said gas and electric properties has very greatly increased.

57. Since said leases were first made the respective and successive lessees have from time to

time made extensive and valuable extensions, additions and improvements to and upon the respective demised premises. Complainants are unable to learn, however, whether all of, or how much of, said extensions, additions and improvements thereto have been treated as part and parcel of the respective demised premises, as is provided in the respective leases, and whether all of, or how much of, the cost of the same has been duly and properly entered upon the books, records and accounts of the lessor companies, but complainants charge that such extensions, additions, and improvements have been made and have greatly enhanced the value of the reversionary interest in the demised premises.

58. For many years last past Public Service Corporation of New Jersey has elected its nominees to membership in the respective boards of directors of all or most of the lessor companies, and has controlled and dominated the management and direction of all or most of said lessor companies.

59. A true copy of the joint consolidation agreement dated April 8, 1924, filed in the office of the Secretary of State of New Jersey on or about July 25, 1924, forming Public Service Electric and Gas Company, is hereto annexed and made a part hereof marked Exhibit 1.

60. Since said consolidation the authorized capital stock of Public Service Electric and Gas Company has been several times increased by amendment of Article IV of said joint consolidation agreement. A true copy of the latest amendment of said Article IV, filed in the office of the Secretary of State of New Jersey on or about

January 31, 1927, is hereto annexed and made a part hereof marked Exhibit 2.

61. In the year 1924 Public Service Corporation of New Jersey formulated a plan for the readjustment of certain of its securities and intercompany relations. This plan provided for certain changes in the financial structure of Public Service Corporation of New Jersey and for the consolidation of the Public Service Gas Company, Public Service Electric Company and United Electric Company of New Jersey. Pursuant to the plan the last named companies were consolidated as aforesaid to form Public Service Electric and Gas Company. Pursuant also to the plan a subsequent merger dated November 5, 1924, was effected by which Burlington Electric Light and Power Company and other corporations were merged into Public Service Electric and Gas Company.

62. Pursuant also to said plan a First and Refunding Mortgage, dated as of August 1, 1924, was made by Public Service Electric and Gas Company to Fidelity Union Trust Company, a trust company organized and existing under the laws of the State of New Jersey, as Trustee, and said Public Service Gas Company and Public Service Electric Company also joined therein.

63. Said mortgage is of the modern so-called open and self-refunding type.

64. Bonds thereunder may be issued in series with maturity not later than 2124.

65. The total aggregate amount of bonds authorized to be issued thereunder is without limit.

66. Bonds may be issued thereunder in series for the following purposes, generally speaking:

There was created thereby the 5½% series, due 1959, in the aggregate principal amount of $31,834,000, dated August 1, 1924, all of which were issuable upon the execution of the indenture without further action by the company;

For the purpose of the acquisition or construction of additions or improvements to property and plants, whether owned by the Company or by any of the Lessor companies, to the extent of 75% of the cost or fair value to the Company (whichever be less) of such additions and improvements, subject to sundry restrictions;

For the purpose of the acquisition of shares of the capital stock of the Lessor Companies to the extent of the par value of such shares so acquired or the actual cost to the Company of the acquisition, whichever be less;

For the purpose of refunding the underlying funded indebtedness of the companies merged into the Company, such, for instance, as the United Electric Company, and of the several lessor Companies to the extent of a like principal amount of bonds (eliminating underlying bonds held by the Company);

For the purpose of refunding funded debt upon properties thereafter acquired by the Company;

For the purpose of refunding bonds issued under the indenture.

67. In said mortgage the Company covenants, among other things, to preserve its franchises and all of the franchises of the Lessor Companies; not to permit any default to occur under any of the leases and to pay all of the rents due thereunder

and perform all of the obligations therein contained; not to make or permit to be made any modification of any such leases which shall operate to shorten the duration of the term thereof; to exercise its power as stockholder in and lessee from the Lessor Companies to prevent the creation of any mortgage or incumbrance upon their respective properties, except to refund existing mortgages and prevent any increase of their authorized or issued capital stock or indebtedness.

68. The Company also covenants as follows:

> "The Company will pay, or cause to be paid, when due (except as herein otherwise provided), all bonds, coupons, or other obligations secured by any mortgage, indenture, or deed of trust having a lien on the property of any of the Lessor Companies, or having a lien on any part of the mortgaged property prior to the lien hereof; it will perform or cause to be performed all obligations imposed by all such mortgages, indentures, or deeds of trust, and it will permit no default thereunder to occur."

The Company also covenants to maintain the property subject to the indenture, and that covered by said leases, in good order and condition, and to make thereto all needful and proper repairs, replacements and improvements; to make periodic appropriations for replacements required by reason of inadequacy or obsolescence of the property owned or operated by it.

69. The indenture provides that the bonds may be declared due and payable and that the property may be foreclosed and the bonds and mort-

gage otherwise enforced in case of defaults therein specified, which defaults include:

> Default in the payment of the principal of any of the underlying bonds when due;
>
> Default in any payment for rental or otherwise due under any of the said leases.

70. Said mortgage recites that the Company is owner and Lessee of lands, plants and appurtenant gas and electric properties throughout various municipalities situate in the Counties of Bergen, Hudson, Essex, Passaic, Middlesex, Morris, Union, Somerset, Mercer, Burlington, Camden, Gloucester and elsewhere in the State of New Jersey, which plants and systems will be from time to time enlarged and increased, and other like property acquired, and the granting clauses of the indenture subject to the lien thereof properties generally described as:

> all the gas and electric plants and property situated in the various municipalities aforesaid and all like properties now owned by the Company or thereafter acquired by it, subject to underlying liens upon the properties of constituent companies merged therewith;
>
> All of the several leaseholds herein elsewhere mentioned;
>
> lease by Public Service Electric Power Company dated June 1, 1923, for 999 years, covering the Kearney Power Plant;
>
> lease by Public Service Railway Company, dated July 1, 1910, for 999 years, affecting the electric power plant known as the Marion Generating Plant, at Jersey City, New Jersey;
>
> other relatively unimportant leaseholds;
>
> bonds and stock held by the Company in

constituent subsidiary or leased companies, and all of such as shall be hereafter acquired; other and after-acquired property, franchises and the like.

71. It was also a part of said plan that eventually other gas and electric companies leased to the Public Service Gas Company and Public Service Electric Company should be merged or consolidated with the Public Service Electric and Gas Company for the purpose, among other things, of vesting title to the valuable leased properties in said consolidated corporation and eliminating the rentals payable under the leases as fixed charges of the consolidated corporation.

72. In pursuance to the said plan and for the said purposes Public Service Corporation of New Jersey and Public Service Electric and Gas Company joined in an Offer made under date of January 10, 1927 to stockholders of the following named leased companies: Essex and Hudson Gas Company, Hudson County Gas Company, Newark Consolidated Gas Company, The Gas and Electric Company of Bergen County, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, The Ridgewood Gas Company, and Somerset, Union and Middlesex Lighting Company, and South Jersey Gas, Electric and Traction Company. A true copy of said Offer is annexed hereto and made a part hereof, and marked Exhibit 8.

73. Said offer contemplated the deposit by assenting stockholders of their shares of stock with the depositaries named in and subject to the provision of a Deposit Agreement dated December 28, 1926, made between Public Service Corpora-

tion of New Jersey, Public Service Electric and Gas Company, J. P. Morgan & Co. and Drexel & Co. as depositaries, and such depositing stockholders. A copy of the relevant and material portions of and a summary of other provisions of said Deposit Agreement is hereto annexed and made a part hereof, marked Exhibit 9.

74. At and before the making of said Offer, Public Service Corporation of New Jersey and Public Service Electric and Gas Company were the owners of some of the shares of said lessor companies, and in the case of certain of said lessor companies large portions of the shares of stock of said lessor companies were owned or controlled by other corporations, associations or persons affiliated with or interested as stockholder or otherwise in Public Service Corporation of New Jersey to a large extent.

75. The Offer classified the lessor companies in accordance with the rate of dividend being paid upon their respective capital stock as follows, viz: *8% stocks:* Essex and Hudson Gas Company, Hudson County Gas Company, South Jersey Gas, Electric & Traction Company: *5% Stocks:* The Gas and Electric Company of Bergen County, Newark Consolidated Gas Company, The Paterson and Passaic Gas and Electric Company, New Brunswick Light, Heat and Power Company: *4% stocks:* Somerset, Union and Middlesex Lighting Company: *2% stock:* The Ridgewood Gas Company.

76. Upon the Offer Public Service Corporation of New Jersey offered to purchase stock of the lessor companies upon either of the following options:

Option B	*Option C*
Cash per share	Number of shares without par value of common stock of Public Service Corporation of New Jersey offered in exchange
8% stocks:	
$142.	4.21
5% stocks:	
$90.	2.63
4% stocks:	
$72.	2.1
2% stocks:	
$36.	1.05

with adjustment of accrued dividends.

77. Under the Offer Public Service Electric and Gas Company offered to exchange the following number of shares of its 6% Cumulative Preferred stock, 1925 series, for stock of the lessors: (This was designated Option A.)

8% stocks	1.37
5% stocks	.86
4% stocks	.69
2% stock	.345

with adjustment of accrued dividends.

78. It was provided in the said Deposit Agreement that the purchase or exchange of said stocks should become operative in respect of the stock of each lessor of which a majority should have been deposited, provided, nevertheless that Public Service Corporation of New Jersey might declare such purchase or exchange operative as to stocks deposited under Option B and/or Option

C irrespective of whether a majority of the stock of any such lessor should have been deposited; but that the exchange under Option A should become operative as to the stock of any lessor of which less than a majority had been deposited only with the consent of the holder of the certificate of deposit.

79. Under said Deposit Agreement it was provided that the purchase or exchange of stocks should become operative, if at all, on or before February 10, 1927, unless extended.

80. The said date was subsequently extended, pursuant to the Deposit Agreement, to March 12, 1927.

81. Certain stockholders of each of said lessor companies deposited their shares of stock under said Deposit Agreement.

82. On or about March 12, 1927, the Deposit Agreement was declared operative as to the stock deposited of Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, and Somerset, Union and Middlesex Lighting Company, at which time it was announced that a majority of the stock of each of said companies had been deposited. At the same time the Public Service Corporation of New Jersey exercised its right under the Deposit Agreement to retain and pay for all of the stock deposited under Option B and/or Option C, and Public Service Electric and Gas Company declared its willingness to exchange the stock deposited under Option A with the consent of the holder of the certificate of deposit representing the same in the case of the other four

lessor companies of which a majority of the capital stock was not deposited, viz: The Gas and Electric Company of Bergen County, Newark Consolidated Gas Company, South Jersey Gas, Electric and Traction Company, and The Ridgewood Gas Company.

83. Complainants are informed and believe and charge that Public Service Corporation of New Jersey has caused to be transferred to itself on the books of the lessor companies the shares of stock thereof so acquired by it under Options B or C aforesaid, and that Public Service Electric and Gas Company has caused to be transferred to itself on the books of the said lessor companies the shares of stock thereof so acquired by it under Option A aforesaid, and that together said two companies now hold as stockholders of record or otherwise control more than two-thirds of the capital stock of each of the said five lessor companies, viz: Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, and Somerset, Union and Middlesex Lighting Company.

84. It was provided in said Offer and Deposit Agreement, by mutual agreement between Public Service Corporation of New Jersey and Public Service Electric and Gas Company, that Public Service Corporation of New Jersey would assign and transfer to Public Service Electric and Gas Company the shares of the lessor companies acquired by it pursuant to Options B and C and that in exchange therefor Public Service Electric and Gas Company would issue its 6% Cumulative Preferred stock, 1925 series, in amounts such that

the dividend on such Preferred stock at 6% would equal the dividends on the stocks of the said lessor companies so acquired at the respective rates of dividend formerly paid thereon. Complainants therefore charge that Public Service Electric and Gas Company is in effect the owner of all of the shares of stock of said lessor companies so acquired, and that the exercise of the right to vote the shares of stock of said lessor companies by Public Service Corporation of New Jersey is in purpose and effect the same as if such shares were voted by Public Service Electric and Gas Company. As Public Service Corporation of New Jersey is the owner of all of the common stock of Public Service Electric and Gas Company and of all of its 7% Cumulative Preferred stock, the interest of Public Service Corporation of New Jersey as stockholder in such lessor companies is subordinate to its interest in Public Service Electric and Gas Company, and the adequacy of the consideration which Public Service Corporation of New Jersey may receive in exchange for such stocks in said lessor companies from Public Service Electric and Gas Company is immaterial to it since the dominant interest of Public Service Corporation of New Jersey is to cause the properties of the said lessor companies to be acquired by the Public Service Electric and Gas Company, and the obligations of itself and said Public Service Electric and Gas Company as lessees to be extinguished, at the least expense to Public Service Electric and Gas Company. The interests of both Public Service Corporation of New Jersey and Public Service Electric and Gas Company will therefore be served by the payment to other stockholders in the lessor companies of the least possible amount in exchange for or in conversion of their shares of stock.

85. On or about April 26, 1927, in accord with the preconceived plan of Public Service Corporation of New Jersey,

Public Service Electric and Gas Company,
Essex and Hudson Gas Company,
Hudson County Gas Company,
New Brunswick Light, Heat and Power Company,
The Paterson and Passaic Gas and Electric Company,
Somerset, Union and Middlesex Lighting Company

86. and their respective boards of directors, made and executed a joint agreement, dated April 26, 1927, providing for the merger of said five lessor companies into and with Public Service Electric and Gas Company. A true copy thereof is hereto annexed and made a part hereof, marked Exhibit 10.

87. At or about the same time the respective Boards of Directors of said companies called special meetings of the stockholders of said companies to be held on May 23, 1927, for the purpose of adopting or rejecting said proposed agreement. Said meetings were convened on May 23, 1927, but no action was taken thereat upon the adoption or rejection of said agreement, and said meetings were adjourned to meet again on June 20, 1927.

88. With the notices of said meetings proxies were sent to the stockholders of said companies, with the request that stockholders unable to or not wishing to attend said meetings do sign and return same. The proxies named therein, to act at the meetings of each of said companies (except Somerset, Union and Middlesex Lighting Company), were Thomas N. McCarter, Percy S. Young

and Charles M. Breder, who are, respectively, President, a Vice-President, and Secretary, of, and also (with the exception of Charles M. Breder) directors of, Public Service Corporation of New Jersey and Public Service Electric and Gas Company; that the proxies named in the case of Somerset, Union and Middlesex Lighting Company were Harry B. Macdonald and T. Wilson Van Middlesworth, the latter of whom is Treasurer of Public Service Corporation of New Jersey and Public Service Electric and Gas Company.

89. Complainants believe it to be and charge that it is the intention of Public Service Corporation of New Jersey and Public Service Gas and Electric Company to vote not less than two-thirds of the capital stock of each of said five lessor companies in favor of the adoption of said agreement at the stockholders' meetings called to be held as aforesaid to vote thereon.

90. Shortly before May 23, 1927, it was publicly announced by a representative of Public Service Electric and Gas Company that upon the consummation of the proposed merger the leases of the said lessor companies would be treated as merged and extinguished and that the rental reserved thereunder would no longer be paid and that dividends on the capital stock of said lessor companies would cease.

91. Said proposed merger agreement provides, among other things, that said five last named lessor corporations shall be absorbed by and merged into Public Service Electric and Gas Company.

92. Said agreement also provides that there shall be issued to stockholders of the lessor com-

panies for each share of capital stock therein the 6% Cumulative Preferred Stock, 1925 series, of Public Service Electric and Gas Company, to the following respective par amount thereof, viz.,

Lessor Company	*Preferred Stock*
(8% Stock)	
Essex and Hudson Gas Company	$137
Hudson County Gas Company	$137
(5% Stock)	
The Paterson and Passaic Gas and Electric Company	$86
New Brunswick Light, Heat and Power Company	$86
(4% Stock)	
Somerset, Union and Middlesex Lighting Company	$69

with adjustment of accrued dividends in each case.

93. No other right or option is extended thereunder to the stockholders of said lessor companies.

94. None of the capital stock of Public Service Electric and Gas Company is subject to redemption except the 6% Cumulative Preferred Stock, 1925 Series, which may be redeemed at the option of the Company on any dividend payment date at any time after three years from the issue thereof on not less than 30 days' notice, by the payment in cash for each share so redeemed of $110 and accumulated and unpaid dividends, if any.

95. In case of the dissolution or liquidation of the company, the holders of all of the several classes of Preferred stock of said Company are entitled to the par value of their shares and ac-

cumulated and unpaid dividends, if any, before any distribution to the holders of the common stock, but are not entitled to any further share in the distribution of the remaining assets of the Company.

96. Said Preferred stocks are entitled to cumulative preferential dividends at the stipulated rates, but are not entitled to any other or further share in the surplus or earnings of the Company.

97. Said Preferred stocks have no voting power unless and until the Company shall be in default in payment of dividends on any of the Preferred stock to an amount equal to two full quarterly dividend payments. In such case the holders of Preferred stock are entitled to 10 votes for each share of Preferred stock held, which right, however, shall cease upon the payment of all dividends in arrears.

98. The holders of the said Preferred stocks are not entitled as of right to subscribe for the purchase or receive any part of any new or additional issue of stock, preferred or common, now or hereafter authorized, or any obligations convertible into stock.

99. The amount of such Preferred Stock for which the capital stock of said lessor companies is exchangeable as aforesaid is the same amount offered under Option A of said offer dated January 10, 1927, the terms and provisions were formulated by Public Service Corporation of New Jersey and Public Service Electric and Gas Company at least as early as December 28, 1926.

100. Complainants charge that the intrinsic value of the capital stock of said lessor companies is much greater than that of the said Preferred

Stock proposed to be issued in exchange therefor; that the market value of the capital stock of said lessor companies is much greater than that of the said Preferred Stock proposed to be issued in exchange therefor; and also that the market value of the capital stock of said lessor companies at April 26, 1927, was substantially higher than at the time the terms of said Offer dated January 10, 1927, were originally formulated.

101. The underlying funded debt of the companies leased to and merged into Public Service Electric & Gas Company and their constituent companies, is briefly summarized in Exhibit 11, hereto annexed and made a part hereof. All of such underlying debt is closed, that is, no more bonds can be issued under the mortgages respectively securing same.

102. The total amount of the capital stock of the companies leased to Public Service Electric and Gas Company is set forth in Exhibit 12, hereto annexed and made a part hereof.

103. The direct funded debt of Public Service Electric and Gas Company as of January 1, 1927, (after giving effect to the issue of $19,800,000. First and Refunding Mortgage Gold Bonds subsequently issued but dated as of January 1, 1927, but subject to the operation of the Sinking Fund since that date) and its capital stock outstanding as of January 1, 1927, are as follows:

Funded Debt:

First and Refunding Mortgage Gold Bonds:			
5%	Series due 1965.....	$22,300,000.	
5½%	Series due 1959.....	25,771,000.	
5½%	Series due 1964.....	15,000,000.	$63,071,000.

Preferred Stock:		
7% Cumulative Preferred*..	$20,000,000.	
6% Cumulative Preferred...	30,000,000.	$50,000,000.
Common Stock:		
11,000,000 shares without nominal or par value, carried at the stated value of $10 per share**		$110,000,000.
Total.....		$223,071,000.

*All except a few shares owned by Public Service Corporation of New Jersey.
**All owned by Public Service Corporation of New Jersey.

104. The total annual interest requirement on said amount of First and Refunding Mortgage Gold Bonds is $3,357,405. The total annual requirement for dividends on said amount of Preferred Stock is $3,200,000.

105. The dividends paid on said Common Stock during 1926 amounted to $12,052,500.

106. Since January 1, 1927, Public Service Electric and Gas Company has issued or obligated itself to issue a substantial additional amount of Preferred Stock in connection with the acquisition of capital stock of the lessor companies The Gas and Electric Company of Bergen County, Newark Consolidated Gas Company, The Ridgewood Gas Company and South Jersey Gas, Electric and Traction Company, to an amount unknown to complainants; also in connection with the acquisition of capital stock of the lessor companies Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company and Somerset, Union and Middlesex Lighting Company, to an amount unknown to complainants. If all of the capital stock of the said last mentioned five merging lessor companies (other than that owned by Public Service Electric and Gas Company at December 31, 1926, but in-

cluding that acquired since that date under the Offer dated January 10, 1927,) were to be exchanged for Preferred Stock under the proposed merger agreement dated April 26, 1927, the total amount of Preferred Stock which would be issued therefor would be $27,359,833. The annual dividend requirement thereon would be $1,641,589, which is equal to the dividends payable annually on the stock of the said lessor companies (other than that owned by Public Service Electric and Gas Company at December 31, 1926) out of the rentals.

107. The stocks in said lessor companies now enjoy a very high degree of security because they rank superior to the large amount of the funded debt and stock of the lessee, and because the dividends thereon are payable from rentals which are a charge upon the large revenues of the lessee superior to its own interest and dividend requirements.

108. The following are the members of the Board of Directors of Public Service Corporation of New Jersey:

David Baird, Jr., Frank Bergen, Samuel T. Bodine, Thomas S. Gates, J. Horace Harding, William C. Heppenheimer, Garret A. Hobart, Anthony R. Kuser, Alfred L. Loomis, Thomas N. McCarter, Uzal H. McCarter, William Scheerer, William H. Speer, Arthur W. Thompson, Paul Thompson, Landon K. Thorne, Edmund W. Wakelee, Percy S. Young.

109. The following are the members of the Board of Directors of Public Service Electric and Gas Company and were the directors holding office on April 26, 1927, the date of the adoption by

the directors of said company of the proposed merger agreement dated April 26, 1927:

Samuel T. Bodine, Thomas S. Gates, Anthony R. Kuser, Alfred L. Loomis, Thomas N. McCarter, Uzal H. McCarter, Arthur W. Thompson, Landon K. Thorne, Edmund W. Wakelee, Percy S. Young.

110. All of said directors are also directors of Public Service Corporation of New Jersey.

111. The following are the members of the Board of Directors of Essex and Hudson Gas Company and were in office on April 26, 1927, the date of the adoption by said company of said proposed merger agreement dated April 26, 1927:

Samuel T. Bodine, Charles M. Breder, Thomas S. Gates, Anthony R. Kuser, Thomas N. McCarter, Uzal H. McCarter, Arthur W. Thompson, Edmund W. Wakelee, Percy S. Young.

112. All of said directors except Charles M. Breder are also directors of Public Service Corporation of New Jersey and of Public Service Electric and Gas Company. Said Charles M. Breder is Secretary of Public Service Corporation of New Jersey and also Secretary of Public Service Electric and Gas Company.

113. The following are the members of the Board of Directors of said Hudson County Gas Company, and held office on April 26, 1927, the date of the adoption by said company of said proposed merger agreement dated April 26, 1927:

Samuel T. Bodine, Charles M. Breder, Thomas S. Gates, Anthony R. Kuser, Thomas N. McCarter, Uzal H. McCarter, Arthur W. Thompson, Edmund W. Wakelee, Percy S. Young.

114. All of said directors except Charles M. Breder are also directors as aforesaid of Public

Service Corporation of New Jersey and of Public Service Electric and Gas Company. Said Charles M. Breder is Secretary, as aforesaid, of said last mentioned companies.

115. The following are the members of the Board of Directors of said New Brunswick Light, Heat and Power Company, who held office on April 26, 1927, the date of the adoption by the directors of said company of said proposed merger agreement dated April 26, 1927:

Samuel T. Bodine, Thomas S. Gates, Anthony R. Kuser, Thomas N. McCarter, Uzal H. McCarter, Arthur W. Thompson, Edmund W. Wakelee and Percy S. Young.

116. All of said directors are also directors as aforesaid of Public Service Corporation of New Jersey and Public Service Electric and Gas Company.

117. The following are the members of the Board of Directors of Gas Light Company of the City of New Brunswick, all of the capital stock of which is, as aforesaid, owned by New Brunswick Light, Heat and Power Company, viz:

Wade H. Johns, Thomas N. McCarter, W. F. Randolph, T. Wilson Van Middlesworth, Percy S. Young.

118. Said Thomas N. McCarter and Percy S. Young are directors as aforesaid of Public Service Corporation of New Jersey and Public Service Electric and Gas Company. Said T. Wilson Van Middlesworth is Treasurer of both of said companies.

119. The following are the members of the Board of Directors of The Paterson and Passaic Gas and Electric Company and held office on April

26, 1927, the date of the adoption by the directors of said company of said proposed merger agreement dated April 26, 1927.

Samuel T. Bodine, Charles M. Breder, Thomas N. McCarter, Thomas S. Gates, Anthony R. Kuser, Uzal H. McCarter, Arthur W. Thompson, Edmund W. Wakelee and Percy S. Young.

120. All of said directors except Charles M. Breder are also directors as aforesaid of said Public Service Corporation of New Jersey and said Public Service Electric and Gas Company. Said Charles M. Breder is Secretary as aforesaid of Public Service Corporation of New Jersey and of Public Service Electric and Gas Company.

121. The following are the members of the Board of Directors of Somerset, Union and Middlesex Lighting Company and held office on April 26, 1927, the date of the adoption by the directors of said company of said proposed merger agreement dated April 26, 1927:

Augustus J. Brunson, Harry B. MacDonald, William H. Pope, T. Wilson Van Middlesworth, and Percy S. Young.

122. Said Percy S. Young is also a director as aforesaid of Public Service Corporation of New Jersey and Public Service Electric and Gas Company. Said T. Wilson Van Middlesworth is Treasurer of Public Service Corporation of New Jersey and is also Treasurer of said Public Service Electric and Gas Company.

123. Complainants are informed and verily believe and therefore charge that many of the Directors of the aforesaid Lessor Companies are holders or owners directly or indirectly of bonds, stocks or other securities or obligations of said

Public Service Corporation of New Jersey and/or said Public Service Electric and Gas Company, or in some instances of corporations or associations which are holders or owners to a material degree of such securities; and that in other instances such Directors in Public Service Corporation of New Jersey and/or Public Service Electric and Gas Company or officers thereof are otherwise so circumstanced that their personal interest lies with the Public Service Corporation of New Jersey and/or Public Service Electric and Gas Company rather than with the interest of the said Lessor Companies in any matter in which said interests conflict. Complainants charge that the interests of said Lessor Companies and their stockholders are in conflict with the interests of said Public Service Corporation of New Jersey and/or Public Service Electric and Gas Company in respect to the terms and provisions upon which it is proposed to merge and consolidate said Lessor Companies in, to and with said Public Service Electric and Gas Company as well also as in other matters affecting the respective rights of said Lessor Companies and said Lessee under the terms and provisions of the respective leases.

124. Complainants charge that the proposed merger agreement is a contract between the corporate parties thereto which, under the statute, must, before submission to stockholders, be made by the respective directors thereof in the exercise of an unbiased, uncontrolled and independent judgment; but that by reason of the facts and circumstances herein stated the directors of the lessor companies are unable to and have not exercised such judgment, but have permitted themselves to be dominated and controlled by Public

Service Corporation of New Jersey and Public Service Electric and Gas Company, and have ignored various considerations and facts which should have led them, in the exercise of an unbiased, uncontrolled and independent judgment, to refuse to make the proposed merger agreement or to submit the same to the stockholders for adoption.

125. Complainants charge that the proposed merger agreement is inequitable, unfair to them, oppressive and destructive of their rights and interests as stockholders for the reasons, among others, that it provides for the exchange of their stock for Preferred Stock

(a) Which has neither the intrinsic nor the market value of their stock; (b) which is redeemable at the option of the Company, the exercise of which right would deprive them of their investment and would force them to reinvest at possible great comparative disadvantage, and the existence of which right would in itself depress and hold down the market value of their investment, whereas the stocks now held by them enjoy the great advantage and especial value which attaches to a non-redeemable security yielding a fixed rate of return in perpetuity; (c) the income on which depends on the continued prosperity of the Public Service Electric and Gas Company and the discretionary action of its directors in the declaration of dividends, whereas the stocks now held by them are absolutely entitled to dividends payable out of rentals which must be paid duly and punctually by the lessee as a condition to the continued use by it of the leased properties which

are invaluable and necessary to it, on the penalty, in case of default, of the termination of such leases and the disintegration of the lessee's physical and financial structure; (d) which is without voting power in the ordinary course, thereby depriving the holders of a voice in the management of the properties in which they have invested; (e) which are inferior in rank and priority to the very great and continually increasing debt of the Public Service Electric and Gas Company, especially its First and Refunding Mortgage Gold Bonds, and such other indebtedness as may be hereafter created, whereas the lessee's obligations under the leases now rank ahead, as to the leased properties, of such debt, and said First and Refunding Mortgage secures the observance of the provisions of the leases, on the penalty, in case of default, of foreclosure; (f) which may or may not enhance in value and security, depending upon the prosperity and success of the management of Public Service Electric and Gas Company, whereas the stocks now held by them tend steadily and surely to so enhance because of the steady growth in the revenues of the lessee, and because of the constant increase of the resources of the lessee through the medium of financing junior in rank and priority to the securities of the lessor companies; (g) which is a security of a type and quality different from that now held by them.

126. Complainants charge that the proposed merger agreement is inequitable, unfair to them, oppressive and destructive of the rights and interests of complainants as stockholders and of the

lessor companies for the reasons, among others, that

(a) the merger is not designed, in good faith, for the common benefit of the whole body of stockholders of the several lessor companies and for the benefit of said companies, but is designed by the lessee company to accomplish the acquisition by it of the valuable properties and franchises of the lessor companies on terms formulated by it and forced upon the lessor companies by its control and domination thereof; (b) the merger is not designed, in good faith, for the common benefit of the whole body of stockholders of the several lessor companies and for the benefit of said companies, but is designed by the lessee company to accomplish the extinguishment and annulment by it of its obligations as lessee on terms dictated by it and forced upon the lessor companies by its control and domination thereof, with the resultant destruction of the vested rights, the benefits and advantages of the lessor companies and their stockholders under the leases; (c) the merger can be adopted, if at all, only through the control which the lessee has acquired over the stocks of the lessor companies which it purposes to exercise, not for the common benefit of the whole body of stockholders of the lessor companies, but for its own peculiar and selfish benefit by the appropriation by it of the properties and assets of the lessor companies to the disadvantage and partial exclusion therefrom of other stockholders.

127. Complainants allege that the consummation of the proposed merger will in substance and

effect be equivalent to a conveyance by each of the said merging lessor companies of its reversionary interest in the demised premises as well as a release and discharge by it of all of the obligations of the lessee thereunder with the same effect as if such lessor had conveyed away all of its property and assets as an entirety; and that such transaction cannot be initiated and that the terms thereof and consideration therefor cannot in equity be permitted to be determined by Boards of Directors of said respective merging lessor companies dominated and controlled by the lessee, or without the unanimous consent of all of the stockholders of each of said lessor companies.

128. Complainant's charge that should the provisions of the Corporation Act of 1896 relating to merger and consolidation be so construed as to permit the exercise by the Public Service Electric and Gas Company and Public Service Corporation of New Jersey of their control of more than two-thirds of the outstanding stock of said merging lessor companies, so as thereby to extinguish and annul the obligations of said Public Service Corporation of New Jersey and Public Service Electric and Gas Company, as lessees, those statutory provisions so construed and the proceedings thereunder for the merger would amount to an impairment of the obligation of the contracts between said lessors and lessees, and of the contractual rights of the stockholders of said lessors, in violation of Section X of Article I of the Constitution of the United States, and as well a violation of Section VII of Article IV of the Constitution of the State of New Jersey, and would constitute a deprivation of the property of said lessor corporations and of the stockholders therein without

due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and would also amount to a taking of the private property of the said lessor corporations and the stockholders therein without just compensation.

129. Complainants charge that the obligations, duties and liabilities of the Public Service Corporation of New Jersey and Public Service Electric and Gas Company, as lessees under the respective leases made by the merging lessor corporations, are obligations, duties and liabilities of a nature and character which under the Corporation Act of 1896 may not be extinguished or annulled by the act of merger and consolidation, but are such as must and should be preserved unimpaired in the case of a merger or consolidation, and that the proposed merger and consolidation, if otherwise lawful, may and should be made only subject to the obligations, liabilities and duties of said lessees under said leases, and that therefore a merger and consolidation which would have the effect of extinguishing and annulling such obligations, liabilities and duties is ultra vires and void.

130. Complainants charge that the shares of stock of said lessor companies have for many years been bought and sold and otherwise dealt with by holders thereof on the assumption that dividends thereon at a fixed rate were in effect guaranteed by the lessees; that such is in effect the case, as the leases are not terminable by the lessee or assigns and as the fixed maximum net cash rental is, as aforesaid, sufficient to pay such dividends regularly and no other disposition of such rental has been made or is required by any corporate need; and that such dividends have been

and are referred to in public statements and reports made by Public Service Corporation of New Jersey and/or Public Service Electric and Gas Company as "guaranteed through leases," or "guaranteed from rentals." Wherefore complainants charge that Public Service Corporation of New Jersey, as original lessee under the leases of said lessor companies, and Public Service Electric and Gas Company, as assignee thereof, are estopped to deny or repudiate their continuing liability to pay the rentals reserved in said leases and now, through the use of their control of more than two-thirds of the capital stock of said lessor companies, to bring about by merger or otherwise the extinguishment of their obligations as lessees and the consequent cessation of dividend payments on the capital stock of the lessor companies.

131. Complainants charge that the corporations proposed to be merged, viz: Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, and Somerset, Union and Middlesex Lighting Company, were not organized for the purpose of carrying on business of the same or a similar nature, and that therefore the proposed merger would be ultra vires, illegal and void. The greater number of said corporations were formed by consolidation of predecessor corporations, some of which were in turn formed by the consolidation of other corporations or by a series of such consolidations, and as such consolidated corporations have succeeded to and are possessed of all rights, privileges, powers and franchises of such predecessor and constituent companies. The kind of business for the purpose of carrying on which said consolidated

corporations were formed will therefore be determined by the terms and provisions of the certificates of incorporation or statutory acts of incorporation under and by which the said predecessor and constituent corporations were incorporated, and the statements therein contained of the objects and purposes for which such corporations were formed.

132. Essex and Hudson Gas Company was incorporated, as aforesaid, under the Corporation Act of 1896, on or about November 30, 1899.

133. Hudson County Gas Company was organized, as aforesaid, on or about October 31, 1899, by the consolidation of

The Peoples' Gas Light Company of Jersey City,
The Jersey City Gas Light Company,
The Consumer's Gas Company of Jersey City,
The Hudson Gas Light Company, and
The Bayonne and Greenville Gas Light Company.

134. Said The Peoples' Gas Light Company of Jersey City was organized as a corporation under and pursuant to an act of the Legislature of the State of New Jersey, being Chapter CCCLXXXIV of the Laws of 1868, approved April 8, 1868, under the name "The People's Gas Light Company of the City of Hudson". By a supplement to said act, being Chapter XXXIV of the Laws of 1871, approved February 14, 1871, its name was changed to "The People's Gas Light Company of Jersey City".

135. Said The Jersey City Gas Light Company was organized as a corporation under and by an

act of the Legislature of the State of New Jersey approved March 1, 1849.

136. Said The Consumer's Gas Company of Jersey City was organized as a corporation on or about August 2, 1877 under and pursuant to the act of the Legislature of New Jersey entitled "An Act to authorize the formation of gas light corporations and regulate the same", approved April 21, 1876 (hereinafter sometimes referred to as the "Gas Companies Act").

137. Said The Hudson Gas Light Company was incorporated under and by an act of the Legislature of New Jersey approved March 6, 1863, being Chapter XCVII of the Laws of 1863.

138. Said The Bayonne & Greenville Gas Light Company was incorporated under and by an act of the Legislature of the State of New Jersey approved February 17, 1864, being Chapter XXIV of the Laws of 1864, under the name "The Bergen Point Gas Light Company". The name of said company was changed to The Bayonne & Greenville Gas Light Company by a supplement thereto, being Chapter CCIX of the Laws of 1871, approved March 14, 1871.

139. New Brunswick Light, Heat and Power Company was incorporated, as aforesaid, under the Corporation Act of 1896, on or about December 6, 1899.

140. The Paterson and Passaic Gas and Electric Company was organized, as aforesaid, on or about February 28, 1899, by the consolidation of

The People's Gas Light Company of the City of Paterson,

Paterson Gas Light Company,

The Edison Electric Illuminating Company of Paterson,
Passaic Lighting Company,
The Lodi Light, Heat and Power Company, and
The Passaic and Bergen Gas Company.

141. Said The Peoples Gas Light Company of the City of Paterson was incorporated under and by an Act of the Legislature of the State of New Jersey approved March 24, 1874, being Chapter CCCLXIII of the Laws of 1874.

142. Said Paterson Gas Light Company was incorporated under and by an Act of the Legislature of the State of New Jersey approved December 9, 1825.

143. Said The Edison Electric Illuminating Company of Paterson was incorporated under an Act of the Legislature of the State of New Jersey entitled, "An Act Concerning Corporations", approved April 7, 1875, and the several supplements and amendments thereto, (hereinafter sometimes referred to as the "Corporation Act of 1875") on or about November 23, 1887.

144. Said Passaic Lighting Company was organized on or about March 27, 1895, being formed by the consolidation of The Passaic Gas Light Company and the Passaic Electric Light, Heat and Power Company, by joint agreement of consolidation dated March 5, 1895.

145. Said The Passaic Gas Light Company was incorporated under and by an Act of the Legislature of the State of New Jersey, approved March 20, 1857, being Chapter CXVII of the Laws of 1857.

146. Said The Passaic Electric Light, Heat and Power Company was incorporated on or about January 18, 1888, under the Corporation Act of 1875.

147. Said The Lodi Light, Heat and Power Company was incorporated on or about May 25, 1898 under the Corporation Act of 1896.

148. Said The Passaic and Bergen Gas Company was incorporated on or about January 26, 1899 under the Corporation Act of 1896.

149. Somerset, Union and Middlesex Lighting Company was organized, as aforesaid, on or about December 1, 1903, by the consolidation of

Plainfield Gas and Electric Light Company,
Somerset Lighting Company, and
Citizens Electric Company.

150. Said Plainfield Gas and Electric Light Company was incorporated on or about December 8, 1890, under the Corporation Act of 1875.

151. Said The Somerset Lighting Company was originally incorporated on or about March 1, 1893, under the Corporation Act of 1875.

152. On or about December 16, 1898 The Somerset Gaslight Company was merged with and into said The Somerset Lighting Company under and pursuant to a joint agreement between said companies dated November 15, 1898.

153. Said The Somerset Gaslight Company was incorporated on or about October 5, 1898, under the Gas Companies Act of 1876.

154. Said Citizens Electric Company was incorporated on or about July 18, 1895 under the Corporation Act of 1875.

155. On or about December 30, 1903 Central Electric Company was merged with and into the said Somerset, Union and Middlesex Lighting Company under and pursuant to a joint agreement between the said companies dated December 1, 1903.

156. Said Central Electric Company was originally incorporated on or about June 12, 1900 under the Corporation Act of 1896.

157. On or about December 20, 1900 The Raritan Electric Light and Power Company, The Bound Brook Electric Light, Heat and Power Company, The Dunellen Electric Light Company, The Edison Electric Illuminating Company of New Brunswick, Rahway Electric Company and Middlesex Electric Company were merged into and with said Central Electric Company under and pursuant to a joint agreement of merger and consolidation between said corporations dated November 29, 1900.

158. Said The Raritan Electric Light and Power Company was incorporated on or about April 3, 1890 under the Corporation Act of 1875.

159. Said The Bound Brook Electric Light, Heat and Power Company was incorporated on or about January 30, 1893 under the Corporation Act of 1875.

160. Said The Dunellen Electric Light Company was incorporated on or about May 20, 1891 under the Corporation Act of 1875.

161. Said The Edison Electric Illuminating Company of New Brunswick was incorporated on or about March 31, 1885 under the Corporation Act of 1875.

162. Said Rahway Electric Company was incorporated on or about June 25, 1896 under the Corporation Act of 1875.

163. Said Middlesex Electric Company was incorporated on or about February 2, 1899 under the Corporation Act of 1896.

164. Public Service Electric and Gas Company was organized, as aforesaid, on or about July 25, 1924, by the consolidation of

Public Service Gas Company,
Public Service Electric Company, and
United Electric Company of New Jersey.

165. Public Service Gas Company was incorporated, as aforesaid, under the name The Oxy-Hydrogen Company of the United States, under and by an act of the Legislature of New Jersey, approved April 4, 1873, being Chapter DXLIII of the Laws of 1873. Its name was changed to Public Service Gas Company on or about August 26, 1909.

166. Public Service Electric Company was incorporated, as aforesaid, under the Corporation Act of 1896, on or about June 14, 1910.

167. United Electric Company of New Jersey was incorporated, as aforesaid, under the Corporation Act of 1896, on or about March 4, 1899.

168. On or about February 1, 1901, Peoples Light & Power Company, North Hudson Light, Heat & Power Company, The Consumer's Light, Heat & Power Company, and The Morris County Electric Company, were merged into and with said United Electric Company of New Jersey under and pursuant to a joint agreement of merger and consolidation dated January 10, 1901.

169. Under the certificate of incorporation of said United Electric Company of New Jersey, its authorized capital stock was $20,000,000, divided into 200,000 shares of the par value of $100 each, which remained unchanged by the said joint agreement.

170. Said Peoples Light & Power Company was incorporated on or about January 22, 1894, under the Corporation Act of 1875.

171. On or about March 29, 1900, The Newark Electric Light and Power Company, Thomson-Houston Electric Company of Newark, N. J., The Newark Schuyler Electric Light Company, The Essex County Electric Company, Suburban Electric Light & Power Company, Montclair Light & Power Company, The Central Power Company, Consumers Electric Light & Power Company, The Excelsior Light & Power Company of Harrison, New Jersey, Kearny Electric Light & Power Company, Hudson County Electric Company and The Jersey City Electric Light Company were merged into and with said Peoples Light & Power Company under and pursuant to a joint agreement of merger and consolidation dated March 2, 1900.

172. Said The Newark Electric Light & Power Company was incorporated on or about January 24, 1881 under the Corporation Act of 1875.

173. Said Thomson-Houston Electric Company of Newark, N. J. was incorporated on or about June 24, 1886 under the Corporation Act of 1875. The name under which it was incorporated was "The Thompson & Houston Electric Light Power and Heating Company of Newark, New Jersey", which name was changed to Thomson-Houston Electric Company of Newark, N. J. on or about October 25, 1887.

174. Said The Newark Schuyler Electric Light Company was incorporated on or about September 1, 1886 under the Corporation Act of 1875.

175. Said The Essex County Electric Company was incorporated on or about November 26, 1888 under the Corporation Act of 1875.

176. Said Suburban Electric Light and Power Company was incorporated on or about October 8, 1895 under the Corporation Act of 1875.

177. Said Montclair Light and Power Company was incorporated on or about May 9, 1895 under the Corporation Act of 1875.

178. Said The Central Power Company was incorporated on or about June 21, 1888 under the Corporation Act of 1875.

179. Said Consumers' Electric Light and Power Company was incorporated on or about July 24, 1896 under the Corporation Act of 1896.

180. Said The Excelsior Electric Company of Harrison New Jersey was incorporated on or about June 16, 1889 under the Corporation Act of 1875.

181. Said Kearny Electric Light and Power Company was incorporated on or about April 30, 1895 under the Corporation Act of 1875.

182. Said Hudson County Electric Company was incorporated on or about August 2, 1889 under the Corporation Act of 1875. On or about July 17, 1893 its certificate of incorporation was amended so as to change the objects of the company.

183. Said The Jersey City Electric Light Company was incorporated on or about November 9,

1892 under the Corporation Act of 1875. It was incorporated under the name "Baxter Electric Light Company of New Jersey", and its name was changed to The Jersey City Electric Light Company on or about December 7, 1883.

184. Said North Hudson Light, Heat and Power Company was incorporated on or about September 19, 1898 under the Corporation Act of 1896.

185. Hudson Electric Light Company was incorporated on or about October 6, 1885, under the Corporation Act of 1875, and on or about May 31, 1900, was merged into North Hudson Light, Heat and Power Company.

186. Said Consumers Light, Heat and Power Company was originally incorporated on or about May 18, 1898 under the Corporation Act of 1896.

187. On or about May 31, 1900 Suburban Electric Company, The Elizabeth Schuyler Electric Company and The Union County Electric Company were merged into and with said Consumers Light, Heat and Power Company under and pursuant to a joint agreement of merger and consolidation between said companies dated April 3, 1900.

188. Said Suburban Electric Company was incorporated on or about January 8, 1892 under the Corporation Act of 1875.

189. Said The Elizabeth Schuyler Electric Company was incorporated on or about October 21, 1885 under the Corporation Act of 1875.

190. Said The Union County Electric Company was incorporated on or about October 23, 1891 under the Corporation Act of 1875.

191. Said Morris County Electric Company was incorporated on or about December 6, 1886 under the Corporation Act of 1875. It was incorporated under the name "The Morristown Electric Light, Heat and Power Co.", which name was changed to Morris County Electric Company on or about March 16, 1893.

192. On or about April 29, 1893 The Boonton Electric Light, Heat and Power Company was merged into and with said Morris County Electric Company under and pursuant to a joint agreement of merger and consolidation between said companies dated March 17, 1893.

193. Said The Boonton Electric Light, Heat and Power Company was organized on or about April 27, 1889 under the Corporation Act of 1875.

194. On or about December 3, 1924, Burlington Electric Light and Power Company, Citizens' Electric Light, Heat and Power Company, Middlesex Electric Light and Power Company, The Morristown Gas Light Company, The Nichols Electric Light and Power Company of Nutley, N. J., Princeton Light, Heat and Power Company, and Weehawken Contracting Company were merged into and with said Public Service Electric and Gas Company under and pursuant to a joint agreement of merger and consolidation dated November 5, 1924.

195. At and before the date of said joint agreement all of the outstanding capital stock of said companies so merged into and with Public Service Electric and Gas Company was owned by Public Service Corporation of New Jersey.

196. Under the provisions of said joint agreement the capital stock of said companies so

merged was exchanged for promissory notes of Public Service Electric and Gas Company.

197. Said Burlington Electric Light and Power Company was incorporated on or about October 6, 1888, under the Corporation Act of 1875.

198. Said Citizens' Electric Light, Heat and Power Company was incorporated on or about March 1, 1905 under the Corporation Act of 1896. On or about May 28, 1924 its certificate of incorporation was amended so as to change the objects for which the company was formed.

199. Said Middlesex Electric Light and Power Company was organized on or about February 28, 1905, being formed as a new corporation by the consolidation of The Cartaret Electric Light and Power Company and Middlesex Lighting Company under and by a joint agreement between said companies dated January 2, 1905.

200. Said The Cartaret Electric Light and Power Company was incorporated on or about June 8, 1900 under the Corporation Act of 1896.

201. Said Middlesex Lighting Company was incorporated on or about December 2, 1904 under the Corporation Act of 1896.

202. Said The Morristown Gas Light Company was incorporated by an Act of the Legislature of the State of New Jersey approved February 19, 1855, being Chapter XXXVI of the Laws of 1855.

203. Said The Nichols Electric Light and Power Company of Nutley, N. J. was incorporated on or about January 3, 1896, under the Corporation Act of 1875.

204. Said Princeton Light, Heat and Power Company was incorporated on or about July 31,

1905, under and pursuant to the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act concerning the sale of the property and franchises of any corporation created by or under any law or laws of this State, except steam railroad, canal, turnpike or plank road companies", approved April 16, 1897, by the purchasers of the property and franchises of Princeton Lighting Company.

205. Said Princeton Lighting Company was organized on or about February 27, 1903, being formed as a new corporation by the consolidation of The Hopewell Electric Light, Heat and Power Company, The Princeton Electric Works, and The Princeton Gas Light Company, under and pursuant to a joint agreement of merger and consolidation between said companies dated February 2, 1903.

206. Said The Hopewell Electric Light, Heat and Power Company was incorporated on or about March 3, 1899 under the Corporation Act of 1896.

207. Said Princeton Electric Works was incorporated on or about March 3, 1899, under the Corporation Act of 1896.

208. Said The Princeton Gas Light Company was incorporated by an act of the Legislature of the State of New Jersey, approved March 1, 1849.

209. Said Weehawken Contracting Company was incorporated on or about May 9, 1904, under the Corporation Act of 1896.

210. Annexed hereto and made a part hereof are copies of so much of the respective certificates of incorporation or statutory acts of incorporation of the following named companies as sets forth the objects and purposes of incorporation of said

companies, which copies are marked as exhibits with the respective numbers set opposite the names of said corporations, viz:

Name of Corporation	*Exhibit No.*
Essex and Hudson Gas Company.....	13
The Peoples' Gas Light Company of Jersey City (The Peoples Gas Light Company of the City of Hudson)....	14
The Jersey City Gas Light Company....	15
The Consumer's Gas Company of Jersey City	16
The Hudson Gas Light Company.....	17
The Bayonne and Greenville Gas Light Company (The Bergen Point Gas Light Company)	18
New Brunswick Light, Heat and Power Company	19
The Peoples Gas Light Company of the City of Paterson	20
Paterson Gas Light Company.....	21
The Edison Electric Illuminating Company of Paterson	22
Passaic Lighting Company	23
The Passaic Gas Light Company.....	24
The Passaic Electric Light, Heat and Power Company	25
The Lodi Light, Heat and Power Company	26
The Passaic and Bergen Gas Company..	27
Plainfield Gas and Electric Light Company	28
The Somerset Lighting Company.....	29
The Somerset Gaslight Company.....	30
Citizens Electric Company.....	31
Central Electric Company.....	32
The Raritan Electric Light and Power Company	33

Name of Corporation	*Exhibit No.*
The Bound Brook Electric Light, Heat and Power Company	34
The Dunellen Electric Light Company	35
The Edison Electric Illuminating Company of New Brunswick	36
Rahway Electric Company	37
Middlesex Electric Company	38
Public Service Gas Company (Oxy-Hydrogen Company of the United States)	39
Public Service Electric Company	40
United Electric Company of New Jersey	41
Peoples Light and Power Company	42
The Newark Electric Light and Power Company	43
Thomson-Houston Electric Company of Newark, N. J. (The Thompson and Houston Electric Light, Power and Heating Company of Newark, New Jersey)	44
The Newark Schuyler Electric Light Company	45
The Essex County Electric Company	46
Suburban Electric Light and Power Company	47
Montclair Light and Power Company	48
The Central Power Company	49
Consumers Electric Light and Power Company	50
The Excelsior Electric Company of Harrison, New Jersey	51
Kearny Electric Light and Power Company	52
Hudson County Electric Company	53
The Jersey City Electric Light Company (Baxter Electric Light Company of New Jersey)	54

Name of Corporation	*Exhibit No.*
North Hudson Light, Heat and Power Company	55
Hudson Electric Light Company	56
Consumers Light, Heat and Power Company	57
Suburban Electric Company	58
The Elizabeth Schuyler Electric Company	59
The Union County Electric Company	60
Morris County Electric Company (The Morristown Electric Light, Heat and Power Co.)	61
The Boonton Electric Light, Heat and Power Company	62
Burlington Electric Light and Power Company	63
Citizens' Electric Light, Heat and Power Company	64
The Cartaret Electric Light and Power Company	65
Middlesex Lighting Company	66
The Morristown Gas Light Company	67
The Nichols Electric Light and Power Company of Nutley, N. J.	68
The Hopewell Electric Light, Heat and Power Company	69
The Princeton Electric Works	70
The Princeton Gas Light Company	71
Weehawken Contracting Company	72

211. Complainants have not accepted the said offer dated January 10, 1927, to stockholders of the leased companies, and have not in any way assented to the proposed merger under the joint agreement dated April 26, 1927, but do protest against the same, and charge that said merger agreement is ultra vires, unlawful, inequitable and void, and should be set aside and annulled.

212. Complainants are without adequate remedy in the courts of law, and therefore pray that—

1. Public Service Corporation of New Jersey
Public Service Electric and Gas Company
Essex and Hudson Gas Company
Hudson County Gas Company
New Brunswick Light, Heat and Power Company
The Paterson and Passaic Gas and Electric Company
Somerset, Union and Middlesex Lighting Company
Samuel T. Bodine
Thomas S. Gates
Anthony R. Kuser
Thomas N. McCarter
Uzal H. McCarter
Arthur W. Thompson
Edmund W. Wakelee
Percy S. Young
Charles M. Breder
Augustus J. Brunson
Harry B. MacDonald
William H. Pope
T. Wilson Van Middlesworth

who are the defendants to this suit, may answer this bill of complaint and each statement therein made:

2. That the defendants, Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company and Somerset, Union and Middlesex Lighting Company, be enjoined from merging or consolidating

into a single corporation, and that they and their respective directors, officers and agents be enjoined from certifying the adoption by the stockholders of said respective companies of the Joint Agreement of Merger and Consolidation dated April 26, 1927, and from filing the same in the office of the Secretary of State of New Jersey or otherwise perfecting or consummating said Joint Agreement and act of merger and consolidation, and that said Joint Agreement may be declared null and void and be set aside:

3. That the defendant, Public Service Corporation of New Jersey, may set forth and discover the nature and extent of its interest in the stock of the defendants Essex & Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company and Somerset, Union and Middlesex Lighting Company and the number of shares of stock of each of the last mentioned lessor companies acquired by it under the offer to stockholders of said companies dated January 10, 1927, and the total number of shares of stock of each of said lessor companies now held by it or by any person, corporation or depositary on its behalf, and whether or not it has agreed with the defendant Public Service Electric and Gas Company to exchange all thereof for preferred stock of that company:

4. That the defendant, Public Service Electric and Gas Company, do set forth and discover the total number of shares of stock held by it in each of the defendants Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, and Somerset, Union and Middlesex Lighting Com-

pany, and how many of such shares in each of said companies were acquired by it under and pursuant to the offer to stockholders of said companies dated January 10, 1927.

5. That each of the above named individual defendants do set forth and discover the nature and extent of any interests, direct or indirect, such as the ownership of bonds, stocks or other securities or obligations of Public Service Electric and Gas Company or of Public Service Corporation of New Jersey, adverse to his duty as director of said lessor companies or any of them to obtain for the stockholders thereof the most favorable terms upon a merger or consolidation of said lessor companies into and with said defendant Public Service Electric and Gas Company.

6. That defendant Public Service Electric and Gas Company do set forth and discover the nature, extent and value of all extensions, additions, alterations, improvements, renewals and betterments of and to the premises demised by Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company and Somerset, Union and Middlesex Lighting Company, or added thereto or made thereupon, and all of the rights, privileges and franchises acquired by the respective lessees in connection with the demised premises, and whether the same are entered on the books, records and accounts of said lessor companies respectively.

7. That complainants may have access to the books, records and accounts of said corporate defendants and opportunity to examine the same as to all items affecting the rights and interests of

said defendant lessor companies and complainants' rights as stockholders therein.

8. The Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company and Somerset, Union and Middlesex Lighting Company be enjoined from refusing or neglecting to pay out in regular dividends to their respective stockholders the net cash rental periodically received by them.

9. That complainants have such other and further relief as may be equitable and just.

10. That a writ of subpoena may issue commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

WALL, HAIGHT, CAREY & HARTPENCE,
PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Complainants.

THOMAS G. HAIGHT,
WALDRON M. WARD,
Of Counsel.

Exhibit 1.

CONSOLIDATION AGREEMENT FORMING

PUBLIC SERVICE ELECTRIC & GAS COMPANY

THIS AGREEMENT, made this eighth day of April, in the year of our Lord one thousand nine hundred and twenty-four, between PUBLIC SERVICE ELECTRIC COMPANY, a corporation organized under an act of the legislature of the State of New Jersey, entitled "An Act concerning corporations (Revision of 1896)", of the first part; UNITED ELECTRIC COMPANY OF NEW JERSEY, a corporation organized under said act, of the second part; and PUBLIC SERVICE GAS COMPANY, a corporation created April 4, 1873, by chapter DXLIII of the pamphlet laws of said year, of the third part, by the directors of said corporations, respectively.

WHEREAS, the said corporations were created and organized under and in pursuance of the said acts of the legislature hereinabove referred to for the purpose of furnishing light, heat and power for domestic and public use in the said state; and

WHEREAS, the respective boards of directors of the said corporations deem it advisable for the purpose of greater efficiency and economy of management and in order to be better able to carry on their business and discharge their public duties to merge and consolidate said corporations under and pursuant to the provisions of an act entitled "An Act concerning corporations (Revision of 1896)", and the supplements thereto and amendments thereof, and in pursuance of all other legal powers and authority for that purpose conferred;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES and of the mutual agreements, covenants, provisions and grants herein contained, it is hereby agreed by and between said corporations, parties hereto, and by their directors, respectively, as follows:

ARTICLE I.

The said Public Service Electric Company, United Electric Company of New Jersey, and Public Service Gas Company, shall be and they are hereby merged and consolidated into a single new corporation under the name of PUBLIC SERVICE ELECTRIC AND GAS COMPANY, hereinafter called the consolidated corporation.

ARTICLE II.

The consolidated corporation shall have and possess and may use, exercise and enjoy all the rights, powers, privileges and franchises of the said corporations, parties to this agreement.

ARTICLE III.

The board of directors of the consolidated corporation shall be ten (10) in number, and the names and places of residence of the first directors and officers thereof, who shall hold office until their successors are elected or appointed, are as follows:

Directors	*Place of Residence*
Walton Clark	Chestnut Hill, Philadelphia, Pa.
Anthony R. Kuser	Benardsville, N. J.
Lewis Lillie	Haverford, Pa.
Alfred L. Loomis	New York City, N. Y.
Thomas N. McCarter	Rumson, N. J.

Uzal H. McCarter	Red Bank, N. J.
Randal Morgan	Chestnut Hill, Philadelphia, Pa.
Landon N. Thorne	New York, N. Y.
Edmund W. Wakelee	Demarest, N. J.
Percy S. Young	Newark, N. J.

President

Thomas N. McCarter, Rumson, N. J.

Vice-Presidents

Percy S. Young, Newark, N. J.
Edmund W. Wakelee, Demarest, N. J.
Dudley Farrand, Newark, N. J.
John L. O'Toole, Newark, N. J.
Henry D. Whitcomb, East Orange, N. J.
Farley Osgood, South Orange, N. J.

Secretary

Charles M. Breder, Newark, N. J.

Assistant Secretaries

William H. Feller, Linden, N. J.
William T. Crudge, Bloomfield, N. J.

Treasurer

T. W. Van Middlesworth, Highland Park, N. J.

Assistant Treasurers

Frederick A. Neis, Newark, N. J.
Robert S. Tomkins, East Orange, N. J.

ARTICLE IV.

The capital stock of the consolidated corporation is twenty million (20,000,000) shares of com-

mon stock of no par value; and three hundred thousand (300,000) shares of preferred stock of the par value of one hundred dollars ($100.) each, two hundred thousand (200,000) of which shall be seven per cent. (7%) cumulative preferred stock, and one hundred thousand (100,000) of which shall be six and one-half per cent. (6½%) cumulative preferred stock. All stock other than preferred stock shall be subordinate as to dividends and assets, as herein provided, to the preferred stock at any time issued and outstanding.

The holders of the preferred stock shall be entitled to receive, when and as declared by the board of directors, dividends from the surplus or net profits of the consolidated corporation, payable quarterly on June 30th, September 30th, December 31st and March 31st in each year. Such dividends shall be payable before any dividends shall be paid upon or set apart for any other shares of stock of the consolidated corporation and shall be cumulative, so that if in any quarterly dividend period such dividends at the specified rate per annum shall not have been paid upon or set apart for the preferred stock, the deficiency shall be fully paid or set apart for payment, before any dividend shall be paid upon or set apart for any other shares of stock of the consolidated corporation. Whenever full cumulative dividends upon all of the preferred stock for all previous quarterly dividend periods shall have been paid, and the full instalment for the current quarterly dividend period shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart, the board of directors may declare dividends out of the then remaining surplus or net profits of the consolidated corporation on the common stock. The dividend to be

paid on the said seven per cent. (7%) cumulative preferred stock shall be at the rate of seven per cent. (7%) per annum and no more. The dividend to be paid on the said six and one-half per cent. (6½%) cumulative preferred stock shall be at the rate of six and one-half per cent. (6½%) per annum and no more.

In the event of the dissolution or liquidation of the consolidated corporation, whether voluntary or involuntary, or of any distribution of the capital of the consolidated corporation, the holders of the said preferred stock shall be entitled to be paid in full out of the assets (whether capital or surplus) both the par amount of their shares and an amount equal to the amount of accumulated and unpaid dividends thereon, whether or not earned or declared, before any distribution to the holders of the common stock, and shall not be entitled to share in the distribution of the remaining assets of the consolidated corporation.

Only the common stock shall have voting power, unless and until the consolidated corporation shall be in default in the payment of dividends on any of the preferred stock to an amount equal to two (2) full quarterly dividend payments, but as long as such default shall continue, the holders of the preferred stock shall possess the right to one (1) vote for each share of preferred stock held, which right, however, shall cease to exist upon the payment of all dividends in default on the preferred stock, and this right shall be subject to renewal whensoever occasion shall arise therefor by reason of subsequent default in the payment of dividends on the preferred stock to the amount aforesaid. Except in the contingency of such default preferred stock shall have no voting power.

The consolidated corporation may from time to time amend this certificate of incorporation in any respect as authorized by law, and in particular so as to authorize and issue additional preferred stock which may rank equally as to preference for dividends and in liquidation with the preferred stock now authorized, and bearing such dividend rates, call prices and amounts payable on liquidation, and having such voting rights, as may from time to time be authorized and as may be permitted by law, and unless at the time of such amendment the consolidated corporation shall be in default to an amount equal to two (2) full quarterly dividends on the preferred stock now authorized, the holders of the said preferred stock shall have no voting power in connection with such amendment.

No holder of the said preferred stock shall be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of stock, preferred or common, whether now or hereafter authorized, or any bonds, debentures, or other securities convertible into stock; and no holder of common stock shall be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of preferred stock with restricted voting rights as provided for the preferred stock now authorized, whether now or hereafter authorized, or any bonds, debentures or other securities convertible into such preferred stock.

ARTICLE V.

All property, real, personal and mixed, of the said corporations, parties hereto, shall vest in the consolidated corporation immediately upon the adoption of this agreement by the stockholders of

the said corporation, according to law, and the said corporations, parties hereto, respectively, shall do any and all things necessary to vest the title to their property of all kinds and franchises in the said consolidated corporation, and otherwise shall carry out the purposes of this agreement.

ARTICLE VI.

The capital stock of Public Service Electric Company now outstanding, amounting to four hundred and thirty-two thousand five hundred (432,500) shares of the par value of one hundred dollars ($100.) each, shall be exchangeable pro rata for four million three hundred and twenty-five thousand (4,325,000) shares of common stock of the consolidated corporation.

The capital stock of United Electric Company of New Jersey now outstanding, amounting to two hundred thousand (200,000) shares of the par value of one hundred dollars ($100.) each, shall be exchangeable for two hundred thousand (200,000) shares of the seven per cent. (7%) cumulative preferred stock of the consolidated corporation.

And the capital stock of Public Service Gas Company now outstanding, amounting to two hundred and ten thousand (210,000) shares of the par value of one hundred dollars ($100.) each, shall be exchangeable pro rata for two million one hundred thousand (2,100,000) shares of common stock of the consolidated corporation.

The balance of the stock of the consolidated corporation, namely, thirteen million five hundred and seventy-five thousand (13,575,000) shares of common stock, and one hundred thousand (100,000) shares of preferred stock may be issued by the directors of the consolidated corporation,

either wholly at once, or by instalments from time to time, to provide or pay for extensions, improvements and betterments of the plant and property of the consolidated corporation, and to construct or acquire other property, and for other purposes as authorized by law.

ARTICLE VII.

Every stockholder of the corporations, parties to this agreement, upon presenting his certificate of stock and surrendering the same to be canceled, shall be entitled to receive a certificate for the proper number of shares of the capital stock of the consolidated corporation, and to be registered as a stockholder of the consolidated corporation.

ARTICLE VIII.

The directors of the consolidated corporation shall be elected by the stockholders thereof annually on the first Monday of April, and shall hold office for one year and until their successors are duly elected.

The officers of the consolidated corporation shall be elected or appointed by the directors thereof at their first meeting after their annual election. The term of all officers shall be one year and until their successors are duly appointed.

ARTICLE IX.

The by-laws of Public Service Electric Company are hereby adopted and declared to be the by-laws of the consolidated corporation, subject to change and amendment as is therein provided.

ARTICLE X.

The consolidated corporation may issue its stock, common and preferred; may make, issue and dispose of bonds or other obligations in order to carry out the purpose of the consolidation, to pay and discharge bonds, mortgages and encumbrances upon any of the property of the consolidating companies and to free the same from the lien thereof, and for the business of the consolidated corporation, and for the purpose of securing said bonds or obligations the consolidated corporation may mortgage its corporate franchises, rights, privileges and property, real, personal and mixed.

ARTICLE XI.

The principal and registered office of the consolidated corporation, and of said consolidating corporations, is No. 80 Park Place, City of Newark, New Jersey, and Charles M. Breder is the agent therein and in charge thereof, and upon whom process may be served.

IN WITNESS WHEREOF, the said corporations, parties to this agreement, in pursuance of resolutions passed by their respective boards of directors, at regular meetings, have caused their respective corporate seals to be hereto affixed and these presents to be signed by their respective presidents or vice-presidents, and attested by their respective secretaries or assistant secretaries, all duly thereunto authorized, and these

presents have been signed by their respective directors, the day and year first above written.

PUBLIC SERVICE ELECTRIC COMPANY
By
THOMAS N. McCARTER
(SEAL) President.

Attest:
CHARLES M. BREDER
Secretary.

THOMAS N. McCARTER
RANDAL MORGAN
ANTHONY R. KUSER
U. H. McCARTER
LEWIS LILLIE
P. S. YOUNG
WALTON CLARK
EDMUND W. WAKELEE
Directors of Public Service Electric Company

UNITED ELECTRIC COMPANY OF NEW JERSEY
By
THOMAS N. McCARTER
(SEAL) President.

Attest:
CHARLES M. BREDER
Secretary.

THOMAS N. McCARTER
RANDAL MORGAN
ANTHONY R. KUSER
U. H. McCARTER
LEWIS LILLIE
P. S. YOUNG
WALTON CLARK
EDMUND W. WAKELEE
Directors of United Electric Company of New Jersey.

PUBLIC SERVICE GAS COMPANY.
By
THOMAS N. McCARTER
President.

(SEAL)

Attest:
CHARLES M. BREDER
Secretary.

THOMAS N. McCARTER
RANDAL MORGAN
ANTHONY R. KUSER
U. H. McCARTER
P. S. YOUNG
WALTON CLARK
EDMUND W. WAKELEE
Directors of Public Service Gas Company.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this eighth day of April, in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, Kenneth M. Hallock, a Notary Public of the State of New Jersey, personally appeared THOMAS N. McCARTER, who, I am satisfied, is the President of PUBLIC SERVICE ELECTRIC COMPANY, the corporation in the foregoing deed or instrument named, and I having first made known to him the contents thereof, he acknowledged that he signed the same as such officer for and on behalf of said corporation, that the same was made by such corporation as its voluntary act and deed, and sealed with its corporate seal, by virtue of authority of its board of directors. All of which is hereby certified.

KENNETH M. HALLOCK
Notary Public of N. J.
Commission Expires 1926

(SEAL)

Bill of Complaint—Exhibit 1.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this eighth day of April, in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, Kenneth M. Hallock, a Notary Public of the State of New Jersey, personally appeared THOMAS M. McCARTER, who, I am satisfied, is the President of UNITED ELECTRIC COMPANY OF NEW JERSEY, the corporation in the foregoing deed or instrument named, and I having first made known to him the contents thereof, he acknowledged that he signed the same as such officer for and on behalf of said corporation, that the same was made by such corporation as its voluntary act and deed, and sealed with its corporate seal, by virtue of authority of its board of directors. All of which is hereby certified.

KENNETH M. HALLOCK
Notary Public of N. J.
Commission Expires 1926

(SEAL)

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this eighth day of April, in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, Kenneth M. Hallock, a Notary Public of the State of New Jersey, personally appeared THOMAS N. McCARTER, who, I am satisfied, is the President of PUBLIC SERVICE GAS COMPANY, the corporation in the foregoing deed or instrument named, and I having first made known to him the contents thereof, he acknowledged that he signed the same as such officer for and on behalf of said corporation, that the same was made by such corporation as its voluntary act and deed, and sealed with its corporate seal, by virtue of authority of its board of directors. All of which is hereby certified.

KENNETH M. HALLOCK
Notary Public of N. J.
Commission Expires 1926

(SEAL)

BE IT KNOWN, that the undersigned, being all of the stockholders of Public Service Electric Company, having at a meeting of said stockholders regularly called and held for that purpose, voted in favor of the approval of the foregoing agreement for the merger and consolidation of the said Company and United Electric Company of New Jersey and Public Service Gas Company, do now, pursuant to law, give our written assent thereto.

WITNESS, our hands this twenty-fifth day of July in the year of our Lord, one thousand nine hundred and twenty-four.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,
By
P. S. Young ..... 432,492 Shares

Proxy

P. S. Young.....	1 Share
Ed. W. Wakelee.....	1 Share
Walton Clark	1 Share
U. H. McCarter	1 Share
Anthony R. Kuser.....	" "
(Thomas N. McCarter	1 Share
(Lewis Lillie	1 Share
(Randall Morgan	1 Share

by P. S. Young
Proxy

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, Clara E. Hurlburt, a Notary Public of

New Jersey, personally appeared CHARLES M. BREDER, who, being by me duly sworn according to law, on his oath says: That he is the Secretary of Public Service Electric Company, one of the corporations named in and who executed the foregoing agreement; that the seal affixed to the foregoing is the corporate seal of the said corporation, the same being well known to him; and that it was so affixed by order of the said corporation; that Thomas N. McCarter is the President of the said corporation; that he saw the said Thomas N. McCarter as such President sign such agreement and annex such seal and deliver such agreement, and heard him declare that he signed, sealed and delivered the said agreement as the voluntary act and deed of the said corporation, Public Service Electric Company, by its order and by authority of its Board of Directors, for the uses and purposes therein expressed. And he further says that the same is signed also by all of the Directors of the said Company, that the total number of shares of stock of the said corporation issued and outstanding is four hundred and thirty-two thousand five hundred (432,500); that a special meeting of the stockholders of said corporation was duly called by resolution of the Board of Directors, to be held on the first day of May, in the year of our Lord one thousand nine hundred and twenty-four, to take action upon such agreement, of which meeting more than twenty (20) days' notice by mail was given to each stockholder at his post office address as appears upon the books of the corporation; that such meeting was held, and on motion it was then adjourned, and by regular adjournments continued until this, the twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four, at which time such

meeting was duly held; and at such meeting the foregoing agreement of consolidation and merger was submitted and read, and approved and adpoted by the unanimous vote in person or by proxy of the holders of all the stock of the corporation, that is to say, by the vote of four hundred and thirty-two thousand five hundred (432,-500) shares; and the assent in writing of said stockholders voting in favor thereof in person or by proxy was made thereto as hereinbefore appears. All of which as Secretary I do hereby certify under the seal of said corporation.

CHARLES M. BREDER
Secretary.

Sworn and subscribed before me the day and year first above written.

CLARA E. HURLBURT
Notary Public of New Jersey
My Commission expires April 11, 1927

(SEAL)

BE IT KNOWN, that the undersigned, being more than two-thirds of all of the stockholders of United Electric Company of New Jersey, having at a meeting of said stockholders regularly called and held for that purpose, voted in favor of the approval of the foregoing agreement for the merger and consolidation of the said Company and Public Service Electric Company and Public Service Gas Company, do now, pursuant to law, give our written assent thereto.

WITNESS, our hands this twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,
By

P. S. Young ..... 197,371 Shares
Proxy

P. S. Young ..... 1 Share
(Thomas N. McCarter ..... 1 Share
(Lewis Lillie ..... 1 Share
(Randall Morgan ..... 1 Share
by
P. S. Young
Proxy

Charles Hunt ..... 5 Shares
Otto H. Krause ..... 3 Shares
George J. Roberts..... 1 Shares
T. W. Van Middlesworth
Treasurer ..... 2331 Shares
by P. S. Young
Proxy

Ed. W. Wakelee..... One Share
Walton Clark ..... One Share
U. H. McCarter..... One Share
Anthony R. Kuser..... " "

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, Clara E. Hurlburt, a Notary Public of New Jersey, personally appeared CHARLES M. BREDER, who, being by me duly sworn according

to law, on his oath says: That he is the Secretary of United Electric Company of New Jersey, one of the corporations named in and who executed the foregoing agreement, that the seal affixed to the foregoing agreement is the corporate seal of the said corporation, the same being well known to him; and that it was so affixed by order of the said corporation; that Thomas N. McCarter is the President of the said corporation, that he saw the said Thomas N. McCarter as such President sign such agreement and annex such seal and deliver such agreement, and heard him declare that he signed, sealed and delivered the said agreement as the voluntary act and deed of the said corporation, United Electric Company of New Jersey, by its order and by authority of its Board of Directors, for the uses and purposes therein expressed. And he further says that the same is also signed by all of the Directors of the said Company; that the total number of shares of stock of the said corporation issued and outstanding is two hundred thousand (200,000); that a special meeting of the stockholders of said corporation was duly called by resolution of the Board of Directors, to be held on the first day of May, in the year of our Lord one thousand nine hundred and twenty-four, to take action upon such agreement, of which meeting more than twenty (20) days' notice by mail was given to each stockholder at his post office address as appears upon the books of the corporation; that such meeting was held, and on motion it was then adjourned, and by regular adjournments continued until this, the twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four, at which time such meeting was duly held; and at such meeting the foregoing agreement of consolidation and merger

was submitted and read, and approved and adopted by the vote in person or by proxy of the holders of more than two-thirds of all of the stock of the corporation, that is to say, by the vote of One hundred ninety nine thousand seven hundred and nineteen shares in favor and None against the same; and the assent in writing of said stockholders voting in favor thereof in person or by proxy was made thereto as hereinbefore appears. All of which as Secretary I do hereby certify under the seal of said corporation.

CHARLES M. BREDER
Secretary.

Sworn and subscribed before me the day and year first above written.

CLARA E. HURLBURT
Notary Public of New Jersey
My Commission expires April 11, 1927

(SEAL)

BE IT KNOWN, that the undersigned, being all of the stockholders of Public Service Gas Company, having at a meeting of said stockholders regularly called and held for that purpose, voted in favor of the approval of the foregoing agreement for the merger and consolidation of the said Company and Public Service Electric Company and United Electric Company of New Jersey, do now, pursuant to law, give our written assent thereto.

WITNESS, our hands this twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,
By
P. S. Young ..... 209,993 Shares
Proxy.

Thomas N. McCarter ..... 1 Share
Randal Morgan ..... 1 Share
by P. S. Young
Proxy

P. S. Young ..... 1 Share
Ed. W. Wakelee ..... 1 Share
Walton Clark ..... 1 Share
U. H. McCarter ..... 1 Share
Anthony R. Kuser..... " "

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four, before me, the subscriber, Clara E. Hurlburt, a Notary Public of New Jersey, personally appeared CHARLES M. BREDER, who, being by me duly sworn according to law, on his oath says: That he is the Secretary of Public Service Gas Company, one of the corporations named in and who executed the foregoing agreement; that the seal affixed to the foregoing agreement is the corporate seal of the said corporation, the same being well known to him; and that it was so affixed by order of the said corpora-

tion; that Thomas N. McCarter is the President of the said corporation; that he saw the said Thomas N. McCarter as such President sign such agreement and annex such seal and deliver such agreement, and heard him declare that he signed, sealed and delivered the said agreement as the voluntary act and deed of the said corporation, Public Service Gas Company, by its order and by authority of its Board of Directors, for the uses and purposes therein expressed. And he further says that the same is also signed by all of the Directors of the said Company, that the total number of shares of stock of the said corporation issued and outstanding is two hundred and ten thousand (210,000); that a special meeting of the stockholders of said corporation was duly called by resolution of the Board of Directors, to be held on the first day of May, in the year of our Lord one thousand nine hundred and twenty-four, to take action upon such agreement, of which meeting more than twenty (20) days' notice by mail was given to each stockholder at his post office address as appears upon the books of the corporation; that such meeting was held, and on motion it was then adjourned, and by regular adjournments continued until this, the twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four, at which time such meeting was duly held; and at such meeting the foregoing agreement of consolidation and merger was submitted and read, and approved and adopted by the unanimous vote in person or by proxy of the holders of all the stock of the corporation, that is to say, by the vote of two hundred and ten thousand (210,000) shares; and the assent in writing of said stockholders voting in favor thereof in person or by proxy was made thereto

as hereinbefore appears. All of which as Secretary I do hereby certify under the seal of said corporation.

CHARLES M. BREDER
Secretary.

Sworn and subscribed before me the day and year first above written.

CLARA E. HURLBURT
Notary Public of New Jersey
My Commission expires April
(SEAL) 11, 1927

Endorsed:
"filed and Recorded
Jul 25, 1924
THOMAS F. MARTIN,
Secretary of State."

STATE OF NEW JERSEY

DEPARTMENT OF STATE

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, do hereby certify, that the foregoing is a true copy of Agreement of Merger and Consolidation Between the PUBLIC SERVICE ELECTRIC COMPANY, UNITED ELECTRIC COMPANY OF NEW JERSEY and the PUBLIC SERVICE GAS COMPANY, forming a new Company to be known as "PUBLIC SERVICE ELECTRIC AND GAS COMPANY," as the same, is taken from and compared with the original filed July 25, 1924, and now remaining on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this ninth day of May, A. D. 1927.

JOSEPH F. S. FITZPATRICK,
Secretary of State.

(SEAL)

Exhibit 2.

ARTICLE IV OF THE CONSOLIDATION AGREEMENT FORMING PUBLIC SERVICE ELECTRIC AND GAS COMPANY, AS AMENDED JANUARY 31, 1927.

'ARTICLE IV.

'The capital stock of the consolidated corporation is twenty million (20,000,000) shares of common stock without par value; and one million three hundred thousand (1,300,000) shares of preferred stock of the par value of one hundred dollars ($100.) each, two hundred thousand (200,000) of which shall be seven per cent. (7%) cumulative preferred stock, one hundred thousand (100,000) of which shall be six and one-half per cent. (6½%) cumulative preferred stock, one million (1,000,000) of which shall be six per cent. (6%) cumulative preferred stock, 1925 Series. All stock other than preferred stock shall be subordinate as to dividends and assets, as herein provided, to the preferred stock at any time issued and outstanding.

'The holders of the preferred stock shall be entitled to receive, when and as declared by the Board of Directors, dividends from the surplus or net profits of the consolidated corporation, payable quarterly on June 30th, September 30th, December 31st, and March 31st in each year. Such dividends shall be payable before any dividends shall be paid upon or set apart for any other shares of stock of the consolidated corporation and shall be cumulative, so that if in any quarterly dividend period such dividends at the specified rate per annum shall not have been paid upon or set apart for the preferred stock, the deficiency shall be fully paid or set apart for payment before any dividend shall be paid upon or set apart

for any other shares of stock of the consolidated corporation. Whenever full cumulative dividends upon all of the preferred stock for all previous quarterly dividend periods shall have been paid, and the full instalment for the current quarterly dividend period shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart, the Board of Directors may declare dividends out of the then remaining surplus or net profits of the consolidated corporation on the common stock. The dividend to be paid on the said seven per cent. (7%) cumulative preferred stock shall be at the rate of seven per cent. (7%) per annum and no more. The dividend to be paid on the said six and one-half per cent. (6½%) cumulative preferred stock shall be at the rate of six and one-half per cent. (6½%) per annum and no more. The dividend to be paid on the said six per cent. (6%) cumulative preferred stock, 1925 Series, shall be at the rate of six per cent. (6%) per annum and no more.

'The six per cent. (6%) cumulative preferred stock, 1925 Series, may be redeemed, at the option of the consolidated corporation, on any dividend payment date at any time after three (3) years from the issue thereof, on notice to the holders of record of said stock given not less than thirty (30) nor more than sixty (60) days previous to the redemption date, by mail and by publication in such manner as may be prescribed by the by-laws of the consolidated corporation, or by resolution of the Board of Directors, by the payment in cash for each share of the six per cent. (6%) cumulative preferred stock, 1925 Series, of one hundred and ten dollars ($110.) and in addition thereto all dividends accumulated and unpaid thereon. From and after the date fixed in any such notice as the

date of redemption (unless default be made by the consolidated corporation in the payment of the redemption price pursuant to such notice) all dividends on the said preferred stock so called for redemption shall cease to accrue, and all rights of the holders of record thereof as stockholders of the consolidated corporation, except the right to receive a redemption price, shall cease and determine.

'In the event of the dissolution or liquidation of the consolidated corporation, whether voluntary or involuntary, or of any distribution of the capital of the consolidated corporation, the holders of the said preferred stock shall be entitled to be paid in full out of the assets (whether capital or surplus) both the par amount of their shares and an amount equal to the amount of accumulated and unpaid dividends thereon, whether or not earned or declared, before any distribution to the holders of the common stock, and shall not be entitled to share in the distribution of the remaining assets of the consolidated corporation.

'Only the common stock shall have voting power, unless and until the consolidated corporation shall be in default in the payment of dividends on any of the preferred stock to an amount equal to two (2) full quarterly dividend payments, but as long as such default shall continue, the holders of the preferred stock shall possess the right to ten (10) votes for each share of preferred stock held, which right, however, shall cease to exist upon the payment of all dividends in default on the preferred stock, and this right shall be subject to renewal whensoever occasion shall arise therefor by reason of subsequent default in the payment of dividends on the preferred stock to the amount aforesaid. Except in the contingency of such default

preferred stock shall have no voting power upon any matter whatever.

'The consolidated corporation may from time to time amend this certificate of incorporation in any respect as authorized by law, and in particular so as to authorize and issue additional preferred stock which may rank equally as to preference for dividends and in liquidation with the preferred stock now authorized, and bearing such dividend rates, call prices and amounts payable on liquidation, and having such voting rights, subject to redemption and such restrictions and qualifications, as may from time to time be authorized and as may be permitted by law, and unless at the time of such amendment the consolidated corporation shall be in default to an amount equal to two (2) full quarterly dividends on the preferred stock now authorized, the holders of the said preferred stock shall have no voting power in connection with such amendment.

'No holder of the said preferred stock shall be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of stock, preferred or common, whether now or hereafter authorized, or any bonds, debentures, or other securities convertible into stock; and no holder of common stock shall be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of preferred stock with restricted voting rights as provided for the preferred stock now authorized, whether now or hereafter authorized, or any bonds, debentures or other securities convertible into such preferred stock.'

Exhibit 3.

LEASE

HUDSON COUNTY GAS COMPANY

to

PUBLIC SERVICE CORPORATION OF NEW JERSEY

Dated June 1, 1903.

THIS INDENTURE, made this first day of June, 1903, between Hudson County Gas Company, a corporation organized under the laws of the State of New Jersey, hereinafter called the lessor, party of the first part, and Public Service Corporation of New Jersey, a corporation organized under the laws of said State, hereinafter called the lessee, party of the second part,

WITNESSETH:

That the said parties have agreed each for itself, its successors and assigns, and each in consideration of the grants, covenants and agreements herein made by each with the other, its successors and assigns, as follows:

FIRST: The lessor has granted, leased and demised, and by these presents does grant, lease and demise unto the lessee, its successors and assigns, all and singular the franchises, gas plants and gas works now leased, owned, possessed, or operated by the lessor as a going concern, or which it may hereafter own, lease, or acquire wherever the same now are or may hereafter be located, constructed or extended; together with all and every the lands, tenements, holders, gas mains, meters, pipes, stables, barns, shops, buildings, and other structures

of every kind and description, and all the easements and appurtenances thereunto appertaining; also all equipment, machinery, tools, appliances, horses, wagons, coal, supplies, and all other property, real, personal and mixed, belonging to the lessor as a going concern, and all contracts, rights, privileges and franchises connected with or relating to the said demised property, or any part thereof, as fully as the same are now or may hereafter be vested in the lessor; excepting, however, its franchise to be a corporation, its corporate seal, its minute, transfer and stock books, the books containing the dividend accounts of the lessor, its office furniture, and its deeds, grants, plats and other instruments and documents containing the evidence of its right and title to the properties now leased, owned or operated by it; and also excepting all cash, bills, notes, accounts receivable, and other property enumerated in certain schedule hereinafter referred to as Schedule A.

To have and to hold all and singular the demised property unto the lessee, its successors and assigns, for and during the term of nine hundred (900) years from and after the first day of June, in the year 1903, upon the terms and conditions, and for the consideration, hereinafter provided and agreed to by the parties hereto.

Second. The lessor covenants that it will at any time, and from time to time hereafter, upon the reasonable request of the lessee, do, make, execute, acknowledge and deliver, or cause or procure to be made, executed, acknowledged, delivered and done, all and every such further and other lawful and reasonable conveyances, transfers, and assurances in the law, and acts, as by the

New Jersey State Library

lessee shall be reasonably devised, advised or required for the better and more effectual vesting and confirming in the lessee of the premises, property, contracts, rights, powers, privileges and franchises hereby leased and demised, or intended so to be; and especially for the better and more effectual vesting and confirming in the lessee all such premises, property, contracts, rights, powers, privileges and franchises as shall be hereafter acquired by the lessor; that during the continuance of this lease it will maintain its corporate existence and organization, and to that end will comply with all the requisites and formalities of law, hold all necessary meetings, elect all necessary officers, and make all necessary records, reports and returns, and it will, at the request and expense of the lessee, exercise, or cause to be exercised, all such franchises and do and perform, or cause to be done and performed, all such acts lawful and consistent with its rights hereunder as shall be proper and necessary for the due protection, preservation and full enjoyment by the lessee of all the property, rights, franchises, contracts and interests hereby demised or granted to it, and the proper extension from time to time of such plants and franchises, and to carry out the true intent and meaning of this instrument; and in case of any default hereunder, the lessor hereby authorizes the same to be done by the lessee, or by its successors and assigns, in the name and as the act of the lessor; and the lessee may, from time to time, and at its own expense, apply for and operate in the name or in the right of the lessor, or in the name or right of any other company in whose name or right the lessor is entitled to act, further rights to lay and maintain pipes for said gas plants, and may at its expense and charge, and

for its own benefit use the lessor's name or rights in bringing, prosecuting or defending any suit or proceeding, or taking any action which may be necessary or proper for the protection or enjoyment of the demised property, rights, privileges and franchises, or to enforce payment of damages for injuries thereto.

The lessee may at all reasonable and convenient times, have access to and make copies of the lessor's plats, deeds, grants and other instruments and documents containing the evidence of its right and title to the properties, contracts, powers, rights, privileges and franchises hereby leased and demised.

THIRD. The lessee shall pay to the lessor, as rent for the demised premises, in gold coin of the United States of America of the present standard of weight and fineness, or its equivalent, on the dates hereinafter stated, the following sums respectively, to wit:

On the first day of December, nineteen hundred and three, one hundred and five thousand dollars, ($105,000).

On the first day of June, nineteen hundred and four, one hundred and five thousand dollars ($105,000).

On the first day of December, nineteen hundred and four, one hundred and thirty-one thousand two hundred and fifty dollars, ($131,250).

On the first day of June, nineteen hundred and five, one hundred and thirty-one thousand two hundred and fifty dollars ($131,250).

On the first day of December, nineteen hundred and five, one hundred and fifty-seven thousand five hundred dollars, ($157,500).

On the first day of June, nineteen hundred and six, one hundred and fifty-seven thousand five hundred dollars ($157,500).

On the first day of December, nineteen hundred and six, two hundred and ten thousand dollars ($210,000).

On the first day of June, nineteen hundred and seven, two hundred and ten thousand dollars ($210,000).

On the first day of December, nineteen hundred and seven, two hundred and sixty-two thousand five hundred dollars, ($262,500).

On the first day of June, nineteen hundred and eight, two hundred and sixty-two thousand five hundred dollars ($262,500).

On the first day of December, nineteen hundred and eight, three hundred and fifteen thousand dollars, ($315,000).

On the first day of June, nineteen hundred and nine, three hundred and fifteen thousand dollars ($315,000).

On the first day of December, nineteen hundred and nine, three hundred and sixty-seven thousand five hundred dollars, ($367,500).

On the first day of June, nineteen hundred and ten, three hundred and sixty-seven thousand five hundred dollars ($367,500).

And on each first day of December and June thereafter, begining December first, nineteen hundred and ten, during the term of this lease, four hundred and twenty thousand dollars, ($420,000).

Such sums shall be paid to the lessor at its office in the City of Jersey City, New Jersey.

And the lessee shall also pay to the lessor the additional sum of one thousand eight hundred dollars ($1,800) in each and every year during the continuance of this lease, in semi-annual payments

of nine hundred dollars ($900) each, on the same days and at the same place as such rent is payable, as and for the expense of maintaining the organization of the lessor, and for providing suitable offices for the accommodation of its officers and directors.

The lessee shall also pay, as the same shall from time to time fall due, the interest on all authorized existing bonded indebtedness, secured by mortgage on the properties, rights, powers, privileges and franchises of the lessor, and the interest on all such bonded indebtedness so secured as may hereafter be created, for the purpose of extending the time of payment of said existing bonded indebtedness, or of refunding the same as hereinafter provided.

The said bonded indebtedness consists of

(1) Six hundred thousand dollars ($600,000), at par, in bonds issued by the Consumers' Gas Works Company, Limited, dated May 1st, 1884, and secured by mortgage to Farmers' Loan and Trust Company, of New York, as trustee, on lands conveyed by the Consumers' Gas Works Company, Limited, to the Consumers' Gas Company of Jersey City (one of the constituent companies of the lessor), which said bonds bear interest at the rate of six (6) per cent. and mature May 1st, 1904; and

(2) Ten million five hundred thousand dollars ($10,500,000), at par, in five (5) per cent. gold bonds of the Hudson County Gas Company, dated November 1st, 1899, secured by mortgage of the same date to the New Jersey Title Guarantee and Trust Company, as trustee, maturing November 1st, 1949; and it is provided in said mortgage that of said ten million five hundred thousand dollars

($10,500,000), at par, of bonds there shall be held in reserve by the trustee under said mortgage, uncertified, six hundred thousand dollars ($600,000), at par, to be certified and delivered only for the purpose of purchasing or paying for, taking up or replacing, said six hundred thousand dollars ($600,000), at par, of bonds of the Consumers' Gas Works Company, Limited, and it is further provided in said mortgage that of said ten million five hundred thousand dollars ($10,500,000), at par, of said bonds one million seven hundred and fifty thousand dollars ($1,750,000), at par, thereof shall be retained by the trustee to be certified and delivered for the purposes of making additions to or extensions or betterments of its plants, or acquiring new property, real or personal, of which there remain at this time uncertified and undelivered seven hundred and fifty thousand dollars ($750,000), at par; and it is understood and agreed that the lessee is not to be required to pay interest on said bonds of the Hudson County Gas Company so held in reserve at the date of this lease, excepting such as shall mature from and after the time when said bonds are issued for the purpose of purchasing or paying for, taking up or replacing the bonds of the Consumer's Gas Works Company, Limited, as in said mortgage of the Hudson County Gas Company, provided; nor shall the lessee be required to pay interest on said bonds of the Hudson County Gas Company which are retained as aforesaid, by the trustee for any or all of the purposes aforesaid, except such as shall hereafter from time to time be certified and delivered for the purpose of making additions to or extensions or betterments of the plant of the lessor or acquiring new property, real or personal.

Bill of Complaint—Exhibit 3.

FOURTH. The lessor covenants that it will suffer and permit the lessee, it keeping all the covenants on its part as herein contained, to occupy, hold, use, possess and enjoy the property, rights, contracts, powers, privileges, and franchises herein demised, during the continuance of the term of this lease, without hindrance or molestation from the lessor or any person claiming by or through or under it, subject, however, to said mortgages.

FIFTH. The lessee covenants that it will, during the continuance of this lease, pay satisfy and discharge as the same shall accrue all taxes, rates, imposts, duties, charges, licenses and assessments, general and special, ordinary and extraordinary, of every nature and description, which may be lawfully imposed or assessed during the continuance of this lease in any way upon the lessor with reference to its capital stock or property, contracts, rights, privileges, or franchises hereby demised, or upon the rental herein reserved, or upon all dividends declared during the continuance of this lease upon the capital stock of the Lessor; and also all sums of money which the lessor may now be or may hereafter become liable to pay by law, contract or otherwise for the possession, enjoyment or perpetuation of any of its rights, powers, privileges, or franchises; said payments to be made as the same become due to the officer or other person entitled by law to receive the same; and in the event that said lessee shall fail to make any such payments when the same become due, the lessor may at any time thereafter make such payments and recover the amount of such payments, with interest thereon from the date thereof, from the lessee without prejudice to any right secured to the lessor by this lease for breach of

any covenants thereof; it being understood and agreed, however, that if the lessee shall desire to resist by legal proceedings, the payment of any tax or assessment, upon the ground that the same is not legally assessed or is excessive and shall so notify the lessor, the lessor shall not pay any such tax or assessment until thirty days after final adjudication upon such tax assessment by the court having jurisdiction in such cases.

The lessee covenants to assume all the contracts and other obligations, and to pay all the outstanding indebtedness of the lessor shown by its books and records, except the principal of the bonded indebtedness secured by said mortgages, and also covenants to assume and pay all the liabilities of the lessor now existing for injuries or damages to persons or property, as the same shall from time to time hereafter be established, and to defend, at its own expense, all actions now pending, or hereafter brought against the lessor, on account of claims for such liabilities.

SIXTH. The lessee covenants that during the continuance of this lease it will in good faith and to the best of its ability operate at its own risk and expense the lessor's gas works and plants and furnish all apparatus and equipment in substitution for, and in addition to, that hereby demised, which may be necessary or proper to such operation, and will carry on, preserve and extend the business heretofore carried on by the lessor in such manner as at all times to meet the demands of the public service and to promote the interests of and preserve the franchises vested in the lessor; that the gas furnished by it during the continuance of this lease shall at all times be of good quality and shall be furnished to its customers under proper conditions, at rates to be established

from time to time by the lessee, and shall be as suitable for the purposes for which it is intended to be used as the gas heretofore furnished by the lessor.

SEVENTH. The lessor covenants to deliver to the lessee upon the execution hereof, the sole and exclusive possession of all the demised property and franchises; and further from time to time during the continuance of this lease as other property and franchises are acquired or come into the right or possession of the lessor, to transfer and deliver possession, or right of possession, thereof to the lessee.

The lessor also covenants and agrees, in consideration of the acceptance of this lease, and the covenants herein entered into by the lessee, that it will forthwith, upon the execution hereof, assign, transfer and deliver to the lessee absolutely the cash, bills, notes, contracts, accounts receivable and other property enumerated in said schedule hereinbefore referred to as Schedule A.

EIGHTH. The lessee hereby accepts the works, plants, estate and property hereby demised as the same actually are at the date hereof, and admits that they are in good order and condition, and covenants that it will, during said term, renew, repair and replace the same so as to maintain and keep the demised premises in as good order, repair and condition as the same now are, and in their present state of efficiency, and that it will extend and expand the same with increase of profitable demand for service of gas, and will stimulate such increase; that it will, from time to time, at its own expense, make all extensions, additions, alterations, improvements, renewals and betterments which may be necessary or proper with

reference to the premises and property hereby demised and for the use and operation thereof and will do and perform all other things necessary to make and maintain said works and plants as first-class gas works; and that all lands, structures, improvements, betterments and renewals added to or made upon the demised premises and all rights, privileges and franchises acquired by the lessee in connection with the demised premises shall become the property of the lessor and be treated as part of the demised premises and be subject to all the terms, conditions and provisions of this indenture the same as if they had been vested in the lessor at the date of this instrument.

NINTH. It is hereby agreed between the parties that all uncertified bonds of the lessor which are in the hands of the trustee under its said mortgage and retained for the purpose of making additions to or extensions or betterments of the plant of the lessor, or acquiring new property, real and personal, may be used by the lessee for the purposes provided in said mortgage, and to that end, whenever the lessee shall need funds for such purposes, it shall in writing notify the lessor of the amount of money required for such purposes (which amount, however, shall never exceed the amount of the uncertified bonds held by the trustee for the purposes aforesaid), and such notice shall be signed by the president or vice-president of the lessee, attested by its secretary and sworn to by one of the officers of the lessee as a proper and necessary expenditure for such purposes, whereupon the lessor shall, by resolution of its board of directors, call upon the trustee under its said mortgage, in the manner provided in the mortgage, for the certification and delivery of an amount of bonds sufficient to provide the amount

of money so required, and upon receipt of said bonds, the lessor shall either sell the same and pay the cash proceeds of such sale to the lessee, or deliver said bonds to the lessee to be used by it for making the payments aforesaid.

TENTH. The lessee shall have the right to add to, remove, alter, change, improve, replace, abandon or sell and convey any part of the property or franchises hereby demised in accordance with its best judgment, from time to time, provided that it be not done in violation of any mortgage now existing thereon or any renewal thereof; and provided, that if the lessee shall sell or convey any property or franchise subject to any such mortgage or renewal, it shall apply the proceeds thereof only in the manner set forth in such mortgage, to the extent that shall be required thereby, and any surplus or the proceeds of the sale of any property not subject to mortgage shall be applied solely for betterments to or extensions of the demised property; and the lessor hereby covenants and agrees that upon request made it will join with the lessee in the execution of any deed or other conveyance necessary to accomplish such sale and conveyance.

ELEVENTH. The lessee covenants that it will save the lessor harmless from all charges, actions, costs, damages, and expenses arising from the maintenance or the operation of the gas works or other use by the lessee of the property, contracts, rights, powers, privileges or franchises hereby leased and demised; and that the lessee will, at its own expense, defend all suits brought against the lessor for any such cause, and pay the final judgments recovered therein.

TWELFTH. The lessor covenants that whenever, during the term of this lease, the principal of any bonds secured by mortgage of any of the property, contracts, rights, powers, privileges, or franchises hereby demised, shall become or be due or payable, it shall and will, upon the written request of the lessee, and at such reasonable times as may be named in such request, do or cause to be done all acts and things necessary or proper to provide, either by the continuance of any existing bonds, mortgage or mortgages, or by the execution of renewal or refunding bonds, mortgage or mortgages, for the payment or the extension of the time of payment of such principal. The lessee covenants to do all acts and things necessary or proper to be done on its part to obtain such extensions, renewals, or refundings, the negotiations for which shall be controlled by the lessee. No greater amount of bonds shall be issued or secured by any such renewal or refunding mortgage than is required to enable the lessee to retire all bonds then outstanding which are secured by mortgage on the properties, contracts, powers, rights, privileges, and franchises hereby demised, and to pay the legal and other expenses incident to the issuing and selling of said renewal or refunding bonds, and the making, executing and recording the mortgage to secure the same; and the interest on said renewal or refunding bonds shall be fixed at the lowest practicable rate. Said bonds shall be sold by the lessee at the highest price which it is able to obtain for the same, and the proceeds shall be applied to the retirement of the outstanding bonds and the payment of the expenses above mentioned. Any surplus arising from the sale of such renewal or refunding bonds over and above the amount required to retire said

outstanding bonds and to pay the expenses incident to the making and recording of such renewal or refunding mortgage, and the issue and sale of the bonds secured thereby shall be applied to extensions of, additions to, or improvements upon, the lessor's properties, not including, however, in such expenditures for additions, extensions, or improvements, any expenditures which are properly chargeable to maintenance or repairs, And until payment in full of the principal and interest of all bonds secured by any such renewal or refunding mortgage, such bonds and any mortgage securing the same shall constitute a lien upon all the property, contracts, powers, rights, privileges and franchises of the lessor which are now subject or which may hereafter become subject to the lien of any such mortgage, superior in all respects to any right of the lessee under this lease.

The lessor covenants and agrees that it will not authorize the creation of any mortgage or other lien upon its property hereby demised except the same be made in renewal or continuation of the existing mortgage of the Company to The New Jersey Title Guarantee and Trust Company, dated November 1st, 1899.

THIRTEENTH. The lessee shall cause the property, from time to time, subject to this lease, to be insured, at the expense of the lessee, against loss or damage by fire, to the extent that the property of gas companies is usually insured, in good and solvent companies—such insurance to be taken in the name of the lessee, and the proceeds thereof, when received by the lessee, to be placed in a separate fund, and to be applied by the lessee solely to the rebuilding, replacement or repair of the property damaged or destroyed, whenever necessary to the operation of the leased property, or,

when not so necessary, then to other extensions, betterments and renewals of property subject to this lease; *provided, however,* that the lessee may adopt such other plan or method of protection against loss by fire, whether by the establishment of an insurance fund, or otherwise, as may be approved by the board of directors of the lessor. It is understood and agreed, however, that the lessee will at all times comply with the insurance clause contained in any existing mortgage upon the demised property or any renewal thereof.

In case of any failure on the part of the lessee to keep said property so insured or protected from loss by fire, it shall be lawful for the lessor to cause said property to be insured, and the lessor may recover the amount of any payments of premiums for such insurance, with interest thereon from the date thereof, from the lessee, without prejudice to any right secured to the lessor by this lease for breach of any covenant thereof.

It is understood by and between the parties hereto that the provisions thus made for restoration of the demised property, or any portion thereof, which may be destroyed or injured by fire, shall be treated and shall operate as a waiver by the lessee of any right, whether statutory or otherwise, on its part, to surrender said leased property, or any part thereof, by reason of destruction or injury by fire, or otherwise, the object being to require the lessee, notwithstanding such event, to continue the term of this lease, and to make the payments and perform the covenants herein required, anything in the statutes of the State of New Jersey to the contrary notwithstanding.

FOURTEENTH. At the expiration or earlier termination of this lease, the lessee shall return and

surrender to the lessor the demised rights, privileges, franchises, premises and property, and all improvements, additions, and extensions thereto, and all property, real and personal, rights, privileges and franchises acquired by the lessee in connection or for use therewith, except as the same may have been sold, conveyed, altered, changed, abandoned, removed or replaced in accordance with the terms of this instrument.

FIFTEENTH. In case the lessee shall default in the payment of any sum required to be paid under this lease, or shall fail to perform any other covenant or condition herein, and such default shall continue for the space of thirty (30) days after notice and demand by the lessor to make such payment or perform such condition or covenant, the lessor shall have the right, at its option, to terminate this lease, and it may, upon notice of its election so to do, re-enter upon the demised premises, or any part thereof, in the name of the whole, and the same have and possess as of its former estate; together with all the additions and extensions made thereto, and franchises acquired in connection therewith, by the lessee, as contemplated herein, and may expel the lessee and those claiming under it therefrom, without prejudice to its right of action for payment or damages to which the lessor may be entitled under this lease for or on account of any such default or defaults.

SIXTEENTH. The lessor, by its agents or representatives, may at all proper and reasonable times enter upon the demised property and estate, and inspect the same, for the purpose of ascertaining its condition and the character of the management, and whether the covenants and agreements of the

lessee herein contained are being substantially complied with.

SEVENTEENTH. There shall be made as of the day when this lease takes effect, a full, complete and particular inventory and description of all the estate and property, real and personal, belonging to the lessor, and coming into the possession of the lessee by virtue of this lease; such inventory and description shall be made by two competent persons, one selected by each party; such inventory and description shall be made in duplicate and an original furnished to each party.

EIGHTEENTH. Schedule A shall not be attached to this lease, but shall be made in duplicate, and shall be marked for identification with the signatures of the Presidents of both the lessor and lessee corporations, and the seals thereof, and one copy shall be retained by each party.

NINETEENTH. The parties hereto covenant each with the other that the covenants herein contained shall inure to the benefit of and be obligatory upon their respective successors and assigns.

IN WITNESS WHEREOF, the said parties hereto have caused their corporate seals to be hereunto affixed, and these presents to be signed by their respective Presidents, and attested by their respective Secretaries, the day and year herein first above written.

HUDSON COUNTY GAS COMPANY,
By E. F. C. YOUNG,
President.

(SEAL)

Attest:
P. S. YOUNG,
Secretary.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,
By THOS. N. McCARTER,
President.

(SEAL)

Attest:
F. W. EGNER,
Secretary.

Bill of Complaint—Exhibit 3.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } ss.:

BE IS REMEMBERED, That on this first day of June, in the year of our Lord nineteen hundred and three, before me, the subscriber, personally appeared P. S. Young, who being by me duly sworn, did depose and say that he is the Secretary of Hudson County Gas Company, the Lessor in the within indenture mentioned; that he well knows the corporate seal of said corporation, and that the seal affixed thereto is the proper corporate seal of said corporation, and that the same was so affixed thereto and the said indenture signed and delivered by E. F. C. Young, who was at the date of the execution thereof, the President thereof, in the presence of said deponent, as the voluntary act and deed of the said company, by the order and direction of the Board of Directors thereof, and that the said deponent signed his name as subscribing witness.

P. S. YOUNG.

Sworn and subscribed before me,
this first day of June, 1903.
CHAS. D. THOMPSON,
Master in Chancery of New Jersey.

Bill of Complaint—Exhibit 3.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, That on this first day of June, in the year of our Lord nineteen hundred and three, before me, the subscriber, personally appeared Frederick W. Egner, who being by me duly sworn, did depose and say, that he is the Secretary of Public Service Corporation of New Jersey, the Lessee in the within indenture mentioned; that he well knows the corporate seal of said corporation, and that the seal affixed thereto is the proper corporate seal of said corporation, and that the same was so affixed thereto and the said indenture signed and delivered by Thomas N. McCarter, who was at the date of the execution thereof, the President thereof, in the presence of said deponent, as the voluntary act and deed of the said company, by order and direction of the Board of Directors thereof, and that the said deponent signed his name as subscribing witness.

F. W. EGNER.

Sworn and subscribed before me, this first day of June, 1903. }

CHANDLER W. RIKER,
Master in Chancery of New Jersey.

Exhibit 4.

SUMMARY OF LEASE BY ESSEX AND HUDSON COUNTY GAS COMPANY TO PUBLIC SERVICE CORPORATION OF NEW JERSEY.

"THIS INDENTURE, made this first day of June, nineteen hundred and three, Between ESSEX AND HUDSON GAS COMPANY, a corporation organized under the laws of the State of New Jersey, hereinafter called the Lessor, party of the first part, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation organized under the laws of said State, hereinafter called the Lessee, party of the second part,

WITNESSETH:

"That the said parties have agreed, each for itself, its successors and assigns, and each in consideration of the grants, covenants and agreements herein made by each with the other, its successors and assigns, as follows:"

FIRST. This article is identical with the article marked "First" in the lease from Hudson County Gas Company to Public Service Corporation of New Jersey dated June 1, 1903 (Exhibit 3).

SECOND. This article is identical with the article marked "Second" in the lease from Hudson County Gas Company mentioned above.

"Third. The Lessee shall pay to the Lessor, as rent for the demised premises, in gold coin of the United States of America, of the present standard of weight and fineness, or its equivalent, on the dates hereinafter stated, the following sums respectively, to wit:

"On the first day of December, nineteen hundred and three, one hundred and thirteen thou-

sand, seven hundred and fifty dollars, ($113,-750.00);

"On the first day of June, nineteen hundred and four, one hundred and thirteen thousand, seven hundred and fifty dollars, ($113,750,00);

"On the first day of December, nineteen hundred and four, one hundred and forty-six thousand, two hundred and fifty dollars, ($146,250.00);

"On the first day of June, nineteen hundred and five, one hudred and forty-six thousand, two hundred and fifty dollars, ($146,250.00);

"On the first day of December, nineteen hundred and five, one hundred and sixty-two thousand, five hundred dollars, ($162,500.00);

"On the first day of June, nineteen hundred and six, one hundred and sixty-two thousand, five hundred dollars, ($162,500.00);

"On the first day of December, nineteen hundred and six, one hundred and ninety-five thousand dollars, ($195,000.00);

"On the first day of June, nineteen hundred and seven, one hundred and ninety-five thousand dollars, ($195,000.00);

"On the first day of December, nineteen hundred and seven, two hundred and twenty-seven thousand, five hundred dollars, ($227,500.00);

"On the first day of June, nineteen hundred and eight, two hundred and twenty-seven thousand, five hundred dollars, ($227,500.00);

"On the first day of December, nineteen hundred and eight, two hundred and sixty thousand dollars, ($260,000.00);

"On the first day of June, nineteen hundred and nine, two hundred and sixty thousand dollars, ($260,000.00); and on each first day of December and June thereafter, beginning December first, nineteen hundred and nine, during the term of

this lease, two hundred and sixty thousand dollars ($260,000.00); such sums shall be paid to the Lessor, at its office in the City of Newark, New Jersey.

"And the Lessee shall also pay to the Lessor the additional sum of one thousand five hundred dollars ($1,500) in each and every year during the continuance of this lease in two payments of seven hundred and fifty dollars ($750) each, on the same dates and at the same place as said rent is payable, as and for the expense of maintaining the organization of the Lessor, and for providing suitable offices for the accommodation of its officers and directors.

"And said Lessee will also pay to the Lessor, as further rent, from time to time as they fall due, the various sums reserved by way of rental in Section 5, sub-division (e) of a certain lease made by Newark Consolidated Gas Company to The United Gas Improvement Company, dated the first day of December, 1898, and assigned on said last mentioned date by The United Gas Improvement Company to the Lessor herein, a true copy of which lease is hereto annexed, and will observe, fulfil and perform all other covenants, stipulations and agreements by the second party to be performed under the said indenture of lease. And the Lessor covenants and agrees to pay the said rent reserved in section (5), sub-division (e) of said lease, as and when the same shall fall due, and that if it shall at any time or times fail so to do, and said failure shall continue for a period of ten (10) days, the Lessee shall have the right, at its option, to pay the same and to deduct such payment from the rent reserved under this lease.

"It is understood and agreed that all of the rights and privileges named and provided in

clauses six, seven, eight and fifteen of said lease of the Newark Consolidated Gas Company, as well as in every other part of said lease, residing in or belonging to the Lessee therein, shall belong to and shall be exercised for the benefit of the Lessee herein. And the Lessor covenants

(b) As from time to time funds shall be required for the maintenance, enlargement, extension, improvement, replacement and alteration of plants, buildings, mains, meters, pipes, services, machinery, apparatus and other appurtenances of the property hereby demised, and for the acquisition of other property, real or personal, in accordance with the terms of this lease, the Lessee shall in writing notify the Trustee herein of the amount of money required for such purposes. Such notice shall be in writing, signed by the President or Vice-President of the Lessee, attested by its Secretary, and sworn to by one of the officers of the Lessee as a proper and necessary expenditure, and shall state the amount of money required at the time and the purpose for which it is required, whereupon said Trustee shall, if necessary to provide the funds, within thirty days from the date of such notice, cause sufficient of said assets described in said schedule, to provide the amount of money needed to be sold or otherwise disposed of, so as to produce the amount of cash required, and for such purpose shall sell any of said securities at the then market price, and out of said proceeds, or out of cash already on hand, shall pay the cash so provided and demanded to the Lessee. *Provided, however,* that if the Lessee so elects and notifies the Trustee in writing, said Trustee, instead of selling the securities enumerated in Schedule C, shall deliver the same to the Lessee, which shall in such event re-

ceive and pay for the same at the market price at the time. At the time of the delivery of the said notice or demand and affidavit to the Trustee, a copy thereof shall be delivered to the Lessor.

"It is understood and agreed that the stock of The East Newark Gas Light Company, to be deposited with the Trustee under this article, shall not be sold or otherwise disposed of by the Trustee without the consent and agrees that upon demand of the Lessee, it, the Lessor, will on its part do and perform all acts and things that by said indenture of lease are in said clauses six, seven, eight and fifteen required by the Lessee therein to be performed, in so far as may be necessary to enable the Lessee hereunder to avail itself of the benefit of said clauses six, seven, eight and fifteen, and as shall be consistent with its duty under said indenture."

FOURTH. This article is identical in language with article Fourth of said Hudson County Gas Company lease except that at the end of Article Fourth of this lease the following words are omitted "subject, however, to said mortgages."

FIFTH. This article is identical in language with article Fifth of said Hudson County Gas Company lease except that the following clause is omitted "except the principal of the bonded indebtedness secured by said mortgages."

SIXTH. Article Sixth of this lease is identical in language with article Sixth of said Hudson County Gas Company lease.

SEVENTH. The first paragraph of Article Seventh is identical with the first paragraph of article Seventh of said Hudson County Gas Company lease. The second paragraph of article Seventh of this lease reads as follows:

"The Lessor also covenants and agrees, in consideration of the acceptance of this lease, and the covenants herein entered into by the Lessee, that it will forthwith, upon the execution hereof, assign, transfer and deliver to the Lessee absolutely the property, cash, contracts, accounts and choses in action enumerated in the schedule thereof hereinafter referred to, marked B."

"EIGHTH. The Lessor further covenants and agrees that upon the execution and delivery of this lease, it will at once deposit with Fidelity Trust Company, of Newark, as Trustee, the cash, stocks, and securities enumerated in the schedule thereof hereinafter referred to, marked C, upon the following trusts, which are hereby agreed to by the Trustee and the Lessee, namely:

"(1) To invest the same, so far as it consists of cash, from time to time in such securities as may be approved by the party of the first part hereto and the said Trustee, and to hold said securities enumerated in said Schedule C, as well as those securities in which the cash investments last above provided for shall have been made, to collect and receive the income therefrom, to sell and dispose of the same, and invest the proceeds of such sale and the income derived from such securities as above provided for, in case of the original investment of said cash funds.

"(2) Said assets enumerated in Schedule C shall constitute a fund which shall be reduced to cash and applied, if demanded by the Lessee, so far as necessary from time to time:

"(a) To the payment of the obligations under the lease of the Newark Consolidated

Gas Company, whenever the current profits from the manufacture and sale of gas by the Lessee under this lease shall not be sufficient to meet the obligations of the second party under said lease dated December first, 1898, provided that whenever any part thereof shall be required for such purpose the Lessee shall in writing advise the Trustee of the amount required for the purpose, and demand payment to it by the Trustee of such amount for such purpose, whereupon such Trustee shall, as soon as may be, pay such amount so demanded to the Lessee, who shall apply the same only to such purpose. Such written demand and notice shall be made by the Lessee to the Trustee under the seal of the Lessee, and attested by its Secretary and verified by the affidavit of one of its officers, and shall be signed by its President or Vice-President. At the time of the delivery of the said notice or demand and affidavit to the Trustee, a copy thereof shall be delivered to the Lessor in writing of both the Lessor and the Lessee."

NINTH. Article Ninth of this lease is identical in language with article Eight of said Hudson County Gas Company lease.

Article Ninth of said Hudson County Gas Company lease is not contained in this lease.

Article TENTH and ELEVENTH of this lease are identical in language with articles Tenth and Eleventh of said Hudson County Gas Company lease.

"TWELFTH. It is further agreed by and between the parties hereto, that the bonds of the Newark Consolidated Gas Company, dated De-

cember first, eighteen hundred and ninety-eight, secured by mortgage to Fidelity Trust Company, Trustee, of even date therewith, and amounting to ten million dollars, at par, (of which $70,000 at par, have remained uncertified and undelivered, and are subject to certification and delivery, in accordance with the provisions of the mortgage securing the same, and under the terms of Sections 6, 7 and 8 of said lease of the Newark Consolidated Gas Company) shall be refunded and re-issued either when said bonds shall become due, or at any time prior thereto, as the obligor therein shall elect; that when said bonds are re-issued, they shall then be issued at as low a rate of interest as is practicable at that time, and the second party hereto hereby convenants and agrees to pay said interest upon said bonds so issued, as part of the rental herein provided for in lieu and instead of the interest on said present issue of bonds; that said rate of interest shall in no event be higher than five per centum per annum; that said new issue of bonds shall not be greater in amount than the present issue of bonds except by consent of the Lessee herein; and that when said new bonds are issued, they shall have the same relative priority over this lease as have the said bonds of the Newark Consolidated Gas Company hereinabove referred to.

Article THIRTEENTH of this lease is identical in language with article THIRTEENTH of said Hudson County Gas Company lease except that the first clause of the first sentence of the first paragraph in this lease reads as follows:

* * * "The Lessee shall cause the property from time to time, subject to this lease, to be insured, at the expense of the Lessee,

against loss or damage by fire, in good and solvent companies, in the manner and to the extent provided in said lease, from the Newark Consolidated Gas Company, and to the extent that the property of gas companies is usually insured;"

Articles FOURTEENTH, FIFTEENTH, SIXTEENTH and SEVENTEENTH are identical in language with articles Fourteenth, Fifteenth, Sixteenth and Seventeenth of said Hudson County Gas Company lease.

"EIGHTEENTH. Schedules A, B and C shall not be attached to this lease, but shall be made in duplicate, and shall be marked for identification with the signatures of the Presidents of both the Lessor and Lessee corporations, and the seals thereof, and one copy shall be retained by each party."

Article NINETEENTH of this lease is identical in language with article Nineteenth of said Hudson County Gas Company lease.

This lease is signed on behalf of the lessor by John F. Shanley, President, and its corporate seal is attested by James P. Dusenberry, Secretary, and is signed on behalf of the lessee by Thomas N. McCarter, President, and its corporate seal is attested by F. W. Egner, Secretary, and is proved by said respective secretaries on June 1, 1903.

This lease is also subscribed at the foot as follows:

"Fidelity Trust Company, the Trustee named in the foregoing lease, in consideration of one dollar ($1) to it in hand paid by the

parties thereto, receipt whereof is hereby acknowledged, hereby accepts the trusts therein declared in its favor as Trustee, and agrees to perform the same.

"In witness whereof, Fidelity Trust Company has caused this assent to be signed by its President, and its corporate seal to be hereto affixed, attested by its Secretary, the first day of June, 1903.

Fidelity Trust Company,
By
U. H. McCarter,
President.

(Seal)

Attest:
James H. Shackleton,
Ass't Secretary."

Annexed to this lease is a copy of lease made by Newark Consolidated Gas Company to The United Gas Improvement Company dated December 1, 1898.

Exhibit 5.

SUMMARY OF LEASE OF THE GASLIGHT COMPANY OF THE CITY OF NEW BRUNSWICK—TO—PUBLIC SERVICE CORPORATION DATED JANUARY 2ND, 1905.

"WHEREAS, THE GASLIGHT COMPANY OF THE CITY OF NEW BRUNSWICK is a corporation of the State of New Jersey, having a capital stock issued and outstanding consisting of four thousand (4,000) shares of the par value of one hundred dollars ($100) per share and amounting to four hundred thousand dollars ($400,000); and

"WHEREAS, the entire amount of said capital stock excepting shares standing in the names of certain individuals to qualify them to act as directors of said The Gaslight Company of the City of New Brunswick, is owned by NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, a corporation organized under the laws of the State of New Jersey, which latter corporation has no other property or assets excepting the said capital stock of The Gaslight Company of the City of New Brunswick;

"NOW, THEREFORE, THIS INDENTURE, made the second day of January, nineteen hundred and five,

"BETWEEN THE GASLIGHT COMPANY OF THE CITY OF NEW BRUNSWICK, a corporation organized under the laws of the State of New Jersey, hereinafter called the lessor, party of the first part,

"AND PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation organized under the laws of said State, hereinafter called the lessee, party of the second part, which indenture is consented to and is also executed by NEW BRUNSWICK LIGHT,

HEAT AND POWER COMPANY, as the owner of the stock of The Gaslight Company of the City of New Brunswick, as party of the third part;

"WITNESSETH: That the said parties of the first and second part have agreed, each for itself, and each in consideration of the grants, covenants and agreements herein made each with the other as follows:

"FIRST. The lessor has granted, leased and demised, and by these presents does grant, lease and demise unto the lessee, all and singular the franchises, gas light plant and works now owned, possessed or enjoyed by the lessor, as a going concern, or which the lessor may hereafter own, lease or acquire wherever the same now are or may hereafter be located, constructed or extended, together with all and every the lands, tenements, holders, gas mains, meters, pipes, stables, barns, shops, buildings, machinery, sub-ways and other property of every kind and description, and all the easements and appurtenances thereunto appertaining, also all equipment, machinery, tools, appliances, horses, wagons, coal, supplies, and all other property, real and personal and mixed belonging to the lessor, as a going concern, whether the same be referred to or included in the foregoing enumeration, or not, and all contracts, rights, privileges, and franchises connected with or relating to the said demised premises, or any part thereof, as fully as the same now are, or hereafter may be vested in the lessor, excepting the franchise of the lessor to be a corporation, the corporate seal of said lessor, and its minute, transfer and stock books, the books containing the dividend accounts of the lessor, its office furniture,

and the deeds, grants, plats and other instruments and documents containing the evidence of its right and title to the properties now owned, possessed or controlled by the lessor, and also excepting all cash, bills, notes, contracts, accounts receivable and other property enumerated in a certain schedule hereinafter referred to as Schedule A.

"To HAVE AND TO HOLD all and singular the demised property unto the lessee for and during the term of nine hundred years from and after the date hereof, upon the terms and conditions, and for the consideration hereinafter provided, and agreed to by the parties hereto."

SECOND. Article Second of this lease is to the same purport and effect, with slight variations in language, as article Second in the Hudson County Gas Company lease dated June 1, 1903 (Exhibit 3).

"THIRD. The lessee shall pay to the lessor, and also to NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, at their offices in the city of New Brunswick, New Jersey, the sum of one hundred dollars in each and every year during the continuance of this lease, in semi-annual payments of fifty dollars each, on the first days of January and July, beginning with July first, nineteen hundred and five, as and for the expenses of maintaining their respective corporate organizations, and for providing suitable offices for the accommodation of their officers and directors.

"The lessee shall also pay to the lessor, or to NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, as owners of the capital stock of said lessor, as rent for the demised premises, in gold coin of the United States of America, of the present standard of weight and fineness, or its equivalent, on

the dates hereinafter stated, the following sums, respectively, to wit:

"On the first day of July, nineteen hundred and five, four thousand dollars ($4,000).

"On the first day of January, nineteen hundred and six, four thousand dollars ($4,000).

"On the first day of July, nineteen hundred and six, four thousand dollars ($4,000).

"On the first day of January, nineteen hundred and seven, four thousand dollars ($4,000).

"On the first day of July, nineteen hundred and seven, five thousand dollars ($5,000).

"On the first day of January, nineteen hundred and eight, five thousand dollars ($5,000).

"On the first day of July, nineteen hundred and eight, five thousand dollars ($5,000).

"On the first day of January, nineteen hundred and nine, five thousand dollars ($5,000).

"On the first day of July, nineteen hundred and nine, six thousand dollars ($6,000).

"On the first day of January, nineteen hundred and ten, six thousand dollars ($6,000).

"On the first day of July, nineteen hundred and ten, six thousand dollars ($6,000).

"On the first day of January, nineteen hundred and eleven, six thousand dollars ($6,000).

"On the first day of July, nineteen hundred and eleven, seven thousand dollars ($7,000).

"On the first day of January, nineteen hundred and twelve, seven thousand dollars ($7,000).

"On the first day of July, nineteen hundred and twelve, eight thousand dollars ($8,000).

"On the first day of January, nineteen hundred and thirteen, eight thousand dollars ($8,000).

"On the first day of July, nineteen hundred and thirteen, nine thousand dollars ($9,000).

"On the first day of January, ninteen hundred and fourteen, nine thousand dollars ($9,000), and on each first day of July and January thereafter, during the term of this lease, ten thousand dollars ($10,000).

"Said sums shall be paid to the lessor or to the New Brunswick Light, Heat and Power Company, at its office in the city of New Brunswick, New Jersey, or may be paid by the lessee to the stockholders of said company pro rata as dividends on their stock in said company.

"The lessee shall also pay interest from time to time as the same shall fall due, upon all bonds which may be outstanding from time to time, issued under the terms of and secured by a certain mortgage made by New Brunswick Light, Heat and Power Company to Fidelity Trust Company, dated the fifteenth day of December, eighteen hundred and ninety-nine and recorded in Book 151 of Mortgages for Middlesex county, on page 1, to secure the sum of five hundred thousand dollars ($500,000), of which bonds to the amount of four hundred and seventy-five thousand dollars ($475,000) have heretofore been issued and are now outstanding, and shall also pay interest on said bonds issued, and to be issued under said mortgage, if the time for the payment of the principal thereof shall be extended, and the interest upon all bonds which may be issued to refund the same as hereinafter provided.

"It is hereby understood and agreed that if at any time during the term of this lease the title to the said plant of the lessor shall cease to remain vested in it, or its right to operate the same shall expire and is not promptly renewed, then, and in that event, the lessee shall have the option of terminating this lease, by notice in writing delivered to the lessor.

"FOURTH. The lessor hereby covenants with the lessee that at the execution of these presents it is lawfully seized in fee simple of the property and franchises enumerated in a certain schedule hereinafter referred to as Schedule B, and that said franchises are in all respects valid for the respective terms thereof, under and subject, however, to the mortgage referred to in section third hereof.

"And the lessor covenants that the lessee, it keeping all the covenants on its part herein contained, shall and may, during the term of this lease, peaceably and quietly have, hold and enjoy all and singular, said property, rights, contracts, powers, privileges and franchises herein demised, without hindrance or molestation from any person or persons lawfully claiming or to claim any right, title or interest at law or in equity, in, to or out of the same, or any part thereof, subject to the mortgage referred to above.

"FIFTH. The lessee covenants that it will, during the continuance of this lease, pay, satisfy and discharge, as the same shall accrue, all taxes, rates, imposts, duties, charges, licenses and assessments, general and special, ordinary and extraordinary, of every nature and description, which may be lawfully imposed or assessed during the continuance of this lease in any way upon the lessor and also upon the New Brunswick Light, Heat and Power Company, with reference to their capital stock or property, contracts, rights, privileges, or franchises hereby demised, or upon the rental herein reserved, or upon all dividends declared during the continuance of this lease upon the capital stock of the lessor and also of New Brunswick Light, Heat and Power Company, and also all sums of money which the lessor, and also

New Brunswick Light, Heat and Power Company, may now be or may hereafter become liable to pay by law, contract or otherwise for the enjoyment or perpetuation of any of their rights, powers, privileges or franchises; said payments to be made as the same become due to the officers or other persons entitled by law to receive the same; and in the event that said lessee shall fail to make any such payments when the same become due, the lessor, or the said New Brunswick Light, Heat and Power Company, may, at any time thereafter, make such payments and recover the amounts thereof, with interest thereon from the date of payment, from the lessee without prejudice to any right secured to the lessor by this lease for breach of any covenants hereof; it being understood and agreed, however, that if the lessee shall desire to resist by legal proceedings, the payment of any tax or assessment, upon the ground that the same is not legally assessed, or is excessive, and shall so notify the lessor, or the said New Brunswick Light, Heat and Power Company, the said companies shall not pay any such tax or assessment until thirty days after final adjudication upon such tax or assessment by the court having jurisdiction in such cases.

"The lessee covenants to assume all the contracts of the lessor shown by their books and records, except the principal of the bonded indebtedness secured by said mortgage.

"There shall be made as of the day of the date hereof, a full, complete and particular list and description of all such contracts, which shall not be attached to this lease, but shall be made by the lessor, in duplicate, and shall be marked for identification with the signatures of the presidents of the lessor and lessee, under the respective seals

thereof, and one copy shall be retained by each party hereto."

SIXTH. Article Sixth is to the same purport and effect, with slight variation, in language as article Sixth of said Hudson County Gas Company lease.

SEVENTH. The first paragraph of article Seventh of this lease is to the same purport and effect, with slight variation, in language as the first paragraph of article Seventh of said Hudson County Gas Company lease. The second paragraph of Article Seventh of this lease reads as follows:

"The lessor also covenants and agrees in consideration of the acceptance of this lease, and the covenants herein entered into by the lessee, that it will forthwith, upon the execution hereof, assign, transfer and deliver to the lessee absolutely the contracts enumerated in said schedule hereinbefore referred to as Schedule A.

EIGHTH. Article Eighth of this lease is to the same purport and effect as article Eighth of said Hudson County Gas Company lease, with slight variation, in language. Article Eighth of this lease omits the phrase "and will stimulate such increase."

"NINTH. It is hereby agreed between New Brunswick Light, Heat and Power Company and said lessee that all uncertified bonds secured by said mortgage may be used by the lessee for the purposes provided in said mortgage, and to that end, whenever the lessee shall need funds for any of such purposes, it shall in writing notify said New Brunswick Light, Heat and Power Company of the amount of money required (which amount, however, shall never exceed the amount of the uncertified bonds held by the trustee for the pur-

poses aforesaid), and such notice shall be signed by the president or vice-president of the lessee, attested by its secretary and sworn to by one of the officers of the lessee as a proper and necessary expenditure for such purposes, whereupon the said New Brunswick Light, Heat and Power Company shall, by resolution of its Board of Directors, call upon the proper trustee, in the manner provided in the mortgage, for the certification and delivery of an amount of bonds sufficient to provide the amount of money so required, and upon receipt of said bonds, the said New Brunswick Light, Heat and Power Company shall either sell the same, upon obtaining the written approval of the lessee of the prices to be received therefor, and pay the cash proceeds of such sale to the lessee, or deliver the said bonds to the lessee to be used by it for said purposes.

TENTH. Article Tenth of this lease is identical with Article Tenth of said Hudson County Gas Company lease.

ELEVENTH. Article Eleventh of this lease is to the same purport and effect as Article Eleventh of said Hudson County Gas Company lease.

TWELFTH. Article Twelfth of this lease is to the same purport and effect as Article Twelfth of said Hudson County Gas Company lease, except that the first sentence in this lease reads as follows:

"The said New Brunswick Light, Heat and Power Company covenants that whenever during the term of this lease, the principal of any bonds, secured by the said mortgage already executed, delivered and recorded, or which shall be executed, delivered and recorded in the future to renew or refund the same, upon any of the property, con-

tracts, rights, powers, privileges or franchises hereby leased and demised, shall become or be due and payable, it shall and will, upon the written request of the lessee, and at such reasonable times as may be named in such request, do or cause to be done all acts and things necessary or proper to provide, either by the continuance of any existing bonds, mortgage or mortgages, or by the execution of renewal or refunding bonds, mortgage or mortgages from time to time, for the payment or the extension of the time of payment of such principal."

The sixth sentence varies from the corresponding sentence in said Hudson County Gas Company lease in that it substitutes for the phrase "of the lessor," the words "of the said New Brunswick Light, Heat and Power Company."

The second paragraph in article Twelfth reads as follows:

"The lessor and the said New Brunswick Light, Heat and Power Company, covenant and agree that they will not authorize the creation of any mortgage or other lien upon their property hereby demised, except the same be made in renewal or continuation of the said existing mortgage."

THIRTEENTH. Article Thirteenth of this lease is to the same purport and effect as Article Thirteenth of said Hudson County Gas Company lease, with slight variation in language.

FOURTEENTH. The first paragraph of Article Fourteenth of this lease is identical with Article Fourteenth of said Hudson County Gas Company lease. The second paragraph of Article Fourteenth of this lease reads as follows:

"If this lease shall be terminated on account of default by the lessor, or for any cause not within

the control of the lessee, the lessor shall upon such termination pay to the lessee the actual amount which it has expended in extensions and betterments to the plant of the lessor in accordance with the terms hereof, over and above the amount provided for such expenditures from the proceeds of the bonds secured by the mortgage referred to in section third hereof, or from the earnings of the property of the lessor which shall have been applied by the lessee to such purposes.

FIFTEENTH. Article Fifteenth of this lease is substantially the same as Article Fifteenth of said Hudson County Gas Company lease, except that the words "or by said New Brunswick Light, Heat and Power Company" are inserted after "lessor" in the first sentence of said article in this lease.

SIXTEENTH. Article Sixteenth in this lease is identical with Article Sixteenth of said Hudson County Gas Company lease.

"SEVENTEENTH. There shall be made, as of the date hereof, a full, complete and particular inventory and description of all the estate and property, real and personal belonging to the lessor (except so much thereof as is enumerated in Schedule B, hereinbefore referred to) and coming into the possession of the lessee by virtue of this lease; such inventory and description shall be made by two competent persons, one selected by each party; such inventory and description shall be made in duplicate, marked for identification with the signatures of the presidents of the lessor and lessee, under their respective seals, and an original furnished to each party.

"EIGHTEENTH. Schedules A and B are not attached to this lease, but have been made in duplicate, and marked for identification with the signa-

tures of the presidents of both lessor and lessee, and the seals thereof, and one copy retained by each party hereto.

"NINETEENTH. The term 'lessor' wherever used in this indenture shall be construed to include in its meaning the corporation constituting the party of the first part hereto, and its successors and assigns, and the term 'lessee' wherever used in this indenture shall be construed to include in its meaning the party of the second part, its successors and assigns."

This lease is signed by J. Bayard Kirkpatrick as President, for the lessor, and is attested by Halsey M. Barrett as Secretary, and by Thomas N. McCarter as President, for the lessee, and is attested by Frederick Evans as Secretary, and is signed by John C. Eisele as President for New Brunswick Light, Heat & Power Company, and is attested by Halsey M. Barrett as Secretary thereof, and the corporate acknowledgments were signed by the respective secretaries on the 2nd day of January, 1905.

Exhibit 6.

SUMMARY OF LEASE BY THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY TO PUBLIC SERVICE CORPORATION DATED JUNE 2, 1903.

"THIS INDENTURE, made this second day of June, nineteen hundred and three, between The Paterson and Passaic Gas and Electric Company, a corporation organized under the laws of the State of New Jersey, hereinafter called the lessor, party of the first part, and Public Service Corporation of New Jersey, a corporation organized under the laws of said State, hereinafter called the lessee, party of the second part,

"WITNESSETH:

"THAT the said parties have agreed, each for itself, its successors and assigns, and each in consideration of the grants, covenants and agreements herein made by each with the other, its successors and assigns, as follows:

"FIRST. The lessor has granted, leased and demised, and by these presents does grant, lease and demise unto the lessee, its successors and assigns, all and singular the franchises, gas and electric light plants and works now leased, owned, possessed, or operated by the lessor, as a going concern, or which it may hereafter own, lease or acquire, wherever the same now are or may hereafter be located, constructed or extended; together with all and every the lands, tenements, holders, gas mains, meters, pipes, stables, barns, shops, buildings, machinery, electrical generators, conductors, switches, switch boards, poles, wires, lamps, conduits, sub-ways, and other property of every kind and description, and all the easements

and appurtenances thereunto appertaining; also all equipment, machinery, tools, appliances, horses, wagons, coal, supplies, and all other property, real, personal and mixed, belonging to the lessor as a going concern, and all contracts, rights, privileges and franchises connected with or relating to the said demised property, or any part thereof, as fully as the same are now or may hereafter be vested in the lessor; excepting, however, its franchise to be a corporation, its corporate seal, its minute, transfer and stock books, the books containing the dividend accounts of the lessor, its office furniture, and its deeds, grants, plats and other instruments and documents containing the evidence of its right and title to the properties now leased, owned or operated by it; and also excepting all cash, bills, notes, contracts, accounts receivable, and other property enumerated in a certain schedule hereinafter referred to as Schedule A.

"To have and to hold all and singular the demised property unto the lessee, its successors and assigns, for and during the term of nine hundred (900) years from and after the first day of June, in the year 1903, upon the terms and conditions, and for the consideration, hereinafter provided and agreed to by the parties hereto."

Second. This article is identical with the article marked "Second" in the lease from Hudson County Gas Company to Public Service Corporation of New Jersey dated June 1, 1903 (Exhibit 3), except that toward the end of the first paragraph of Article Second of this lease, following the words "further rights to lay and maintain pipe for said gas plants" the following lan-

guage is contained which does not appear in said Hudson County Gas Company lease, viz.:

> "and to erect and maintain poles, pole lines and wires, and construct conduits for said electric plants."

"THIRD. The lessee shall pay to the lessor, as rent for the demised premises, in gold coin of the United States of America of the present standard of weight and fineness, or its equivalent, on the dates hereinafter stated, the following sums respectively, to wit:

"On the first day of December, nineteen hundred and three, thirty-seven thousand, five hundred dollars, ($37,500).

"On the first day of June, nineteen hundred and four, thirty-seven thousand, five hundred dollars, ($37,500).

"On the first day of December, nineteen hundred and four, fifty thousand dollars, ($50,000).

"On the first day of June, nineteen hundred and five, fifty thousand dollars ,($50,000).

"On the first day of December, nineteen hundred and five, sixty-two thousand, five hundred dollars ($62,500).

"On the first day of June, nineteen hundred and six, sixty-two thousand, five hundred dollars ($62,500).

"On the first day of December, nineteen hundred and six, seventy-five thousand dollars, ($75,000).

"On the first day of June, nineteen hundred and seven, seventy-five thousand dollars ($75,000).

"On the first day of December, nineteen hundred and seven, eighty-seven thousand, five hundred dollars, ($87,500).

"On the first day of June, nineteen hundred and eight, eighty-seven thousand, five hundred dollars, ($87,500).

"On the first day of December, nineteen hundred and eight, one hundred thousand dollars, ($100,000).

"On the first day of June, nineteen hundred and nine, one hundred thousand dollars ($100,000).

"On the first day of December, nineteen hundred and nine, one hundred and twenty-five thousand dollars, ($125,000).

"On the first day of June, nineteen hundred and ten, one hundred and twenty-five thousand dollars, ($125,000).

"And on each first day of December and June thereafter, beginning December first, nineteen hundred and ten, during the term of this lease, one hundred and twenty-five thousand dollars, ($125,000).

"Such sums shall be paid to the lessor at its office in the City of Paterson.

"And the lessee shall also pay to the lessor the additional sum of one thousand dollars ($1,000), in each and every year during the continuance of this lease, in semi-annual payments of five hundred dollars ($500) each, on the same days and at the same place as said rent is payable, as and for the expenses of maintaining the organization of the lessor, and for providing suitable offices for the accommodation of its officers and directors.

"The lessee shall also pay, as the same shall from time to time fall due, the interest on all authorized existing bonded indebtedness, secured by mortgage on the properties, rights, powers, privileges and franchises of the lessor, and the interest on all such bonded indebtedness so secured as may hereafter be created, for the purpose of extending

the time of payment of said existing bonded indebtedness, or of refunding the same as hereinafter provided.

"The bonded indebtedness consists of five million dollars ($5,000,000), at par, of bonds issued by The Paterson and Passaic Gas and Electric Company, of which bonds there have been, under the terms of the mortgage securing the same, dated March 1, 1899, to The Paterson Safe Deposit and Trust Company, trustee, certified and delivered, three million, eight hundred and fifteen thousand dollars ($3,815,000), at par, and one million, one hundred and eighty-five thousand dollars ($1,185,000), at par, are reserved uncertified and undelivered by the trustee for the purpose of taking up mortgage bonds of the constituent companies of The Paterson and Passaic Gas and Electric Company heretofore authorized, as follows, to wit: Paterson Gas Light Company, The Paterson Electric Light Company, The Edison Electric Illuminating Company of Paterson, Passaic Gas Light Company, and Passaic Lighting Company, and also for the purpose of making additions to, or extensions or betterments of, its plant or acquiring new property, real or personal; of which one million, one hundred and eighty-five thousand dollars ($1,185,000), at par of bonds, there remain at this time in the hands of the trustee uncertified and undelivered, one hundred and fifty-four thousand dollars, ($154,000), at par, for the purpose of making additions to, or extensions or betterments of, its plant, or acquiring new property, real or personal; but it is understood and agreed that the lessee is not to be required to pay interest on the said bonds of The Paterson and Passaic Gas and Electric Company retained uncertified by the Trustee for the purpose of taking up the bonds

of the constituent companies of The Paterson and Passaic Gas and Electric Company, and for the purpose of making additions to or extensions or betterments of its plant or acquiring new property, real or personal, so long as the same remain in the hands of the trustee uncertified and undelivered, but the lessee shall pay interest upon the bonds of the constituent companies of The Paterson and Passaic Gas and Electric Company which have not been taken up, and upon the bonds of The Paterson and Passaic Gas and Electric Company which have been certified and delivered."

Articles Fourth and Fifth are identical in language with articles Fourth and Fifth of said Hudson County Gas Company lease.

Article Sixth is identical in language with article Sixth of said Hudson County Gas Company lease except that where the word "gas" first occurs in said article, it is in this lease followed by the words "and electric light"; and that where the word "gas" occurs for the second and third times in the said article, it is in this lease followed by the words "and electricity."

Article Seventh is identical in language with article Seventh of said Hudson County Gas Company lease.

Article Eighth is identical in language with article Eighth of said Hudson County Gas Company lease except that where the word "gas" first occurs in article Eighth of this lease, it is followed by the words "and electricity"; and that where the word "gas" secondly occurs, in article Eighth of this lease, it is followed by the words "and electric light."

Article Ninth and Tenth of this lease are identical in language with articles Ninth and Tenth of the said Hudson County Gas Company lease.

Article Eleventh of this lease is identical in language with article Eleventh of said Hudson County Gas Company lease except that where the word "gas" occurs in article Eleventh of this lease, it is followed by the words "and electric light."

The first paragraph of article Twelfth of this lease is identical in language with the first paragraph of article Twelfth of said Hudson County Gas Company lease.

The second paragraph of article Twelfth of this lease reads as follows:

> "The lessor covenants and agrees that it will not authorize the creation of any mortgage or other lien upon its property hereby demised except the same be made in renewal or continuation of the said existing mortgages."

Article Thirteenth of this lease is identical in language with article Thirteenth of said Hudson County Gas Company lease except that where the word "gas" occurs in article Thirteenth of this lease it is followed by the words "and electric light."

Article Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth and Nineteenth of this lease are respectively identical in language with Articles Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth and Nineteenth of said Hudson County Gas Company lease.

This lease is signed on behalf of the lessor by William Barbour, President, and its corporate seal is attested by W. H. Rogers, Secretary, and is signed on behalf of the lessee by Thomas N. McCarter, President, and its corporate seal is attested by F. W. Egner, Secretary.

This lease is proved by the said respective secretaries on June 2, 1903.

Exhibit 7.

SUMMARY OF LEASE OF SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY TO PUBLIC SERVICE CORPORATION DATED DECEMBER 31, 1903.

"THIS INDENTURE, made this thirty-first day of December, nineteen hundred and three, between SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, a corporation organized under the laws of the State of New Jersey, hereinafter called the Lessor, party of the first part, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation organized under the laws of said State, hereinafter called the Lessee, party of the second part, WITNESSETH:

THAT the said parties have agreed, each for itself, its successors and assigns, and each in consideration of the grants, covenants and agreements herein made by each with the other, its successors and assigns, as follows:

FIRST. The Lessor has granted, leased and demised, and by these presents does grant, lease and demise unto the Lessee, its successors and assigns, all and singular the franchises, gas and electric light plants and works now leased, owned, possessed, or operated by the Lessor, as a going concern, or which it may hereafter own, lease or acquire, wherever the same now are or may hereafter be located, constructed or extended; together with all and every the lands, tenements, holders, gas mains, meters, pipes, stables, barns, shops, buildings, machinery, electrical generators, conductors, switches, switch boards, poles, wires, lamps, conduits, sub-ways, and other property of every kind and description, and all the easements and appurtenances thereunto appertaining; also

all equipment, machinery, tools, appliances, horses, wagons, coal, supplies, and all other property, real, personal and mixed, belonging to the Lessor as a going concern, whether the same be referred to or included in the foregoing enumeration or not, and all contracts, rights, privileges and franchises connected with or relating to the said demised property, or any part thereof, as fully as the same are now or may hereafter be vested in the Lessor; excepting, however, its franchise to be a corporation, its corporate seal, its minute, transfer and stock books, the books containing the dividend accounts of the Lessor, its office furniture, and its deeds, grants, plats and other instruments and documents containing the evidence of its right and title to the properties now leased, owned or operated by it; and also excepting all cash, bills, notes, contracts, accounts receivable, and other property enumerated in a certain schedule hereinafter referred to as Schedule A.

To HAVE AND TO HOLD, all and singular the demised property unto the Lessee, its successors and assigns, for and during the term of nine hundred (900) years from and after the thirty-first day of December in the year 1903, upon the terms and conditions and for the consideration, hereinafter provided and agreed to by the parties hereto."

SECOND. Article Second of this lease is identical in language with Article Second of the The Hudson County Gas Company lease (Exhibit 3) except that the last clause of the first paragraph of article Second of this lease reads as follows—

". . .; and the Lessee may, from time to time, and at its own expense, apply for and

operate in the name or in the right of the Lessor, or in the name or right of any other company in whose name or right the Lessor is entitled to act, further rights to lay, use, and maintain pipes for said gas plants, and to erect, use, and maintain poles, pole lines and wires, and construct conduits for said electric plants, and may at its expense and charge, and for its own benefit, use the Lessor's name or rights in bringing, prosecuting or defending any suit or proceeding, or taking any action which may be necessary or proper for the protection or enjoyment of the demised property, rights, privileges and franchises, or to enforce payment of damages for injuries thereto."

"THIRD. The Lessee shall pay to the Lessor at its office in the City of Plainfield the sum of fifteen hundred dollars ($1,500) in each and every year during the continuance of this lease, in semi-annual payments of seven hundred and fifty dollars ($750) each, on the first day of June and December, beginning with June 1st, 1904, as and for the expenses of maintaining the organization of the Lessor, and for providing suitable offices for the accommodation of its officers and directors.

"The Lessee shall also pay to the Lessor, as rent for the demised premises, in gold coin of the United States of America of the present standard of weight and fineness, or its equivalent, on the dates hereinafter stated, the following sums respectively, to wit:

"On the first day of June, nineteen hundred and six, five thousand, two hundred and fifty dollars ($5,250).

"On the first day of December, nineteen hundred and six, five thousand, two hundred and fifty dollars, ($5,250).

"On the first day of June, nineteen hundred and seven, seven thousand, eight hundred and seventy-five dollars ($7,875).

"On the first day of December, nineteen hundred and seven, seven thousand, eight hundred and seventy-five dollars ($7,875).

"On the first day of June, nineteen hundred and eight, ten thousand, five hundred dollars ($10,500).

"On the first day of December, nineteen hundred and eight, ten thousand, five hundred dollars ($10,500).

"On the first day of June, nineteen hundred and nine, thirteen thousand, one hundred and twenty-five dollars ($13,125).

"On the first day of December, nineteen hundred and nine, thirteen thousand, one hundred and twenty-five dollars ($13,125).

"On the first day of June, nineteen hundred and ten, fifteen thousand, seven hundred and fifty dollars ($15,750).

"On the first day of December, nineteen hundred and ten, fifteen thousand, seven hundred and fifty dollars ($15,750).

"On the first day of June, nineteen hundred and eleven, eighteen thousand, three hundred and seventy-five dollars ($18,375).

"On the first day of December, nineteen hundred and eleven, eighteen thousand, three hundred and seventy-five dollars ($18,375).

"On the first day of June, nineteen hundred and twelve, twenty-one thousand dollars ($21,000).

"And on each first day of December and June thereafter, beginning December first, nineteen

hundred and twelve, during the term of this lease, twenty-one thousand dollars ($21,000).

"Such sums shall be paid to the Lessor at its office in the City of Plainfield.

"The Lessee shall also pay interest from time to time as the same shall fall due, upon all bonds which may be outstanding from time to time, issued under the terms of and secured by the following mortgages, and shall also pay interest on said bonds if the time for the payment of the principal thereof shall be extended, and the interest upon all bonds, which may be issued to refund the same, as hereinafter provided:

"Mortgage of Somerset, Union and Middlesex Lighting Company to Fidelity Trust Company, Trustee, dated December 1, 1903.

"Mortgage of Plainfield Gas and Electric Light Company to Morton Trust Company, Trustee, dated April 1, 1900.

"Mortgage of Plainfield Gas and Electric Light Company to Central Trust Company of New York, Trustee, dated December 27th, 1890.

"Mortgage of Plainfield Gas Light Company to Peter Brunson, Trustee, dated October 1, 1890.

"Mortgage of Citizens' Electric Company to Knickerbocker Trust Company, Trustee, dated November 1, 1895.

"Mortgage of Somerset Lighting Company to Fidelity Trust Company, Trustee, dated February 1, 1899.

"Mortgage of Central Electric Company to Fidelity Trust Company, dated July 2, 1900.

"Mortgage of Edison Electric Illuminating Company of New Brunswick to B. F. Howell, T. E. Townsend and E. S. Campbell, Trustees, dated June 1, 1888.

"It is hereby understood and agreed that if at any time the title to the entire electric plant of

the Lessor in the City of Plainfield shall cease to remain vested in the Lessor, then, and in that event, the Lessee shall, at any time within six months thereafter, have the option of submitting to arbitration the question of whether an equitable decrease should not be made in the amount of the rental to be paid hereunder; this question, and the amount of such decrease, if any, shall be determined by a board of three arbitrators, to be chosen, one by the Board of Directors of the Lessee, one by a meeting of the holders of the stock of the Lessor, other than that owned by the Lessee, which meeting shall be called by the Board of Directors of the Lessor, or any stockholder thereof, a written notice whereof shall be mailed to each such stockholder to his address as shown by the books of the Lessor, at least ten days before the date of such meeting, and the third shall be selected by the two so chosen. In case the two arbitrators to be so first chosen shall fail for thirty days after their appointment to agree on a third arbitrator, then said third arbitrator may be appointed by any justice of the Supreme Court of New Jersey on the application of either of the arbitrators so first chosen; and in case the said stockholders of the Lessor should fail to choose an arbitrator within thirty days after the appointment by the Lessee of its arbitrator, then two arbitrators may be appointed by any justice of the Supreme Court of New Jersey, upon the application of the arbitrator chosen by the Lessee. The award of a majority of the Board of Arbitrators shall be conclusive and shall bind each of the parties hereto.

"The parties hereto agree to give to such Board of Arbitrators free access to all books, papers and accounts, which said Board of Arbitrators

may desire to examine, and to do all in their power to assist said Board of Arbitrators in obtaining any and all information which it may desire.

"The said Board of Arbitrators shall carefully inquire into the subject of said decrease of rental, and shall make an award setting forth what changes, if any, shall be made in the amount thereof as set forth in this lease, and a duplicate original of said award shall be delivered to the Secretary of each of the parties hereto and shall be binding upon the parties hereto and become thenceforth a part of this indenture of lease. After the title to said electric plant of the Lessor in the City of Plainfield shall cease to remain vested in the Lessor, if such contingency shall happen, no rental shall be paid by the Lessee hereunder until the award of said arbitrators shall be delivered, and thereafter the rental which will become payable hereunder shall be adjusted accordingly.

"In case two of the members of said Board of Arbitrators should fail to agree upon an award within ninety days after their appointment, then, and in that event, another Board of Arbitrators may be appointed, in the same manner and with the same powers as hereinbefore set forth, and so on until the award has been finally made.

"If the Lessee shall not exercise its said option of submitting to arbitration the question of the decrease of rental hereunder within six months after it has the right so to do, as hereinbefore set forth, such option shall thereupon expire, and the rental shall continue as provided herein.

"In the event that the Lessor shall as aforesaid at any time during the continuance of this lease become divested of its title to said electric plant

in the City of Plainfield, then, and in that event, the Lessor shall pay over the sum of money which it shall receive as consideration for said plant to Morton Trust Company, or its successor, as Trustee under the mortgage of Plainfield Gas and Electric Light Company to Morton Trust Company, Trustee, dated April 1, 1900, to be held by said Trust Company, or its said successor, and invested and reinvested by it, as directed by the Lessor, in (a) bonds of said Plainfield Gas and Electric Light Company, secured by said mortkage to Morton Trust Company, Trustee, dated April 1, 1900, at a rate not in excess of the par value thereof, or (b) in legal securities. Said fund, with the interest thereon (less the costs and expenses of said trusteeship, which shall be charged against said fund), or so much thereof as shall be necessary to satisfy and discharge said bonds, shall be applied to the payment of the bonds outstanding under said mortgage of Plainfield Gas and Electric Light Company, when the same become due. If there be any excess in said amount over and above the amount requisite to so satisfy and discharge said bonds, then and in that event said Morton Trust Company or its successor, shall pay such surplus over to the Lessor, to be paid over by it to Fidelity Trust Company, or its successor, as Trustee, under the mortgage of Somerset, Union and Middlesex Lighting Company to Fidelity Trust Company, Trustee, dated December 1, 1903, to be invested and reinvested by it, as directed by the Lessor, in (a) bonds of said Somerset, Union and Middlesex Lighting Company, secured by said mortgage to said Fidelity Trust Company, Trustee, dated December 1, 1903, at a rate not in excess of the par value thereof, or (b) in legal securities. Said fund,

with the interest thereon (less the costs and expenses of said trusteeship which shall be charged against said fund), or so much thereof as shall be necessary to satisfy and discharge said bonds, shall be applied to the payment of the bonds outstanding under said mortgage of Somerset, Union and Middlesex Lighting Company when the same become due.

"In the event that the bonds secured by said mortgages, or either of them, or any renewals or extensions thereof made in accordance with the provisions of this instrument should be paid off at the time the title shall be so divested, so that the said fund shall not be needed, or shall be more than sufficient, to satisfy and discharge said bonds, then, and in either of such events, the said arbitrators shall also direct the disposition of said fund or said portion thereof; but it shall be ordered to be applied by said arbitrators in that manner which is in their opinion best adapted to restore the *status* of the parties hereto to the same condition as before such divesting of title of said electric plant.

It is hereby further understood and agreed that if at any time the right to operate, to maintain and extend any other part of the plant herein leased or mentioned in Schedule B hereinafter referred to, whether or not the same is subject to any operating contract in existence at this time, or to distribute and deliver the products thereof in the customary manner, should expire at any time before the termination of this lease, and should not be extended upon the present terms, then, and in that event, the Lessee shall at any time within six months thereafter, at its option, submit to arbitration, the question whether an equitable decrease should not be made in the

amount of rental to be paid hereunder, said arbitrators to be chosen in the same manner and said arbitration to be conducted upon the same terms and conditions herein provided for in case of arbitration upon divestiture of the title of the Lessor to its electric plant in the City of Plainfield.

"Fourth. The said Lessor does hereby covenant with the said Lessee that at the execution of these presents, it, the said Lessor, is lawfully seized in fee simple of the property and franchises enumerated in a certain schedule hereinafter referred to as Schedule B, and that said franchises are in all respects valid for the respective terms thereof, under and subject, however, to the mortgages referred to in Section Third hereof.

"And the Lessor covenants that the Lessee, it keeping all the covenants on its part herein contained, shall and may during the term of this lease, peaceably and quietly have, hold and enjoy, all and singular, said property, rights, contracts, powers, privileges and franchises herein demised, without hindrance or molestation from any person or persons lawfully claiming or to claim any right, title or interest at law or in equity, in, to or out of the same, or any part thereof, subject to the mortgages referred to above."

Fifth. Article Fifth of this lease is identical in language to article Fifth of said Hudson County Gas Company lease except that article Fifth of this lease contains the following additional and last paragraph—

"There shall be made as of the day when this lease takes effect, a full, complete and particular list and description of all such indebtedness and liabilities, which shall not be attached to this lease,

but shall be made by the Lessor in duplicate, and shall be marked for identification with the signatures of the Presidents of both the Lessor and Lessee corporations, under the respective seals thereof, and one copy shall be retained by each party."

SIXTH. Article Sixth of this lease is identical in language with article Sixth of said Hudson County Gas Company lease except that where the word "gas" first occurs in article Sixth of this lease, it is followed by the words "and electric light" and where the word "gas" secondly and thirdly occurs, it is followed by the words "and electricity."

SEVENTH. Article Seventh of this lease is identical in language with article Seventh of said Hudson County Gas Company lease.

EIGHTH. Article Eighth of this lease is identical in language with article Eighth of said Hudson County Gas Company lease except that where the word "gas" first occurs in article Eighth of this lease, it is followed by the words "and electricity" and the words there following the word "gas" in said Hudson County Gas Company lease, viz.: "and will stimulate such increase" are omitted herein; where the word "gas" secondly occurs in said article Eighth of this lease, it is followed by the words "and electric light".

"NINTH. It is hereby agreed between the parties that all uncertified bonds secured by any of said mortgages may be used by the Lessee for the purposes provided in said mortgages respectively, and to that end, whenever the Lessee shall need funds for any of such purposes, it shall in writing

notify the Lessor of the amount of money required for such purposes (which amount, however, shall never exceed the amount of the uncertified bonds held by the trustee for the purposes aforesaid), and such notice shall be signed by the president or vice-president of the Lessee, attested by its secretary and sworn to by one of the officers of the Lessee as a proper and necessary expenditure for such purposes, whereupon the Lessor shall, by resolution of its board of directors, call upon the proper trustee, in the manner provided in the mortgage, for the certification and delivery of an amount of bonds sufficient to provide the amount of money so required, and upon receipt of said bonds, the Lessor shall either sell the same, upon obtaining the written approval of the Lessee of the price to be received therefor, and pay the cash proceeds of such sale to the Lessee, or deliver said bonds to the Lessee to be used by it for said purposes."

TENTH. Article Tenth of this lease is identical with the language of article Tenth of said Hudson County Gas Company lease.

ELEVENTH. Article Eleventh of this lease is identical in language with article Eleventh of said Hudson County Gas Company lease except that where the word "gas" occurs in article Eleventh of this lease, it is followed by the words "and electric light."

TWELFTH. Article Twelfth of this lease is identical in language with article Twelfth of said Hudson County Gas Company lease except that where the word "mortgage" first occurs in article Twelfth of this lease, it is followed by the additional words "already executed, delivered and

recorded, or which shall be executed, delivered and recorded in the future to renew or refund the same, upon''; also except that where the word ''mortgage'' last occurs in the first sentence of the first paragraph of article Twelfth of this lease, it is followed by the words ''from time to time''; also except that in the fourth and fifth sentence of the first paragraph of article Twelfth of this lease, the word ''expenses'' is followed by the words ''and commissions''; also except that the second paragraph of section Twelfth of this lease reads as follows—

> ''The Lessor covenants and agrees that it will not authorize the creation of any mortgage or other lien upon its property hereby demised except the same be made in renewal or continuation of the said existing mortgages.''

Thirteenth. Article Thirteenth of this lease is identical in language with article Thirteenth of said Hudson County Gas Company lease except that where the word ''gas'' first occurs in article Thirteenth of this lease, it is followed by the words ''and electric light''; and except that in article Thirteenth of this lease the words ''in good and solvent companies'' follows the word ''insured'' where it secondly occurs in this article instead of where it firstly occurs.

Fourteenth. The first paragraph of article Fourteenth of this lease is identical in language with article Fourteenth of said Hudson County Gas Company lease. Article Fourteenth of this lease contains the following additional paragraph—

> ''If this lease shall be terminated on account of default by the Lessor, or for any

cause not within the control of the Lessee, the Lessor shall upon such termination pay to the Lessee the actual amount which it has expended in extensions and betterments to the plant of the Lessor, in accordance with the terms hereof, over and above the amount provided for such expenditures from the proceeds of the bonds secured by the mortgages referred to in Section Third hereof, or from the earnings of the property of the Lessor which shall have been applied by the Lessee to such purposes."

Articles Fifteenth and Sixteenth of this lease are identical in language with articles Fifteenth and Sixteenth of said Hudson County Gas Company lease.

Article Seventeenth of this lease is identical in language with article Seventeenth of said Hudson County Gas Company lease except that after the word "Lessor" where it firstly appears in article Seventeenth of this lease are added the words "(except so much thereof as is enumerated in Schedule B hereinbefore referred to);" and except that after the word "duplicate" there follows in this lease the words "marked for identification with the signatures of the Presidents of both the Lessor and Lessee corporations, under the respective seals thereof."

"EIGHTEENTH. Schedules A and B are not attached to this lease, but have been made in duplicate, and marked for identification with the signatures of the presidents of both the Lessor and Lessee corporations, and the seals thereof, and one copy retained by each party."

NINETEENTH. Article Nineteenth is identical in language with article Nineteenth of said Hudson County Gas Company lease.

This lease is signed on behalf of the Lessor by H. G. Runkle, President, and its corporate seal is attested by J. C. Pope, Secretary, and is signed on behalf of the lessee by Thomas N. McCarter, President, and its corporate seal is attested by Frederick Evans, Secretary. It is proved by the respective secretaries December 31, 1903.

Exhibit 8.

PUBLIC SERVICE CORPORATION OF NEW JERSEY

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

To the Holders of Stocks of
Companies Leased to Public Service Electric and Gas Company:

The Plan of Readjustment of certain securities of Public Service Corporation of New Jersey and its subsidiary companies, announced in March, 1924, contemplated the later offer to holders of the capital stocks of certain companies now leased to Public Service Electric and Gas Company of the opportunity to exchange their stocks for other securities, and for the ultimate consolidation of the leased companies with Public Service Electric and Gas Company.

The holders of large amounts of the stocks of these leased companies have expressed their desire that this provision of the Plan be carried out at this time and have indicated their readiness to make exchanges on the bases set out below. Accordingly Public Service Corporation of New Jersey and Public Service Electric and Gas Company, with the approval of the Board of Public Utility Commissioners of the State of New Jersey in so far as its approval is necessary, are now prepared to offer, in exchange for such stocks, at the option of the holders, either (A) 6% Preferred Stock, 1925 Series, of Public Service Electric and Gas Company, (B) Cash, or (C) Common Stock of Public Service Corporation of New Jersey, on the basis and in accordance with the terms of the Deposit Agreement dated December 28, 1926, to which such companies and J. P. Morgan & Co. and Drexel & Co., Depositaries, are parties. A

copy of the Deposit Agreement is enclosed herewith. The basis of such exchange (which also provides for adjustment of dividends and for payment for any fraction of a share in cash) may be summarized as follows:

For each share of stock of the companies listed below the holder will obtain under Option A, 6% Preferred Stock 1925 Series of Public Service Electric and Gas Co. to amount shown in column headed Option A, or under Option B, cash to amount shown in column headed Option B, or under Option C, Common Stock of Public Service Corporation of New Jersey to amount shown in Column headed Option C.

		OPTION A Public Service Electric and Gas Co. 6% Preferred Stock 1925 Series ($100 par value)		*OPTION B*	*OPTION C* Public Service Corporation of New Jersey Common Stock (no par value)	
	Present Annual Income	No. of Shares	Annual Income at $6 per share	Cash	No. of Shares	Annual Income at $2 per share
Essex and Hudson Gas Co., Hudson County Gas Co., South Jersey Gas, Electric and Traction Co.	$8	1.37	$8.22	$142	4.21	$8.42
The Gas and Electric Co. of Bergen County, New Brunswick Light, Heat and Power Co., Newark Consolidated Gas Co., The Paterson and Passaic Gas and Electric Co.	$5	.86	$5.16	$90	2.63	$5.26
Somerset, Union and Middlesex Lighting Co...	$4	.69	$4.14	$72	2.10	$4.20
The Ridgewood Gas Co.....	$2	.345	$2.07	$36	1.05	$2.10

No fractional shares of new stock will be issued and the excess of the shares or fractions of a share of the deposited stock over the shares exchangeable into the number of whole shares of new stock on the above basis, will be paid for in cash at the prices specified in column headed Option B.

Under the terms of the Deposit Agreement, stockholders desiring to avail themselves of the above offer must deposit their stocks *properly endorsed for transfer on or before the close of business February 10, 1927, and at the time of making such deposit must specify the Option selected.* The exchange of securities will become effective as to the stocks of each of the above-named leased companies only in case a majority of the stock of such company is deposited, but the undersigned reserve the right to acquire any stocks which have been deposited under Options B or C, even though less than a majority of the stock of such company has been deposited.

We are advised by counsel that the exchange of the stocks of any such leased company pursuant to Option A under the foregoing Plan will constitute an exchange of securities in pursuance of a plan of reorganization and will be non-taxable transactions under Section 203 (b) (2) and 203 (h) of the Income Tax Law.

The United Gas Improvement Company, which owns nearly one-third of the total of these leased companies' stocks, has agreed to exchange the entire amount of its holdings on the terms now offered.

The stocks of the leased companies have inactive and restricted markets. The stocks offered in exchange represent ownership in a large and comprehensive system, have broad and active markets, and, at the dividend rates indicated in

New Jersey State Library

the above table, will give the present stockholders an increased income. These offers are accordingly advantageous to the stockholders of the leased companies. Such stockholders may, at their option, receive cash for their holdings in the amounts scheduled under Option B.

Public Service Electric and Gas Company's corporate and financial structure will be simplified and strengthened by the transaction. It is planned, following this exchange offer, to consolidate with Public Service Electric and Gas Company the Public Service Electric Power Company, which owns the recently completed Kearny Power Station. An important and valuable plant will thus be added to the property which Public Service Electric and Gas Company owns in fee.

The Company's bankers have assisted in the preparation of this Plan of Exchange and recommend its acceptance by the holders of the stocks of the above-named companies.

The stocks of the leased companies may be deposited at the offices of Messrs. J. P. Morgan & Co., 23 Wall Street, New York City, or Drexel & Co., Chestnut and Fifth Streets, Philadelphia, who will act as Depositaries, under the Deposit Agreement, or at the office of Fidelity-Union Trust Company, 755 Broad Street, Newark, New Jersey, Agent for the Depositaries. *Stock Certificates deposited must be properly endorsed for transfer and signatures guaranteed by a member of the Stock Exchange of the City in which the deposit is made or by an officer of a bank or trust company whose signature can be verified in such city, or else acknowledged before a Notary Public. If an acknowledgment be taken by a Notary outside of the state in which the deposit is made, a certificate of the Clerk of the County or of a*

Court of Record attesting the authority of the Notary will be required. Depositing stockholders will receive registered Certificates of Deposit issued by the Depositaries under the Deposit Agreement. No expense of any kind will be chargeable to the depositors.

January 10, 1927.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,
PUBLIC SERVICE ELECTRIC AND GAS COMPANY.

Exhibit 9.

SUMMARY OF DEPOSIT AGREEMENT

Dated—December 28, 1926.

AGREEMENT dated the 28th day of December, 1926, between PUBLIC SERVICE CORPORATION OF NEW JERSEY a corporation of the State of New Jersey, hereinafter referred to as the "Corporation," party of the first part; PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a like corporation, hereinafter referred to as "Electric and Gas," party of the second part, the parties of the first part and second parts being herein referred to jointly as "Public Service Companies"; J. P. MORGAN & Co., of New York City, New York, and DREXEL & Co., of Philadelphia, Pennsylvania hereinafter called "Depositaries," parties of the third part; and such holders of the capital stock of the "Lessors" hereinafter referred to, as shall become parties hereto in the manner hereinafter provided, who, with their successors in interest, are hereinafter called "Depositors," parties of the fourth part.

WHEREAS, Electric and Gas is in possession and enjoyment, under leases and assignments of leases, of the property and franchises of the following named nine (9) several corporations (hereinafter referred to as the "Lessors"), that is to say:—

Essex and Hudson Gas Company,
Hudson County Gas Company,
South Jersey Gas, Electric and Traction Company,
The Gas and Electric Company of Bergen County,

New Brunswick Light, Heat and Power Company,
Newark Consolidated Gas Company,
The Paterson and Passaic Gas & Electric Company,
The Ridgewood Gas Company,
Somerset, Union and Middlesex Lighting Company;

and from the rentals paid to the Lessors, respectively, they are enabled to pay and do pay dividends upon their outstanding capital stock, which capital stock and dividends are respectively as follows:—

(a) Essex and Hudson Gas Company has authorized $6,500,000. in par value of common capital stock, all of which is issued and outstanding, on which a dividend at the rate of 8% per annum is paid;

(b) Hudson County Gas Company has authorized $10,500,000. in par value of common capital stock, all of which is issued and outstanding, on which a dividend at the rate of 8% per annum is paid;

(c) South Jersey Gas, Electric and Traction Company has authorized $6,000,000. in par value of common capital stock, all of which is issued and outstanding, on which a dividend at the rate of 8% per annum is paid;

(d) The Gas and Electric Company of Bergen County has authorized $2,000,000. in par value of common capital stock, all of which is issued and outstanding, on which a dividend at the rate of 5% per annum is paid;

(e) New Brunswick Light, Heat and Power Company has authorized $400,000. in par value of common capital stock, all of which

is issued and outstanding, on which a dividend at the rate of 5% per annum is paid;

(f) Newark Consolidated Gas Company has authorized $6,000,000. in par value of common capital stock, all of which is issued and outstanding, on which a dividend at the rate of 5% per annum is paid;

(g) The Paterson and Passaic Gas and Electric Company has authorized capital stock of the par value of $5,000,000. all of which is outstanding ($269,700. par value being now owned by Electric and Gas Company) on which a dividend at the rate of 5% per annum is paid;

(h) Somerset, Union and Middlesex Lighting Company has authorized capital stock of the par value of $1,050,000. all of which is outstanding ($422,400. par value being now owned by Electric and Gas Company), on which a dividend at the rate of 4% per annum is paid;

(i) The Ridgewood Gas Company has authorized $100,000. in par value of common capital stock, all of which is issued and outstanding, on which a dividend at the rate of 2% per annum is paid;

The above specified stocks of Essex and Hudson Gas Company, Hudson County Gas Company, and South Jersey Gas, Electric and Traction Company (on which dividends at the rate of 8% per annum are being paid), are hereinafter called "8% stocks"; the above specified stocks of The Paterson and Passaic Gas and Electric Company, Newark Consolidated Gas Company, The Gas and Electric Company of Bergen County, and New Brunswick Light, Heat and Power Company (on

which dividends at the rate of 5% per annum are being paid) are hereinafter called "5% stocks"; the above specified stock of the Somerset, Union and Middlesex Lighting Company (on which dividends at the rate of 4% per annum are being paid) is hereinafter called "4% stock"; the above specified stock of The Ridgewood Gas Company (on which dividends at the rate of 2% per annum are being paid) is hereinafter called "2% stock"; and

WHEREAS, Electric and Gas was organized in aid of a plan of adjustment of certain securities of the Corporation and its subsidiary companies announced in March, 1924, and under such plan it was contemplated that whenever the same seemed practicable, Electric and Gas should acquire the stock of said Lessors so as to make the ownership of Electric and Gas comprehend all the property, as nearly as might be, operated by it in and about its business; and in consummation of such feature of such plan Electric and Gas purposes to acquire shares of stock (in addition to such shares heretofore acquired by it) of the Lessors by the issue of its 6% Preferred Stock 1925 Series as in this Agreement provided; and

WHEREAS, Corporation is the owner of all the common capital stock of Electric and Gas, and is interested in its business and welfare, and is willing to acquire said stocks of the Lessors for cash and in exchange for the common stock of Corporation, on the terms and subject to the conditions hereinafter provided in Options B and C respectively, and thereupon as part of the aforesaid plan forthwith to assign and transfer the same to Electric and Gas in exchange for 6% Cumulative Preferred Stock, 1925 Series, of Electric and Gas on the basis hereinafter provided; and

WHEREAS, Electric and Gas desires to acquire the outstanding stocks of said Lessors from the present holders thereof, in exchange for the 6% Cumulative Preferred Stock, 1925 Series, of Electric and Gas, on the terms and subject to the conditions hereinafter provided in Option A and at the same time to acquire from the Corporation, on the basis hereinafter provided, such stocks as the Corporation may acquire hereunder from the present holders; and

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

Paragraph 1 contains the language of mutual agreement.

Paragraph 2 provides for the benefit of deposit of stock.

3. Each Depositor shall upon the deposit of his stock file with the Depositary a written notice stating which one of the three Options, A, B or C, specified in paragraph 10 hereof he elects and stating that his stock is deposited under the Option so selected. The election so made shall be irrevocable.

Paragraph 4 provides for the issuance of a certificate of deposit.

Paragraph 5 provides that the issuance and acceptance of a certificate of deposit constitutes assent to this agreement.

Paragraph 6 provides for transfer of certificates of deposit.

Paragraph 7 states the effect of such transfer and relates to the payment and receipt of dividends on deposited stock.

8. No transfer of any particular stock deposited hereunder shall be made or caused to be made by either Depositary upon the books of the Lessor issuing such stock unless and until the Agreements

of Purchase or Exchange hereinafter set forth become operative as to such stock, and the holder of the certificate of deposit representing such stock shall meanwhile be entitled to receive all dividends declared and payable thereon, and to exercise all voting and other rights in connection therewith except the right to make any disposition of such stock inconsistent with the terms of this Agreement, *provided,* however, that on or after the transfer by any Depositor of his certificate of deposit, or any part thereof, the deposited stock represented by such certificate of deposit may, at the option of either Depositary, be transferred into the name of either Depositary or into the name of such transferee of transferees.

Paragraph 9 provides for the re-issue of mutilated, destroyed or lost certificates of deposit.

10. Subject to the below mentioned Agreements of Purchase or Exchange becoming operative, in the manner provided in paragraph 12 hereof, and subject to all the conditions and provisions herein contained, Public Service Companies respectively agree to acquire all outstanding stock of the Lessors deposited hereunder, upon the terms of any one of the three alternative Options below specified, such Option to be irrevocably selected by the Depositor at the time of such deposit; and, subject as aforesaid, each holder of a certificate of deposit agrees to the transfer, either to the Corporation or to Electric and Gas, of the deposited stock represented thereby, under the Option so selected and specified in such certificate of deposit; said Options being as follows:

Option A. Electric and Gas will, in exchange for the deposited stock, deliver 6% Cumulative Preferred Stock, 1925 Series, of Electric and Gas in the following amounts, with adjustment of

accrued dividends at the rates repectively specified upon the stock of the Lessors so deposited and accrued dividends at the rate of six per cent. per annum upon the Preferred Stock of Electric and Gas so delivered:

\$137 par value of Preferred Stock for each share of 8% stock deposited,

\$86 par value of Preferred Stock for each share of 5% stock deposited,

\$69 par value of Preferred Stock for each share of 4% stock deposited,

\$34.50 par value of Preferred Stock for each share of 2% stock deposited.

Option B. Corporation will purchase the deposited stock for cash at the prices as follows, in each case plus accrued dividends at the rates respectively specified to the date of purchase:

\$142 per share for 8% stock deposited,
\$90 per share for 5% stock deposited,
\$72, per share for 4% stock deposited,
\$36 per share for 2% stock deposited.

Option C. Corporation, in exchange for deposited stock, will deliver common stock of the Corporation without nominal or par value, in the following amounts, with adjustment of accrued dividends at the rates respectively specified upon the deposited stock of the Lessors and upon the common stock so delivered (the accrued dividends upon the common stock of the Corporation to be taken at the rate of \$2.00 per share per annum):

4.21 shares of common stock of the Corporation for each share of 8% stock deposited;

2.63 shares of common stock of the Corporation for each share of 5% stock deposited;

2.1 shares of common stock of the Corporation for each share of 4% stock deposited;

1.05 shares of common stock of the Corporation for each share of 2% stock deposited.

The adjustment of accrued dividends under Options A and C shall be made as follows: Upon delivery of the new stock to the Depositaries, for account of the holders of certificates of deposit, Electric and Gas or the Corporation, as the case may be, will pay to the Depositaries an amount equal to dividends at the rate herein specified as being currently paid upon the deposited stock acquired, from the end of the period for which the last payment of dividends upon such deposited stock has been made, up to the date of such payment to the Depositaries; and the Depositaries, or either of them, shall at the same time, for the account of the holder of the certificate of deposit, pay to the Electric and Gas, or to the Corporation, as the case may be, an amount equal to dividends upon the new stock then delivered to the Depositaries, from the date from which dividends shall be accruing thereon up to the date of such payment. The amount so paid by either Depositary in respect of the stock received by it for delivery to the holder of any certificate of deposit shall be deducted by such Depositary from the cash, if any, payable by it to the holder of such certificate of deposit; and if the amount so paid by such Depositary shall exceed the money payable by it to the holder of such certificate of deposit, the difference shall be paid by the holder of such certificate of deposit to such Depositary prior to the delivery of the new stock by the Depositary to such holder; and for the amount of such difference such Depositary shall have a lien upon such new

stock and upon all dividends thereafter paid thereon.

11. In the case of any holder of a certificate of deposit issued under Options A or C, if the number of shares of Electric and Gas Preferred Stock and/or Public Service Corporation of New Jersey common stock deliverable under the Agreements of Exchange in respect of the deposited stock represented by such certificate of deposit shall include a fraction of a share, then and in that event there will be delivered by Electric and Gas, or by the Corporation, as the case may be, the number of whole shares (but no fractions) of such new stock so deliverable, and the excess of the shares or fractions of a share of the deposited stock represented by such certificate of deposit over and above the shares thereof which on the basis aforesaid are exchangeable into the number of whole shares of new stock so delivered shall be purchased by Electric and Gas, or by the Corporation, as the case may be, and paid for in cash at the prices hereinbefore set forth under Option B.

12. On the 10th day of February, 1927 (unless said date shall have been extended as hereinafter provided), the Agreements of Purchase or Exchange contained in paragraph 10 hereof shall forthwith, without any further action, become operative in respect of the stock of each Lessor of which a majority of the stock shall then have been deposited hereunder (but except as below in this Article 12 set forth not in respect of the stock of any other Lessor), in accordance with the respective Options under which the certificates of deposit representing the stock of such Lessor shall have been issued; *provided, however,* that Public Service Companies, may, by written notice

to the Depositaries prior to the date above specified, extend said date by not to exceed 30 days.

The Corporation may, however, on said date (or at the expiration of any extension thereof, as above provided), in respect of the stock of any one or more of the Lessors deposited under Option B and/or Option C, by written notice given to the Depositaries, declare said Agreements of Purchase or Exchange to be forthwith operative in respect of such stock, irrespective of whether or not a majority of the stock of such Lessor shall then have been deposited. In no case, however, shall such Agreement of Exchange be declared operative as to the stock of any particular Lessor deposited under Option A without the consent of the holder of the certificate of deposit representing the same unless at least a majority of the stock of such Lessor shall then have been deposited hereunder.

13. When said Agreements of Purchase or Exchange shall have become operative, as provided in paragraph 12,

(1) Corporation (a) shall pay to the Depositaries the purchase price of the stocks of Lessors payable to holders of certificates of deposit issued under Option B, and (b) shall issue and deliver to Depositaries stock certificates (in temporary or definitive form) representing the shares of Common Stock of the Corporation deliverable to the holders of certificates of deposit issued under Option C, and shall pay Depositaries an amount equal to any cash receivable by such holders of certificates issued under Option C. On receipt of such cash and stock certificates, Depositaries shall deliver to the Corporation the stocks acquired by it pursuant to said Options B and C, and upon sur-

render by the holders of their respective certificates of deposit representing such stock, properly endorsed, Depositaries shall pay to the holders of certificates of deposit issued pursuant to Option B, the respective amounts of cash payable to such holders, and shall deliver and pay to the holders of certificates of deposit issued pursuant to Option C, the certificates of the respective amounts of Common Stock of the Corporation deliverable and the respective amounts of cash payable to such holders.

(2) Corporation shall thereupon assign and transfer to Electric and Gas the shares of Lessors so acquired by the Corporation pursuant to Options B and C, and in exchange therefor Electric and Gas will issue and deliver to Corporation 6%, Cumulative Preferred Stock, 1925 Series, of Electric and Gas in such amount that the dividends thereon (at 6%) will equal the dividends payable (at the respective dividend rates hereinbefore specified) on the stocks of Lessors so assigned and transferred.

Contemporaneously with the issue last aforesaid Electric and Gas shall deliver to the Depositaries certificates (in temporary or definitive form) of duly issued Preferred Stock of Electric and Gas for the number of shares in the aggregate (but in several amounts as required) deliverable to the holders of certificates of deposit issued under Option A, and shall pay to Depositaries the amount of cash payable to such holders. Upon receipt of said stock certificates and cash, Depositaries shall deliver to Electric and Gas the stocks acquired by it under Option A, and upon the surrender by the holders of their certificates of deposit representing such stock, properly endorsed, Depositaries shall pay and deliver to such

holders the cash and Preferred Stock of Electric and Gas payable and deliverable upon such certificates of deposit under said Option A. The acquisition by Electric and Gas of the stocks of Lessors deposited under Option A shall be simultaneous with the acquisition by it from the Corporation of the stocks acquired by the Corporation under Options B and C.

(3) Corporation shall assign and transfer to Electric and Gas, an amount of the 6% Cumulative Preferred Stock, 1925 Series, of Electric and Gas equal to the amount by which the Preferred Stock issued by Electric and Gas to Depositors pursuant to Option A exceeds the amount of such Preferred Stock on which the annual dividends (at 6%) would equal the aggregate dividends at the rates above specified upon the stocks of the Lessors acquired by Electric and Gas under said Option A.

Corporation guarantees that the aggregate dividend requirements on the total Preferred Stock to be issued pursuant to this Agreement which will remain outstanding after the consummation of this Agreement shall be no greater than the aggregate of the requirements for dividends at the rates above specified on all the stocks of the Lessors acquired by Electric and Gas pursuant to this Agreement.

14. In the event that, as to the stock of any one or more of the Lessors, the Agreements of Purchase or Exchange, specified in paragraph 10 hereof, shall not have become operative in the manner specified in paragraph 12 hereof, on or before the date first named in said paragraph 12 (or on or before such later date as may be fixed by Public Service Companies, as therein provided), then and in such case a notice to that effect

shall be mailed by the Depositaries to the holders of certificates of deposit representing the deposited stock of any such Lessor or Lessors as to which such Agreement shall not have become operative, and there shall be returnable to such holders of certificates of deposit, upon surrender thereof, properly endorsed, to the Depositary issuing the same, the specific shares of stock originally included under the deposit number designated on said certificate or in case such certificate shall have been subdivided the portion of such shares represented by such subdivisive certificates. The holders of certificates of deposit agree upon notice from the Depositaries to surrender such certificates of deposit and to accept such stock in lieu thereof.

Paragraph 15 limits the responsibility of Depositaries.

Paragraph 16 limits the responsibility of Depositaries and provides that the Depositaries and Public Service Companies assume no obligation to non-depositing stockholders.

Paragraph 17 makes the obligations herein assumed subject to necessary consent from the Board of Public Utility Commissioners of New Jersey.

Paragraph 18 limits the effect of statements contained in notices and circulars.

Paragraph 19 provides that the Depositors shall not be liable for any expense in connection with any deposit.

20. Each holder of a certificate of deposit, by the surrender of his certificate of deposit and the receipt of the certificates of new stock and/or cash distributed by Depositaries upon consummation of the Agreements of Purchase or Exchange as herein provided, or, in the event such purchase

or exchange shall not become operative, upon return of an equal par value of the specific shares of stock originally included under the deposit number designated in said certificate, releases and discharges Depositaries and Public Service Companies from all liability and accountability of every kind, character and description whatsoever.

Paragraph 21 authorizes Depositaries to appoint agents.

Paragraph 22 provides for the refund by the Public Service Corporation of New Jersey to holders of preferred stock of Public Service Electric & Gas Company issued in exchange for certificates of deposit of the Pennsylvania four mill personal property tax.

Paragraph 23 defines the term "Depositors."

Paragraph 24 provides for the publication of notices under this agreement.

Paragraph 25 makes this agreement binding upon the successors and assigns of parties hereto.

Attached thereto are Exhibits A, B and C, being respectively forms of the certificates of deposit issued to stockholders respectively, accepting Options A, B or C.

Exhibit 10.

PROPOSED MERGER AGREEMENT DATED APRIL 26, 1927

THIS AGREEMENT, made this twenty-sixth day of April, in the year of our Lord one thousand nine hundred and twenty-seven, between the Directors of the several corporations hereinafter named, all incorporated under the laws of the State of New Jersey, under the corporate seals of the respective corporations, that is to say, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, party of the first part, ESSEX AND HUDSON GAS COMPANY, party of the second part, HUDSON COUNTY GAS COMPANY, party of the third part, THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, party of the fourth part, SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, party of the fifth part, and NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, party of the sixth part.

WHEREAS, the party of the first part became and was formed into a corporation by an agreement of merger and consolidation filed in the Office of the Secretary of State for the State of New Jersey, on the twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four, and is engaged in the business, as it is authorized to do, of operating under the leases hereinafter referred to, the property and franchises of the parties of the second, third, fourth, fifth and sixth parts hereto; and

WHEREAS, the party of the second part was duly organized as a corporation under the laws of the State of New Jersey, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and ninety-eight, by a certificate dated on the twenty-ninth day of said November,

recorded in the Clerk's Office of Essex County, in Book 15 of Incorporation Business Companies, p. 113, and filed on the day first named in the Office of the Secretary of State, and thereafter, to wit, on the first day of June, in the year of our Lord one thousand nine hundred and three, made a lease of all its property and franchises, except its franchises to be a corporation, to Public Service Corporation of New Jersey, for the term of nine hundred (900) years from the date of such lease, under the terms and conditions therein stated, which lease is duly recorded in the office of the Register of Deeds of the County of Essex, in Book N. 36 of Deeds, p. 176, and in the office of the Register of Deeds of the County of Hudson, in Book 836 of Deeds, p. 389, and thereunder said lessee entered into and took possession of the said demised property and franchises; which said lease, by various mesne assignments, as well as the leasehold estate therein referred to, became vested in and is now possessed, and the property used and franchises exercised by the party of the first part hereto; and

WHEREAS, the party of the third part became and was formed into a corporation by an agreement of merger and consolidation, filed in the office of the Secretary of State on the thirty-first day of October, in the year of our Lord one thousand eight hundred and ninety-nine, and thereafter, to wit, on the first day of June, in the year of our Lord one thousand nine hundred and three, made a lease of all its property and franchises, except its franchise to be a corporation, to Public Service Corporation of New Jersey, for the term of nine hundred (900) years from and after the date thereof, under the terms and conditions therein stated, which lease is duly recorded in

the office of the Register of Deeds of the County of Hudson, in Book 833 of Deeds, p. 569, and in the office of the Clerk of the County of Bergen, in Book 563 of Deeds, p. 443, and thereunder said lessee entered into and took possession of the said demised property and franchises; which said lease, by various mesne assignments, as well as the leasehold estate therein referred to, became vested in and is now possesed, and the property used and franchises exercised by the party of the first part hereto; and

WHEREAS, the party of the fourth part became and was formed into a corporation by an agreement of merger and consolidation, filed in the office of the Secretary of State of the State of New Jersey, on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and ninety-nine, and thereafter, to wit, on the second day of June, in the year of our Lord one thousand nine hundred and three, made a lease of all its property and franchises, except its franchise to be a corporation, to Public Service Corporation of New Jersey, for the term of nine hundred (900) years from the first day of June, in the year of our Lord one thousand nine hundred and three, under the terms and conditions therein stated, which lease is duly recorded in the office of the Clerk of the County of Bergen, in Book 563 of Deeds, p. 471, in the office of the Register of Deeds of the County of Essex in Book L. 36 of Deeds, p. 417, and in the office of the Clerk of the County of Passaic, in Book A. 16 of Deeds, p. 415, and thereunder said lessee entered into and took possession of the said demised property and franchises; which said lease, by various mesne assignments, as well as the leasehold estate therein referred to, became vested in and is now pos-

sessed, and the property used and franchises exercised by the party of the first part hereto; and

WHEREAS, the party of the fifth part became and was formed into a corporation by an agreement of merger and consolidation, filed in the office of the Secretary of State of the State of New Jersey, on the first day of December, in the year of our Lord one thousand nine hundred and three, and thereafter, to wit, on the thirty-first day of December, in the year of our Lord one thousand nine hundred and three, made a lease of all its property and franchises, except its franchise to be a corporation, to Public Service Corporation of New Jersey, for the term of nine hundred (900) years from and after the date thereof, under the terms and conditions therein stated, which lease is duly recorded in the office of the Clerk of the County of Middlesex, in Book 353 of Deeds, p. 385, in the office of the Clerk of the County of Union, in Book 425 of Deeds, p. 356, and in the office of the Clerk of the County of Somerset, in Book C. 10 of Deeds, p. 447, and thereunder said lessee entered into and took possession of the said demised property and franchises; which said lease, by various mesne assignments, as well as the leasehold estate therein referred to, became vested in and is now possessed, and the property used and franchises exercised by the party of the first part hereto; and

WHEREAS, the party of the sixth part was duly organized as a corporation under the laws of the State of New Jersey on the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, by a certificate dated the fifth day of said December, and recorded in the Clerk's Office of Middlesex County, in Book D of

Incorporations, pages 397, &c., and filed on the day first named in the office of the Secretary of State; and

WHEREAS, the said several corporations were duly organized for carrying on business of the same or a similar nature, which business is now being carried on in part by and under said leases by the party of the first part, as aforesaid; and the respective Directors of the several corporations have deemed it advisable for the purposes of greater efficiency in carrying on and performing the duties incumbent upon the party of the first part, both in its own right and as lessee of the other parties hereto, for the party of the first part to absorb and have merged into it as a single corporation the five (5) other several corporations, parties hereto under and pursuant to the provisions of the act of the Legislature of the State of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the various acts supplemental thereto and amendatory thereof, as well as in pursuance of all other legal power and authority for such purpose, vested in and possessed by the said parties hereto and each of them; and

WHEREAS, Public Service Corporation of New Jersey is the owner of ten million nine hundred and ninety-nine thousand nine hundred and ninety (10,999,990) shares out of a total of eleven million (11,000,000) shares of the common capital stock of the party of the first part hereto, and believes it to be to its interest, as owner of such common capital stock, that the property and franchises of the parties of the second, third, fourth, fifth and sixth parts hereto should be merged into the property and franchises of the said party of

the first part hereto, so as to facilitate its business and operations, and to that end Public Service Corporation of New Jersey has, prior to the date of these presents, made and entered into an agreement with the party of the first part, providing that if the party of the first part hereto shall make and enter into this agreement, and exchange for each share of the capital stock of Essex and Hudson Gas Company, the party of the second part, and Hudson County Gas Company, the party of the third part, the sum of one hundred and thirty-seven dollars ($137.) in par value of the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part; and for each share of The Paterson and Passaic Gas and Electric Company, party of the fourth part, and New Brunswick Light, Heat and Power Company, party of the sixth part, the sum of eighty-six dollars ($86.) in par value of six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part; and for each share of Somerset, Union and Middlesex Lighting Company, the party of the fifth part, the sum of sixty-nine dollars ($69.) in par value of the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, said Public Service Corporation of New Jersey will supply of the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part owned by it, an amount sufficient to reimburse the party of the first part as follows, that is to say: For each share of stock of Essex and Hudson Gas Company, the party of the second part, and Hudson County Gas Company, the party of the third part three dollars and sixty-seven cents ($3.67) in par value; for each share of stock of The Paterson and Passaic Gas and Electric Company, the party of

the fourth part, and New Brunswick Light, Heat and Power Company, the party of the sixth part, the sum of two dollars and sixty-seven cents ($2.67) in par value; and for each share of stock of Somerset, Union and Middlesex Lighting Company, the party of the fifth part, the sum of two dollars and thirty-three cents ($2.33) in par value; and

WHEREAS, the parties hereto have prescribed the terms and conditions of carrying into effect the absorption of and the merger into the party of the first part, of the said parties of the second, third, fourth, fifth and sixth parts hereto, no new corporation being thereby formed, the party of the first part remaining and being in existence and possessing all the powers and authority with which it is invested at the time of making this agreement fully and unimpaired;

NOW, THEREFORE, in furtherance of the matters aforesaid, and in order to carry the same into effect, THIS AGREEMENT WITNESSETH, that the said Directors have mutually bargained and agreed, and by these presents do mutually bargain and agree as follows:

FIRST: The party of the first part, Public Service Electric and Gas Company, is to continue and remain a corporation fully possessed of all and singular the powers and authority obtained by it or conferred upon it immediately before the making of this agreement, no new corporation being hereby formed, but the other corporations named herein being absorbed by and merged into the party of the first part, whose principal office is at No. 80 Park Place, in the City of Newark, County of Essex and State of New Jersey, and the agent

therein and in charge thereof upon whom process against said corporation may be served is Charles M. Breder.

SECOND: The Board of Directors of Public Service Electric and Gas Company, the party of the first part, are ten (10) in number, and the names and places of residence of the said Directors and the Officers of the said Company, who hold office until the first Monday in April, in the year of our Lord one thousand nine hundred and twenty-eight, and until their successors are elected or appointed and qualified, are as follows:

DIRECTORS

Thomas N. Carter,	Rumson, N. J.
S. T. Bodine,	Villa Nova, Pa.
Thomas S. Gates, Rex & Seminole Ave.	Chestnut Hill, Pa.
A. R. Kuser,	Bernardsville, N. J.
Alfred L. Loomis, Tuxedo Park,	Tuxedo, N. Y.
Uzal H. McCarter,	Red Bank, N. J.
Arthur W. Thompson, Towanda & West Chestnut Sts.	Chestnut Hill, Pa.
Landon K. Thorne, 950 Park Ave.,	New York City, N. Y.
E. W. Wakelee,	Demarest, N. J.
Percy S. Young, 830 Lake St.,	Newark, N. J.

OFFICERS

Thomas N. McCarter, President,	Rumson, N. J.
Percy S. Young, Vice-President,	830 Lake St., Newark, N. J.
E. W. Wakelee, " "	Demarest, N. J.
John L. O'Toole, " "	675 Clifton Ave., Newark, N. J.
Edgar Allegaert, " "	391 Parker St., Newark, N. J.
John A. Clark, " "	34 Beech St., East Orange, N. J.
George Barker, " "	565 Mt. Prospect Ave., Newark, N. J.
R. R. Young, " "	254 Montclair Ave., Newark, N. J.
Charles M. Breder, Secretary,	137 Roseville Ave., Newark, N. J.
W. H. Feller, Asst. Secretary,	733 Summit St., Linden, N. J.
W. T. Crudge, " "	17 Thornton St., Bloomfield, N. J.

T. W. VanMiddlesworth,	Treasurer,	Grant Ave., Highland Park, New Brunswick, N. J.
F. A. Neis,	Asst. Treasurer,	774 South 12th St., Newark, N. J.
R. S. Tomkins,	" "	67 South Parkway, East Orange, N. J.
F. M. Ludlow,	" "	112 Montrose St., Newark, N. J.

THIRD: All of the shares of stock held by the party of the first part in the said corporations, the parties of the second, third, fourth, fifth and sixth parts, upon the taking effect of this agreement by the adoption thereof by two-thirds of all the capital stock of each of the said corporations, shall be surrendered for cancellation.

FOURTH: In case this agreement is adopted by two-thirds of all the capital stock of each of the said corporations, parties hereto, then and in such case:

For the capital stock of Essex and Hudson Gas Company, party of the second part to this agreement, other than that held by the party of the first part, there shall be issued the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of one hundred and thirty-seven dollars ($137.) par value for each one hundred dollars ($100.) par value of the stock of the said party of the second part, together with an adjustment of the dividend at the rate of six per cent (6%) as fixed on such preferred stock and the dividend of eight per cent. (8%) per annum theretofore paid on the stock of the said party of the second part, from the last dividend date to the time of this Agreement taking effect.

For the capital stock of Hudson County Gas Company, party of the third part to this agreement, other than that held by the party of the first part, there shall be issued the six per cent. (6%)

cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of one hundred and thirty-seven dollars ($137.) par value for each one hundred dollars ($100.) par value of the stock of the said party of the third part, together with an adjustment of the dividend at the rate of six per cent. (6%) as fixed on such preferred stock and the dividend of eight per cent. (8%) per annum theretofore paid on the stock of the said party of the third part, from the last dividend date to the time of this agreement taking effect.

For the capital stock of The Paterson and Passaic Gas and Electric Company, party of the fourth part to this agreement, other than that held by the party of the first part, there shall be issued the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of eighty-six dollars ($86.) par value for each one hundred dollars ($100.) par value of the stock of the said party of the fourth part, together with an adjustment of the dividend at the rate of six per cent. (6%) as fixed on such preferred stock and the dividend of five per cent. (5%) per annum theretofore paid on the stock of the said party of the fourth part, from the last dividend date to the time of this agreement taking effect.

For the capital stock of Somerset, Union and Middlesex Lighting Company, party of the fifth part to this agreement, other than that held by the party of the first part, there shall be issued the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of sixty-nine dollars ($69.) par value for each one hundred dollars ($100.) par value of the stock of the said party of the fifth part, together with an adjustment of the dividend at the rate of six per cent. (6%) as fixed on such preferred stock

and the dividend of four per cent. (4%) per annum theretofore paid on the stock of the said party of the fifth part, from the last dividend date to the time of this agreement taking effect.

For the capital stock of New Brunswick Light, Heat and Power Company, party of the sixth part to this agreement, other than that held by the party of the first part, there shall be issued the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of eighty-six dollars ($86.) par value for each one hundred dollars ($100.) par value of the stock of the said party of the sixth part, together with an adjustment of the dividend at the rate of six per cent. (6%) as fixed on such preferred stock and the dividend of five per cent. (5%) per annum theretofore paid on the stock of the said party of the sixth part, from the last dividend date to the time of this agreement taking effect.

FIFTH: Each stockholder in the several corporations, parties of the second, third, fourth, fifth and sixth parts to this agreement, shall be entitled, upon presentation of the certificate of stock standing in the name of such stockholder and surrendering the same to be cancelled, to receive from the party of the first part for and in place thereof shares of the six per cent. (6%) cumulative preferred stock, 1925 Series, of Public Service Electric and Gas Company, party of the first part, in the ratio and proportion provided in the foregoing paragraph hereof, and in case any such stockholder shall be entitled to a fraction of a share, such stockholder shall be entitled to be paid in cash for such fraction at the same rate, which stock shall thereupon be cancelled.

IN WITNESS WHEREOF, each of the said corporations, parties to this agreement, pursuant and in

obedience to a resolution passed by the respective Boards of Directors at regular meetings thereof, have caused their respective corporate seals to be hereunto affixed and these presents to be signed by their respective Presidents or Vice-Presidents and attested by their respective Secretaries or Assistant Secretaries, and the said Directors of the said several companies have also duly signed these presents; dated the day and year first above written.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
By THOMAS N. McCARTER
President.

(SEAL)

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter
P. S. Young
Alfred L. Loomis
Landon K. Thorne
Anthony R. Kuser
Thomas S. Gates
Arthur W. Thompson
S. T. Bodine
U. H. McCarter

ESSEX AND HUDSON GAS COMPANY
By P. S. YOUNG
Vice-President.

(SEAL)

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter
P. S. Young
Anthony R. Kuser
Thomas S. Gates
S. T. Bodine
Arthur W. Thompson
U. H. McCarter
Charles M. Breder

HUDSON COUNTY GAS COMPANY,
By P. S. YOUNG,
(SEAL) Vice-President.

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter	Arthur W. Thompson
P. S. Young	S. T. Bodine
Anthony R. Kuser	U. H. McCarter
Thomas S. Gates	Charles M. Breder

THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY,
By P. S. YOUNG,
(SEAL) Vice-President.

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter	Arthur W. Thompson
P. S. Young	S. T. Bodine
Anthony R. Kuser	U. H. McCarter
Thomas S. Gates	Charles M. Breder

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY,
By A. J. BRUNSON
(SEAL) President.

Attest:
H. B. MACDONALD,
Secretary.

Bill of Complaint—Exhibit 10.

Directors

A. J. Brunson
H. B. MacDonald
William H. Pope
P. S. Young
T. W. Van Middlesworth

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY,
By P. S. YOUNG,
Vice-President.

(SEAL)

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter
P. S. Young
Anthony R. Kuser
Thomas S. Gates
Arthur W. Thompson
S. T. Bodine
U. H. McCarter

BE IT KNOWN, that I, CHARLES M. BREDER, Secretary of PUBLIC SERVICE ELECTRIC AND GAS COMPANY, one of the corporations named in the foregoing agreement, DO HEREBY CERTIFY that a meeting of the stockholders of said corporation was held at the Company's office in the City of Newark, County of Essex and State of New Jersey, on Monday, the twenty-third day of May, A. D. nineteen hundred and twenty-seven, at the hour of nine o'clock in the forenoon, twenty (20) days' notice of the time, place and object of such meeting having been first mailed to the last known post office address of each of the stockholders of said Company, and at the said meeting of stockholders the foregoing agreement was submitted

to the said stockholders for consideration and a vote of the stockholders by ballot taken thereon for the adoption or rejection of the same, each share of stock casting one vote; and the votes in person or by proxy of the holders of more than two-thirds of all the capital stock of said corporation were for the adoption of said agreement; and this certificate is made hereon under the seal of said corporation, as required by law.

WITNESS, the seal of the said corporation and my hand this twenty-third day of May, in the year of our Lord one thousand nine hundred and twenty-seven.

.....
Secretary.

BE IT KNOWN, that I, CHARLES M. BREDER, Secretary of ESSEX AND HUDSON GAS COMPANY, one of the corporations named in the foregoing agreement, DO HEREBY CERTIFY that a meeting of the stockholders of said corporation was held at the Company's office in the City of Newark, County of Essex and State of New Jersey, on Monday, the twenty-third day of May, A. D. nineteen hundred and twenty-seven, at the hour of nine o'clock in the forenoon, twenty (20) days' notice of the time, place and object of such meeting having been first mailed to the last known post office address of each of the stockholders of said Company, and at the said meeting of stockholders the foregoing agreement was submitted to the said stockholders for consideration and a vote of the stockholders by ballot taken thereon for the adoption or rejection of the same, each share of stock casting one vote; and the votes in person or

by proxy of the holders of more than two-thirds of all the capital stock of said corporation were for the adoption of said agreement; and this certificate is made hereon under the seal of said corporation, as required by law.

WITNESS, the seal of the said corporation and my hand this twenty-third day of May, in the year of our Lord one thousand nine hundred and twenty-seven.

.....

Secretary.

BE IT KNOWN, that I, CHARLES M. BREDER, Secretary of HUDSON COUNTY GAS COMPANY, one of the corporations named in the foregoing agreement, DO HEREBY CERTIFY that a meeting of the stockholders of said corporation was held at the Company's office in the City of Newark, County of Essex and State of New Jersey, on Monday, the twenty-third day of May, A. D. nineteen hundred and twenty-seven, at the hour of ten o'clock in the forenoon, twenty (20) days' notice of the time, place and object of such meeting having been first mailed to the last known post office address of each of the stockholders of said Company, and at the said meeting of stockholders the foregoing agreement was submitted to the said stockholders for consideration and a vote of the stockholders by ballot taken thereon for the adoption or rejection of the same, each share of stock casting one vote; and the votes in person or by proxy of the holders of more than two-thirds of all the capital stock of said corporation were for the adoption of said agreement; and this certifi-

cate is made hereon under the seal of said corporation, as required by law.

WITNESS, the seal of the said corporation and my hand this twenty-third day of May, in the year of our Lord one thousand nine hundred and twenty-seven.

.....
Secretary.

BE IT KNOWN, that I, CHARLES M. BREDER, Secretary of THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, one of the corporations named in the foregoing agreement, DO HEREBY CERTIFY that a meeting of the stockholders of said corporation was held at the Company's office in the City of Newark, County of Essex and State of New Jersey, on Monday, the twenty-third day of May, A. D. nineteen hundred and twenty-seven, at the hour of eleven o'clock in the forenoon, twenty (20) days' notice of the time, place and object of such meeting having been first mailed to the last known post office address of each of the stockholders of said Company, and at the said meeting of stockholders the foregoing agreement was submitted to the said stockholders for consideration and a vote of the stockholders by ballot taken thereon for the adoption or rejection of the same, each share of stock casting one vote; and the votes in person or by proxy of the holders of more than two-thirds of all the capital stock of said corporation were for the adoption of said agreement; and this certificate is made hereon under the seal of said corporation, as required by law.

WITNESS, the seal of the said corporation and my hand this twenty-third day of May, in the year

of our Lord one thousand nine hundred and twenty-seven.

.....

Secretary.

BE IT KNOWN, that I, HARRY B. MACDONALD, Secretary of SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, one of the corporations named in the foregoing agreement, DO HEREBY CERTIFY that a meeting of the stockholders of said corporation was held at the Company's office, No. 110 East Front Street, in the City of Plainfield, County of Union and State of New Jersey, on Monday, the twenty-third day of May, A. D. nineteen hundred and twenty-seven, at the hour of ten o'clock in the forenoon, twenty (20) days' notice of the time, place and object of such meeting having been first mailed to the last known post office address of each of the stockholders of said Company, and at the said meeting of stockholders the foregoing agreement was submitted to the said stockholders for consideration and a vote of the stockholders by ballot taken thereon for the adoption or rejection of the same, each share of stock casting one vote; and the votes in person or by proxy of the holders of more than two-thirds of all the capital stock of said corporation were for the adoption of said agreement; and this certificate is made hereon under the seal of said corporation, as required by law.

WITNESS, the seal of the said corporation and my hand this twenty-third day of May, in the year of our Lord one thousand nine hundred and twenty-seven.

.....

Secretary.

Bill of Complaint—Exhibit 10.

Be it known, that I, Charles M. Breder, Secretary of New Brunswick Light, Heat and Power Company, one of the corporations named in the foregoing agreement, do hereby certify that a meeting of the stockholders of said corporation was held at the Company's office in the City of Newark, County of Essex and State of New Jersey, on Monday, the twenty-third day of May, A. D. nineteen hundred and twenty-seven, at the hour of twelve o'clock noon, twenty (20) days' notice of the time, place and object of such meeting having been first mailed to the last known post office address of each of the stockholders of said Company, and at the said meeting of stockholders the foregoing agreement was submitted to the said stockholders for consideration and a vote of the stockholders by ballot taken thereon for the adoption or rejection of the same, each share of stock casting one vote; and the votes in person or by proxy of the holders of more than two-thirds of all the capital stock of said corporation were for the adoption of said agreement; and this certificate is made hereon under the seal of said corporation, as required by law.

Witness, the seal of the said corporation and my hand this twenty-third day of May, in the year of our Lord one thousand nine hundred and twenty-seven.

.....

Secretary.

Exhibit 11.

PUBLIC SERVICE ELECTRIC & GAS COMPANY.

Underlying funded debt (at December 31, 1926), outstanding with public—eliminating Sinking Fund and inter-company holdings, but including holdings of Public Service Corporation.

MERGED COMPANIES.

	Principal Amount	*Annual Interest requirement*
United Electric 1st Mtg. 4s of 1949	$17,934,500	$717,380
Consumers L. H. & P. 1st Mtg. 5s of 1938	308,000	15,400
North Hudson L. H. & P. 1st Mtg. 5s of 1938	367,000	18,350
Middlesex Elec. L. & P. 1st Mtg. 5s of 1955	160,000	8,000
Princeton L. H. & P. S. F. Mtg. 5s of 1939	111,000	5,550
Weehawken Contracting 1st Mtg. 6s of 1928	30,000	1,800
Totals	$18,910,500	$766,480
Public Service Electric Company Equipment Trust Series A 8% Certificates	520,000	41,600
Real estate mortgages	1,393,727	

Bill of Complaint—Exhibit 11.

Funded debt of Leased Companies at December 31, 1926, excluding Sinking Fund and intercompany holdings, but including holdings of Public Service Corporation.

	Principal Amount	*Annual Interest requirement*
(Essex & Hudson Gas Co.)		
Newark Gas 1st Mtg. 6s of 1944	$ 3,999,700	$239,982
Newark Cons. Gas Cons. Mtg. 5s of 1948	6,000,000	300,000
(Hudson County Gas Co.)		
Hudson Co. Gas 1st Mtg. 5s of 1949	10,500,000	525,000
(New Brunswick Light, Heat & Power Co.)		
New Brunswick L. H. & P. 1st Mtg. 4s of 1939	500,000	20,000
(Paterson & Passaic Gas & Elec. Co.)		
Paterson & Passaic G. & E. Cons. Mtg. 5s of 1949	4,049,000	204,950
(South Jersey Gas, Elec. & Traction Co.)		
Trenton Gas & Elec. 1st Mtg. 5s of 1949	1,998,000	99,900
South Jersey G. E. & T. 1st Mtg. 5s of 1953	9,487,000	649,700
(Somerset, Union & Middlesex Lighting Co.)		
Central Elec. Cons. Mtg. 5s of 1940	729,300	36,465
Somerset Ltg. 1st Mtg. 5s of 1939	129,000	6,450
Plainfield G. & E. Lt. Gen. Mtg. 5s of 1940	500,000	25,000
Somerset U. & M. Ltg. 1st Mtg. 4s of 1943	1,401,109	56,044
(Gas & Electric Company of Bergen County)		
Hackensack Gas Lt. 1st Mtg. 5s of 1934	24,000	1,200
Hackensack G. & E. Gen. Mtg. 5s of 1935	10,000	500

Englewood G. & E. 1st Mtg. 5s of 1939.....	23,000	1,150
G. & E. Co. of Bergen County Cons. Mtg. 5s of 1949	1,443,000	72,150
G. & E. Co. of Bergen County Gen. Mtg. 5s of 1954	1,654,000	82,700
Totals	$42,447,109	$2,321,191

(NOTE: Public Service Electric Power Co. bonds are not included because redeemed on April 1, 1927.)

Exhibit 12.

PUBLIC SERVICE ELECTRIC & GAS COMPANY.

Stocks of principal Leased Companies (at December 31, 1926) outstanding in hands of public—eliminating holdings of Public Service Electric and Gas Company but including holdings of Public Service Corporation:

Company	*Par Value of stock*	*Rate of Dividend*	*Annual Dividends*
Essex & Hudson Gas Co.	$ 6,500,000	8%	$ 520,000
Hudson County Gas Co.	10,500,000	8%	840,000
South Jersey Gas Elec. & Traction Co.	6,000,000	8%	480,000
Newark Cons. Gas Co.	6,000,000	5%	300,000
Paterson & Passaic Gas & Elec. Co.	4,729,816	5%	236,491
Gas & Electric Co. of Bergen County	2,000,000	5%	100,000
New Brunswick Light Heat & Power Co.	400,000	5%	20,000
Somerset Union & Middlesex Ltg. Co.	627,600	4%	25,104
Ridgewood Gas Co.	100,000	2%	2,000
Totals	$36,857,416		$2,523,595

NOTE: Public Service Electric Power Co. is not included as the acquisition of its property has terminated its lease.

Exhibit 13.

ESSEX AND HUDSON GAS COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION.

3. The objects for which this corporation is formed are:—

(a) To manufacture, sell and distribute illuminating and fuel gas throughout the counties of Essex and Union, in the State of New Jersey, and the town of Harrison, the Township of Kearney, and the Borough of East Newark, in the county of Hudson and State of New Jersey, and for such purposes to build and construct such gas works as may be necessary for the business of the company; the company, however, shall have no right to extend its business operations beyond the limits of the territory above described without the unanimous consent of the stockholders of said company.

(b) To manufacture, purchase, or otherwise acquire, to hold, own, mortgage, pledge, sell assign, and transfer, or otherwise dispose of goods, wares, and merchandise necessary to the carrying on of the business aforesaid.

(c) To enter into, make perform and carry out contracts of every kind necessary for the business aforesaid, with any person, firm, association, or corporation.

(d) To have one or more offices, and without restriction to hold, purchase, mortgage, lease, make leases of, and convey real and personal property of every kind, including gas properties and gas franchises in the territory above described, and to contract for the operation of the same, to acquire, use, grant, and sell letters patent and licenses therein for processes, appa-

ratus, and machinery for the production, manufacture, and use of gas for all purposes.

(e) To construct machinery and apparatus necessary for the operation of gas companies in the territory above described.

(f) To lease the plants and property of other gas companies, to make contracts with other companies for the operation, management, and control of gas plants, and works, and to acquire and hold the stock of other companies doing a public or private lighting business; provided said companies be within the limits of the territory above described.

(g) To lease for such term or terms, and upon such conditions and covenants as may be deemed advisable, all the property, real and personal, and franchises, of the company (except its franchise to be a corporation), to any corporation of this state having authority to take the same.

Exhibit 14.

THE PEOPLE'S GAS LIGHT COMPANY OF THE CITY OF HUDSON

EXTRACT FROM CHARTER.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That John R. McPherson, John R. Mullaney, John M. Wilson, Thomas E. Bray, Jeremiah B. Cleveland, Joseph W. Gilmore and William H. Bumstedt, and every person or persons who may become subscribers according to the mode hereinafter prescribed, and their successors, are hereby created a body politic and corporate in fact by the name of "The People's Gas Light Company of the City of Hudson," and by the said name the said corporation shall have corporate power in all courts of law and equity, and shall have power and authority to manufacture, make and sell gas, to be made of coals or other materials, for the purpose of lighting the streets, buildings, manufactories and other places in the cities of Hudson and Bergen and places adjacent in Hudson county, and to enter into and to execute all contracts, agreements or covenants in relation to the objects of this corporation, and to enforce the same, and be capable of purchasing, taking, holding and disposing of such property, real and personal, as is necessary to give effect to the purposes of this corporation, and for the accommodation of their business and concerns, or which it may be necessary for the said corporation to acquire and hold, and dispose of for the purpose of securing debts which have become due to them in the course of the business of the said corporation; provided, that the said real estate shall not

exceed what may be necessary for the purpose mentioned, and no private lands shall be in any way injured or defaced without permission being first obtained in writing from the owner or owners thereof.

2. And be it enacted, that the said corporation shall be empowered to lay down their gas pipes and to erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues or public grounds of the said cities of Hudson and Bergen, and places adjacent, and to do all things necessary to light the said cities and places or any part thereof; provided that the public travel shall at no time be unnecessarily affected or impeded by the laying of said pipes, or the erection of said posts, and the streets, side and crosswalks, public grounds, lanes, avenues and squares shall not be injured, but all be left in as good and perfect condition as before the laying of said pipes or the erection of said posts.

Exhibit 15.

THE JERSEY CITY GAS LIGHT COMPANY.

EXTRACT FROM CHARTER.

* * * the said corporation shall have power and authority to manufacture, make, and sell gas, to be made of bituminous coal or other materials, for the purpose of lighting the streets, buildings, manufactories, and other places, situated in Jersey City and vicinity.

Exhibit 16.

THE CONSUMERS GAS COMPANY OF JERSEY CITY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

That we have associated as a Company for the purpose of constructing maintaining and operating gas works under the provisions of the said Act.

That the place in which it is proposed to supply and distribute illuminating gas and construct, maintain and operate the works is the City of Jersey City.

Exhibit 17.

THE HUDSON COUNTY GAS LIGHT COMPANY.

EXTRACT FROM CHARTER.

* * * the said corporation are hereby invested with full power and authority to manufacture, make and sell gas, to be made of bituminous coal or other materials for the purpose of lighting the streets, buildings, and other places in the city of Hoboken and the township of Weehawken and their vicinity, and to purchase, hold and convey all real and personal estate required for the purposes of the corporation.

Exhibit 18.

THE BERGEN POINT GAS LIGHT COMPANY

EXTRACT FROM CHARTER

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That John H. Watson, Andrew D. Melick, Solon Humphreys, Abram B. Warner and Walter B. Palmer, and all and every person or persons who may become subscribers according to the mode hereinafter prescribed, and their successors, be and the same are hereby created a body politic and corporate in fact, by the name of "The Bergen Point Gas Light Company"; and by the said name the said corporation shall have power to sue and be sued, plead and be impleaded, contract and be contracted with, and to make, manufacture and sell illuminating gas, to be made from coal or other proper materials, for the purpose of lighting the streets, buildings, manufactories and public grounds, situated in the township of Bayonne and vicinity, and under and by the aforesaid corporate name and style, the said corporation shall have power and authority to enter into and execute any and all proper contracts, agreements, understandings, undertakings and covenants for the furtherance of the objects for which the said corporation is created, with power and right to enforce the same, in all proper way and manner under the laws of this state; and shall be capable of purchasing, taking and holding any estate, real or personal, necessary to give effect to the specified purpose of this corporation, for the accommodation of their business and concerns, or which it may be necessary for the said corporation to acquire and hold for the purpose of securing

debts, which have become due to them in the regular business of the said corporation; provided, that the real estate shall not exceed what may be necessary for the purpose mentioned; and also to purchase and hold any and all patents and patent rights necessary and proper for the purpose of carrying out the object and intent for which such corporation is created, and for the accommodation of its business and concerns.

2. And be it enacted, That the said corporation shall be and is hereby empowered and authorized to enter upon and make any and all necessary and proper excavations for the purpose of laying down, and to lay down, all necessary and proper gas pipes and conductors and to erect all necessary and proper posts, burners, lights and reflectors, in any and all of the streets, lanes, alleys, avenues, roads, highways and public grounds within the said township of Bayonne and vicinity, and to do all things necessary and proper to be done for the purpose of lighting the same, and the dwellings, stores, and other buildings and places in said township of Bayonne and vicinity; provided, that the public travel shall at no time be unreasonably and unnecessarily obstructed or impeded thereby, nor shall the said streets, lanes, alleys, avenues, roads, highways and public grounds be permanently injured by the same, but the said corporation shall put and leave such streets, lanes, alleys, avenues, roads, highways and public grounds in as good, perfect and permanent condition as the same were in before the laying of said pipes, and the erection of said posts.

Exhibit 19.

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

3. The objects for which this corporation is formed are:—To manufacture, purchase and sell machinery, apparatus, devices and materials required to be used for making and using gas and electricity for light, heat, power, fuel and all other purposes; to manufacture, produce, and distribute gas and electricity, and to sell same to corporations and individuals with which it is or may be authorized to contract; to purchase and sell the bye products of the manufacture of gas; to manufacture, purchase or otherwise acquire, to hold, own, mortgage, sell, assign and transfer, or otherwise dispose of goods, wares and merchandise necessary to the carrying out of the business aforesaid; to enter into, make, perform and carry out contracts of every kind necessary for the business aforesaid, with any person, firm, association or corporation; to have one or more offices, and without restriction to hold, purchase, mortgage, lease, make leases of and convey real and personal property of every kind including gas and electric properties and franchises, and to contract for the operation of the same; to acquire, use, grant and sell letters patent and licenses therein for processes, apparatus and machinery for the production, manufacture and use of gas and electricity for all purpose; to lease the plants and property of other gas and electric companies; to make contracts with other companies for the operation, management and control of gas and electric plants

and works, and to acquire and hold the stock of other companies doing a public or private business in supplying gas and electricity or either gas or electricity for light, heat, power, fuel or other purposes.

Exhibit 20.

PEOPLES' GAS LIGHT COMPANY OF THE CITY OF PATERSON

EXTRACT FROM CHARTER

* * * the said corporation shall have corporate power in all courts of law and equity, and shall have power and authority to manufacture, make and sell gas, to be made of coals or other materials, for the purpose of lighting the streets, buildings, manufactories and other places in the City of Paterson, in Passaic county, and to enter into and to execute all contracts, agreements or covenants, in relation to the objects of this corporation, and to enforce the same, and be capable of purchasing, taking, holding and disposing of such property, real and personal, as is necessary to give effect to the purposes of this corporation, and for the accommodation of their business and concerns, or which it may be necessary for the said corporation to acquire and hold and dispose of, for the purpose of securing debts which have become due to them in the course of the business of the said corporation; provided, that the said real estate shall not exceed what may be necessary for the purpose mentioned, and no private lands shall be in any way injured or defaced, without permission being first obtained in writing from the owner or owners thereof.

Exhibit 21.

PATERSON GAS LIGHT COMPANY

EXTRACT FROM CHARTER

1. BE IT ENACTED by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That John Colt, John Kear, and Andrew Parsons, and their present and future associates, shall be, and they are hereby created a body politic and corporate, in fact, by the name of the "Paterson Gas Light Company," and by that name they and their successors may have perpetual succession, and shall, in law, be capable of suing and being sued in any courts and places whatsoever, and may have a common seal, with power to alter the case, and, by the said name, the said corporation shall have power and authority to manufacture, make, and sell gas, to be made of coal, oil, or other materials, for the purpose of lighting the streets, buildings, manufactories, and other places situate in the said town of Paterson, and to enter into and execute contracts, agreements, or covenants in relation to the objects of this incorporation, and of enforcing the same, and be capable of purchasing, taking and holding, any estate, real or personal, necessary to give effect to the specified purposes of this corporation, and for the accommodation of their business and concerns; Provided, that the said real estate shall not exceed what may be absolutely necessary to effect the purposes of said company, and that no public nor private land shall be dug into or any way injured or defaced, without permission being first obtained in writing from the owner or owners thereof.

Exhibit 22.

THE EDISON ELECTRIC ILLUMINATING COMPANY OF PATERSON

EXTRACT FROM CERTIFICATE OF INCORPORATION

And that the objects for which the Company is formed are to generate electricity for the purpose of creating light, heat and power; to sell and supply light, heat and power generated by electricity to customers, private and public houses, dwellings, manufactories, and other buildings and places, streets and highways, public parks and other public places, within the City of Paterson and adjacent townships in the County of Passaic; to buy or lease land and erect thereon buildings and machinery for the purpose of such manufacture or generation; to erect and maintain poles and wires above or beneath the ground of public streets and elsewhere for the purpose of supplying and distributing such electricity, heat, light and power.

Exhibit 23.

EXTRACT FROM CONSOLIDATION AGREEMENT FORMING

PASSAIC LIGHTING COMPANY.

NINTH: Such new or consolidated Company may prosecute and carry on a general lighting business for public and municipal as well as private purposes and all and any kinds of business which either or both the Passaic Gas Light Company or The Passaic Electric Light Heat and Power Company is authorized by law to conduct.

Exhibit 24.

THE PASSAIC GAS LIGHT COMPANY.

EXTRACT FROM CHARTER.

2. And be it enacted, That the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners and reflectors, in the streets, alleys, lanes, avenues and public grounds of the city of Paterson, and its vicinity, and the dwellings, stores, and other places situated therein; provided, that the public travel shall at no time be affected or impeded by the laying of the said pipes, or the erection of the said posts, and the streets, side and cross-walks, public grounds, lanes and avenues, shall not be injured, but all be left in as good and perfect condition as before the laying of the said pipes, or the erection of the said posts.

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11. And be it enacted, That the said corporation shall possess the general powers, and be subject to the restrictions and liabilities contained in the act entitled "an act concerning corporations," approved the fourteenth day of February, one thousand eight hundred and forty-six, so far as the same are applicable.

Exhibit 25.

THE PASSAIC ELECTRIC LIGHT, HEAT AND POWER COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

THIRD: That the objects for which said Company is formed, are as follows:

The manufacturing and generating, storing, dealing in, furnishing and supplying of electricity, light, heat and power.

And also the manufacturing, generating and storing of electricity, fuel-gas and steam, and the supply of the same, through appropriate conductors.

And *also* the carrying on of any and all business in any wise appertaining to, or connected with, the manufacturing and generating, storing, distributing and furnishing of electricity, steam and fuel-gas, for heat, power and light purposes, including the transaction of any and all business in which electricity, gas, artificial or natural, or steam, is now or hereafter may be utilized, and all matters incidental or necessary to the distribution of light, heat and power, or the cause or manner of, or means by which, light, heat and power are or may hereafter be produced, stored conducted or utilized.

And Also the production, storing, sale and supply of all and every kind of light, heat and power, in every way, manner, and by every means not prohibited by the Laws of the State of New Jersey to corporations formed under this act.

And Also the manufacturing, selling dealing in any and all the necessary appliances used in, or

which may be required or deemed advisable for or in connection with the utilization of any and all of the foregoing, or in any wise appertaining thereto or connected therewith;

Excepting Always and excluding from the foregoing provisions, and each and every one thereof, such matters as are prohibited by law to corporations formed under this act;

And Also the manufacture and sale of any and all products arising from the aforesaid operations, and the carrying on of a general mercantile business if required or desired in connection with the said business;

Including the purchase, sale and exchange of real and personal property of every kind, the leasing, purchasing, holding, selling, assigning, conveying, mortgaging and exchanging real or personal property or contracts, of every name and nature, and the doing of any and all other things, and the carrying on of any and all other business operations which may be necessary and advisable in connection therewith, and which are or may be authorized by the Laws of the State of New Jersey, under which this Company is formed.

Exhibit 26.

THE LODI LIGHT, HEAT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

III. The objects for which the corporation is formed are the manufacturing and supplying gas and electricity for heating and power purposes and also for lighting the streets and public and private buildings of the Borough of Lodi, in the County of Bergen and State of New Jersey.

Exhibit 27.

THE PASSAIC AND BERGEN GAS COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: The objects for which this corporation is formed are to manufacture and sell gas throughout the counties of Passaic and Bergen, in the State of New Jersey, and for such purposes to hold, purchase, mortgage, lease, make leases of and convey real and personal property of every kind, including gas properties and gas franchises, and to enter into contracts for the operation of the same.

Exhibit 28.

PLAINFIELD GAS AND ELECTRIC LIGHT COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

THIRD: That the objects for which said Company is formed, are as follows:

The manufacturing and generating, dealing in, furnishing and supplying gas, electricity, heat and power.

And also the manufacturing and generating of gas and electricity for illuminating, fuel and other purposes, and steam and the supplying of the same through appropriate conductors.

And also the carrying on of any and all business in anywise appertaining to or connected with, the manufacturing and generating, distributing and furnishing of gas, electricity and steam for the purpose of light, heat and power, including the transaction of any and all business in which gas, artificial or natural, electricity or steam is now or hereafter may be utilized, and all matters incidental or necessary to the distribution of light, heat and power, or the cause or manner of, or means by which, light, heat and power are or may hereafter be produced, conducted or utilized.

Also the production, sale and supply of all and every kind of light, heat and power, in every way and manner and by every means not prohibited by the Laws of the State of New Jersey to corporations formed under this Act.

And also the manufacturing, selling and dealing in any and all the necessary appliances used in or which may be required or deemed advisable for or in connection with the utilization of any

and all of the foregoing, or in any wise appertaining thereto or connected therewith.

And also, the manufacture and sale of any and all products arising from the aforesaid operations, and the carrying on of a general mercantile business if required or desired in connection with the said business.

Including the purchase, sale and exchange of real and personal property of every kind, the leasing, purchasing, holding, selling, assigning, conveying, mortgaging and exchanging real or personal property or contracts of every name and nature, and the doing of any and all other things and the carrying on of any and all other business operations which may be necessary and advisable in connection therewith, and which are or may be authorized by the Laws of the State of New Jersey.

Excepting always and excluding from the foregoing provisions and each and every one thereof such matters as are prohibited by law to corporations formed under this Act.

Exhibit 29.

THE SOMERSET LIGHTING COMPANY.

EXTRACT FROM CERTIFICATION OF ORGANIZATION.

And that the objects for which the Company is formed are to manufacture and generate gas and electric currents and transmit the same by means of pipes, mains and other conduits through and over public streets, highways, and private property, and to sell or lease the same for the purposes of light, heat and power.

Exhibit 30.

THE SOMERSET GASLIGHT COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

The objects for which this company is formed are to construct, maintain and operate gas works, and to manufacture, sell, furnish, supply and distribute illuminating gas.

Exhibit 31.

CITIZENS' ELECTRIC COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

SECOND: That the place in this State where the business of said company is to be conducted, and which is to be deemed its principal place of business in this State, is the City of Plainfield in the County of Union. The places out of this State where the same is to be conducted, and where said company proposes to carry on operations, are the City of New York in the State of New York, the City of Philadelphia in the State of Pennsylvania, and elsewhere, and that the objects for which said company is formed are to carry on within the said City of Plainfield and the Borough of North Plainfield and elsewhere in the counties of Union and Somerset in the State of New Jersey, and elsewhere, the business of building, constructing, maintaining, extending, acquiring by purchase, lease or otherwise, and operating electric machinery, implements, appurtenances and plants of all kinds, for the purpose of generating, conveying and distributing light, heat and power, and to sell, convey, mortgage, pledge and lease such machinery, implements, appurtenances and plants of all kinds, and to acquire contracts, franchises and concessions authorizing the construction, maintenance and operation of such machinery, implements, appurtenances and plants of all kinds, and to issue bonds, secured by mortgage or otherwise, and debentures, promissory notes and other securities and evidences of indebtedness in payment for such machinery, implements, appurtenances and plants of all kinds, and for such contracts,

franchises and concessions, and to pledge and negotiate such bonds, debentures, promissory notes and evidences of indebtedness for the purpose of raising or obtaining capital or money for any of the purposes aforesaid, and to furnish light, heat and power to persons and corporations, and to buy, sell, pledge, and deal in the stock, bonds and securities issued and to be issued by any electric light, heat or power company or other corporation, and to exercise all the rights of owners and stockholders as to such securities and stock.

Exhibit 32.

CENTRAL ELECTRIC COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

THIRD: The objects for which the said corporation is formed are to manufacture, buy, sell and furnish electric current for light, heat and power.

To manufacture, buy, sell, lease, let or operate any or all machinery for the manufacture or distribution of any or all types of Electrical Energy; and any or all manner of electric machinery, apparatus or supplies of any nature or kind whatsoever.

To erect, buy, sell, lease, or let power plants or stations for the manufacture and distribution of electric current, and any or all machinery used therein or in connection therewith;

To manufacture, buy, sell, lease, or let electric, gas or combination fixtures, chandeliers, brackets, lamps, globes, or other supplies and appurtenances used for or in connection with the manufacture, distribution or use of electric current for light, heat or power; and to carry on a general business of installing and erecting wires and fixtures, either interior or exterior for the transmission and use of electric current for light, heat or power;

To buy, sell, or lease pole lines, to erect poles and string electric wires thereon or on the poles of other individuals or corporations, and to sell or lease to other individuals or corporations the right to string electric wires on, or attach electric wires to any or all poles so erected, owned or leased; to build and construct underground subways or conduits in public streets, avenues or

highways within this State, and string electric wires or conductors therein, and to buy or lease from, to sell or let to any other individual, or corporation, the right to string electric wires or conductors in any such subway.

The Corporation shall also have power to conduct its business in all its branches, have one or more offices, and to hold, purchase, mortgage, and convey real and personal property either within or without the State of New Jersey, and in all other states, and in all foreign countries.

Exhibit 33.

RARITAN ELECTRIC LIGHT AND POWER COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

And that the objects for which the Company is formed are to apply electrical currents in an electric circuit for producing light, heat and power, for lighting streets and public and private places, and to furnish light, heat and power, or any of them, for sale in the City of Perth Amboy and extend the same to adjacent places in or over, under or through the streets or highways.

Exhibit 34.

THE BOUND BROOK ELECTRIC LIGHT, HEAT AND POWER COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

SECOND: That the place in this State where the business of such company is to be conducted is the Borough of Bound Brook, in the County of Somerset and the village of South Bound Brook in the County of Somerset, and the Township of Piscataway, in the County of Middlesex, New Jersey, and that the objects for which the said company is formed are the generation of electricity for light, heat and power, and the furnishing of the same to consumers.

Exhibit 35.

THE DUNELLEN ELECTRIC LIGHT COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

And that the objects for which the Company is formed are for the manufacture and sale of electricity to be used for light, heat and power.

Exhibit 36.

EDISON ELECTRIC ILLUMINATING COMPANY OF NEW BRUNSWICK

EXTRACT FROM CERTIFICATE OF INCORPORATION

SECOND: That the place in this State where the business of the said Company is to be conducted is the City of New Brunswick, in the County of Middlesex and State of New Jersey. And the objects for which the said Company is formed are for constructing, maintaining, and operating works for the manufacture, supply, and distribution of electricity for electric lights, heat and power for selling such electricity to consumers, corporations, and individuals residing and being in the City of New Brunswick, and in the territory adjoining and adjacent thereto; for buying lands and erecting thereon buildings and machinery and for erecting posts and poles and laying and placing conductors and conduits in the streets, alleys and highways of said city and territory, to sustain and place the necessary wires and fixtures for the distribution of such electricity to said consumers and for all other such purposes as shall be necessary to fully carry on the business aforesaid.

Exhibit 37.

RAHWAY ELECTRIC COMPANY

EXTRACT FROM CERTIFICATE OF ORGANIZATION

THIRD: The objects for which the company is formed are the constructing, maintaining and operating of works for the supply and distribution of electricity for electric lights, heat and power, and any lawful business connected therewith or relating thereto.

Exhibit 38.

MIDDLESEX ELECTRIC COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: That the objects for which the said corporation is formed are— To manufacture, buy, sell and furnish Electric current for light, heat or power;

To manufacture, buy, sell, lease, let, or operate any or all machinery for the manufacture or distribution of any or all types of Electric Current; and any or all manner of Electric machinery, apparatus or supplies of any nature or kind whatsoever;

To erect, buy, sell, lease or let power plants or stations for the manufacture and distribution of Electric current, and any or all machinery used therein or in connection therewith.

To manufacture, buy, sell, lease, or let Electric, Gas or combination fixtures, chandeliers, brackets, lamps, globes, or other supplies and appurtenances used for or in connection with the manufacture, distribution or use of Electric Current for light, heat or power; and to carry on a general business of installing and erecting wires and fixtures, either interior or exterior for the transmission and use of electric current for light, heat or power;

To buy, sell, or lease pole lines; to erect poles and string Electric wires thereon or on the poles of other individuals or corporations, and to sell or lease to other individuals or corporations the right to string electric wires on or attach Electric wires to any or all poles so erected, owned or leased; to build, and construct underground subways or conduits in public streets, avenues, or

highways within this State, and string Electric wires or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation the right to string Electric wires or conductors in any such subways.

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and to hold, purchase mortgage and convey real and personal property outside of the State of New Jersey and in all other States, and in all foreign countries.

Exhibit 39.

THE OXY-HYDROGEN COMPANY OF THE UNITED STATES

EXTRACT FROM CHARTER

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That Theodore Westen, Lemuel H. Davis, Benjamin G. Clark, John S. Irick, Samuel H. Grey, William J. Sewell, Daniel Dodd, and John C. Bullitt, and all and every person and persons who may become stockholders in the capital stock hereinafter mentioned, their successors and assigns, are hereby constituted and made a body politic and corporate, in fact and in law, by the name of the Oxy-Hydrogen Company of the United States; and by that name shall have power to sue and to be sued, to plead and to be impleaded, to contract and to be contracted with, and to purchase, hold, lease, receive licenses, sell and dispose of any patent or patents for the manufacture of oxygen and hydrogen gas, or either of them, and their combination with other gases, for illuminating, heating, and all other purposes, and to issue its stock at par in payment for such purchase, lease or license, and to grant licenses under and dispose of said patents or rights under said patents within this state or elewhere, and to make, manufacture, use and sell such gas, for the purpose of illuminating and heating, or for any other purpose or purposes, within the state of New Jersey or elsewhere, and, for the purposes aforesaid, to purchase, hold, sell, convey, mortgage, lease and otherwise dispose of personal or real estate; and that the said corporation is hereby empowered to lay pipes and conductors, with all appurtenances

thereto, and erect the necessary posts and lights in any and all the roads, streets, highways and public grounds in the state of New Jersey, and do all things necessary for the purpose of lighting the same, and or body politic, for the carrying on and doing any and all the objects hereinbefore stated, and in addition to said objects, and in nowise in limitation of the same, to engage in and carry on any other business and to do any and all other things which may seem to the corporation capable of being carried on in connection with said objects, and to do any and all of the things set forth herein, to the same extent that natural persons might or could do in any part of the world, as principals, agents, contractors, trustees or otherwise.

The Board of Directors shall have power without the assent or vote of the stockholders, to make, alter, amend and rescind the By-Laws of this corporation, to fix the amount to be reserved as a working capital to declare dividends, subject to the amount of working capital so fixed.

The corporation is to have power also to conduct its business in all its branches, in all the other of the United States, Territories and Colonies, and in any foreign country or place, have one or more offices; and to hold, purchase, mortgage, and convey real and personal property in all or any of said States and Territories, foreign Countries and places.

Exhibit 40

PUBLIC SERVICE ELECTRIC COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: The objects for which the said corporation is formed are:

To manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power.

To manufacture, buy, sell, lease, let or operate any or all machinery or appliances for the manufacture, generation, accumulation, storage, transmission, furnishing, supplying or distribution of any or all types or varieties of electrical energy and any or all manner of electrical machinery, apparatus or supplies of every nature or kind whatsoever.

To erect, buy, sell, hold, operate, lease and let power plants and generating stations for the manufacture, generation, accumulation, storage, transmission, furnishing, supplying or distribution of electrical energy and any or all machinery used therein or in connection therewith, and to take, hold, acquire by assignment or otherwise, leases of all such plants and machinery, and to operate the same under and in pursuance of such leases, and to assign and transfer the same.

To manufacture, buy, sell, lease and let fixtures, chandeliers, electroliers, brackets, lamps, globes and other supplies and appurtenances used for and in connection with the manufacture, generation, accumulation, storage, transmission, furnishing, supplying or distribution or use of electrical energy for light, heat or power or otherwise, and to carry on a general business of electricians, mechanical engineers, suppliers of elec-

trical energy for the purpose of light, heat or power or otherwise, and to install, erect and operate, sell or lease wires, cables and fixtures, both interior and exterior, for the transmission and use of electrical energy, and to manufacture and deal in all supplies, apparatus and things required for or capable of being used in connection with the generation, accumulation, storage, transmission, furnishing, supplying or distribution of electrical energy.

To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be deemed necessary.

To buy, sell, operate or lease pole lines, erect poles, string wires thereon, or on poles of other corporations or individuals, in, on and along any and all streets, avenues, highways and roads of counties, cities, towns, townships, boroughs, villages and other municipalities in this state, and over or under any and all canals and other waterways, and across any and all bridges, and to use the same for the transmission of electrical energy, either for delivery to consumers on such lines, or for transmission to other corporations or individuals to be distributed by them to other consumers, and to sell or lease to other corporations or to individuals the right to string electric wires on, or attach electric wires to, any or all poles so erected, owned or leased, and to use such lines both as through lines and for local delivery.

To build, construct and use, for any of the purposes stated above, underground subways or conduits in all the streets, avenues, highways and

roads of the State of New Jersey, and under canals and other water-ways, and upon and across bridges spanning the same, and to string or place electric wires or conductors therein, and to buy or lease from, or sell or let to any other corporation or individual, the right to string and to use as aforesaid electric wires or conductors in any such subways or conduits.

To buy, own, sell, mortgage and otherwise dispose of the stocks, bonds, securities and evidences of indebtedness of other corporations, and to acquire the rights, privileges and franchises of other corporations either by purchase, lease or agreement, and to operate, sell, assign and transfer the same.

To apply for, register, purchase, lease or otherwise acquire, and to hold, use, rent, operate, introduce and sell or otherwise dispose of, all trademarks, inventions, improvements or processes used in connection with the aforesaid business or any part thereof, including such as may be secured under letters patent of the United States or of other countries, and such as are not so secured, and to grant licenses in respect thereto, and otherwise generally to turn the same to account.

To erect and construct for other corporations and for municipalities and individuals, works, plants and extensions of plants, and equip the same for the production, use, sale, supply and delivery of electrical energy for the foregoing purposes, or for any or either of them or any part thereof, and to lease or operate the same, and to lease to or operate for others, works and plants already constructed, in whole or in part, either in the name of such corporations, municipalities or individuals, or in the name of this company or

otherwise, as may be deemed most advantageous by the contracting parties.

To purchase, or otherwise acquire, sell, hold, assign, transfer, mortgage, pledge, guarantee, exchange, or otherwise dispose of all or any part, whether less or more than a majority, of the shares of the capital stock, all or any bonds and other securities or evidences of indebtedness, goodwill, rights, assets, property of any and every kind, or any part thereof, of other corporations of this or other states; and while owners of such stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon; with power to designate some person for that purpose from time to time to the same extent that natural persons might or could do.

In general, to do all or anything not prohibited by law in connection with the foregoing objects and incidental thereto that an individual might or could do.

The corporation may, upon the authority of its board of directors, for any and all lawful purposes in the course of the transaction of the business and affairs of the corporation, execute and issue bonds and debentures, and issue or cause to be issued certificates or other negotiable or transferable instruments, and pledge any and all of the assets of the corporation for the performance of the covenants of such bonds, indentures, certificates and other instruments, upon such terms and conditions as may be set out in the instrument pledging the same, or in any contract, deed or instrument relating thereto.

To procure the corporation to be registered or recognized in any state, county, city or other municipality of the United States, the territories thereof, the District of Columbia, colonial possessions or territorial acquisitions of the United

States, and in any foreign country, or any city, town or municipality thereof.

To conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage and convey real and personal property, in or out of this state, in such places in the several states and territories of the United States, the District of Columbia, colonial possessions and territorial acquisitions of the United States, and in foreign countries, as shall from time to time be found necessary or convenient for the purposes of the business of the company.

Exhibit 41.

UNITED ELECTRIC COMPANY OF NEW JERSEY

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: The objections for which the said corporation is formed are:

To manufacture, generate, buy, sell, accumulate, store, transmit, furnish and distribute electric current for light, heat and power;

To manufacture, buy, sell, lease, let, or operate any or all machinery or appliances for the manufacture, generation, storage, accumulation, transmission or distribution of any or all types of electric current, and any or all manner of electric machinery, apparatus or supplies of any nature or kind whatsoever.

To erect, buy, sell, operate, lease and let power plants and generating stations for the manufacture, generation, accumulation, storage, transmission and distribution of electric current and any or all machinery used therein or in connection therewith;

To manufacture, buy, sell, lease and let fixtures, chandeliers, electroliers, brackets, lamps, globes and other supplies and appurtenances used for or in connection with the manufacture, generation, accumulation, storage, transmission, distribution or use of electric current for light, heat or power or otherwise, and to carry on a general business of electricians, mechanical engineers, suppliers of electricity for the purpose of light, heat or power or otherwise, and install, erect, and operate, sell or lease wires, cables and fixtures, both interior and exterior, for the transmission and use of electric current, and manufacture and deal in all ap-

paratus and things required for or capable of being used in connection with the generation, distribution, supply, accumulation and employment of electricity;

To buy, sell, operate or lease pole lines, erect poles, string electric wires thereon, or on poles of other individuals or corporations, on any and all streets, avenues, highways and roads of counties, townships, towns, villages, and cities, and over or under any and all canals and other waterways, and across any and all bridges, and to use the same for the transmission of electric current either for delivery to consumers on such lines or for transmission of current to vendors to consumers, and to sell or lease to other individuals or corporations the right to string electric wires on or attach electric wires to any or all poles so erected, owned or leased, and to use such lines both as through lines and for local delivery;

To build and construct and use, for any of the purposes stated above, underground subways or conduits in such streets, avenues, highways and roads and under such canals and other waterways, and string electric wires or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation the right to string and to use as aforesaid electric wires or conductors in any such subways;

To buy, own, sell, mortgage and otherwise dispose of the stock, bonds, securities and evidences of indebtedness of other corporations, and to acquire the rights, privileges and franchises of other existing corporations, either by purchase, lease, or agreements, and to operate the same;

To apply for, register, purchase, lease or otherwise acquire, and to hold, use, rent, operate, introduce and sell or otherwise dispose of all trademarks, inventions, improvements or processes

used in connection with the aforesaid business or any part thereof, including such as may be secured under Letters Patent of the United States or other countries, and such as are not so secured, and to grant licenses in respect thereto, and otherwise generally to turn the same to account;

To erect and construct for other corporations and for municipalities and individuals, works, plants and extensions of plants, and equip the same, for the production, use, sale, supply and delivery of the foregoing or any or either of them, or any part thereof, and to lease or operate the same, and to lease to or operate for others, works and plants already constructed, in whole or in part, either in the name of such other corporations, municipalities, or individuals or in the name of this company or otherwise, as may be deemed most advantageous by the contracting parties;

To purchase or otherwise acquire, hold, sell, assign, transfer, mortgage, pledge, guarantee, exchange, or otherwise dispose of all or any part, whether less or more than a majority, of the shares of the capital stock of, or any bonds and other securities, or evidences of indebtedness, good will, rights, assets, property of any and every kind, or any part thereof, of other corporations of this or any other State; and while owners of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon; with power to designate some person for that purpose, from time to time to the same extent that natural persons might or could do.

In general to do all or anything in connection with the foregoing objects and incidental thereto as an individual owner might or could do, not prohibited by law.

The corporation may, upon the authority of the Board of Directors, for any and all lawful purposes, in the course of the transaction of the business and affairs of the corporation, execute and issue bonds and debentures and issue or cause to be issued certificates or other negotiable or transferable instruments, and pledge any and all of the assets of the corporation for the performance of the covenants of such bonds, debentures, certificates and other instruments, upon such terms and conditions as may be set out in the instrument pledging the same, or in any contract, deed, or instrument relating thereto.

To procure the company to be registered or recognized in any State, County, City or other municipality, of the United States, the Territories thereof, the District of Columbia, colonial possessions, or territorial acquisitions and in any foreign country or any city, town or municipality thereof.

To conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage, and convey real and personal property in or out of the State, in such places in the several States and Territories of the United States, the District of Columbia, Colonial possessions or Territorial acquisitions and in foreign countries as shall from time to time be found necessary or convenient for the purposes of the company's business.

Exhibit 42.

PEOPLES LIGHT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

SECOND: That the places in this State where the business of such company is to be conducted are the Towns of East Orange, Bloomfield and Montclair in the County of Essex, the Cities of Orange and Newark, in said County of Essex and the Towns of Harrison and Kearney and the City of Jersey City in the County of Hudson and that the objects for which the said company is formed are to construct, purchase, sell, lease and operate works and plants for the manufacture and distribution of Electricity, Steam and Gas for light, heat and power; to manufacture and distribute Electricity, Steam and Gas, for light, heat and power, to contract with private parties, municipal or other corporations for furnishing Electricity, Steam and Gas for light, heat and power, to string and lay wires both overhead and underground for the distribution of electricity and to lay conduits, mains and pipes for the distribution of steam and gas.

Exhibit 43.

THE NEWARK ELECTRIC LIGHT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

2nd. The place where the business of such company is to be conducted is the City of Newark, in the County of Essex and State of New Jersey and the object for which said Company is formed is to supply Electricity for illuminating purposes, mechanical purposes and other purposes adapted to its use.

Exhibit 44.

THOMSON-HOUSTON ELECTRIC COMPANY OF NEWARK, N. J.

EXTRACT FROM CERTIFICATE OF INCORPORATION

SECOND: That the place in this State where the the business of such company is to be conducted is the City of Newark, in the County of Essex and State of New Jersey, and that the objects for which the said company is formed are the furnishing of electric lights, electric power and heat for buildings, streets, and public places and to this end to purchase lands, to erect buildings thereon, and to purchase and erect therein machinery sufficient to produce electric lights, power and heat and to erect and furnish such a plant as may be necessary to supply customers of the company therewith.

Exhibit 45.

THE NEWARK SCHUYLER ELECTRIC LIGHT COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

SECOND: That the place in this State where the business of such company is to be conducted is the City of Newark, in the County of Essex and State of New Jersey, and that the objects for which the said Company is formed are to produce and furnish to customers electric light and power, to purchase land, erect buildings thereon, and to purchase patents, and rights for the production of electricity, and to erect poles, lines and conductors for the transmission of electricity for light and power.

Exhibit 46.

THE ESSEX COUNTY ELECTRIC COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

SECOND: That the places in this State where the business of such company is to be conducted are the City of Orange, in the County of Essex and other places in said County. The principal part of the business of said company is to be conducted in the said City of Orange. The objects for which said company is formed are the constructing, maintaining and operating works for the supply and distribution of electricity for electric light, heat or power; to lease or buy lands or buildings or machinery necessary for such construction, maintenance or operation; or to erect such buildings; to issue bonds, secured by a mortgage or mortgages upon the property and franchises of such company, and to sell the same for the purpose of raising money with which to construct, maintain or operate such works, and in general to do all lawful acts necessary and proper to attain the objects aforesaid.

Exhibit 47.

SUBURBAN ELECTRIC LIGHT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

SECOND: That the place in this State where the business of such company is to be conducted is the Township of East Orange, in the County of Essex, and such other points or places in the County of Essex as the said Company may erect a plant or secure a right to the distribution of electricity for the purposes of light or power, and that the objects for which the said company is formed are to produce and furnish to customers electric light and power; to purchase land and erect buildings thereon necessary and proper for the uses of the company in the conducting of its business; to purchase patents and rights for the production of electricity, and to erect poles, lines, conduits and conductors for the stringing or holding of wires and for the transmission of electricity thereon for light and power purposes; to lease or purchase any other plant or plants and operate the same, and to generally carry on and conduct the business of lighting by electricity and of the furnishing of power by electric motors.

Exhibit 48.

MONTCLAIR LIGHT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION.

SEVENTH: The works are to be constructed and the business of the Company carried on in the town of Montclair, county of Essex; and the Company is for the purpose of constructing, maintaining and operating an electric light and power plant in said town, and for the purpose of supplying said town and the inhabitants thereof with electricity; and for the purpose of constructing, maintaining and operating works in connection therewith, for the purpose of supplying electricity to such towns, cities, townships and villages, or the inhabitants thereof, as it may be lawful for it to supply for public and private uses, by contract with any of such towns, cities, townships and villages, made with their respective municipal or other authorities.

Exhibit 49.

THE CENTRAL POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION.

SECOND: That the place in this state where the business of such company is to be conducted is the City of Newark in the County of Essex, and State of New Jersey,

and that the objects for which the said company is formed are to purchase or lease central real estate in the City of Newark, Essex County, New Jersey, with buildings and machinery and erect other buildings and machinery, and to lease or sell the same, and to furnish and sell power for the use of the occupants of such buildings or others in the vicinity and to apply such lands, buildings and machinery to any other convenient and lawful uses.

Exhibit 50.

CONSUMERS' ELECTRIC LIGHT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION.

THIRD: The objects for which the said Company is formed are to produce, furnish, distribute, lease and sell electric light, heat and power, and to purchase, lease, construct, maintain and operate works for the supply and the distribution of electricity for electric light, heat and power in and throughout the County of Essex and adjoining Counties, and for that purpose to extend and maintain wires along and across the public streets and highway, and over private property, and also to purchase, lease, acquire and hold real estate in Essex County, and to lease or sell the same, and to lease, purchase, hold or to rent or sell machinery and other equipment in connection with the business of furnishing light, heat and power and to mortgage all such real and personal property and the franchise of the Company.

Exhibit 51.

EXCELSIOR ELECTRIC COMPANY OF HARRISON, NEW JERSEY

EXTRACT FROM CERTIFICATE OF INCORPORATION.

SECOND: That the places in this State where the business of such Company is to be conducted are the Township of Kearny and the Town of Harrison in the County of Hudson and State of New Jersey.

The principal part of the business of said Company within this State is to be transacted in the said Town of Harrison in the County of Hudson which is to be the principal place of business of the said Company, and the place where its principal office is to be located. And that the objects for which the Company is formed are to manufacture, furnish and sell electric light, heat and power; to buy lands and to erect buildings and machinery thereon for the purposes of such manufacture.

Exhibit 52.

KEARNEY ELECTRIC LIGHT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION.

And that the objects for which the Company is formed are to manufacture, generate, store, deal in, furnish and supply electricity for arc and incandescent electric lights, and for electric light heat and power, and also to carry on all business in connection therewith; to sell and supply the said light heat and power, or either of them, to persons, corporations, Boards of Township Committees, or other governing bodies of Towns, Townships, or any municipality desiring to purchase the same, for the purpose of private lighting, or the lighting of street buildings and other public place, in Townships, Towns or other municipalities; and to sell and deal in appliances necessarily used in connection with the same and pertaining thereto; also to purchase contracts made by private corporations, Boards of Township Committees, or other governing bodies of Townships, Towns and other municipalities with any person or persons for selling or purchasing and supplying arc and incandescent electric lights, or either of them, or electric light, heat or power, or either of them for a term of terms of years for any of the purposes aforesaid, and to lease or buy lands, and to erect thereon buildings and machinery for the purpose aforesaid; to issue bonds secured by a mortgage or mortgages upon the property and franchises of the company, and to sell the same for the purpose of raising money with which to erect buildings and machinery and to erect operate and maintain telephone and tele-

phone poles and wires, and do a general telephone business in said Township and elsewhere and to do any and all things necessary to the proper installations, introductions, operation and maintaining of the said electric light, heat, power and telephone business.

The portion of the business of said Company which is to be carried on out of this State is the purchasing of machinery and material necessary to carry into effect the objects of the said company, and the transaction of all business necessary to the financial conduct and operation of the said company's business, or necessary in purchasing, renting, leasing or paying for machinery, material, supplies or real estate, or offices.

Exhibit 53.

HUDSON COUNTY ELECTRIC COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION.

SECOND: That the place in this State where the business of such company is to be conducted is the county of Hudson; that the objects for which said company is formed are the supply, distribution and sale of electricity for light, heat and power in the cities, towns, and townships of said County of Hudson; that the principal office of the company in the State of New Jersey shall be located in the city of Jersey City.

Exhibit 54.

BAXTER ELECTRIC LIGHT COMPANY OF NEW JERSEY

EXTRACT FROM CERTIFICATE OF INCORPORATION.

OBJECTS: The objects of the Company are to establish and build electric lighting stations and furnish electric lights for public and private use.

Exhibit 55.

NORTH HUDSON LIGHT, HEAT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: The objects for which this corporation is formed are the constructing, purchasing, leasing, maintaining and operating works, with all the appliances, patents and appurtenances necessary thereto, as are now or may hereafter be used, for the manufacture and production, supply and distribution of electricity for electric lights, heat, power or any other purpose; and for the manufacture and production, supply and distribution of heat and power by steam or any other method, in, to and through the County of Hudson and all the municipalities and places contained in said County, and to all persons and corporations residing, locating or located therein; to purchase, receive, hold and own bonds, mortgages, debentures, notes, shares of capital stock and other securities, obligations, contracts evidences of indebtedness of any other corporation that may be advisable or necessary for the accomplishment of the objects of this Company.

Exhibit 56.

HUDSON ELECTRIC LIGHT COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

And that the objects for which the Company is formed are to manufacture and furnish light by means of electricity, or any other means, in said City of Hoboken in the County of Hudson and State of New Jersey.

The portion of the business of said Company which is to be carried on out of this State is the Keeping of its books of account stock & transfer books excepted and all such other business of the said Company, as does not pertain directly to the practical manufacture and furnishing of the said light.

Exhibit 57.

CONSUMERS LIGHT, HEAT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: The objects for which this corporation is formed are the constructing, purchasing, leasing, maintaining and operating works, with all the appliances and appurtenances necessary thereto, for the supply and distribution of electricity for electric lights, heat and power to the counties of Middlesex, Union, Essex and Hudson, and all the municipalities contained in said counties, and to all persons, natural or artificial, residing or locating or located therein.

Exhibit 58.

SUBURBAN ELECTRIC COMPANY

EXTRACT FROM CERTIFICATE OF ORGANIZATION.

And that the objects for which the Company is formed are to produce, generate, store, distribute, transmit, use, buy, sell and deal in gas, steam, electricity or other commodities or manufactured products for light, heat, power or other commercial or manufacturing purposes for which the same are now or hereafter may be utilized; to manufacture, buy, sell and deal in any and all appliances, machinery, equipments or supplies which may be required or used in and about the production, storing or distributing of heat, light and motor power, whether by or from gas, steam, electricity or other means; to purchase, lease, or otherwise acquire, construct, equip, hold, manage and maintain railways to be operated with electricity, steam, gas, animal, or other motor power; to acquire, maintain, sell or exchange the lands, buildings, machinery, apparatus, posts, wires, fixtures and such other property, real or personal as may be necessary for the purposes aforesaid; to purchase, lease, receive or otherwise secure such franchises, rights of way, licenses, grants, or permits as may now or hereafter be necessary and proper for the objects for which said company is formed; to acquire, hold, sell, and transfer stocks, bonds, securities, obligations, contracts, grants, concessions and franchises of every kind and goods, wares and merchandise and real and personal property and to lease mortgage or pledge both real estate and personal property; excepting always and excluding from the foregoing provisions and each and every one thereof such mat-

ters as are prohibited by law to corporations formed under the act.

The portion of the business of said Company which is to be carried on out of this State is the buying, selling and dealing in the manufactured products of said company.

Exhibit 59.

THE ELIZABETH SCHUYLER ELECTRIC COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

SECOND: That the place in this State where the business of such company is to be conducted is the City of Elizabeth in the County of Union and that the objects for which the Company is formed are to manufacture transmit use and sell electricity for light and power and to purchase lease or otherwise acquire, and maintain the lands, buildings, machinery, apparatus, posts, wires and other fixtures necessary therefor.

Exhibit 60.

THE UNION COUNTY ELECTRIC COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: The objects for which the said Company is formed are:

(1) To construct, acquire, maintain, operate, purchase and sell works, machinery, apparatus and implements of all kinds for generating, producing, supplying and transmitting electricity, and adapting and applying the same for the purpose of furnishing light, heat and power.

(2) To manufacture, generate and sell electricity for lighting, fuel and other purposes and to transmit and supply the same through appropriate conductors.

(3) To furnish electrical power and equipment of all kinds for purposes of locomotion and to transmit passengers, freight and merchandise, and to operate machinery of all kinds.

(4) To form promote and aid in the construction of, and to control and manage under lease or otherwise, plants, works, implements, machinery and apparatus for generating, utilizing and transmitting light, heat or power by electricity, and for applying the same to practical uses and purposes.

(5) To transact and carry on any and all kinds of business in any way appertaining to, or connected with, the manufacture, generation, distribution and supplying of electricity for the purpose of furnishing light, heat and power, both according to methods now in use and in all other ways that may hereafter be discovered or devised.

(6) To acquire, hold, sell, and transfer stocks, bonds, securities, obligations, contracts, grants,

concessions and franchises of every kind, and goods, wares and merchandise, and real and personal property and to lease, mortgage or pledge both real estate and personal property.

(7) To do all and every necessary and proper thing for the attainment of any of the objects hereinbefore enumerated, either alone or by co-operation with other corporations or with firms or individuals, excepting always and excluding from each and all of the provisions hereof such matters as are prohibited by law.

Exhibit 61.

THE MORRISTOWN ELECTRIC LIGHT HEAT AND POWER CO.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

THIRD: That the objects for which said Company is formed are as follows:

The manufacturing and generating, dealing in, furnishing and supplying of electricity, light, heat and power;

And also the manufacturing and generating of electricity, fuel-gas and steam, and the supplying of the same, through appropriate conductors;

And also the carrying on of any and all business in anywise appertaining to, or connected with, the manufacturing and generating, distributing and furnishing of electricity, steam and fuel-gas, for heat, power, and light purposes, including the transaction of any and all business in which electricity, gas, artificial or natural or steam, is now or hereafter may be utilized, and all matters incidental or necessary to the distribution of light, heat and power, or the cause or manner of, or means by which light, heat and power are or may hereafter be produced, conducted or utilized.

Also the production, sale and supply of all and every kind of light, heat and power, in every way, manner, and by every means not prohibited by the Laws of the State of New Jersey to corporations formed under this act.

And also the manufacturing, selling and dealing in any and all the necessary appliances used in or which may be required or deemed advisable for or in connection with the utilization of any

and all of the foregoing, or in anywise appertaining thereto or connected therewith;

Excepting always and excluding from the foregoing provisions, and each and every one thereof, such matters as are prohibited by law to corporations formed under this act.

And also the manufacture and sale of any and all products arising from the aforesaid operations, and the carrying on of a general mercantile business if required or desired in connection with the said business.

Including the purchase, sale and exchange of real and personal property of every kind, the leasing, purchasing, holding, selling, assigning, conveying, mortgaging and exchanging real or personal property or contracts, of every name and nature, and the doing of any and all other things, and the carrying on of any and all other business operations which may be necessary and advisable in connection therewith, and which are or may be authorized by the Laws of the State of New Jersey, under which this Company is formed.

Exhibit 62.

THE BOONTON ELECTRIC LIGHT, HEAT AND POWER COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

THIRD: That the objects for which said Company is formed are as follows:

The manufacturing and generating, storing, dealing in, furnishing and supplying of electricity, light, heat and power.

And also the manufacturing, generating and storing of electricity, fuel gas and steam and the supplying of the same through appropriate conductors.

And also the carrying on of any and all business in any wise appertaining to, or connected with, the manufacturing and generating, storing, distributing and furnishing of electricity, steam and fuel gas, for heat, power and light purposes, including the transactions of any and all business in which electricity, gas, artificial or natural, or steam is now or hereafter may be utilized, and all matters incidental or necessary to the distribution of light, heat and power, or the cause or manner of, or means by which, light, heat and power are or may hereafter be produced, stored, conducted or utilized.

And also the production, storing, sale and supply of all and every kind of light, heat and power in every way, manner and by every means not prohibited by the laws of the State of New Jersey, to corporations formed under this act. And also the manufacturing, selling and dealing in any and all the necessary appliances used in, or which may be required or deemed advisable for or in connection with the utilization of any

and all the foregoing, or in anywise appertaining thereto, or connected therewith.

Excepting always and excluding from the foregoing provisions, and each and every one thereof, such matters as are prohibited by law to corporations formed under this act.

And also the manufacturing and sale of any and all products arising from the aforesaid operations, and the carrying on of a general mercantile business if required or desired in connection with the said business;

Including the purchase, sale and exchange of real and personal property of every kind, the leasing, purchasing, holding selling, assigning, conveying, mortgaging and exchanging, real or personal property, or contracts, of every name and nature, and the doing of any and all other things, and the carrying on or any and all other business operations which may be necessary and advisable in connection therewith, and which are or may be authorized by the laws of the State of New Jersey under which this Company is formed.

Exhibit 63.

BURLINGTON ELECTRIC LIGHT AND POWER COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

The objects for which the said company is formed are, to erect poles, wires and other appliances for street and domestic lighting by the use and means of electricity; to convey *convey* electric power for the operation of engines or other motors; to erect buildings and machinery for generating electricity for said lighting and other purposes; to sell the light and power so generated; to buy lands and erect machinery for the purposes of the said business; to issue bonds secured by a mortgage or mortgages on the property and franchise of said company, and to sell the same for the purpose of raising money with which to build machinery and buildings and keeping up and maintaining said electric lighting system, and in general to do and perform all acts and powers and possess and enjoy all powers, rights and privileges for the successful management of an electric lighting and electric power company.

Exhibit 64.

CITIZENS ELECTRIC LIGHT, HEAT AND POWER COMPANY.

EXTRACT FROM AMENDED CERTIFICATE OF INCORPORATION.

THIRD: The object for which said company is formed is to furnish light, heat and power for domestic and public use in New Jersey;

(a) To accomplish said object, said company shall have power to construct, purchase, maintain and operate plants and works, buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

(b) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

(c) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be necessary.

Exhibit 65.

THE CARTARET ELECTRIC LIGHT AND POWER COMPANY.

EXTRACT FROM CERTIFICATE OF INCORPORATION.

THIRD: The objects for which the said Company is formed are:

(1) To construct, acquire, maintain, operate, purchase and sell works, machinery, apparatus and implements of all kinds for generating, producing, supplying and transmitting electricity, and adapting and applying the same for the purpose of furnishing light, heat and power.

(2) To manufacture, generate and sell electricity for lighting, fuel and other purposes and to transmit and supply the same through appropriate conductors.

To furnish electrical power and equipment of all kinds for purpose of locomotion and to transmit passengers, freight and merchandise, and to operate machinery of all kinds.

(4) To form, promote and aid in the construction of, and to control and manage under lease or otherwise, plants, works, implements, machinery and apparatus for generating, utilizing and transmitting light, heat or power by electricity, and for applying the same to practical uses and purposes.

(5) To transmit and carry on any and all kinds of business in any way appertaining to, or connected with, the manufacture, generation, distribution and supplying of electricity for the purpose of furnishing light, heat and power, both according to methods now in use and in all other ways that may hereafter be discovered or devised.

(6) To acquire, hold, sell and transfer stocks, bonds, securities, obligations, contracts, grants, concessions and franchises of every kind, and goods, wares and merchandise and real and personal property and to lease, mortgage or pledge both real and personal property.

(7) To do all and every necessary and proper thing for the attainment of any of the objects hereinbefore enumerated, either alone or by co-operation with other corporations, or with firms or individuals excepting always and excluding from each and all of the provisions hereof such matters as are prohibited by law.

Exhibit 66.

MIDDLESEX LIGHTING COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: The objects for which the said corporation is formed are:

To manufacture, generate, buy, sell, accumulate, store, transmit, furnish and distribute electric current for light, heat and power;

To manufacture, buy, sell, lease, let or operate any or all machinery or appliances for the manufacture, generation, storage, accumulation, transmission or distribution of any or all types of electric current, and any or all manner of electric machinery, apparatus or supplies of any nature or kind whatsoever;

To erect, buy, sell, operate, lease and let power plants and generating stations for the manufacture, generation, accumulation, storage, transmission and distribution of electric current and any or all machinery used therein or in connection therewith;

To manufacture, buy, sell, lease and let fixtures, chandeliers, electroliers, brackets, lamps, globes and other supplies and appurtenances used for or in connection with the manufacture, generation, accumulation, storage, transmission, distribution or use of electric current for light, heat or power or otherwise, and to carry on a general business of electricians, mechanical engineers, suppliers of electricity for the purpose of light, heat or power or otherwise, and install, erect and operate, sell or lease wires, cables and fixtures, both interior and exterior, for the transmission and use of electric current, and manufacture and deal in all apparatus and things required for or capable of be-

ing used in connection with the generation, distribution, supply, accumulation and employment of electricity;

To buy, sell, operate or lease pole lines, erect poles, string electric wires thereon, or on poles of other individuals or corporations on any and all streets, avenues, highways and roads of counties, townships, towns, villages, and cities, and over or under any and all canals and other waterways, and across any and all bridges, and to use the same for the transmission of electric current either for delivery to consumers on such lines or for transmission of current to vendors to consumers, and to sell or lease to other individuals or corporations the right to string electric wires on or attach electric wires to any or all poles so erected, owned or leased, and to use such lines both as through lines and for local delivery;

To build and construct and use, for any of the purposes stated above, underground subways or conduits in such streets, avenues, highways and roads and under such canals and other waterways, and string electric wires or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation the right to string and to use as aforesaid electric wires or conductors in any such subways;

To buy, own, sell, mortgage and otherwise dispose of the stock, bonds, securities and evidences of indebtedness of other corporations, and to acquire the rights, privileges and franchises of other existing corporations, either by purchase, leases, or agreements, and to operate the same;

To apply for, register, purchase, lease or otherwise acquire, and to hold, use, rent, operate, introduce and sell or otherwise dispose of all trademarks, inventions, improvements or processes

used in connection with the aforesaid business or any part thereof, including such as may be secured under letters Patent of the United States or other countries, and such as are not secured, and to grant licenses in respect thereto, and otherwise generally to turn the same to account;

To erect and construct for other corporations and for municipalities and individuals, works, plants and extensions of plants and equip the same, for the production, use, sale, supply and delivery of the foregoing or any or either of them or any part thereof, and to lease or operate the same, and to lease to or operate for others, works and plants already constructed, in whole or in part, either in the name of such other corporations, municipalities, or individuals or in the name of this company or otherwise, as may be deemed most advantageous by the contractng parties;

To purchase, or otherwise acquire, hold, sell, assign, transfer, mortgage, pledge, guarantee, exchange or otherwise dispose of all or any part, whether less or more than a majority of the shares of the capital stock, of, or any bonds and other securities, or evidences of indebtedness, good will, rights, assets, property of any and every kind, or any part thereof, of other corporations of this or any other State; and while owners of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon; with power to designate some person for that purpose, from time to time to the same extent that natural persons might or could do.

In general to do all or anything in connection with the foregoing objects and incidental thereto as an individual owner might or could do, not prohibited by law.

The corporation may, upon the authority of the Board of Directors, for any and all lawful

purposes, in the course of the transaction of the business and affairs of the corporation, execute and issue bonds and debentures and issue or cause to be issued certificates or other negotiable or transferable instruments, and pledge any and all of the assets of the corporation for the performance of the covenants of such bonds, debentures, certificates and other instruments, upon such terms and conditions as may be set out in the instrument pledging the same, or in any contract, deed, or instrument relating thereto.

To procure the company to be registered or recognized in any State, County, City, or other municipality of the United States, the Territories thereof, the District of Columbia, Colonial possessions, or territorial acquisitions and in any foreign country or any city, town or municipality thereof:

To conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage, and convey real and personal property in or out of the State, in such places in the several States and Territories of the United States, the District of Columbia, Colonial possessions or Territorial acquisitions and in foreign countries as shall from time to time be found necessary or convenient for the purposes of the Company's business.

Exhibit 67.

THE MORRISTOWN GAS LIGHT COMPANY

EXTRACT FROM CHARTER

BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That John F. Voorhees, William N. Wood, Albert H. Stanburrough, Augustus W. Cutter, and George T. Cobb, and all and every person or persons who may become subscribers according to the mode herein after prescribed, and their successors, are hereby created a body politic and corporate, in fact, by the name of "the Morristown Gas Light Company," and, by the same name, the said corporation shall have power and authority to manufacture, make, and sell gas, to be made of bituminous coal or other materials, for the purpose of lighting the streets, buildings, manufactories, and other places, situated in Morristown and its vicinity, and to enter into and execute contracts, agreements, or covenants in relation to the objects of this corporation, and of enforcing the same and be capable of purchasing, taking, and holding any estate, real and personal, necessary to give effect to the specified purposes of this corporation, for the accommodation of their business and concerns, or which it may be necessary for the said corporation to acquire and hold for the purpose of securing debts which have become due to them in the regular business of the said corporation; provided, that the said real estate shall not exceed what may be necessary for the purposes mentioned: and no private lands shall be in any way injured or defaced, without permission fully obtained in writing from the owner or owners thereof.

2. And be it enacted, That the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners, and reflectors in the streets, alleys lanes, avenues, and public grounds of Morristown and its vicinity, and the dwellings, stores, and other places situated therein; provided, that the public travel shall at no time be affected or impeded by the laying of the said pipes or the erection of the said posts; and the streets, side and cross walks, public grounds, lanes and avenues, shall not be injured, but all be left in as good and perfect condition as before the laying of the said pipes or the erection of the said posts.

Exhibit 68.

THE NICHOLS ELECTRIC LIGHT AND POWER COMPANY OF NUTLEY, N. J.

EXTRACT FROM CERTIFICATE OF INCORPORATION

SECOND: That the place in this State where the business of such Company is to be conducted is Nutley in the Township of Franklin, in the County of Essex, and such other points or places in the County of Essex and elsewhere, as the said Company may erect a plant or secure a right to the distribution of electricity for the purposes of light or power, and that the objects for which the said Company is formed are to produce and furnish to customers electric light and power; to purchase land and erect buildings thereon necessary and proper for the uses of the Company in the conducting of its business; to purchase patents and patent rights for the production of electricity and to erect poles, lines, conduits, and conductors for the stringing or holding of wires and for the transmission of electricity thereon for light and power purposes; to lease or purchase any other plant or plants and operate the same and to generally carry on and conduct the business of lighting by electricity and of the furnishing of power by electric motors.

Exhibit 69.

THE HOPEWELL ELECTRIC LIGHT, HEAT AND POWER COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: The objects for which this corporation is formed are, (1) To carry on the business of an electric light, heat and power company, in all its branches, and in particular to construct, lay down, establish, fix and carry out, all necessary conduits or subways, cables, pole lines, wires, lamps, streets, markets, buildings, and, places, both public and private, or to enable the same so to be lighted, to construct, maintain and operate works for the supply and distribution of electricity for electric light, heat and power; to carry on the business of supplies of light and power and carriers of passengers and goods by land and by water in all its branches; to acquire the right to use or manufacture and put up telephones, telegraphs, phonographs and all electrical apparatus now known or that may hereafter be invented, including all wires or appliances for connecting electric apparatus at a distance with other electric apparatus.

(2) To carry on the business of electricians, mechanical engineers, and manufacturers of and dealers in all apparatus and things required for or capable of being used in connection with the generation, distribution, supply, accumulation and employment of electricity.

(3) To purchase, hold, sell and convey such real or personal estate as the purposes of the corporation and the proper and convenient conduct of its business shall require; also, to issue bonds secured by a mortgage or mortgages upon the property and franchises of said corporation, and to sell the

same for the purpose of raising money with which to carry on the business of said corporation, or to purchase any real or personal property needed or convenient for the prosecution of the work of the corporation, to lease and occupy any lands and buildings that may be desired for the purposes of the corporation.

(4) To purchase, hold, acquire, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock or other evidences of indebtedness created by other corporations, created under the law of this or any other state, and while the holder of such stock to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

The corporation shall also have power to conduct its business in all its branches have one or more offices, and to hold, purchase, mortgage and convey real and personal property outside of the State of New Jersey, and in all other states, and in all foreign countries, and especially in the city of Philadelphia, in the State of Pennsylvania.

Exhibit 70.

PRINCETON ELECTRIC WORKS

EXTRACT FROM CERTIFICATE OF INCORPORATION

THIRD: The objects for which this corporation is formed are

(1) To carry on the business of an electric light, heat, and power company, in all its branches and in particular to construct, lay down, establish, fix and carry out, all necessary conduits or subways, cables, pole lines, wires, lamps, fixtures, and works, and to generate, accumulate, distribute and supply electricity, and to light cities, towns or other municipalities, streets, markets, buildings, and, places, both public and private, or to enable the same so to be lighted, to construct, maintain and operate works for the supply and distribution of electricity for electric light, heat and power; to carry on the business of suppliers of light and power and carriers of passengers and goods by land and by water in all its branches; to acquire the right to use or manufacture and put up telephones, telegraphs, phonographs and all electrical apparatus now known or that may hereafter be invented, including all wires or appliances for connecting electric apparatus at a distance with other electric apparatus.

(2) To carry on the business of electricians, mechanical engineers, and manufacturers of and dealers in all apparatus and things required for or capable of being used in connection with the generation, distribution, supply, accumulation and employment of electricity.

(3) To purchase, hold, sell and convey such real or personal estate as the purposes of the corporation and the proper and convenient conduct of its

business shall require; also, to issue bonds secured by a mortgage or mortgages upon the property and franchises of said corporation, and to sell the same for the purpose of raising money with which to carry on the business of said corporation, or to purchase any real or personal property needed or convenient for the prosecution of the work of the corporation, to lease and occupy any lands and buildings that may be desired for the purposes of the corporation.

(4) To purchase, hold, acquire, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock or other evidences of indebtedness created by other corporations, created under the law of this or any other state, and while the holder of such stock to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

The corporation shall also have power to conduct its business in all its branches, have one or more offices, and to hold, purchase, mortgage and convey real and personal property outside of the State of New Jersey, and in all other states, and in all foreign countries, and especially in the city of Philadelphia, in the State of Pennsylvania.

Exhibit 71.

THE PRINCETON GAS LIGHT COMPANY

EXTRACT FROM CHARTER

. . . the said corporation shall have power and authority to manufacture, make, and sell gas, for the purpose of lighting the streets, buildings, manufactories, and other places, situated in the borough of Princeton. * * *

10. And be it enacted, That the said corporation shall possess the general powers, and be subject to the restrictions and liabilities, contained in the act entitled, "An act concerning corporations," approved the fourteenth day of February, eighteen hundred and forty-six, so far as the same are applicable.

Exhibit 72.

WEEHAWKEN CONTRACTING COMPANY

EXTRACT FROM CERTIFICATE OF INCORPORATION.

THIRD: The objects for which the Corporation is formed are:

(1) To engage in and carrying on the business of laying, constructing building, cleaning, repairing and pumping sewers, drains and outlets of every kind and nature, and to buy, lease, hire, and acquire any and all appliances, apparatus, machinery. pumps, patents, and things that are or may be useful or necessary for said business.

To make, produce, accumulate, transmit, buy, sell and dispose of electricity to any and all persons, firms and corporations, private, public, municipal or body politic, for light, power or any other object, and to buy, lease, hire and acquire any and all appliances, apparatus, machinery, patents and things that are or may be useful or necessary in connection therewith.

To plan, build, construct, manufacture, acquire, buy, sell and patent any and all kinds of electrical steam and mechanical devices, machines, engines, pumps and appliances.

To purchase, acquire, take on lease or in exchange any real or personal property, and plan, contract for, erect, build, lease, buy, hire or otherwise acquire any building, house or structure.

To obtain, accept, use and enjoy any and all kinds of permits, rights, privileges and franchises, municipal, private or otherwise.

To enter into, make and carry out any and all contracts, of any and every nature, with any and all persons, firms and corporations, private, public, municipal all dwellings, stores, mines, tunnels,

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and other places; provided, that public travel shall not be unreasonably and unnecessarily obstructed thereby, and that the said corporation shall put such streets, roads, highways and public grounds in as good condition as the same were before laying said pipes and erecting said posts.

Answer.

Filed August 10, 1927.

IN CHANCERY OF NEW JERSEY.

R. IRVING OUTWATER, *et al.*,
Complainants,

vs.

PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et al.*,
Defendants.

On Bill, &c.
Answer.

The joint and several answer of the defendants Public Service Corporation of New Jersey, Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, Samuel T. Bodine, Thomas S. Gates, Anthony R. Kuser, Thomas N. McCarter, Uzal H. McCarter, Arthur W. Thompson, Edmund W. Wakelee, Percy S. Young, Charles M. Breder, Augustus J. Brunson, Harry B. MacDonald, William H. Pope, and T. Wilson Van Middlesworth.

These defendants above named, jointly and severally answering the bill of complaint, say that:

1. They admit the statements in paragraph 1 of the bill of complaint that the complainants Outwater and Wells, are and were prior to April 26, 1927, the holders of record of 50 shares of stock of Essex and Hudson Gas Company, 150 shares of stock of Hudson County Gas Company and 124

shares of the stock of The Paterson and Passaic Gas and Electric Company, and these defendants further admit that the complainants, Roosevelt & Sons, as partners, are and were prior to April 26, 1927, holders of record of 88 shares of stock of Somerset, Union and Middlesex Lighting Company, but these defendants do not admit that said complainants are, or any of them was, prior to said day of April, 1927, the owners or owner of any of the shares of stock mentioned in said paragraph, and these defendants have no knowledge or information on that subject sufficient to form a belief.

2. These defendants admit the statements in paragraphs numbered 2 to 9 inclusive, of the bill of complaint.

3. These defendants admit the statements in paragraph 10 of the bill of complaint, except the statement that Public Service Corporation of New Jersey is the owner of all of the common stock of Public Service Electric and Gas Company, all of the common stock of Public Service Railway Company, all of the common stock of Public Service Transportation Company, all of the common stock of Public Service Production Company, and all of the stock of other smaller companies engaged in business in the State of New Jersey, and state the fact to be that the directors of those companies are the owners of shares of stock therein.

4. These defendants deny the statements in paragraph 11 of the bill of complaint.

5. They admit the statements in paragraphs 12 to 50, inclusive, of the bill of complaint, asking leave, however, to correct any mistakes or

omissions that may be discovered in said paragraphs by comparison with the documents referred to therein, and to supply amendments thereof and supplements to said documents.

6. They admit paragraphs 51 and 52 of the bill of complaint, except the statements at the end of each of said paragraphs that on the date of the assignment of the leases therein mentioned Public Service Corporation of New Jersey owned all the capital stock of Public Service Gas Company, and all the capital stock of Public Service Electric Company.

7. They admit the statements of fact in paragraphs 53 and 54 of said bill of complaint, except the statement at the end of paragraph 54 that at all times since the organization of Public Service Electric and Gas Company all of its capital stock, and twenty million par value of its 7% cumulative preferred stock (except a few shares of the latter) have been owned by Public Service Corporation of New Jersey, and allege the fact to be that the directors of said Electric and Gas Company are the owners of a few of its shares of stock.

8. They admit the statements in paragraphs 55 and 56 of the bill of complaint.

9. Defendants admit that since the leases referred to in paragraph 57 of the bill of complaint were made, the respective lessees have, from time to time, made extensive and valuable extensions, additions and improvements to and upon the respective demised premises, and that such extensions, additions and improvements have been treated as part and parcel of the respective demised

premises, as provided in the respective leases; the cost of such extensions, additions and improvements has not been entered upon the books, records or accounts of the lessor companies.

10. These defendants deny the statements in paragraph 58 of the bill of complaint.

11. They admit the statement in paragraph 59 of said bill of complaint, subject to the reservation stated in paragraph 5 hereof.

12. These defendants admit the statements in paragraphs 60 and 61 of said bill of complaint, and ask leave to refer to the plan mentioned in paragraph 61 for a complete statement of its terms.

13. They admit the statements in paragraphs 62 to 70 of said bill of complaint, inclusive, subject to the reservation set forth in paragraph 5 hereof.

14. They admit the statement in paragraph 71 of the bill of complaint, that it was part of the plan referred to in paragraph 61 that other gas and electric companies should be merged or consolidated with Public Service Electric and Gas Company, and state that the purposes for which it is proposed to make such mergers and consolidations were to carry out said plan, and for no other purpose.

15. Answering paragraph 72 of the bill of complaint, these defendants admit that pursuant to said plan Public Service Corporation of New Jersey and Public Service Electric and Gas Company joined in an offer made under date of January 10, 1927, to stockholders of certain corpora-

tions named in said paragraph, and that a true copy of said proposition is annexed to the bill of complaint, marked Exhibit 8, and these defendants state that the purposes for which said proposition was made are set forth in said plan and offer and for no other purpose.

16. They admit the statements in paragraph 73 of the bill of complaint, subject to the reservation set forth in paragraph 5 hereof.

17. Replying to paragraph 74 of the bill of complaint, these defendants say that at and before the time of the making of said offer of January 10, 1927, therein referred to, Public Service Electric and Gas Company owned 4,224 shares and Public Service Corporation of New Jersey owned 93 shares of the 10,500 shares of the capital stock of Somerset, Union and Middlesex Lighting Company, or approximately 41%. At and before said day of January, Public Service Electric and Gas Company owned 2,697 shares of the 50,000 shares outstanding of The Paterson and Passaic Gas and Electric Company, and Public Service Corporation of New Jersey owned none of said stock of The Paterson and Passaic Gas and Electric Company. At and before said day of January, 1927, neither Public Service Corporation of New Jersey nor Public Service Electric and Gas Company owned any shares of the capital stock of Essex and Hudson Gas Company, or of Hudson County Gas Company, but one share of stock of New Brunswick Light, Heat and Power Company, of the 4,000 shares of stock of that company outstanding, was owned by Public Service Corporation of New Jersey. These defendants further say that the remaining part of paragraph 74 is so indefinite

that they are unable to answer it. A statement in tabular form of the stock holdings as set forth in this paragraph is hereto annexed marked Exhibit 7 and made a part hereof.

18. These defendants admit the statements in paragraphs 75, 76, 77, 78, 79, 80, 81, 82 and 83 of the bill of complaint, subject to the reservation set forth in paragraph 5 hereof.

19. They admit the following statement in paragraph 84 of the bill of complaint:

> "It was provided in said Offer and Deposit Agreement, by mutual agreement between Public Service Corporation of New Jersey and Public Service Electric and Gas Company, that Public Service Corporation of New Jersey would assign and transfer to Public Service Electric and Gas Company the shares of the lessor companies acquired by it pursuant to Options B and C and that in exchange therefor Public Service Electric and Gas Company would issue its 6% Cumulative Preferred stock, 1925 series, in amounts such that the dividend on such Preferred stock at 6% would equal the dividends on the stocks of the said lessor companies so acquired at the respective rates of dividend formerly paid thereon."

and deny the statements in the rest of said paragraph.

20. They admit the statements in paragraphs 85, 86, 87 and 88 of the bill of complaint.

21. Answering paragraph 89 of the bill of complaint, the defendants Public Service Cor-

poration of New Jersey and Public Service Electric and Gas Company, say that it is their intention at present to vote the stock which they now hold in the lessor companies, parties to the proposed agreement, Exhibit 10 annexed to the bill of complaint, for the adoption of the said proposed agreement at the meetings of the stockholders of said lessor companies that have been called for the purpose of taking the same into consideration, but whether these defendants, Public Service Corporation of New Jersey and Public Service Electric and Gas Company, or either of them, shall vote the said stock of said lessor companies for the adoption of said proposed agreement depends upon conditions that may exist at the time when the vote thereon shall be taken; and these defendants Public Service Corporation of New Jersey and Public Service Electric and Gas Company deny said paragraph 89 in so far as it is inconsistent herewith.

22. They admit the statements in paragraphs 90 to 99 inclusive of the bill of complaint, subject to correction, if necessary, by reference to Exhibits 1 and 10 annexed to the bill of complaint.

23. These defendants, answering paragraph 100 of said bill of complaint, deny that either the intrinsic or market value of the stock of the lessor companies is greater than that of the preferred stock proposed to be issued in exchange therefor or was greater when the proposition of January 10, 1927, (Exhibit 8 annexed to the bill of complaint) was made, and if there was any increase in the market price of the stock of said lessor companies over the increase of the market

price of the stock proposed to be issued in exchange since said proposition was made, it was temporary and due to stock manipulation and not to any variation in the relative value of the stocks of the lessor companies, and the stock of Public Service Electric and Gas Company.

24. They admit the statements in paragraphs 101 to 106, inclusive, of the bill of complaint.

25. Answering paragraph 107 of the bill of complaint, these defendants say that the security of the stock of the lessor companies is due to the prosperity and financial strength of the lessee and is inherent in the value of the stock of the lessee offered in exchange for stock of the lessor companies.

26. The statements in paragraphs 108 to 122, inclusive, are admitted.

27. These defendants deny the statements in paragraph 123 of the bill of complaint.

28. These defendants deny the statement in paragraph 124 of the bill, that by reason of facts and circumstances stated therein the directors of the lessor companies were and are unable to and did not exercise unbiased, uncontrolled and independent judgment in formulating the proposed merger agreement. They also deny that the directors referred to in said paragraph permitted themselves to be dominated and controlled by Public Service Corporation of New Jersey and Public Service Electric and Gas Company, and ignored various considerations and

facts which should have led them in the exercise of an unbiased, uncontrolled and independent judgment to refuse to make the proposed merger agreement, or to submit the same to the stockholders for adoption. On the contrary these individual defendants say that the said proposition and offer and the proposed merger agreement were prepared in consultation with the most eminent bankers in the country after long investigation and impartial consideration of all pertinent facts.

29. These defendants, further answering, deny the statement in paragraph 125 of the bill of complaint, that the proposed merger agreement is inequitable, unfair to the complainants, oppressive and destructive of their rights and interests as stockholders, and also deny the statements in said paragraph, and the validity of the arguments set forth in subdivisions (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (*g*) of said paragraph, whereby complainants endeavor to sustain the charges made at the beginning of said paragraph.

30. These defendants deny the charge in paragraph 126 of said bill, that the proposed merger is inequitable, unfair to the complainants, oppressive and destructive of their rights and interests as stockholders and of the lessor companies, and also deny the statements in subdivisions (*a*), (*b*) and (*c*) of said paragraph, that the proposed merger is not designed in good faith for the common benefit of the whole body of stockholders of the several lessor companies, and of said companies, but is designed by the lessee company, meaning Public Service Electric and Gas Company, to accomplish

the acquisition by it of the valuable properties and franchises of the lessor companies on terms formulated by it and forced upon the lessor companies by its control and domination thereof, and further deny the statement in said subdivisions of paragraph 126 that said proposed merger agreement is designed by the lessee company to accomplish the extinguishment and annulment by it of its obligations as lessee on terms dictated by it and forced upon the lessor companies by its control and domination thereof, with the resulting destruction of the vested rights, benefits and advantages of the lessor companies and their stockholders under the leases; and these defendants also deny the statements in subdivisions (*a*), (*b*) and (*c*) of said paragraph 126, that the said lessee, meaning Public Service Electric and Gas Company, proposes to get control of the stocks of the lessor companies, not for the common benefit of the whole body of stockholders of the lessor companies, but for its own peculiar and selfish benefit, by the appropriation by it of the properties and assets of the lessor companies, to the disadvantage and partial exclusion therefrom of other stockholders. On the contrary, these defendants say that the holders of more than two-thirds of the stock of the lessor companies, parties to said proposed merger agreement, accepted the offer set forth in the proposition dated January 10th, 1927, Exhibit 8 annexed to the bill of complaint, knowing that the proposed merger agreement was to be made, and it was not until after their acceptance had been received that the directors of the companies, parties to said proposed agreement of merger, entered into the same and called meetings of the stockholders of the several companies to consider it.

31. In reply to paragraph 127 these defendants say that it is merely a statement of the legal opinion of the draftsman of the bill, which these defendants are advised and believe is erroneous.

32. These defendants, further answering, deny the statement in paragraph 128 that should the provisions of the general corporation act of 1896 be construed so as to permit said merger agreement to be consummated, with its consequent legal effect, and the execution of the proposed agreement of merger, it would impair the obligation of the contracts between said lessors and lessee, and the contractual rights of the stockholders of said lessors, in violation of Section X of Article I of the Constitution of the United States, and in violation of Section VII of Article IV of the Constitution of the State of New Jersey, and would deprive the lessor corporations and their stockholders of their property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States, and would also amount to a taking of the private property of said lessor corporations and the stockholders therein without just compensation.

33. These defendants also deny the allegations in paragraph 129 of the bill of complaint.

34. Answering paragraph 130 of the bill of complaint, these defendants say that no statements of fact therein, even if true, estop or otherwise prevent Public Service Electric and Gas Company and the other corporations, parties to said proposed merger agreement, from entering into the same. A termination of the leases referred to in paragraph

130 is simply a lawful consequence of the right of the parties to said proposed merger agreement to enter into and perform the same.

35. These defendants deny the statement in paragraph 131 of the bill of complaint that the parties to the proposed merger agreement, Exhibit 10 annexed to the bill of complaint, were not at the time when such agreement was made organized to engage in the same or a similar business.

36. They admit the statements in paragraphs 132 to 210 inclusive of the bill of complaint, subject to the reservation set forth in paragraph 5 hereof.

37. They admit paragraph 211 of the bill of complaint so far as it states that the complainants have not accepted the offer dated January 10, 1927, to stockholders of the leased company, and have not in any way assented to the proposed merger under the joint agreement dated April 26, 1927, and protest against the same, but these defendants deny that said merger agreement is *ultra vires,* unlawful, inequitable and void, and should be set aside and annulled.

38. All admissions made in this answer are intended for the purpose of this case only.

39. These defendants deny, and each of them denies, that said merger agreement, Exhibit 10, annexed to the bill of complaint, was prepared with any purpose or intent to be unfair to the complainants or any of them, or to be oppressive or destructive of their or any of their rights or interests as stockholders, or to discriminate

against them in any way or to any extent. They also deny that the said agreement was prepared in the interest or for the benefit of some of its stockholders of the companies therein named, and not for the benefit of all of said stockholders. But on the contrary, these defendants say that said proposed merger agreement is fair and equitable and the execution and performance of said agreement would be beneficial to all persons and parties in any way interested in said corporations, parties thereto, and that it would also be beneficial to the inhabitants of the municipalities in which the works of all of said corporations are located and operating and who depend on said companies for light, heat and power, and was prepared for that purpose and intended to have that effect.

40. The stocks of the lessor companies now outstanding have but a narrow market and a fixed income; the stock of Public Service Electric and Gas Company offered in exchange would yield a larger fixed income to the holders of stocks of the lessor companies than they get at present and is equally secure. It is stock issued by a large, prosperous and favorably known corporation, is listed on the New York Stock Exchange and has a wide and active market. The property of all of the lessor companies parties to the proposed merger agreement is now held by Public Service Electric and Gas Company under leases for terms of approximately nine hundred years. The lessor companies, if separated from the lessee, would not be in a position to borrow capital to extend and enlarge their works. The intrinsic value of their property depends largely on the resources and credit of Public Serv-

ice Electric and Gas Company. They must and do rely on that company for capital to enlarge their works, and the ability of that company to obtain capital on favorable terms would be increased by the proposed merger. It is not true that the proposed merger would redound to the benefit of Public Service Electric and Gas Company, or to holders of its securities, or to its directors or officers, except to a small extent, if any, for the reason that said company is a public utility and its rates and income are fixed by the board of public utility commissioners. No income is allowed to the holders of its securities in excess of a reasonable return on the fair value of its property. Economies in operation by the company and favorable terms on which capital can be obtained would inure for the most part, if not entirely, to the benefit of the people who depend on the company for light, heat and power.

41. These defendants further answering say that for many years prior to 1924 the territory in which Public Service Electric and Gas Company now furnishes light, heat and power, was served in those particulars by many smaller utility corporations, some operating in a single municipality and others in more than one, but nevertheless in restricted territory by means of small generating plants that could not be operated economically. During the period of forty years and more prior to 1924, many new utilities were organized for the purpose of supplying light, heat and power in said territory, but gradually during that time by means of merger and consolidation agreements and leases and otherwise the number was reduced or prevented from increasing so rapidly as otherwise would have been

the case. Nearly all of those small companies had made mortgages covering their respective properties and had issued bonds, many of them long term bonds, and the mortgages for the most part had become closed so that it became increasingly difficult to obtain capital to enlarge the properties of the several utilities to keep pace with the public needs for the service they rendered. Efforts had been made from time to time, especially since May 1903, to provide adequate capital, but the rapid increase of population in the territory in which their properties are located and increasing demands for service outgrew the provisions that had been made for capital and so by the year 1924 a condition came into existence which required a very large amount of new capital (as much as thirty million dollars in that year alone) to provide sufficient means to render the service called for by the increased population of the territory, and by the additional uses for gas and electricity, and the financial structure of the companies had by that means become such that a comprehensive and radical change had to be made in order that the necessary capital could be obtained to enlarge and extend their works. Great advances had been made in the art of generating, transmitting and supplying gas and electricity. It was no longer possible for the public to be economically served by companies operating in restricted areas, with numerous small generating stations. In order that the public might be adequately supplied with these services at reasonable rates, it was necessary that gas and electricity be manufactured and generated in large quantities at great central stations and transmitted throughout large areas by high-pressure mains and high-tension transmission lines. This situation was

very much aggravated by the enormous increase in the cost of constructing utility plants that followed the outbreak of the world war in 1914. Prior to 1924, the officers of Public Service Electric Company and Public Service Gas Company had studied the situation intently and formulated one or more plans by which it was hoped that the condition could be relieved, and the companies enabled to borrow the large amounts of capital needed annually. Tentative plans formulated by the officers of the companies were submitted in 1923 for criticism and advice to Messrs J. P. Morgan & Company of New York, and Drexel & Company of Philadelphia, who were generally familiar with the financial situation of the said companies. They made a thorough investigation of the whole situation aided by a complete examination made by a firm of eminent utility engineers of the properties then owned by Public Service Electric Company, Public Service Gas Company and United Electric Company of New Jersey, and by said lessor companies, and recommended a comprehensive plan to provide relief, which, after careful consideration, was adopted by said companies. A copy of the plan, dated March 13th, 1924, is hereto annexed, marked Exhibit 1, and made a part hereof. On or immediately after its date said plan was very widely published in all the principal newspapers in this State, and many of the leading newspapers in other States, for the information of those interested in the securities of the companies therein mentioned, and no unfavorable criticism was received. In the month of April following a proposed consolidation agreement to be made by Public Service Electric Company, Public Service Gas Company and United Electric Company of New Jersey in pur-

suance of said plan was submitted to the Board of Public Utility Commissioners of this State for approval. On the 29th of that month a hearing on the subject was held by said Board at Trenton, when the plan was explained at length by the President of Public Service Electric Company and Public Service Gas Company and of several of their affiliated companies, and by the Vice-President in charge of Finance of those companies, in which the financial conditions and needs of the companies were fully set forth. The plan was also elaborately explained to the utility board by a member of the firm of J. P. Morgan & Company and Drexel & Company, from the bankers' standpoint. At said hearing no objection to the plan was made, nor was any charge made that it was unfair, oppressive or unjust. Following the hearing, and after full consideration of the subject, the Utility Board approved the proposed consolidation agreement. A copy of the certificate approving the same is hereto annexed, marked Exhibit 2, and made a part hereof. Thereupon Public Service Electric Company, Public Service Gas Company, and United Electric Company of New Jersey, entered into said consolidation agreement forming Public Service Electric and Gas Company, one of the defendants in this case, a copy of which is annexed to the bill of complaint and marked Exhibit 1, and made a part thereof.

Shortly after the said consolidation agreement was filed a mortgage was executed by Public Service Electric and Gas Company in pursuance of paragraph 3 of said plan and after hearing, was approved by said Board of Public Utility Commissioners, a copy of their certificate approving the same dated July 24, 1924, is hereto annexed,

marked Exhibit 3, and made a part hereof, and the other provisions of paragraphs 2, 3 and 4 were carried out with a result that was beneficial to the corporations, and to the inhabitants of the territory in which they supplied electricity and gas. In the autumn of 1924, in pursuance of the said plan, Exhibit 1 hereto annexed, dated March 13 of that year, for a complete consolidation and unification of the corporations mentioned therein and their properties, seven other electric and gas companies, viz: Burlington Electric Light and Power Company, Citizens' Electric Light, Heat and Power Company, Middlesex Electric Light and Power Company, The Morristown Gas Light Company, The Nichols Electric Light and Power Company of Nutley, N. J., Princeton Light, Heat and Power Company and Weehawken Contracting Company, were merged into Public Service Electric and Gas Company with the approval of the Board of Public Utility Commissioners, by certificate dated November 20, 1924, a copy of said certificate is hereto annexed marked Exhibit 4 and made part hereof, thereby further simplifying the financial structure of the companies, increasing efficiency and economy in operation, and making it possible to obtain capital on reasonable terms necessary to enlarge the property of the company created by the said consolidation agreement and subsequent mergers. Since Public Service Electric and Gas Company was formed July 25, 1924, that Company has been able to issue securities and has obtained capital to the amount of $123,216,000, nearly $90,000,000 of which has been expended in enlarging and extending the plant of the company, and $32,964,000 of said sum of $123,216,000 has been used by Public Service Electric and Gas Company to refund

other bonds, liens upon its property. In paragraph 5 of the said plan it was provided that an offer should be made to the holders of stock of certain lessor companies, parties to said proposed merger agreement, Exhibit 10 annexed to the bill of complaint, to exchange their stock for other securities so that those companies might eventually be consolidated with or merged into Public Service Electric and Gas Company, and the entire plan of March 13, 1924, be completely carried out. The high degree of security claimed for the stocks of the leased companies which are now sought to be merged into Public Service Electric and Gas Company and the present high market price of those securities have been brought about by putting into effect the comprehensive plan, referred to above, of which the present merger agreement is the last step.

42. These defendants further answering say that in pursuance of said plan the offer for the stocks of the lessor companies, marked Exhibit 8, annexed to the bill of complaint, was prepared and made after full and fair consideration as stated in paragraph 28 hereof; that said offer exceeded the full market value of said stocks at the time it was made, and exceeded the market value of said stocks for several years prior thereto, and also in pursuance of said plan and offer said proposed merger agreement (Exhibit 10 annexed to the bill of complaint) was made by the directors of the several companies and meetings of their respective stockholders were called to consider the same.

43. In the month of December 1926, Public Service Corporation of New Jersey and Public Service Electric and Gas Company submitted to

the Board of Public Utility Commissioners a proposed offer to the holders of stock of the lessor companies, Exhibit 8 annexed to the bill of complaint, and at the same time submited an application of Public Service Electric and Gas Company for the approval of an issue of six per cent. cumulative preferred stock, 1925 Series, to the amount of $42,060,317, to be exchanged for the stocks of the lessor companies on the basis set forth in said offer, and the proposed issue of said stock was approved by said Board on the sixth day of January, 1927, a copy of the certificate approving the same is hereto annexed marked Exhibit 5 and made a part hereof.

44. And these defendants further answering say that the proposed merger agreement was submitted to the Board of Public Utility Commissioners of this state in the month of April last, and after full consideration it was approved on the nineteenth day of May following, a copy of the order approving the same is hereto annexed, marked Exhibit 6, and made a part hereof.

45. And these defendants aver that the complete execution of the plan dated March 13, 1924 (Exhibit 1 hereto annexed), by the execution of the proposed agreement (Exhibit 10 annexed to the bill of complaint) would further simplify the financial structure of the parties thereto and their associated corporations, increase efficiency and economy in operation, and enable the Public Service Electric and Gas Company to obtain new capital on more favorable terms, and thus diminish the cost of producing and distributing electricity and gas in nearly 300 municipalities of this state.

46. Answering paragraph 3 of the prayers of the bill of complaint, these defendants say that the nature of the interest of Public Service Corporation of New Jersey in the stock of the lessor companies mentioned in said paragraph is as a stockholder, and the extent of its interest in said stock, and the total number of shares thereof held by it, or by any person, corporation or depositary on its behalf, are as follows:

Hudson County Gas Company..	40	shares
New Brunswick Light, Heat and Power Company.....	132.8	shares
The Paterson and Passaic Gas and Electric Company.....	.88	shares
Somerset, Union and Middlesex Lighting Company.....	15.68	shares

The number of shares of stock of each of said lessor companies acquired by Public Service Corporation of New Jersey under the offer to stockholders, dated January 10, 1927 (Exhibit 8 annexed to the bill of complaint) is as follows:

Essex and Hudson Gas Company	42,421	shares
Hudson County Gas Company..	72,181	shares
New Brunswick Light, Heat and Power Company.....	2,395	shares
The Paterson and Passaic Gas and Electric Company.....	37,001	shares
Somerset, Union and Middlesex Lighting Company.....	2,830	shares

And this defendant, Public Service Corporation of New Jersey, admits that it has agreed with Public Service Electric and Gas Company to exchange

all of said shares of stock not heretofore exchanged for six per cent. cumulative preferred stock, 1925 Series, of said company.

47. Answering paragraph 4 of the prayers of the bill of complaint, these defendants say that Public Service Electric and Gas Company holds the following number of shares of stock in each of the lessor companies mentioned in said paragraph:

Essex and Hudson Gas Company	48,265	shares
Hudson County Gas Company	80,331	shares
New Brunswick Light, Heat and Power Company	2,597	shares
The Paterson and Passaic Gas and Electric Company	41,225.2	shares
Somerset, Union and Middlesex Lighting Company	7,562	shares

And further answering said paragraph, these defendants say that the following is the number of shares of stock in each of said lessor companies that were acquired by Public Service Electric and Gas Company under and pursuant to the offer to stockholders of said lessor companies, dated January 10, 1927:

Essex and Hudson Gas Company	5,844	shares
Hudson County Gas Company	8,150	shares
New Brunswick Light, Heat and Power Company	141	shares
The Paterson and Passaic Gas and Electric Company	1,527	shares
Somerset, Union and Middlesex Lighting Company	521	shares

48. In answer to paragraph 5 of the prayers in the bill of complaint the above named individual defendants deny and each of them denies that they have any interests, direct or indirect, adverse to their duty as directors of said lessor companies or any of them to obtain for the stockholders thereof the most favorable terms upon a merger or consolidation of said lessor companies into and with said defendant Public Service Electric and Gas Company. Some of said individual defendants are holders of shares of the common stock of Public Service Electric and Gas Company to qualify them to act as directors thereof, and some of them are holders of shares of the preferred stock thereof, and of the common stock of Public Service Corporation of New Jersey and several of them are holders of other securities of said companies, and were holders as well of stock in the lessor companies, and have exchanged their holdings of stock in said lessor companies, except directors' qualifying shares, under one or other of the options contained in Exhibit 8 annexed to the bill of complaint, because they deemed said options or offers in every way fair and equitable to the stockholders of said lessor companies. A majority of the directors of Somerset, Union and Middlesex Lighting Company who voted for the proposed merger agreement were not interested in any way in any of the other companies, parties to said agreement, or in Public Service Corporation of New Jersey. These defendants say that the total holdings of stock in Public Service Corporation of New Jersey by the directors of the lessor companies who are also directors of said Public Service Corporation of New Jersey, or of Public Service Electric and Gas Company are 26,533 shares of common stock and 4,505

shares of preferred stock of Public Service Corporation of New Jersey out of 4,807,239 shares outstanding, or 645/1000th of 1 per cent., and said directors hold 8 shares of common stock of Public Service Electric and Gas Company out of a total of 11,000,000 shares of common stock, and 1,600 shares of preferred stock of Public Service Electric and Gas Company out of 514,453 shares of preferred stock, or 14/1000th of 1 per cent.

49. In reply to paragraph 6 of the prayers in the bill of complaint, these defendants say that all proper and necessary renewals and repairs of the property of said lessor companies have been made and the cost thereof was and is under the accounting system prescribed by the Board of Public Utility Commissioners paid out of charges against income of Public Service Electric and Gas Company. Many extensions, additions, improvements and betterments to the demised premises have been made from time to time to provide for the growth of the business. The book cost of extensions, additions, improvements and betterments to the demised premises other than those paid for out of the proceeds of bonds of the lessor companies, is approximately as follows:

Hudson County Gas Company....	$6,000,000.
The Paterson and Passaic Gas and Electric Company.....	11,500,000.
Somerset, Union and Middlesex Lighting Company	9,000,000.

The Essex and Hudson Gas Company never owned a gas plant other than that which it acquired and operated under lease from the Newark Consolidated Gas Company. There have been no ex-

tensions, additions, improvements and betterments to the property of Essex and Hudson Gas Company, except as such extensions, additions, improvements and betterments made to the property of Newark Consolidated Gas Company at a book cost of $13,500,000 may have inured to the benefit of the Essex and Hudson Gas Company under the said lease. And these defendants say that no rights, privileges and franchises have been acquired by the respective lessees in connection with the demised premises, except those that came to the lessees by virtue of the leases.

50. The defendants further answering deny that complainants are without adequate remedy in the courts of law or at law, and on the contrary defendants aver that there is adequate remedy provided for any supposed damage or injury to complainants by section 108 of an Act entitled "An Act concerning corporations (Revision of 1896)," and the amendments thereof and supplements thereto, whereby compensation is provided to the complainants for any damage or injury they, or any of them, may suffer by reason of the execution or performance of said proposed agreement.

And these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

FRANK BERGEN,
Solicitor for and of Counsel
with Defendants.

Exhibit 1.

PUBLIC SERVICE CORPORATION OF NEW JERSEY.

MARCH 13, 1924.

TO THE HOLDERS OF THE SECURITIES OF PUBLIC SERVICE CORPORATION OF NEW JERSEY:

In order to meet the requirements of service to the public, to strengthen and improve the position of the holders of its securities, and to provide an adequate means of procuring new capital for necessary extension and development, Public Service Corporation submits herewith a plan of readjustment of certain of its securities and inter-company relations.

The great growth of the territory which the Corporation serves and the rapidly increasing opportunities of service to the public make it desirable that the Corporation should simplify its inter-company relationships and at the same time strengthen its entire financial structure.

The plan has been prepared with the assistance of the Corporation's bankers and has been presented to the Board of Public Utility Commissioners of the State of New Jersey for its approval. It will not disturb the relationship which the Corporation now bears to its subsidiary companies or to the public; nor will it affect the holders of securities of the underlying electric, gas and railway properties, except to improve their position by facilitating the development of these properties. It will make possible the financing by the Corporation itself of the capital requirements of the railway properties

until the credit of the Railway Company is reestablished, while the electric and gas activities will be placed in position to finance themselves independently.

The plan in brief provides for:

1. Consolidation of Electric and Gas Companies.

The consolidation of Public Service Electric Company, Public Service Gas Company, United Electric Company of New Jersey and several smaller Companies, practically all of whose stocks are now owned by Public Service Corporation, into a new company to be known as Public Service Electric and Gas Company, all of whose common stock will be owned by Public Service Corporation.

2. Provision for Perpetual Interest Bearing Certificates.

The exchange of $19,736,800 Common Stock (limited to 5% dividends) of United Electric Company, now held by the Trustee as part security for the Public Service Perpetual Interest Bearing Certificates, for $19,736,800 6% Preferred Stock of Public Service Electric and Gas Company, as authorized in the Mortgage and Agreement of Pledge securing the Perpetual Interest Bearing Certificates.

3. Exchange of General Mortgage 5% Bonds for New 5½% Bonds.

An offer to the holders to exchange the $31,978,000 General Mortgage 5% Bonds of Public Service Corporation outstanding in the hands of the public for $31,978,000 First and Refunding Mortgage 5½% Bonds, Series due 1959, to be

issued under a mortgage to be made by Public Service Electric and Gas Company, which will have a direct lien on the Company's owned property and leasehold estates, and will be in modern form, with appropriate refunding provisions and with conservative restrictions covering the issuance of bonds for acquisitions, additions and betterments.

4. Redemption of 20-Year 7% Secured Bonds.

The redemption of the outstanding $9,500,000 Twenty-Year 7% Secured Gold Bonds of Public Service Corporation due December 1, 1941, in order that the $14,000,000 General Mortgage 5% Bonds of Public Service Corporation pledged thereunder may be released and cancelled. Funds for this redemption to be provided by Public Service Corporation.

5. Further Consolidations.

An offer to the stockholders of certain other gas and electric companies leased to Corporation of the opportunity to exchange their stocks for other securities, so that, eventually, these Companies also may be consolidated with Public Service Electric and Gas Company. The holders of a large amount of these stocks have already expressed their desire to make this exchange. These consolidations are not an essential part of the plan, however, as the leases in question extend in practically all cases for terms upwards of 900 years.

If the plan is approved by the Board of Public Utility Commissioners of the State of New Jersey, the holders of the General Mortgage 5% Bonds thereupon will be asked to deposit their

bonds with depositories for the purpose of making the exchange, and if this offer of exchange is accepted by the General Mortgage Bondholders, steps toward making the plan effective will be taken forthwith.

When the precise details of the plan are finally settled and approved the security holders will be further advised.

PUBLIC SERVICE CORPORATION OF NEW JERSEY.

By THOMAS N. McCARTER
President.

Exhibit 2.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the matter of the application of PUBLIC SERVICE ELECTRIC COMPANY, UNITED ELECTRIC COMPANY OF NEW JERSEY and PUBLIC SERVICE GAS COMPANY for approval of merger and consolidation.	Certificate.

Application being made to the Board of Public Utility Commissioners, by Public Service Electric Company, United Electric Company of New Jersey and Public Service Gas Company, by petition in writing for approval of an agreement of merger and consolidation of said companies, forming Public Service Electric and Gas Company, a copy of said agreement, dated April 8th, 1924, being filed with said petition, and the Board having rendered a decision of even date in this matter, which agreement and decision by reference thereto herein are made a part hereof.

The Board of Public Utility Commissioners, after investigation and hearing, no reason to the contrary appearing,

Exhibit 2 annexed to Answer.

HEREBY GRANTS said application and APPROVES said agreement of consolidation and merger in accordance with said petition and said decision.

Dated May 22d, 1924.

BOARD OF PUBLIC UTILITY COMMISSIONERS
(SEAL) By (Sgd) HARRY V. OSBORNE,
President.

ATTEST:

(sgd) ALFRED N. BARBER,
Secretary.

(SEAL) I HEREBY CERTIFY the foregoing to be a true copy of a Certificate adopted by the Board of Public Utility Commissioners at a meeting held Thursday, May 22d, 1924, and recorded in the minutes of said meeting.

ALFRED N. BARBER,
Secretary.

Exhibit 3.

STATE OF NEW JERSEY.

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the matter of the application of PUBLIC SERVICE ELECTRIC AND GAS COMPANY for approval of first and refunding mortgage and authority to issue Thirty-one Million, Eight Hundred Thirty-four Thousand Dollars ($31,834,000) first and refunding mortgage gold bonds, five and one-half per cent. (5.5%) series due 1959.	Certificate.

Application being made to the Board of Public Utility Commissioners by petition in writing, for approval of the making, execution and delivery of a mortgage dated August 1st, 1924, to Fidelity Union Trust Company, Trustee, in form filed on July 22nd, 1924, and the issuance thereunder of first and refunding gold bonds, five and one-half per cent. (5.5%), series due 1959, in the amount of Thirty-one Million, Eight Hundred Thirty-four Thousand Dollars ($31,834,000), to be issued at once under the terms of said mortgage for the purposes as set forth in said petition, which by reference thereto herein is made part hereof,

And the said Board being satisfied after investigation and due hearing that the proposed issue

of said bonds is to be made in accordance with law, and the purpose of said issue being approved by the Board, the said Board,

HEREBY GRANTS said application and APPROVES the making execution and delivery of said mortgage and the issuance thereunder of said proposed bonds as requested in the petition, to be issued at par, provided that nothing herein is intended to approve or authorize the issuance of sale of any issue of bonds under the mortgage hereby approved other than the thirty-one million, eight hundred thirty-four thousand dollars ($31,834,000) first and refunding mortgage gold bonds five and one-half per cent. (5.5%) series due 1959, hereby specifically authorized, any further or subsequent issues being subject to the approval of this Board or any successor State Body having similar power and authority to approve of same.

Dated, July 24th, 1924.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
(SEAL) By (Signed) H. V. OSBORNE,
President.

ATTEST:

(Signed) ALFRED N. BARBER,
Secretary.

(SEAL) I HEREBY CERTIFY the foregoing to be a true copy of a Certificate adopted by the Board of Public Utility Commissioners at its meeting held Thursday, July 24th, 1924, and recorded in the minutes of said meeting.

(Signed) ALFRED N. BARBER,
Secretary.

Exhibit 4.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the application of PUBLIC SERVICE ELECTRIC & GAS COMPANY and other Companies for approval of agreement.	Certificate.

Application being made to the Board of Public Utility Commissioners by the Public Service Electric & Gas Company, Burlington Electric Light & Power Company, Citizens' Electric Light, Heat & Power Company, Middlesex Electric Light & Power Company, the Morristown Gas Light Company, the Nichols Electric Light & Power Company of Nutley, N. J., Princeton Light, Heat & Power Company, and Weehawken Contracting Company, by petition in writing, for approval of agreement by and between the Public Service Electric & Gas Company and the seven other companies named above, whereby the seven companies referred to are merged and consolidated into Public Service Electric & Gas Company, a copy of said agreement dated November 5th, 1924 being on file with the Board, with petition and agreement by reference thereto herein are made part hereof, and

The Board of Public Utility Commissioners, after investigation, and due hearing, no reason to the contrary appearing,

HEREBY GRANTS said application and APPROVES said agreement in accordance with said application.

Dated—November 20, 1924.

BOARD OF PUBLIC UTILITY COMMISSIONERS
(SEAL) By (signed) H. V. OSBORNE
President.

Attest:
(signed) ALFRED N. BARBER,
Secretary.

(SEAL) I HEREBY CERTIFY the foregoing to be a true copy of Certificate adopted by the Board of Public Utility Commissioners at a meeting held Thursday, November 20th, 1924 and recorded in the minutes of said meeting.

(Signed) ALFRED N. BARBER
Secretary.

Exhibit 5.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS.

In the Matter of the Application of the PUBLIC SERVICE ELECTRIC & GAS COMPANY for approval of the Issuance of Forty-Two Million, Sixty Thousand, Three Hundred Seventeen Dollars ($42,060,-317) of its six per cent. (6%) Cumulative Preferred Stock, 1925 series } Certificate.

Application having been made to the Board of Public Utility Commissioners by Public Service Electric & Gas Company, by petition in writing dated December 31, 1926, for the approval of the proposed issue of Forty-two Million, Sixty Thousand, Three Hundred Seventeen Dollars ($42,060,-317) of its Six Per Cent. (6%) cumulative preferred stock, 1925 series, for the uses and purposes more fully set forth in the aforesaid petition, which by reference thereto herein is made a part hereof, that is to say, the said issue of stock is to be used to acquire all the stocks outstanding in the hands of the public of Essex & Hudson Gas Company, Hudson County Gas Company, South Jersey Gas, Electric & Traction Company, The Gas & Electric Company of Bergen County, New Brunswick Light, Heat & Power Company, Newark Consolidated Gas Company, The Paterson & Passaic Gas & Electric

Company, Somerset, Union & Middlesex Lighting Company, The Ridgewood Gas Company, lessor companies, the basis of acquiring which stocks is set forth in a memorandum on page seven of said petition, and this Board being satisfied after investigation and due hearing that the proposed issue of said preferred stock is to be made in accordance with law and the purpose of said issue being approved by the Board, the said Board

HEREBY GRANTS said application (subject to Conference Order Number Seven) and APPROVES the said proposed issue of Forty-two Million, Sixty Thousand, Three Hundred Seventeen Dollars (42,060,317) of its Six Per Cent. (6%) preferred stock, 1925 series, at par, to be exchanged for the stocks of the aforesaid nine lessor companies on the basis set forth in the said petition, and authorizes each of said companies to transfer upon its books such amount of stock set forth in aforesaid petition as may be required by Public Service Electric & Gas Company. As the exchange of stocks hereinabove is made on the basis of equivalent income, no question of value is passed on herein.

Dated January 6, 1927.

BOARD OF PUBLIC UTILITY COMMISSIONERS
By (Signed) JOS. F. AUTENRIETH
(SEAL) President.

Exhibit 6.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS

In the Matter of the Application of PUBLIC SERVICE ELECTRIC AND GAS COMPANY, ESSEX AND HUDSON GAS COMPANY, HUDSON COUNTY GAS COMPANY, THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, and NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, forming PUBLIC SERVICE ELECTRIC AND GAS COMPANY, for approval of Agreement of Merger and Consolidation dated April 26, 1927.	Certificate.

Application being made to the Board of Public Utility Commissioners by Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, and New Brunswick Light, Heat and Power Company, by petition in writing, dated April 28, 1927, for approval of a merger agreement, dated April 26, 1927, between Public Service Electric and Gas Com-

pany, Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, and New Brunswick Light, Heat and Power Company, forming Public Service Electric and Gas Company, which by reference thereto herein is made part hereof, and the Board being satisfied after investigation and due hearing that said merger is to be made in accordance with law, and its purpose being approved by the Board.

The said Board HEREBY GRANTS said application and APPROVES the said merger agreement, All books and records of the merging and consolidating companies are to be turned over to the consolidated company.

Dated, May 19, 1927.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
(SEAL) By (Signed) JOS. F. AUTENRIETH,
President.

Exhibit 7.

Number of shares of stock of the lessor companies, Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, and Somerset, Union and Middlesex Lighting Company, owned by Public Service Electric and Gas Company, and by Public Service Corporation of New Jersey, on January 10, 1927, when the offer was made. The initials of the lessor companies are used.

	E. & H. Gas Co.	Hudson Co. Gas Co.	N. B. L. H. & P. Co.	The P. & P. G. & E. Co.	S. U. & M. L. Co.
P. S. E. & G. Co....	—	—	—	2,697	4,224
P. S. C. of N. J....	—	—	1	—	93
Total no. of shares of the five lessor companies outstanding Jan. 10, 1927....	65,000	105,000	4,000	50,000	10,500

Number of shares of stock of lessor companies acquired in pursuance of the offer dated January 10, 1927.

	E. & H. Gas Co.	Hudson Co. Gas Co.	N. B. L. H. & P. Co.	The P. & P. G. & E. Co.	S. U. & M. L. Co.
	48,265	80,351	2,728.8	38,529.08	3,260.68
Total no. of shares of lessor companies now held by P. S. E. & G. Co.....	48,265	80,351	2,597	41,225.20	7,562
P. S. C. of N. J....	—	—	132.8	.88	15.68

Common Form of Replication.

Petition to Intervene as Complainants.

Filed June 21, 1927.

IN CHANCERY OF NEW JERSEY

R. IRVING OUTWATER, *et al.*, Complainants,
v.
PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et al.*, Defendants.

On Bill, &c.
Petition to Intervene as Complainants.

TO THE HONORABLE EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

The petition of MARY REGIS SHANLEY, WILLIAM C. SHANLEY, JR., and BERNARD M. SHANLEY, 2d, individually and as Executors under the Will of William C. Shanley, deceased; GRACE B. S. HANSON, MARY R. SHANLEY and HELEN L. SHANLEY, by Mary Regis Shanley her next friend, respectfully shows as follows:

1. On or about the 15th day of June, 1927, R. Irving Outwater and others filed their bill of complaint in this court on behalf of themselves and all other stockholders of the corporations hereinafter mentioned who might come in as complainants against Public Service Corporation of New Jersey and others, wherein, among other things, they prayed that a certain merger agreement made be-

tween the directors of Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, Paterson and Passaic Gas & Electric Company, Somerset, Union and Middlesex Lighting Company and the New Brunswick Light, Heat & Power Company, respectively, dated April 26th, 1927, should be declared illegal and invalid and the said companies restrained and enjoined from consummating the same.

2. The Estate of Bernard M. Shanley, Sr., late of the City of Newark, County of Essex and State of New Jersey, owns the following shares of stock of the following companies (the properties and franchises of which are under lease to said Public Service Electric & Gas Company), which are parties to the said merger agreement, viz:

Essex and Hudson Gas Co	2361
Hudson County Gas Co	4370
Paterson and Passaic Gas & Electric Co.	3279
Somerset, Union and Middlesex Lighting Co.	188

Said shares of stock are now held by Fidelity Union Trust Company as substituted trustee under the last Will and Testament of the said Bernard M. Shanley, Sr., deceased.

3. Under the will of the said Bernard M. Shanley, Sr., he directed that the net income of his residuary estate (of which the said shares of stock mentioned in the preceding paragraph hereof form a part) after the payment of all necessary and proper expenses and charges, should be divided annually between his widow Julia D. Shanley, and his

three sons William C. Shanley, James Roosevelt Shanley and Bernard M. Shanley, Jr., share and share alike, each receiving one-fourth thereof, until the death or remarriage of his said widow, upon the happening of either of which events the said residuary estate should be divided among his said sons, share and share alike.

4. The said Julia D. Shanley is still living, but each of the said sons of the said Bernard M. Shanley, Sr., is dead.

5. The said William C. Shanley died on December 28th, 1922, leaving him surviving his widow Mary Regis Shanley, one of the petitioners herein, and his children William C. Shanley, Jr., Bernard M. Shanley, 2d, Grace B. S. Hanson, Mary R. Shanley and Helen L. Shanley, the other petitioners herein. He left a last will and testament, which was duly admitted to probate by the Surrogate of the County and State of New York, and Letters Testamentary issued to your petitioners Mary Regis Shanley, Bernard M. Shanley, 2d and William C. Shanley, Jr.

6. In and by the said last mentioned will, the said William C. Shanley bequeathed all of his property to your petitioner Mary Regis Shanley during the term of her life, and upon her death bequeathed the residuary estate to his children, share and share alike, the issue of any deceased child or children to take his or her parent's share; but provided that the whole of his estate should be held in trust by his executors and distributed only when the youngest child should arrive at the age of twenty-one years; the income thereof, in the meantime, to be

expended during their minority for their support, maintenance and education, and as to those children then of age their respective shares of income to be paid to them if deemed advisable by the executors.

7. In the early part of the present year the Public Service Corporation of New Jersey and Public Service Electric and Gas Company offered to purchase or exchange the shares of stock of the companies mentioned in the second paragraph hereof owned by persons and corporations other than themselves upon certain terms and conditions set forth in a certain Deposit Agreement dated December 28th, 1926. One of the options given to the said stockholders under said Agreement was the same as that upon which the said merger agreement is proposed to be carried out. Another of the said options was the purchase of the said stocks for cash at certain figures.

8. The said Fidelity Union Trust Company, as substituted trustee as aforesaid, over the protest of your petitioners and other beneficiaries under the will of the said Bernard M. Shanley, deceased, advised them that it proposed, unless your petitioners and said other beneficiaries could procure a better price within a certain limited time, to sell and dispose of the said shares of stock mentioned in paragraph 2, and other shares of stock held by said estate in companies, the properties of which are likewise under lease to the said Public Service Electric and Gas Company, to the said Public Service Corporation of New Jersey and/or the said Public Service Electric and Gas Company, at the

prices offered for the same in and by the said Deposit Agreement.

9. Your petitioners feeling that the said offers were inadequate and unfair, on or about March 3rd, 1927 filed their bill of complaint in this court to restain the said Fidelity Union Trust Company, as substituted trustee under the last will and testament of Bernard M. Shanley, Sr., from selling, exchanging or otherwise disposing of stocks of the said companies held by it as substituted trustee as aforesaid; and thereafter an order was made by this court restraining and enjoining the said Fidelity Union Trust Company, as substituted trustee as aforesaid, pending the final determination of that cause, from selling, exchanging or otherwise disposing of the said shares of stock.

10. Your petitioners feel that the best interests of the estate of Bernard M. Shanley, Sr., deceased, will be served if the said merger is enjoined by this court.

11. Your petitioners have accordingly called upon the said Fidelity Union Trust Company, as substituted trustee as aforesaid, to intervene in the said suit as a party complainant and join with the other complainants in an effort to have the said merger enjoined and restrained. Your petitioners feel, however, that in view of the importance of this suit to the estate of the said Bernard M. Shanley, Sr., deceased, and the interest of your petitioners therein; and in view further of the attitude of the Fidelity Union Trust Company in persisting in its determination to sell the said stocks to the Public Service Corporation of New Jersey and Public

Service Electric and Gas Company over the protest of the beneficiaries of the estate of Bernard M. Shanley, Sr., until restrained by this court as aforesaid; the fact that its President, the Chairman of its Board of Directors and other directors are members of the Board of Directors of the Public Service Corporation of New Jersey and the Public Service Electric and Gas Company, and the close affiliations between the said trustee and the said last mentioned companies, that the full protection of the interests of your petitioners as beneficiaries of the estate of the said Bernard M. Shanley, deceased, and *cestui que* trust under his said will, requires that they and such other beneficiaries of said estate, as desire to do so, should be admitted as parties complainant to this suit, to the end that they may actively assist in the prosecution thereof, and prevent, if possible, the consummation of the said merger.

Your petitioners, therefore, pray that they may be authorized to intervene in this suit as parties complainant.

And your petitioners will ever pray, etc.

MARY REGIS SHANLEY, WILLIAM C. SHANLEY, JR., and BERNARD M. SHANLEY, 2D, individually and as Executors under the Will of William C. Shanley, deceased; GRACE B. S. HANSON, MARY R. SHANLEY and HELEN L. SHANLEY, by MARY REGIS SHANLEY her next friend,

By WALL, HAIGHT, CAREY & HARTPENCE,
Solicitors.

STATE OF NEW JERSEY }
County of Hudson } ss.:

WILLIAM C. SHANLEY, Jr., of full age, being duly sworn according to law, on his oath deposes and says:

I am one of the petitioners in the foregoing petition named; the matters and things therein set forth are true to the best of my knowledge, information and belief. This petition is presented with the full consent and approval of my mother Mary Regis Shanley, and my brothers and sisters Bernard M. Shanley, 2d, Grace B. S. Hanson, Mary R. Shanley and Helen L. Shanley, the petitioners named in the foregoing petition.

WILLIAM C. SHANLEY, JR.

Subscribed and sworn to before me this 21 day of June, 1927 }
CHARLES J. GORMLEY
Master in Chancery
of New Jersey.

Order Admitting Mary Regis Shanley *et al.* as Complainants.

Filed June 21, 1927.

IN CHANCERY OF NEW JERSEY.

R. Irving Outwater, *et al.*,
Complainants,

v.

Public Service Corporation of New Jersey, *et al.*,
Defendants.

On Bill, &c.

Upon reading and filing the petition of Mary Regis Shanley, William C. Shanley, Jr., and Bernard M. Shanley, 2d, individually and as Executors under the will of William C. Shanley, deceased; Grace B. S. Hanson, Mary R. Shanley and Helen L. Shanley, by Mary Regis Shanley her next friend, praying that they be admitted as parties complainant in the above entitled case, and it appearing that they have an interest which the decree herein will affect;

It is, on this 21st day of June, 1927, on motion of Wall, Haight, Carey & Hartpence, Solicitors for the said petitioners Ordered that the said Mary Regis Shanley, William C. Shanley, Jr., Bernard M. Shanley, 2d, individually and as Executors under the Will of William C. Shanley, deceased, Grace B. S. Hanson, Mary R. Shanley and Helen L. Shanley be and they are hereby admitted as and made parties complainant in the above entitled cause.

Respectfully advised,

John H. Backes,
V. C.

E. R. Walker,
C.

Petition.

Filed July 12, 1927.

IN CHANCERY OF NEW JERSEY

Between R. IRVING OUTWATER, *et als.*, Complainants, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et als.*, Defendants.	On Bill, &c. Petition.

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

Your petitioner, Fidelity Union Trust Company, a trust company organized under the laws of the State of New Jersey, as Trustee under the Last Will and Testament and Codicil thereto of Bernard M. Shanley, deceased, respectfully shows that:

1. On or about June 16, 1927, the complainants, R. Irving Outwater, H. Prescott Wells, partners trading as Outwater & Wells, W. Emlen Roosevelt, George Emlen Roosevelt, Philip J. Roosevelt, Fairman R. Dick and Archibald B. Roosevelt, partners trading as Roosevelt & Sons, filed their bill in the above entitled cause in behalf of themselves and such other stockholders of the Essex & Hudson Gas Company, Hudson County Gas Company, The Paterson & Passaic Gas & Electric Company and Somerset, Union and Middlesex Lighting Company as shall come in and contribute to the expense of

said suit against the Public Service Corporation of New Jersey, Public Service Electric and Gas Company, Essex & Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson & Passaic Gas & Electric Company, Somerset, Union & Middlesex Lighting Company, Samuel T. Bodine, Thomas S. Gates, Anthony R. Kuser, Thomas N. McCarter, Uzal H. McCarter, Edmund W. Wakelee, Percy S. Young, Charles M. Breder, Augustus J. Brunson, Harry P. MacDonald, William H. Pope and T. Wilson Van Middlesworth, defendants, praying, among other things, that the defendants, Public Service Electric & Gas Company, Essex & Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat & Power Company, The Paterson & Passaic Gas & Electric Company and the Somerset, Union & Middlesex Lighting Company be enjoined from merging or consolidating into a single corporation, and that their respective directors, officers and agents be enjoined from certifying the adoption by the stockholders of said respective companies of the joint agreement of merger and consolidation dated April 26, 1927, and from filing the same in the office of the Secretary of the State of New Jersey, or otherwise perfecting or consummating said joint agreement of merger and consolidation, and that said joint agreement may be declared null and void and be set aside.

2. Your petitioner, as such trustee, holds 2361 shares of the capital stock of the Essex & Hudson Gas Company, 3279 shares of the capital stock of The Paterson & Passaic Gas & Electric Company, 4370 shares of the capital stock of the Hudson County Gas Company, and 188 shares of the capital

stock of the Somerset, Union & Middlesex Lighting Company, four of the defendants in the above entitled cause. In addition thereto, your petitioner, as such trustee, holds 127 shares of the South Jersey Gas & Electric Company and 16,854 shares of the Newark Consolidated Gas Company.

3. Action was taken by the Boards of Directors of the Public Service Electric & Gas Company, the Essex & Hudson Gas Company, the Hudson County Gas Company, The Paterson & Passaic Gas & Electric Company, the Somerset, Union & Middlesex Lighting Company, the South Jersey Gas & Electric Company and the Newark Consolidated Gas Company, under which it was proposed to merge the six last mentioned companies into the Public Service Electric & Gas Company; no action, however, has yet been taken by the stockholders of said companies upon such proposed merger.

4. The Public Service Corporation and the Public Service Electric & Gas Company offered to purchase the outstanding stocks of the other companies at the prices following: Essex & Hudson Gas Company at $142. per share; Hudson County Gas Company at $142. per share; South Jersey Gas & Electric Company at $142. per share; The Paterson & Passaic Gas & Electric Company at $90. per share; the Newark Consolidated Gas Company at $90. per share; and the Somerset, Union & Middlesex Lighting Company at $72. per share.

5. The stock enumerated in paragraph 2 hereof constituted 72% of the assets of the estate of said Bernard M. Shanley, deceased, and in view of that fact, and believing that the price offered for such

stock was the full value thereof, the trust committee of your petitioner, after full discussion and conscientious consideration, deemed it advisable to sell such stock.

6. Certain of the beneficiaries under the will and codicil of said Bernard M. Shanley, deceased, objected to the sale at the prices offered, though they produced no higher bid therefor, and this court in a cause now pending wherein Mary Regis Shanley and others, individually and as executors of the last will and testament of William C. Shanley, deceased, are complainants, and Fidelity Union Trust Company, as Substituted Trustee under the last will and Testament of Bernard M. Shanley, deceased, and others, are defendants, your petitioner, as such trustee, was restrained and enjoined, pending the final determination of said cause unless and until this court should otherwise order, from selling, exchanging or otherwise disposing of the above enumerated stocks.

7. Julia D. Shanley; Mary Regis Shanley, William C. Shanley, Jr. and Bernard M. Shanley, 2nd, individually and as executors under the will of William C. Shanley, deceased; Grace B. S. Hanson; Mary R. Shanley; and Helen L. Shanley, by her next friend, have requested your petitioner to join as co-complainant in the above cause.

8. Said Julia D. Shanley is entitled to one-fourth of the income from the estate of said Bernard M. Shanley, deceased, until either her death or remarriage.

9. The interest of William C. Shanley, deceased, was assigned by him to the Empire Trust Company.

Your petitioner is informed and believes that such assignment was made as security for the payment of bonds issued by The J. R. Shanley Estate Company—the holder by assignment of the former interest of James Roosevelt Shanley in said estate—and therefore, the interest of said executors under the will of William C. Shanley, deceased, is dependent upon more than sufficient moneys being realized from the shares of the estate formerly owned by James Roosevelt Shanley and William C. Shanley.

10. Your petitioner is informed and believes that the Guaranty Trust Company of New York is Trustee of the interest in the estate of said Bernard M. Shanley now owned by The J. R. Shanley Estate Company.

11. The persons interested in the estate of said Bernard M. Shanley, deceased, are: Mary Regis Shanley, widow and executrix of the estate of William C. Shanley, deceased; William C. Shanley, Jr. and Bernard M. Shanley, 2nd, individually and as executors of William C. Shanley, deceased; Grace B. S. Hanson; Mary R. Shanley; Helen L. Shanley; Julia D. Shanley; Regina R. Shanley; Mary S. S. Dempsey; Adele C. Shanley; Bernard M. Shanley; Seton J. Shanley; Ruth B. Shanley; Regina G. Shanley; Adele C. Bucknan; James R. V. Shanley; Julia D. S. Kohlsaat; Robert A. Shanley; Joseph Sanford Shanley; Empire Trust Company; The J. R. Shanley Estate Company and Guaranty Trust Company of New York.

12. No request to intervene in the above entitled cause has been received by your petitioner from the

executors or executrices under the wills of James Roosevelt Shanley and Bernard M. Shanley, Jr., or Regina R. Shanley, Mary S. S. Dempsey, Adele C. Shanley, Bernard M. Shanley, Seton J. Shanley, Regina G. Shanley, Ruth B. Shanley, Adele C. Bucknan, James R. V. Shanley, Julia D. S. Kohlsaat, Robert A. Shanley, Joseph Sanford Shanley, Empire Trust Company, The J. R. Shanley Estate Company or the Guaranty Trust Company of New York, though the interests of the persons and corporations in this paragraph named in said estate are one-half of the income, and upon either the death or remarriage of Julia D. Shanley two-thirds of the principal of said estate.

13. Your petitioner has been advised by counsel that the bill filed in the above entitled cause is most exhaustive and presents every legal question involved in the transactions leading up to the proposed action the complainants seek to restrain; that counsel representing complainants are of the highest standing and ability, and can and will learnedly present to the court the facts involved and the rules of law applicable thereto; and that any benefit enuring to the complainants will be of like advantage to the estate of said Bernard M. Shanley, deceased, without the estate incurring any expense in reference thereto.

14. In view of the foregoing facts, your petitioner feels it incumbent to present to the court the condition in which it finds itself to the end that it may have such direction and guidance in the premises as may seem proper.

Your petitioner, therefore, prays: That an order may be made—to be served in such manner as the

court may direct—requiring the persons and corporations named in paragraph 11 hereof to show cause, if any they have, as to whether or not your petitioner should join as one of the complainants in the above entitled cause.

FIDELITY UNION TRUST COMPANY
As Trustee under the Last Will and Codicil of Bernard M. Shanley, deceased,
By
E. A. PRUDEN
Vice President.
Petitioner.

STATE OF NEW JERSEY }
County of Essex } ss:

I, EDWARD A. PRUDEN, of full age, being duly sworn according to law, upon my oath depose and say that I am Vice-President of the Fidelity Union Trust Company and as such officer am its agent for the purpose of making this affidavit; that the statements contained in the foregoing petition are true to the best of my knowledge, information and belief.

EDWARD A. PRUDEN

Sworn and subscribed to before me }
this 12 day of July, 1927. }
RAYMOND G. NIXON
Notary Public of New Jersey
My Commission expires February 23, 1931.

Order to Show Cause.

Filed July 12, 1927.

IN CHANCERY OF NEW JERSEY

Between R. IRVING OUTWATER, *et als.*, Complainants, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et als.*, Defendants.	On Bill, &c. Order to Show Cause

The bill in the above entitled cause having been filed by complainants, R. Irving Outwater, H. Prescott Wells, partners trading as Outwater & Wells, W. Emlen Roosevelt, George Emlen Roosevelt, Philip J. Roosevelt, Fairman R. Dick and Archibald B. Roosevelt, partners trading as Roosevelt & Sons, in behalf of themselves and such other stockholders of the Essex & Hudson Gas Company, the Hudson County Gas Company, The Paterson & Passaic Gas & Electric Company and the Somerset, Union & Middlesex Lighting Company as should come in and contribute to the expense of said suit. And it appearing by the petition filed in this cause by the Fidelity Union Trust Company, as Substituted Trustee under the will and codicil thereto of Bernard M. Shanley, deceased: (*a*) that as such trustee it holds shares in the above companies; (*b*) that Julia D. Shanley, Mary Regis Shanley, William C. Shanley, Jr. and Bernard M. Shanley, 2nd, individually and as executors under the will of William C. Shanley, deceased, Grace B. S. Hanson,

Mary R. Shanley and Helen L. Shanley, by her next friend, have requested said petitioner to join as a co-complainant in the above cause; (*c*) that no request has been made to petitioner by other persons or corporations having an interest in the estate of Bernard M. Shanley, deceased, to intervene in said suit; (*d*) that the persons and corporations having an interest in said suit are those hereinafter named; and (*e*) that said petitioner seeks instructions from the court as to whether or not it should join as one of the complainants in the above entitled cause:

IT IS, THEREUPON, on this 12th day of July, Nineteen Hundred and Twenty-seven, by the Chancellor, ORDERED that Mary Regis Shanley; William C. Shanley, Jr., and Bernard M. Shanley, 2nd, individually and as executors of William C. Shanley, deceased; Grace B. S. Hanson; Mary R. Shanley; Helen L. Shanley; Julia D. Shanley; Regina R. Shanley; Mary S. S. Dempsey; Adele C. Shanley; Bernard M. Shanley; Seton J. Shanley; Ruth B. Shanley; Regina G. Shanley; Adele C. Bucknan; James R. V. Shanley; Julia D. S. Kohlsaat; Robert A. Shanley; Joseph Sanford Shanley; Empire Trust Company; The J. R. Shanley Estate Company and Guaranty Trust Company of New York show cause, if any they have, before the Chancellor at the Chancery Chambers in the City of Newark on the 26th day of July, Nineteen Hundred and Twenty-seven, at ten o'clock in the forenoon of said day, or so soon thereafter as counsel can be heard, as to whether or not the said Fidelity Union Trust Company as such trustee should join as one of the complainants in the above cause.

and it is further ORDERED that a true, but uncertified, copy of this order and said petition be served

upon the above named persons and corporations within seven days from the date hereof.

E. R. WALKER,
C.

Respectfully advised

JOHN H. BACKES,
V. C.

Order.

Filed September 6, 1927.

IN CHANCERY OF NEW JERSEY.

Between
R. IRVING OUTWATER, *et als.*,
Complainants,

and

PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et als.*
Defendants.

On Bill, Etc.

Order.

On Petition of Fidelity Union Trust Company for Direction in Respect to Intervening as Party Complainant.

This matter coming on to be heard in the presence of Louis Hood, Esquire, of counsel with Fidelity Union Trust Company, petitioner; Thomas G. Haight, Esquire, of counsel with Mary Regis Shanley, William C. Shanley, Jr., and Bernard M. Shanley, 2nd, Individually and as executors under the Will of William C. Shanley, deceased, and of Grace B. Hanson and Mary R.

Shanley; Waldron M. Ward, Esquire, of counsel with Julia D. Shanley; Joseph Kahrs, Esquire, of counsel with Regina R. Shanley, Mary S. S. Dempsey, Adele G. Shanley, Bernard M. Shanley, and Seton J. Shanley; and it appearing to the court that the Fidelity Union Trust Company, as substituted trustee under the will and codicil of Bernard M. Shanley, deceased, has sought the direction and guidance of the court in respect to its intervention as party complainant in this suit, and that it is to the interest of the beneficiaries of said trust estate to have such intervention, and it also appearing that The J. R. Shanley Estate Company has filed its answer to the said petition submitting the trustee to the direction and guidance of the Court

It is, on this sixth day of September, 1927, ordered that the said Fidelity Union Trust Company, as such substituted trustee under the will and codicil of Bernard M. Shanley, deceased, be advised and directed to intervene as party complainant in the above entitled cause.

Respectfully advised

John H. Backes

V. C.

Petition to Intervene as Complainant.

Filed September 8, 1927.

IN CHANCERY OF NEW JERSEY.

Between R. IRVING OUTWATER, *et als.*, Complainants, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et als.*, Defendants.	On Bill, etc. Petition to Intervene as Complainant.

TO THE HONORABLE EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

The petition of Fidelity Union Trust Company, as Substituted Trustee under the Last Will and Testament and codicil thereto of Bernard M. Shanley, deceased, respectfully shows that:

1. On or about the 15th day of June, 1927, R. Irving Outwater and others filed their bill of complaint in this court on behalf of themselves and all other stockholders of the corporations hereinafter mentioned who might come in as complainants against Public Service Corporation of New Jersey and others, wherein, among other things, they prayed that a certain merger agreement made between the directors of Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, Paterson and Passaic Gas & Electric Company, Somerset, Union and Middlesex Lighting Company and the New Brunswick Light, Heat and Power Company, respect-

ively, dated April 26th, 1927, should be declared illegal and invalid and the said companies restrained and enjoined from consummating the same, and, to this end, that the respective directors, officers and agents of the several companies proposing to merge be enjoined from certifying the adoption by the stockholders of said respective companies of the joint agreement of merger and consolidation, dated April 26th, 1927, and from filing the same in the Office of the Secretary of the State of New Jersey, or otherwise perfecting or consummating said agreement of merger and consolidation, and that said joint agreement may be declared null and void and be set aside, all because of the matters and things in said bill of complaint contained.

2. The Estate of Bernard M. Shanley, Sr., late of the City of Newark, Essex County, New Jersey, owns the following shares of stock of the following companies (the properties and franchises of which are under lease to said Public Service Electric and Gas Company) which are parties to the said merger agreement, viz:

Essex and Hudson Gas Company	2361	shares
Hudson County Gas Company	4370	"
Paterson and Passaic Gas & Electric Co.	3279	"
Somerset, Union & Middlesex Lighting Co.	188	"

The legal title to said shares of stock is now vested in the Fidelity Union Trust Company, as Substituted Trustee under the Last Will and Testament and codicil thereto of the said Bernard M. Shanley, deceased.

3. Action was taken by the Boards of Directors of the Public Service Electric & Gas Company, the Essex and Hudson Gas Company, the Hudson County Gas Company, The Paterson and Passaic Gas & Electric Company, The Somerset, Union and Middlesex Lighting Company, and the New Brunswick Light, Heat & Power Company, under which it was proposed to merge the five last mentioned companies into the Public Service Electric and Gas Company; but no action has yet been taken by the stockholders of the said companies upon such merger.

4. Julia D. Shanley; Mary Regis Shanley, William C. Shanley, Jr., and Bernard M. Shanley, 2nd, Individually and as Executors under the will of William C. Shanley, deceased; Grace B. S. Hanson; Mary R. Shanley; and Helen L. Shanley, by her next friend, have requested your petitioner to join as co-complainant in the above cause.

5. Said Julia D. Shanley is entitled to one-fourth of the income from the estate of the said Bernard M. Shanley, deceased, until either her death or remarriage, and since the death of the said Bernard M. Shanley, said Julia D. Shanley has continued, and still is, his widow; and the children of the said Bernard M. Shanley, deceased, to wit: Bernard M. Shanley, Jr., William C. Shanley and J. Roosevelt Shanley were each entitled to one-fourth of said income until the death or remarriage of the said widow, and upon the happening of either of said events, to the residuum of the said estate, share and share alike.

6. The said Mary Regis Shanley is the widow of the said William C. Shanley, deceased, and William

C. Shanley, Jr., Bernard M. Shanley, 2nd, Grace B. S. Hanson, Mary R. Shanley and Helen L. Shanley are the children of said William C. Shanley, deceased, who was one of the sons and beneficiaries under the last will and testament of Bernard M. Shanley, deceased.

7. The interest of William C. Shanley, deceased, was assigned by him to the Empire Trust Company. This assignment was made as security for the payment of bonds issued by The J. R. Shanley Estate Company—the holder by assignment of the former interest of James Roosevelt Shanley in said estate—and, therefore, the interest of said executors under the will of William C. Shanley, deceased, is dependent upon more than sufficient moneys being realized from the shares of the estate formerly owned by James Roosevelt Shanley and William C. Shanley.

8. The other persons now interested in the estate of the said Bernard M. Shanley, deceased, are: (1) The Guaranty Trust Company of New York, as Trustee of the interest in the estate of said Bernard M. Shanley, deceased, now owned by The J. R. Shanley Estate Company, which said Trustee is the holder of the said interest for the security of outstanding bonds aggregating more than a Million Dollars; (2) subject to the interest held by the said Guaranty Trust Company of New York, The J. R. Shanley Estate Company is the holder of the interest of James Roosevelt Shanley, another son of the said Bernard M. Shanley, deceased, under the will and codicil of the said deceased Bernard M. Shanley; (3) the interest of the third son, to wit: Bernard M. Shanley, Jr., passed by his will to his

widow and executrix, Regina R. Shanley, and to his children; Mary S. S. Dempsey, Adele C. Shanley, Bernard M. Shanley, 2nd, Seton J. Shanley, Regina G. Shanley and Ruth B. Shanley; and (4) Joseph Sanford Shanley, son of James Roosevelt Shanley, deceased.

9. No request to intervene in the above entitled cause was made by the Executors or Executrices under the Wills of James Roosevelt Shanley and Bernard M. Shanley, Jr., or by Regina R. Shanley, Mary S. S. Dempsey, Adele C. Shanley, Bernard M. Shanley, Seton J. Shanley, Regina G. Shanley, Ruth B. Shanley, Joseph Sanford Shanley, Empire Trust Company, The J. R. Shanley Estate Company or the Guaranty Trust Company of New York, though the interests of the persons and corporations in this paragraph named in said estate are one-half of the income, and either upon the death or remarriage of the said Julia D. Shanley, two-thirds of the principal of the said estate.

10. Your petitioner has heretofore filed a petition in the above entitled cause setting forth, among other matters, the matters hereinbefore contained in this petition and praying for the direction and guidance of the court in the premises in respect to said request of said beneficiaries to intervene as party complainant.

11. Upon the filing of the petition, an order to show cause was made, which came on to be heard by the court on the Sixth day of September, 1927, with the result that the court found it to be to the interests of the beneficiaries of the said trust estate to have the said substituted trustee under the will and

codicil of Bernard M. Shanley, deceased, intervene as party complainant in the aforesaid bill of complaint and directing the said substituted trustee to intervene as party complainant in the above entitled suit.

By reason of the said premises, your petitioner now prays that it may be authorized to intervene in this suit as party complainant, holding the legal title to the aforesaid shares of stock of the Essex and Hudson Gas Company, Hudson County Gas Company, Paterson and Passaic Gas and Electric Company, and Somerset, Union and Middlesex Lighting Company.

And your petitioner will ever pray, etc.

FIDELITY UNION TRUST COMPANY,
as Substituted Trustee under the last will and testament and codicil thereto of Bernard M. Shanley, deceased.
By
E. A. PRUDEN
Vice-President

HOOD, LAFFERTY & CAMPBELL,
Solicitors.

STATE OF NEW JERSEY }
County of Essex } ss.

I, EDWARD A. PRUDEN, of full age, being duly sworn according to law, upon my oath depose and say that I am Vice President of the Fidelity Union Trust Company, and as such officer am its agent for the purpose of making this affidavit; that the statements contained in the foregoing petition are true to the best of my knowledge, information and belief.

EDWARD A. PRUDEN

Sworn and subscribed to before me this 8th day of September, 1927.

MARTHA E. BERG

[SEAL] Notary Public of New Jersey

My Commission expires Jan. 8, 1931

Order Admitting Fidelity Union Trust Company as Substituted Trustee under Last Will and Testament and codicil thereto of Bernard M. Shanley, deceased, as Party Complainant.

Filed September 10, 1927.

IN CHANCERY OF NEW JERSEY

Between R. IRVING OUTWATER, *et als.*, Complainants, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et als.*, Defendants.	On Bill, Etc. Order Admitting Fidelity Union Trust Company, as Substituted Trustee under Last Will and Testament and codicil thereto of Bernard M. Shanley, deceased, as Party Complainant.

Upon reading and filing the petition of Fidelity Union Trust Company, as Substituted Trustee under the Last will and testament and codicil thereto of Bernard M. Shanley, deceased, praying that it be admitted as party complainant in the above entitled cause, and it appearing that said Substituted Trustee has an interest which the decree herein will affect:

IT IS on this 10 day of September, one thousand nine hundred and twenty-seven (1927), on motion of Hood, Lafferty & Campbell, Esqs., Solicitors for the said Petitioner, ORDERED that the said Fidelity Union Trust Company, as Substituted Trustee under the Last Will and Testament and codicil thereto of Bernard M. Shanley, deceased, be and it hereby is admitted and made a party complainant in the above entitled cause.

E. R. WALKER

C.

Respectfully advised,

JOHN H. BACKES

V. C.

Petition of Stockholders' Committee for Leave to Intervene.

Filed October 10, 1927.

IN CHANCERY OF NEW JERSEY.

Between R. Irving Outwater and others, Complainants, and Public Service Corporation of New Jersey, and others, Defendants.	On Bill, &c. Petition of Stockholders' Committee for Leave to Intervene.

To His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of W. Emlen Roosevelt, Evans R. Dick, Roscoe C. Ingalls, R. Irving Outwater, William C. Shanley, Jr., and Ernest Sturm, as the Committee constituted and acting under that certain Deposit Agreement dated June 10, 1927, by and between said Committee and Depositing Stockholders of shares of the capital stock of Essex and Hudson Gas Company and other companies therein mentioned respectfully shows:

1. Petitioners are the Committee constituted and acting under that certain Agreement dated June 10, 1927, by and between them and such holders of the shares of the capital stock of Essex and Hudson Gas Company, Hudson County Gas Company, The

Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, New Brunswick Light, Heat and Power Company, South Jersey Gas Electric and Traction Company, The Gas and Electric Company of Bergen County, Newark Consolidated Gas Company and The Ridgewood Gas Company as should become parties thereto by deposit of their stock with said Committee.

2. Petitioners are the holders of record, as such Committee, of the following number of shares of the following mentioned companies:

Name of Company	Number of Shares
Essex and Hudson Gas Company.....	2,765
Hudson County Gas Company.....	4,083
The Paterson and Passaic Gas and Electric Company	1,216
Somerset, Union and Middlesex Lighting Company	781
New Brunswick Light, Heat and Power Company	None
South Jersey Gas, Electric and Traction Company	12,204
The Gas and Electric Company of Bergen County	5,939
Newark Consolidated Gas Company....	5,504
The Ridgewood Gas Company.....	None

3. Petitioners have not, and, according to petitioners' best knowledge, information and belief, none of the prior owners or holders of record of the above mentioned shares of stock, either prior to April 26, 1927, or since said date, have consented

to the proposed agreement dated April 26, 1927, for the merger of the defendants Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company and Somerset, Union and Middlesex Lighting Company with defendant Public Service Electric and Gas Company.

4. Petitioners desire to come in and be admitted as parties complainant in the above entitled cause, and are willing to contribute to the expense of the prosecution thereof.

Petitioners therefore pray that an order be made admitting them as parties complainant to the above entitled cause, and that they be allowed to appear therein and aid in the prosecution thereof.

Your petitioners will ever pray, &c.,

WALL, HAIGHT, CAREY & HARTPENCE,
PITNEY HARDIN & SKINNER,
Solicitors for and of Counsel with Petitioners.

Petition of Stockholders' Committee for Leave to Intervene.

STATE OF NEW YORK }
County of New York }

HALVAR UTVIK, being duly sworn according to law, on his oath says, that he is Secretary of the Committee under the Agreement dated June 10, 1927, who are the petitioners named in the foregoing petition; that he has read the same and that the statements therein contained are true to the best of his knowledge, information and belief.

HALVAR UTVIK.

Subscribed and sworn to before me this 10th day of October, 1927.

WM. W. RICHARDS,
[NOTARIAL SEAL] Notary Public, Kings County No. 19,
Certificate filed in New York County
No. 70,
My Commission expires March 30, 1928

A true copy.

PITNEY HARDIN & SKINNER
Solicitors

Order Admitting Committee as Complainants.

Filed October 25, 1927.

IN CHANCERY OF NEW JERSEY

Between R. IRVING OUTWATER and others, Complainants, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, and others, Defendants.	On Bill, &c. Order Admitting Committee as Complainants.

On reading and filing the petition of W. Emlen Roosevelt, Evans R. Dick, Roscoe C. Ingalls, R. Irving Outwater, William C. Shanley, Jr., and Ernest Sturm, constituted and acting as a Committee under Agreement dated June 10, 1927, praying that they be admitted as parties complainant in the above entitled cause,

IT IS, on this 25th day of October, 1927, on motion of Wall, Haight, Carey & Hartpence, and Pitney, Hardin & Skinner, Solicitors for complainants and for said petitioners, ORDERED that said petitioners, as the Committee aforesaid, be and hereby are admitted as parties complainant in the above entitled cause, and that they be allowed to appear therein in aid of the prosecution thereof.

It is FURTHER ORDERED, that petitioners serve a true copy of said petition and this order on the

solicitor for the defendants within one day from the date hereof.

E. R. WALKER
C.

Respectfully advised,
JOHN H. BACKES
V. C.

A true copy
PITNEY HARDIN & SKINNER
Solicitors

Order Amending Bill of Complaint.

Filed September 30, 1927.

IN CHANCERY OF NEW JERSEY.

Between R. IRVING OUTWATER and others, Complainants, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, and others, Defendants.	On Bill, &c.

ORDER AMENDING BILL OF COMPLAINT.

The defendants consenting hereto, it is on this thirtieth day of September, 1927, on motion of the solicitors for the complainants, ORDERED that

the Bill of Complaint be and hereby is amended as follows: —

Paragraph 210 is hereby amended so as to read as follows—

"210. Annexed hereto and made a part hereof are copies of so much of the respective certificates of incorporation or statutory acts of incorporation of the following named companies as sets forth the objects and purposes of incorporation of said companies, which copies are marked as exhibits with the respective numbers set opposite the names of said corporations, viz.:

Name of Corporation	Exhibit No.
Essex and Hudson Gas Company...	13
The People's Gas Light Company of Jersey City (The Peoples Gas Light Company of the City of Hudson).	14
The Jersey City Gas Light Company.	15
The Consumer's Gas Company of Jersey City.....	16
The Hudson Gas Light Company...	17
The Bayonne and Greenville Gas Light Company (The Bergen Point Gas Light Company).....	18
New Brunswick Light, Heat and Power Company	19
The Peoples Gas Light Company of The City of Paterson.....	20
Paterson Gas Light Company.....	21
The Edison Electric Illuminating Company of Paterson.....	22
Passaic Lighting Company.....	23
The Passaic Gas Light Company....	24
The Passaic Electric Light, Heat and Power Company	25

Name of Corporation	Exhibit No.
The Lodi Light, Heat and Power Company	26
The Passaic and Bergen Gas Company	27
Plainfield Gas and Electric Light Company	28
The Somerset Lighting Company	29
The Somerset Gaslight Company	30
Citizens Electric Company	31
Central Electric Company	32
The Raritan Electric Light and Power Company	33
The Bound Brook Electric Light, Heat and Power Company	34
The Dunellen Electric Light Company	35
The Edison Electric Illuminating Company of New Brunswick	36
Rahway Electric Company	37
Middlesex Electric Company	38
Public Service Gas Company (Oxy-Hydrogen Company of the United States)	39
Public Service Electric Company	40
United Electric Company of New Jersey	41
Burlington Electric Light and Power Company	42
Citizens Electric Light, Heat & Power Company	43
Middlesex Electric Light and Power Company	44
The Morristown Gaslight Company	45
The Nichols Electric Light and Power Company of Nutley, N. J	46
Princeton Light, Heat and Power Company	47
Weehawken Contracting Company	48"

Exhibit 40 annexed to the Bill of Complaint is hereby corrected and amended so as to read as in exhibit entitled "Exhibit 40" (Public Service Electric Company—extract from Certificate of Incorporation as amended March 25, 1924) hereto annexed and made a part hereof.

Exhibit 41 annexed to the Bill of Complaint is hereby corrected and amended so as to read as in exhibit entitled "Exhibit 41" (United Electric Company of New Jersey—extract from Certificate of Incorporation as amended March 25, 1924) hereto annexed and made a part hereof.

Exhibits Nos. 42 to 62, inclusive, annexed to the Bill of Complaint are hereby struck out.

Exhibit No. 63 (Burlington Electric Light and Power Company—extract from Certificate of Incorporation) annexed to the Bill of Complaint is hereby re-numbered as "Exhibit 42".

Exhibit 64 (Citizens Electric Light, Heat and Power Company—extract from Amended Certificate of Incorporation) annexed to the Bill of Complaint is hereby re-numbered "Exhibit 43".

Exhibits 65, 66 annexed to the Bill of Complaint are hereby struck out.

A new exhibit hereto annexed and made a part hereof as "Exhibit 44" (Extract from Certificate of Amendment of Middlesex Electric Light and Power Company—Amendment filed May 28, 1924) is hereby added to and made a part of the Bill of Complaint.

Exhibit 67 (The Morristown Gaslight Company —Extract from Charter) annexed to the Bill of Complaint is hereby re-numbered as "Exhibit 45".

Exhibit 68 (The Nichols Electric Light and Power Company of Nutley, N. J.—Extract from

Certificate of Incorporation) annexed to the Bill of Complaint is hereby re-numbered as "Exhibit 46".

Exhibits 69-70-71 annexed to the Bill of Complaint are hereby struck out.

A new exhibit hereto annexed and made a part hereof, numbered "Exhibit 47" (Extract from Certificate of Amendment of Certificate of Organization of Princeton Light, Heat and Power Company—amendment filed May 28, 1924) is hereby added to and made a part of the Bill of Complaint.

Exhibit 72 (Weehawken Contracting Company—Extract from Certificate of Incorporation) is hereby corrected and amended and re-numbered so as to read as in "Exhibit 48" hereto annexed and made a part hereof.

It is FURTHER ORDERED that complainants need not rewrite or re-verify the Bill of Complaint as amended; that complainants be not required to furnish the defendants with a certified copy of the amended Bill of Complaint or issue a new subpœna; that the defendants be not required to file a new or further answer to the amended Bill of Complaint, and that the defendants' answer heretofore filed do stand as an answer to the Bill of Complaint as so amended, and that the complainants be not required to withdraw their replication heretofore filed, but that the same do stand as a sufficient replication.

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

The defendants do consent to the foregoing order.

FRANK BERGEN,
Solicitor for defendants.

Exhibit 40 (Amended) annexed to Order Amending Bill of Complaint.

Exhibit 40 (Amended).

PUBLIC SERVICE ELECTRIC COMPANY

Extract from Certificate of Incorporation as amended March 25, 1924

"THIRD. The object for which said company is formed is to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be deemed necessary."

Exhibit 41 (Amended) annexed to Order Amending Bill of Complaint.

Exhibit 41 (Amended).

UNITED ELECTRIC COMPANY OF NEW JERSEY

Extract from Certificate of Incorporation as amended March 25, 1924

"THIRD. The object for which said company is formed is to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be deemed necessary."

Exhibit 44 annexed to Order Amending Bill of Complaint.

Exhibit 44.

Extract from Certificate of Amendment

of

MIDDLESEX ELECTRIC LIGHT AND POWER COMPANY

Amendment filed May 28, 1924

"RESOLVED (1), that in the judgment of the board of directors of Middlesex Electric Light and Power Company, it is advisable to amend its certificate of incorporation consisting of a consolidation agreement made on the second day of January, in the year of our Lord one thousand nine hundred and five, by and between The Carteret Electric Light and Power Company, of the first part, and Middlesex Lighting Company, of the second part, by adding to ARTICLE IX of said certificate or agreement the following:

"The object of said company hereafter is and shall be to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical

energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be necessary."

Exhibit 47.

Extract from Certificate of Amendment

of

Certificate of Organization of

PRINCETON LIGHT, HEAT AND POWER COMPANY

Amendment filed May 28, 1924

"RESOLVED (1) that in the judgment of the board of directors of Princeton Light, Heat and Power Company, it is advisable to amend its certificate of organization made on the thirty-first day of July in the year of our Lord one thousand nine hundred and five, by adding after paragraph FIFTH thereof the following:

Exhibit 47 annexed to Order Amending Bill of Complaint.

"SIXTH. The object of said company hereafter is and shall be to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate gas and electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, gas pipes, posts, burners and reflectors, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas and electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas and electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles, laying or constructing gas mains and erecting burners and reflectors in and on the same to sustain the necessary wires, lamps, burners, reflectors and fixtures, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be necessary."

Exhibit 48 (Amended) annexed to Order Amending Bill of Complaint.

Exhibit 48 (Amended).

WEEHAWKEN CONTRACTING COMPANY

Extract from Certificate of Incorporation as amended June 5, 1924

"THIRD. The object for which said company is formed is to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be deemed necessary."

Order for Amendment to Answer to Bill of Complaint as Amended.

Filed September 30, 1927.

IN CHANCERY OF NEW JERSEY.

R. IRVING OUTWATER, *et al.*, Complainants, vs. PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et al.*, Defendants.	On Bill, &c. Order for Amendment to Answer to Bill of Complaint as Amended.

The complainants consenting hereto, It is, on this thirtieth day of September, 1927, on motion of Frank Bergen, Solicitor of Defendants, ORDERED that the following amendment be and is hereby made to the answer filed by the defendants in this cause to the bill of complaint as amended by the complainants:

Strike out the present paragraph number 36 in the defendants' answer as the same is now on file, and insert in lieu thereof, the following:

"36. They admit the statements in paragraphs 132 to 209, inclusive, of the bill of complaint, subject to the reservation set forth in paragraph 5 hereof. They deny the statements in paragraph 210 as amended."

And it is further ORDERED that the said amendment be inserted in the answer now on file and that

such answer as amended be taken and deemed the answer of the defendants to the amended bill of complaint of complainants.

Respectfully advised

JOHN H. BACKES
V. C.

This amendment is consented to

WALL, HAIGHT, CAREY & HARTPENCE

PITNEY, HARDIN & SKINNER,
Solicitors of Complainants.

Amended Bill of Particulars.

Filed September 23, 1927.

IN CHANCERY OF NEW JERSEY.

Between
R. Irving Outwater and others,
Complainants,
and
Public Service Corporation of New Jersey, and others,
Defendants.

On Bill, &c.
Amended Bill of Particulars.

Pursuant to stipulation dated July 11, 1927, the complainants hereby furnish the defendants with this bill of particulars:

The respects in which the corporations proposed to be merged, mentioned in paragraph 131 of the Bill of Complaint, were not organized for the purpose of carrying on business of the same or a similar nature, and the respects in which the charters or certificates of incorporation of the several companies named in paragraph 210 of the Bill of Complaint indicate and the charters or certificates of incorporation indicating, that the companies proposed to be merged were not organized for the purpose of carrying on business of the same or a similar nature, are as follows:

No one of the companies proposed to be merged, viz.,

Essex and Hudson Gas Company
Hudson County Gas Company,

New Brunswick Light, Heat and Power Company,
The Paterson and Passaic Gas and Electric Company,
Somerset, Union and Middlesex Lighting Company, and
Public Service Electric and Gas Company

was organized for the purpose of carrying on business of a nature the same as or similar to the nature of the business for which any other of said companies was organized;

The nature of business for the purpose of carrying on which each of said companies was organized is, in general language, saving reference for greater certainty to the provisions of the respective charters or certificates of incorporation of said companies or the constituent corporations forming the same or predecessors to the same, as follows: and the charters or certificates of incorporation indicating the nature of such business and the dissimilarity aforesaid, are as follows:—

ESSEX AND HUDSON GAS COMPANY

Organized to carry on the business of—

1. Gas Company
2. Dealings in property
3. Acquisition and ownership of stock of other companies doing a public or private lighting business.

See Exhibit 13.

HUDSON COUNTY GAS COMPANY

Successor to corporations organized for purpose of carrying on business of—

1. Gas Company

See charters of

	Exhibit No.
The Peoples Gas Light Company of the City of Hudson	14
The Jersey City Gaslight Company	15
The Consumers Gas Company of Jersey City	16
The Hudson County Gaslight Company	17
The Bergen Point Gaslight Company	18

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY

Organized for the purpose of carrying on business of—

1. Gas Company
2. Electric Company
3. Dealings in property
4. Acquisition and ownership of stocks of other gas and/or electric companies

See Exhibit 19

THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY

Successor to corporations organized for the purpose of carrying on business of—

1. Gas Company
   See charters of

	Exhibit No.
Peoples Gaslight Company of the City of Paterson	20
Paterson Gaslight Company..	21
Passaic Lighting Company...	23
The Passaic Gaslight Company	24
The Passaic Electric Light, Heat, and Power Company..	25
The Lodi Light, Heat and Power Company	26
The Passaic and Bergen Gas Company	27

2. Electric Company
   See charters of

The Edison Illuminating Company of Paterson.....	22
Passaic Lighting Company...	23
The Passaic Electric Light, Heat and Power Company..	25
The Lodi Light, Heat and Power Company	26

3. Steam Company
   See charter of

The Passaic Electric Light, Heat and Power Company..	25

Exhibit No.

4. General Mercantile business in connection with other business—
See charter of
The Passaic Electric Light, Heat and Power Company. 25

5. Dealings in property—
See charter of
The Passaic Electric Light, Heat and Power Company.. 25

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY

Successor to corporations organized for the purpose of carrying on business of—

1. Gas Company—
See charters of
Plainfield Gas and Electric Light Company..... 28
The Somerset Lighting Company 29
The Somerset Gaslight Company 30

2. Electric Company—
See charters of
Plainfield Gas and Electric Light Company..... 28
The Somerset Lighting Company 29
Central Electric Company.... 32
Raritan Electric Light and Power Company..... 33

	Exhibit No.
The Bound Brook Electric Light, Heat and Power Company	34
The Dunellen Electric Light Company	35
Edison Electric Illuminating Company of New Brunswick.	36
Rahway Electric Company	37
Middlesex Electric Company	38

3. Steam Company—
See charter of
Plainfield Gas and Electric Light Company..... 28

4. General Mercantile business in connection with other business—
See charter of
Plainfield Gas and Electric Light Company..... 28

5. Dealings in property—
See charter of
Plainfield Gas and Electric Light Company..... 28

6. Light, heat and power—
See charter of
Citizens Electric Company.... 31

7. Dealings in stocks, bonds and securities—
See charter of
Citizens Electric Company... 31

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

Successor to corporations organized for the purpose of carrying on business of—

Exhibit No.

(1) Gas Company
See charters of
Public Service Gas Company.. 39
Princeton Light, Heat and Power Company, as amended 47
Morristown Gaslight Company 45

(2) Electric Company
See charters of—
Burlington Electric Light and Power Company..... 42
Nichols Electric Light and Power Company of Nutley. 46

(3) Light, heat and power company—
See charters of—
Public Service Electric Company, as amended..... 40
United Electric Company of New Jersey, as amended... 41
Citizens Electric Light, Heat and Power Company, as amended 43
Middlesex Electric Light and Power Company, as amended 44
Princeton Light, Heat and Power Company, as amended 47
Weehawken Contracting Company, as amended..... 48

Respectfully yours,

WALL HAIGHT CAREY & HARTPENCE
PITNEY HARDIN & SKINNER
Solicitors for Complainants

Dated—September 23, 1927

Addition by way of Supplement to Amended Bill of Complaint.

Filed December 14, 1927.

IN CHANCERY OF NEW JERSEY.

Between R. IRVING OUTWATER and others, Complainants, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, and others, Defendants.	On Bill, &c. Addition by way of Supplement to Amended Bill of Complaint.

TO THE HONORABLE EDWIN ROBERT WALKER, CHANCELLOR OF NEW JERSEY:

The complainants R. Irving Outwater and H. Prescott Wells, partners trading as Outwater & Wells, W. Emlen Roosevelt, George Emlen Roosevelt, Philip J. Roosevelt, Fairman R. Dick and Archibald B. Roosevelt, partners trading as Roosevelt & Son, W. Emlen Roosevelt, Evans R. Dick, Roscoe C. Ingalls, R. Irving Outwater, William C. Shanley, Jr., and Ernest Sturm, as a Committee under Agreement dated June 10, 1927, and Fidelity Union Trust Company, Substituted Trustee under the last will and testament and codicil thereto of Bernard M. Shanley, by way of supplement and addition to the Amended Bill of Complaint herein, by leave of court first obtained, respectfully show that:

I. The complainants have respectively continued to be and are holders of record of shares of stock in the defendants Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and

Addition by way of Supplement to Amended Bill of Complaint.

Passaic Gas and Electric Company, and Somerset, Union and Middlesex Lighting Company, as alleged respectively, by the original complainants in the original Bill of Complaint, and by the said Committee in their petition for leave to be admitted as parties complainant filed in the above entitled cause, and by said Substituted Trustee in its petition for leave to be admitted as a party complainant filed in the above entitled cause.

II. On or about September 27, 1927, the Board of Directors of the defendant Essex and Hudson Gas Company adopted a resolution declaring it advisable that the certificate of incorporation of said defendant company be amended so as to declare its objects and purposes to be as set forth in the certificate of amendment in this paragraph mentioned. At the same time the said Board of Directors called a meeting of the stockholders of said defendant company to be held on October 19, 1927, to take action upon said proposed amendment. On October 19, 1927, said meeting of stockholders was held. At said meeting, the defendant Public Service Electric & Gas Company, being the holder of more than two-thirds in interest of the outstanding capital stock of said defendant, Essex & Hudson Gas Company, voted such stock so held by it in favor of said amendment. At said meeting, the complainants Outwater and Wells and the complainants W. Emlen Roosevelt and others, as a Committee under Agreement dated June 10, 1927, voted against said amendment. Thereupon said defendant Essex and Hudson Gas Company made and executed a certificate of amendment and filed same in the office of the Secretary of State of New Jersey on or about October 20, 1927. A true copy of said certificate of amendment is hereto annexed and made a part hereof, marked Exhibit A.

Addition by way of Supplement to Amended Bill of Complaint.

III. On or about September 27, 1927, the Board of Directors of the defendant Hudson County Gas Company adopted a resolution declaring it advisable that the objects of said defendant company be amended, changed or altered so as to express its objects as set forth in the certificate of amendment in this paragraph hereinafter mentioned. At the same time the said Board of Directors called a meeting of the stockholders of said defendant company to be held on October 19, 1927, to take action upon said proposed amendment. On October 19, 1927, said meeting of stockholders was held. At said meeting, the defendant Public Service Electric and Gas Company, being the holder of more than two-thirds in interest of the outstanding capital stock of Hudson County Gas Company, voted such stock so held by it in favor of said amendment. At said meeting, the complainants Outwater and Wells and the complainants W. Emlen Roosevelt and others, as a Committee under Agreement dated June 10, 1927, voted against said amendment. Thereupon said defendant Hudson County Gas Company made and executed a certificate of amendment and filed same in the office of the Secretary of State of New Jersey on or about October 19, 1927. A true copy of said certificate of amendment is hereto annexed and made a part hereof, marked Exhibit B.

IV. On or about September 27, 1927, the Board of Directors of the defendant The Paterson and Passaic Gas and Electric Company adopted a resolution declaring it advisable that the objects of said company be amended, changed or altered so as to express its objects as set forth in the certificate of amendment in this paragraph hereinafter men-

tioned. At the same time, the said Board of Directors called a meeting of the stockholders of said defendant company to be held on October 19, 1927, to take action upon said proposed amendment. On October 19, 1927 said meeting of stockholders was held. At said meeting, the defendant Public Service Electric & Gas Company, being the holder of more than two-thirds in interest of the outstanding capital stock of said defendant The Paterson and Passaic Gas & Electric Company, voted such stock so held by it in favor of said amendment. At said meeting the complainants Outwater and Wells and the complainants W. Emlen Roosevelt, and others, as a Committee under Agreement dated June 10, 1927, voted against said amendment. Thereupon said defendant The Paterson and Passaic Gas & Electric Company made and executed a certificate of amendment and filed same in the office of the Secretary of State of New Jersey on or about October 19, 1927. A true copy of said certificate of amendment is hereto annexed and made a part hereof, marked Exhibit C.

V. On or about September 28, 1927, the Board of Directors of the defendant Somerset, Union and Middlesex Lighting Company adopted a resolution declaring it advisable that the objects of said defendant company be amended, changed or altered so as to express its objects as set forth in the certificate of amendment in this paragraph hereinafter mentioned. At the same time, the said Board of Directors called a meeting of the stockholders of said defendant company to be held on October 20, 1927, to take action upon said proposed amendment. On October 20, 1927, said meeting of stock-

holders was held. At said meeting, the defendant Public Service Electric & Gas Company, being the holder of more than two-thirds in interest of the outstanding capital stock of said defendant Somerset, Union & Middlesex Lighting Company, voted such stock so held by it in favor of said amendment. At said meeting, the complainants Roosevelt & Sons and the complainants W. Emlen Roosevelt, and others, as a Committee under Agreement dated June 10, 1927, voted against the said amendment. Thereupon said defendant Somerset, Union and Middlesex Lighting Company made and executed a certificate of amendment and filed same in the office of the Secretary of State of New Jersey on or about October 20, 1927. A true copy of said certificate of amendment is hereto annexed and made a part hereof, marked Exhibit D.

VI. On or about September 27, 1927, the Board of Directors of the defendant New Brunswick Light, Heat and Power Company, adopted a resolution declaring it advisable that Article 3 of the certificate of incorporation of said defendant company be amended so that the same shall read as set forth in the certificate of amendment in this paragraph hereinafter mentioned. At the same time, the said Board of Directors called a meeting of the stockholders of said company to be held on October 19, 1927, to take action upon said proposed amendment. On October 19, 1927, said meeting of stockholders was held. At said meeting, the defendant Public Service Electric & Gas Company, being the holder of more than two-thirds in interest of the outstanding capital stock of said defendant New Brunswick Light, Heat & Power Com-

pany, voted such stock so held by it in favor of said amendment. Thereupon said defendant New Brunswick Light, Heat & Power Company made and executed a certificate of amendment and filed same in the office of the Secretary of State of New Jersey on or about October 20, 1927. A true copy of said certificate of amendment is hereto annexed and made a part hereof, marked Exhibit E.

VII. On or about October 25, 1927, the defendants Public Service Electric & Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas & Electric Company, Somerset, Union and Middlesex Lighting Company and New Brunswick Light, Heat and Power Company, and their respective Boards of Directors, made and executed a joint Agreement dated October 25, 1927, providing for the absorption and merger of said five defendant lessor companies into and with said defendant Public Service Electric & Gas Company. A true copy thereof is hereto annexed and made a part hereof, marked Exhibit F.

VIII. At or about the same time, the respective Boards of Directors of said companies called special meetings of the stockholders of said companies to be held on November 21, 1927, for the purpose of adopting or rejecting said proposed merger agreement.

IX. The meetings of the stockholders of said companies originally called to be held on May 23, 1927, for the purpose of adopting or rejecting the proposed Agreement of Merger, of which a copy is

annexed to the Bill of Complaint, marked Exhibit 10, were, as alleged in paragraph 87 of the Bill of Complaint, adjourned to June 20, 1927. Thereafter said meetings were again adjourned from time to time, the last adjourned date of said meetings being the same date fixed for the respective meetings of the same companies called, as in this Supplement hereinabove alleged, to adopt or reject the said Agreement dated October 25, 1927, namely, November 21, 1927. Said meetings of the stockholders of said companies called to adopt or reject said Agreement of October 25, 1927, were convened on November 21, 1927, but no action was taken thereat upon the adoption or rejection of said Agreement and said meetings have been adjourned to a future date.

X. With the notices of said meetings, proxies were sent to the stockholders of said five lessor companies, with the request that stockholders not expecting to attend the meetings do sign and return same. The persons respectively named therein to act as proxies at the meetings of each of said companies were the same proxies named as such to act at the respective meetings of said companies called to be held on May 23, 1927, as alleged in paragraph 88 of the Bill of Complaint.

XI. Complainants believe it to be and charge that it is the intention of Public Service Electric & Gas Company to vote the stock held by it in each of said five lessor companies, being in each case more than two-thirds of such stock, in favor of the adoption of said Agreement dated October 25, 1927, at the stockholders' meetings called to be held as aforesaid to vote thereon, and that it is the inten-

tion of the defendant Public Service Corporation of New Jersey likewise to vote such stock in said lessor companies as may at the time be held by it.

XII. Said proposed Agreement of absorption and merger dated October 25, 1927, is in substance identical with the said Merger Agreement dated April 26, 1927 (Exhibit 10) and provides for the conversion of the stock of the said five lessor companies held by persons other than said defendant Public Service Electric & Gas Company into the Preferred Stock of said defendant Public Service Electric & Gas Company in the same respective amounts and proportions as provided in said Merger Agreement of April 26, 1927 (Exhibit 10).

XIII. The directors of the corporate defendants at all times since the filing of the Bill of Complaint herein, have continued to be respectively the same persons named as directors of said corporate defendants respectively in paragraphs 108 to 122, inclusive, of the Bill of Complaint. Certain of said directors have continued to be officers of the defendants, Public Service Electric & Gas Company and Public Service Corporation of New Jersey, as alleged in said paragraphs.

XIV. The defendant Public Service Corporation of New Jersey has at all times since the filing of the Bill of Complaint herein continued to be the owner and holder of all of the outstanding common capital stock of the defendant Public Service Electric & Gas Company (except such right, title and interest in the qualifying shares thereof as is held by the directors of said Public Service Electric & Gas

Company) and also of all but a few shares of the $20,000,000, par value of the 7% Cumulative Preferred Stock of the Public Service Electric & Gas Company. Since the filing of the Bill of Complaint said defendants have acquired additional shares of stock in the five merging lessor companies in this Supplement mentioned, to an extent unknown to complainants.

XV. Since the filing of the Bill of Complaint herein, the funded debt of the defendant Public Service Electric & Gas Company has increased and the amount of the preferred stock of said defendant has also increased, but the exact amounts of such funded debt and preferred stock now outstanding are not known to complainants. On October 25, 1927, when the proposed Agreement of that date (Exhibit F) was approved and executed by the respective Boards of Directors of said defendant companies, the capital stock of said lessor companies was of a greater value than, and enjoyed a higher degree of security than, upon April 26, 1927, when the proposed Merger was first approved by said Boards of Directors, for which reason, among others, the said proposed Agreement of October 25, 1927 (Exhibit F) is even more unfair and inequitable to the stockholders of said companies than said earlier proposed Agreement of April 26, 1927 (Exhibit 10). The re-approval and re-execution of said Agreement, as well as the proceedings in this Supplement hereinabove mentioned for the amendment of the respective certificates of incorporation of said lessor companies, further indicate the determination of the defendants Public Service Corporation of New Jersey and

Public Service Electric & Gas Company, to absorb and merge said lessor companies into Public Service Electric & Gas Company under terms fixed by said defendants, Public Service Corporation of New Jersey and Public Service Electric & Gas Company, and to force said terms upon the complainants.

XVI. Complainants repeat the charges contained in paragraphs 123 to 130 inclusive, of the Bill of Complaint, and do hereby direct such charges to the proposed Agreement of Merger dated October 25, 1927, as well as to the matters referred to in said paragraphs.

XVII. Complainants repeat the charge contained in paragraph 131 of the Bill of Complaint, as amended, that the companies proposed to be merged under said Agreement of October 25, 1927, were not organized for the purpose of carrying on business of the same or a similar nature, and that, therefore, the proposed absorption and merger would be *ultra vires,* illegal and void, notwithstanding the attempted amendment of the respective certificates of incorporation of the five merging lessor companies as in this Supplement hereinabove mentioned, and complainants allege and charge as follows:

(*a*) The defendant Hudson County Gas Company was formed by the consolidation of certain corporations which were organized under special acts of the Legislature or under the Act authorizing the formation of Gas Light Companies (Act of April 21, 1876) for the sole purpose of manufacturing and distributing illuminating gas; that such constituent corporations had no power in law to

amend their respective charters so as to embrace other or broader objects or purposes; that Hudson County Gas Company, as the successor of said constituent corporations, is subject to the same restrictions and disabilities; that it was not organized under the General Corporation Act of 1896 or the General Corporation Act of 1875 and cannot avail itself of the power granted to corporations organized under the General Corporation Act in and by section 27 of the General Corporation Act of 1896 to change its objects; that it wholly lacks lawful power to change or alter the objects or purposes for which its constituent corporations were organized and to which it succeeded; and that the attempted amendment in this Supplement mentioned of its objects or purposes was nugatory and wholly ineffective in law to accomplish a change or alteration of its objects and purposes;

(*b*) That the certificate of incorporation of the defendant Essex and Hudson Gas Company provides among other things:—

"3. The objects for which this corporation is formed are:—

(*a*) To manufacture, sell and distribute illuminating and fuel gas throughout the counties of Essex and Union, in the State of New Jersey, and the Town of Harrison, the Township of Kearney, and the Borough of East Newark, in the County of Hudson and State of New Jersey, and for such purposes to build and construct such gas works as may be necessary for the business of the company; the company, however, shall have no right to extend its business operations beyond the limits of

the territory above described without the unanimous consent of the stockholders of said company. * * *";

that the amendment of its objects and purposes attempted to be made by it as in this Supplement hereinbefore stated, in terms declares its objects and purposes to be the furnishing of light, heat and power for domestic and public use in New Jersey; that such amendment therefore in terms would authorize and permit the extension of its business operations beyond the limits of the territory described in the above quoted section of its certificate of incorporation; that the merging of said defendant company into and with Public Service Electric and Gas Company, for the purpose of permitting which said amendment was attempted to be made, would constitute an extension of its business operations beyond said territory; that inasmuch as said amendment was attempted to be made without and did not receive the unanimous consent of the stockholders of said defendant company the said amendment was nugatory and wholly ineffective in law to accomplish a change or alteration of its objects or purposes;

(*c*) That the defendant The Paterson and Passaic Gas and Electric Company was formed by the consolidation of certain constituent corporations, and neither it nor all of its constituent corporations were organized under the General Corporation Act of 1896 or the General Corporation Act of 1875; that it was not a corporation to which the power of changing or altering its objects and purposes was granted under and by Section 27 of the General Corporation Act, and it wholly lacked power to

make the amendment by it attempted to be made as in this Supplement hereinabove set forth; and that said amendment was nugatory and wholly ineffective to accomplish a change or alteration of its objects or purposes;

(*d*) That said defendant Somerset, Union and Middlesex Lighting Company was formed by the consolidation of certain constituent corporations, and neither it nor all of its constituent corporations were organized under the General Corporation Act of 1896 or the General Corporation Act of 1875; that it was not a corporation to which the power of changing or altering its objects and purposes was granted under and by Section 27 of the General Corporation Act, and it wholly lacked power to make the amendment by it attempted to be made as in this Supplement hereinabove set forth; and that said amendment was nugatory and wholly ineffective to accomplish a change or alteration of its objects or purposes;

(*e*) That there was no necessity for, or advantage to any one of said four lessor corporations last mentioned to be derived from, the attempted amendments above mentioned, and such amendments were attempted to be made as a mere formal compliance with the forms of law for the mere purpose of furthering and carrying into effect the design of the defendants Public Service Corporation of New Jersey and Public Service Electric and Gas Company to vest ownership of the properties, rights and franchises of said lessor companies in the defendant Public Service Electric and Gas Company and to extinguish the obligations of the latter under the

leases made by said lessor companies, through the means of a merger on terms unfair and inequitable to the complainants, and therefore the attempted amendments, changes and alterations in the objects and purposes of said lessor companies cannot be given effect in a court of equity as against the rights of the complainants.

XVIII. Complainants have not in any way assented to the proposed merger under the Agreement dated October 25, 1927, but do protest against the same and charge that such agreement is *ultra vires,* unlawful, inequitable and void and should be set aside and annulled.

Complainants therefore pray:

1. That the defendants to this suit, named in paragraph 212 (1) of the Bill of Complaint, may answer this Supplement to the Bill of Complaint and each statement therein made:

2. That the relief prayed in the Bill of Complaint be extended to and granted in respect of the matters alleged in this Supplement thereto:

3. That the defendants, Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, and New Brunswick, Light, Heat and Power Company, and their respective directors, officers and agents, be enjoined from certifying the adoption by the stockholders of said respective companies of the Joint Agreement of Merger dated October 25, 1927, and

from filing the same in the office of the Secretary of State of New Jersey or otherwise perfecting or consummating said Joint Agreement and act of merger, and that said Joint Agreement may be declared null and void and be set aside.

WALL, HAIGHT, CAREY & HARTPENCE,
PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel
with Complainants.

Exhibit A.

CERTIFICATE OF AMENDMENT.

Be it known that ESSEX AND HUDSON GAS COMPANY, a corporation and body politic of the State of New Jersey, hereby certifies:

1. The principal office of the said corporation is at No. 80 Park Place, in the City of Newark, Essex County, New Jersey, and the agent therein and in charge thereof upon whom process against said corporation may be served is Charles M. Breder.

2. The Board of Directors of said corporation, at a meeting duly convened and held on the twenty-seventh day of September in the year one thousand nine hundred and twenty-seven, a quorum being present, by the unanimous vote of the directors present, duly passed and adopted a resolution that the amendment to and change and alteration of the certificate of incorporation of said corporation, hereinafter set forth, is advisable, and called a

meeting of the stockholders of said corporation to be held at its principal office on the nineteenth day of October, nineteen hundred and twenty-seven to take action thereon.

3. The following is a copy of said resolution:

"RESOLVED, That in the judgment of the Board of Directors of Essex and Hudson Gas Company it is advisable to amend its certificate of incorporation dated the twenty-ninth day of November, in the year one thousand eight hundred and ninety-eight, and filed in the office of the Secretary of State on the thirtieth day of November, in the year one thousand, eight hundred and ninety-eight, so as to declare its objects and purposes to be as follows:

'The object for which this Company is formed is to furnish light, heat and power for domestic and public use in New Jersey. To accomplish said object said Company shall have power:

'(*a*) To construct, purchase, maintain and operate gas and electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, gas pipes, posts, burners and reflectors, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas, and electrical energy, for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distrib-

ute gas, and electrical energy, for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

'(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

'(*c*) To use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles to sustain the necessary wires, lamps, burners, reflectors and fixtures, laying or constructing gas mains and erecting burners and reflectors in or on the same, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this State as may be necessary.' "

4. Thereafter on the nineteenth day of October in the year one thousand nine hundred and twenty-seven, pursuant to said call of said directors, on notice given to each stockholder as provided in the by-laws of said corporation and specified in said resolution, a meeting of the stockholders of said corporation was held to take action on the above recited resolution, declaring the said amendment of the said certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning fifty-two thousand five hundred fifty-three shares of the stock of said corporation, being more than two-thirds in interest of the stock of said corpora-

tion, and at such meeting the owners of forty-nine thousand seven hundred twenty-eight shares of stock present in person or represented by proxy voted in favor of the amendment, change or alteration of said certificate of incorporation and two thousand eight hundred twenty-five shares voted against the same.

5. That the total number of shares of stock of said corporation, at the time of said meeting, issued and outstanding entitled to vote thereon was sixty-five thousand (65,000) shares.

IN WITNESS WHEREOF, said Essex and Hudson Gas Company has caused this certificate to be made and signed by Thomas N. McCarter, its President, and Charles M. Breder, its Secretary, and its corporate seal to be hereunto affixed this nineteenth day of October in the year nineteen hundred and twenty-seven.

ESSEX AND HUDSON GAS COMPANY
By THOMAS N. McCARTER
President.

(SEAL)

Attest:
CHARLES M. BREDER
Secretary.

Addition by way of Supplement to Amended Bill of Complaint—Exhibit A.

STATE OF NEW JERSEY }
County of Essex } ss.:

BE IT REMEMBERED, That on this nineteenth day of October, in the year of our Lord one thousand nine hundred and twenty-seven, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Thomas N. McCarter and Charles M. Breder, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and the said Thomas N. McCarter being to me known and known to me to be the President, and said Charles M. Breder being to me known and known to me to be the Secretary of ESSEX AND HUDSON GAS COMPANY, the corporation named in and which executed the foregoing certificate, and I having first made known to them and each of them the contents thereof, they did thereupon severally acknowledge that they signed, sealed and delivered the said certificate as their voluntary act and deed and as the voluntary act and deed of the said corporation, the same being sealed with the common or corporate seal of the said corporation and by its authority. All of which is hereby certified.

FRANK J. DAVIS
Notary Public of New Jersey
(SEAL) My commission Expires March 8, 1932.

Endorsed:
"FILED AND RECORDED
Oct 20, 1927
Joseph F. S. Fitzpatrick
Secretary of State."

New Jersey State Library

Exhibit B.

CERTIFICATE OF AMENDMENT

Be it known that HUDSON COUNTY GAS COMPANY, a corporation and body politic of the State of New Jersey, hereby certifies:

1. The principal office of the said corporation is at No. 80 Park Place, in the City of Newark, Essex County, New Jersey, and the agent therein and in charge thereof upon whom process against said corporation may be served is Charles M. Breder.

2. The Board of Directors of said corporation, at a meeting duly convened and held on the twenty-seventh day of September in the year one thousand nine hundred and twenty-seven, a quorum being present, by the unanimous vote of the directors present, duly passed and adopted a resolution that the amendment to and change and alteration of the certificate of incorporation of said corporation, hereinafter set forth, is advisable, and called a meeting of the stockholders of said corporation to be held at its principal office on the nineteenth day of October, nineteen hundred and twenty-seven to take action thereon.

3. The following is a copy of said resolution:

"RESOLVED, That in the opinion of the Board of Directors of this Company, it is advisable to make an amendment, change or alteration in the objects of this Company as the same now exist under and by virtue of the agreement and

New Jersey State Library

act of merger or consolidation by which the same was formed, so as to express its objects, and to that end it is hereby declared:

'The object for which this Company is formed is to furnish light, heat and power for domestic and public use in New Jersey. To accomplish said object said Company shall have power:

'(*a*) To construct, purchase, maintain and operate gas and electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, gas pipes, posts, burners and reflectors, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas, and electrical energy, for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas, and electrical energy, for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

'(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

'(*c*) To use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles to sustain the necessary wires, lamps, burners, re-

flectors and fixtures, laying or constructing gas mains and erecting burners and reflectors in or on the same, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this State as may be necessary.' "

4. Thereafter on the nineteenth day of October in the year one thousand nine hundred and twenty-seven, pursuant to said call of said directors, on notice given to each stockholder as provided in the by-laws of said corporation and specified in said resolution, a meeting of the stockholders of said corporation was held to take action on the above recited resolution, declaring the said amendment of the said certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning eighty-five thousand eight hundred sixty-eight shares of the stock of said corporation, being more than two-thirds in interest of the stock of said corporation, and at such meeting the owners of eighty-one thousand six hundred thirty-two (81,632) shares of stock present in person or represented by proxy voted in favor of the amendment, change or alteration of said certificate of incorporation and four thousand two hundred thirty-six (4,236) shares voted against the same.

5. That the total number of shares of stock of said corporation, at the time of said meeting, issued and outstanding entitled to vote thereon was one hundred and five thousand (105,000) shares.

IN WITNESS WHEREOF, said Hudson County Gas Company has caused this certificate to be made

and signed by Thomas N. McCarter, its President, and Charles M. Breder, its Secretary, and its corporate seal to be hereunto affixed this nineteenth day of October in the year nineteen hundred and twenty-seven.

HUDSON COUNTY GAS COMPANY
By THOMAS N. McCARTER
(SEAL) President

Attest:

CHARLES M. BREDER
Secretary

STATE OF NEW JERSEY }
County of Essex } ss.:

BE IT REMEMBERED, That on this nineteenth day of October, in the year of our Lord one thousand nine hundred and twenty-seven, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Thomas N. McCarter and Charles M. Breder, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and the said Thomas N. McCarter, being to me known and known to me to be the President, and said Charles M. Breder being to me known and known to me to be the Secretary of HUDSON COUNTY GAS COMPANY, the corporation named in and which executed the foregoing certificate, and I having first made known to them and each of them the contents thereof, they did thereupon severally acknowledge that they signed, sealed and delivered the said certificate as their voluntary act and deed and as the voluntary act and deed of the said corporation, the same being

sealed with the common or corporate seal of the said corporation and by its authority. All of which is hereby certified.

FRANK J. DAVIS
Notary Public of New Jersey
My Commission expires March 8, 1932.
(SEAL)

Endorsed:

"FILED AND RECORDED
Oct 19 1927
JOSEPH F. S. FITZPATRICK
Secretary of State."

Exhibit C.

CERTIFICATE OF AMENDMENT

Be it known that THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, a corporation and body politic of the State of New Jersey, hereby certifies:

1. The principal office of the said corporation is at 80 Park Place, in the City of Newark, Essex County, New Jersey, and the agent therein and in charge thereof upon whom process against said corporation may be served is Charles M. Breder.

2. The Board of Directors of said corporation, at a meeting duly convened and held on the twenty-seventh day of September in the year one thousand

nine hundred and twenty-seven, a quorum being present, by the unanimous vote of the directors present, duly passed and adopted a resolution that the amendment to and change and alteration of the certificate of incorporation of said corporation, hereinafter set forth, is advisable, and called a meeting of the stockholders of said corporation to be held at its principal office on the nineteenth day of October, nineteen hundred and twenty-seven to take action thereon.

3. The following is a copy of said resolution:

"RESOLVED, That in the opinion of the Board of Directors of this Company, it is advisable to make an amendment, change or alteration in the objects of this Company as the same now exist under and by virtue of the agreement and act of merger or consolidation by which the same was formed, so as to express its objects, and to that end it is hereby declared:

'The object for which this Company is formed is to furnish light, heat and power for domestic and public use in New Jersey. To accomplish said object said Company shall have power:

'(*a*) To construct, purchase, maintain and operate gas and electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, gas pipes, posts, burners and reflectors, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas, and electrical energy, for

light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas, and electric energy, for light, heat and power, and to buy, sell and furnish fixtures and appliances for the use thereof.

'(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

'(*c*) To use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles to sustain the necessary wires, lamps, burners, reflectors and fixtures, laying or constructing gas mains and erecting burners and reflectors in or on the same, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this State as may be necessary.' "

4. Thereafter on the nineteenth day of October in the year one thousand nine hundred and twenty-seven, pursuant to said call of said directors, on notice given to each stockholder as provided in the by-laws of said corporation and specified in said resolution, a meeting of the stockholders of said corporation was held to take action on the above recited resolution, declaring the said amendment of the said certificate of incorporation to be advisable, at which meeting there were present in per-

son or represented by proxy stockholders owning forty-three thousand four hundred eighty-three shares of the stock of said corporation, being more than two-thirds in interest of the stock of said corporation, and at such meeting the owners of forty-two thousand one hundred thirty-two (42,-132) shares of stock present in person or represented by proxy voted in favor of the amendment, change or alteration of said certificate of incorporation and one thousand three hundred fifty-one (1,351) shares voted against the same.

5. That the total number of shares of stock of said corporation, at the time of said meeting, issued and outstanding entitled to vote thereon was fifty thousand (50,000) shares.

In witness whereof, said The Paterson and Passaic Gas and Electric Company has caused this certificate to be made and signed by Thomas N. McCarter, its President, and Charles M. Breder, its Secretary, and its corporate seal to be hereunto affixed this nineteenth day of October in the year nineteen hundred and twenty-seven.

The Paterson and Passaic Gas and Electric Company,
By Thomas N. McCarter,
President.

(SEAL)

Attest:

Charles M. Breder,
Secretary.

Addition by way of Supplement to Amended Bill of Complaint—Exhibit C.

STATE OF NEW JERSEY,
County of Essex, } ss.:

BE IT REMEMBERED, That on this nineteenth day of October, in the year of our Lord one thousand nine hundred and twenty-seven, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Thomas N. McCarter and Charles M. Breder, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and the said Thomas N. McCarter being to me known and known to me to be the President, and said Charles M. Breder being to me known and known to me to be the Secretary of THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, the corporation named in and which executed the foregoing certificate, and I having first made known to them and each of them the contents thereof, they did thereupon severally acknowledge that they signed, sealed and delivered the said certificate as their voluntary act and deed and as the voluntary act and deed of the said corporation, the same being sealed with the common or corporate seal of the said corporation and by its authority. All of which is hereby certified.

FRANK J. DAVIS
Notary Public of New Jersey
(SEAL) My Commission Expires March 8, 1932.

Endorsed:
"Filed and recorded
Oct 19 1927
JOSEPH F. S. FITZPATRICK
Secretary of State."

Exhibit D.

CERTIFICATE OF AMENDMENT

Be it known that SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, a corporation and body politic of the State of New Jersey, hereby certifies:

1. The principal office of the said corporation is at Plainfield Savings Bank Building, East Front Street, in the City of Plainfield, New Jersey, and the agent therein and in charge thereof upon whom process against said corporation may be served is Harry B. MacDonald.

2. The Board of Directors of said corporation, at a meeting duly convened and held on the twenty-eighth day of September in the year one thousand nine hundred and twenty-seven, a quorum being present, by the unanimous vote of the directors present, duly passed and adopted a resolution that the amendment to and change and alteration of the certificate of incorporation of said corporation, hereinafter set forth, is advisable, and called a meeting of the stockholders of said corporation to be held at its principal office on the twentieth day of October, nineteen hundred and twenty-seven to take action thereon.

3. The following is a copy of said resolution:

"RESOLVED, That in the opinion of the Board of Directors of this Company, it is advisable to make an amendment, change or alteration in the object of this Company as the same now

exist under and by virtue of the agreement and act of merger or consolidation by which the same was formed, so as to express its objects, and to that end it is hereby declared:

'The object for which this Company is formed is to furnish light, heat and power for domestic and public use in New Jersey. To accomplish said object said Company shall have power:

'(*a*) To construct, purchase, maintain and operate gas and electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, gas pipes, posts, burners and reflectors, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas, and electrical energy, for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas, and electrical energy, for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

'(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

'(*c*) To use the public roads, highways, streets, avenues and alleys in this State for

the purpose of erecting posts or poles to sustain the necessary wires, lamps, burners, reflectors and fixtures, laying or constructing gas mains and erecting burners and reflectors in or on the same, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this State as may be necessary.' "

4. Thereafter on the twentieth day of October in the year one thousand nine hundred and twenty-seven, pursuant to said call of said directors, on notice given to each stockholder as provided in the by-laws of said corporation and specified in said resolution, a meeting of the stockholders of said corporation was held to take action on the above recited resolution, declaring the said amendment of the said certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning ninety-two hundred forty-five shares of the stock of said corporation, being more than two-thirds in interest of the stock of said corporation, and at such meeting the owners of eighty-three hundred seventy-six shares of stock present in person or represented by proxy voted in favor of the amendment, change or alteration of said certificate of incorporation and eight hundred sixty-nine voted against the same.

5. That the total number of shares of stock of said corporation, at the time of said meeting, issued and outstanding entitled to vote thereon was ten thousand five hundred (10,500) shares.

IN WITNESS WHEREOF, said Somerset, Union and Middlesex Lighting Company has caused this certificate to be made and signed by Augustus J. Brunson, its President, and Harry B. MacDonald, its Secretary, and its corporate seal to be hereunto affixed this twentieth day of October in the year nineteen hundred and twenty-seven.

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY,

By

(SEAL) AUGUSTUS J. BRUNSON, President.

Attest:

H. B. MACDONALD, Secretary.

STATE OF NEW JERSEY }
County of Union } ss.:

BE IT REMEMBERED, That on this twentieth day of October, in the year of our Lord one thousand nine hundred and twenty-seven, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Augustus J. Brunson and Harry B. MacDonald, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and the said Augustus J. Brunson being to me known and known to me to be the President, and said Harry B. MacDonald being to me known and known to me to be the Secretary of SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, the corporation named in and which executed the foregoing certificate, and I having first made known to them and each of them the contents thereof, they did thereupon severally acknowledge

that they signed, sealed and delivered the said certificate as their voluntary act and deed and as the voluntary act and deed of the said corporation, the same being sealed with the common or corporate seal of the said corporation and by its authority. All of which is hereby certified.

H. C. KOCH
Notary Public

Endorsed:

(SEAL) "FILED AND RECORDED
Oct. 20, 1927
JOSEPH F. S. FITZPATRICK
Secretary of State."

Exhibit E.

CERTIFICATE OF AMENDMENT

Be it known that NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, a corporation and body politic of the State of New Jersey, hereby certifies:

1. The principal office of the said corporation is at No. 80 Park Place, in the City of Newark, Essex County, New Jersey, and the agent therein and in charge thereof upon whom process against said corporation may be served is Charles M. Breder.

2. The Board of Directors of said corporation, at a meeting duly convened and held on the twenty-seventh day of September in the year one thousand nine hundred and twenty-seven, a quorum being present, by the unanimous vote of the directors

present, duly passed and adopted a resolution that the amendment to and change and alteration of the certificate of incorporation of said corporation, hereinafter set forth, is advisable, and called a meeting of the stockholders of said corporation to be held at its principal office on the nineteenth day of October, nineteen hundred and twenty-seven to take action thereon.

3. The following is a copy of said resolution:

"RESOLVED, That in the judgment of the Board of Directors of New Brunswick Light, Heat and Power Company, it is advisable to amend Article 3 of its certificate of Incorporation, dated the fifth day of December, in the year one thousand eight hundred and ninety-nine, and filed in the office of the Secretary of State on the sixth day of December, in the year one thousand eight hundred and ninety-nine, so that the same shall read as follows:

'3. The object for which this Company is formed is to furnish light, heat and power for domestic and public use in New Jersey. To accomplish said object said Company shall have power:

'(*a*) To construct, purchase, maintain and operate gas and electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, gas pipes, posts, burners and reflectors, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas, and electrical energy, for light,

heat and power; and to extend and enlarge the same from time to time, and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas, and electrical energy, for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

'(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

'(*c*) To use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles to sustain the necessary wires, lamps, burners, reflectors and fixtures, laying or constructing gas mains and erecting burners and reflectors in or on the same, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this State as may be necessary.' "

4. Thereafter on the nineteenth day of October in the year one thousand nine hundred and twenty-seven, pursuant to said call of said directors, on notice given to each stockholder as provided in the by-laws of said corporation and specified in said resolution, a meeting of the stockholders of said corporation was held to take action on the above recited resolution, declaring the said amendment of the said certificate of incorporation to be advisable, at which meeting there were present in person or

represented by proxy stockholders owning three thousand and sixty-three (3,063) shares of the stock of said corporation, being more than two-thirds in interest of the stock of said corporation, and at such meeting the owners of three thousand and sixty-three (3,063) shares of stock present in person or represented by proxy voted in favor of the amendment, change or alteration of said certificate of incorporation and no shares voted against the same.

5. That the total number of shares of stock of said corporation, at the time of said meeting, issued and outstanding entitled to vote thereon was four thousand (4,000) shares.

IN WITNESS WHEREOF, said New Brunswick Light, Heat and Power Company has caused this certificate to be made and signed by Thomas N. McCarter, its President, and Charles M. Breder, its Secretary, and its corporate seal to be hereunto affixed this nineteenth day of October in the year nineteen hundred and twenty-seven.

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY

By THOMAS N. McCARTER,

(SEAL) President.

Attest:

CHARLES M. BREDER,

Secretary.

Addition by way of Supplement to Amended Bill of Complaint—Exhibit E.

STATE OF NEW JERSEY }
County of Essex } SS.:

BE IT REMEMBERED, That on this nineteenth day of October, in the year of Our Lord one thousand nine hundred and twenty-seven, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared Thomas N. McCarter and Charles M. Breder, who, I am satisfied, are the persons named in and who executed the foregoing certificate; and the said Thomas N. McCarter being to me known and known to me to be the President, and said Charles M. Breder being to me known and known to me to be the Secretary of NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, the corporation named in and which executed the foregoing certificate, and I having first made known to them and each of them the contents thereof, they did thereupon severally acknowledge that they signed, sealed and delivered the said certificate as their voluntary act and deed and as the voluntary act and deed of the said corporation, the same being sealed with the common or corporate seal of the said corporation and by its authority. All of which is hereby certified.

FRANK J. DAVIS,
Notary Public of New Jersey,
My Commission Expires March 8, 1932.

(SEAL)

ENDORSED:
"FILED AND RECORDED
Oct. 20, 1927
JOSEPH F. S. FITZPATRICK,
Secretary of State."

Addition by way of Supplement to Amended Bill of Complaint—Exhibit F.

Exhibit F.

MERGER AGREEMENT

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
ABSORBING
ESSEX AND HUDSON GAS COMPANY
HUDSON COUNTY GAS COMPANY
THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY
SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY
NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY

Dated, October 25, 1927

THIS AGREEMENT, made this twenty-fifth day of October, in the year of our Lord one thousand nine hundred and twenty-seven, between the Directors of the several corporations hereinafter named, all incorporated under the laws of the State of New Jersey, under the corporate seals of the respective corporations, that is to say, PUBLIC SERVICE ELECTRIC AND GAS COMPANY, party of the first part, ESSEX AND HUDSON GAS COMPANY, party of the second part, HUDSON COUNTY GAS COMPANY, party of the third part, THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, party of the fourth part, SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, party of the fifth part, and NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, party of the sixth part.

Addition by way of Supplement to Amended Bill of Complaint—Exhibit F.

WHEREAS, the party of the first part became and was formed into a corporation by an agreement of merger and consolidation filed in the Office of the Secretary of State for the State of New Jersey, on the twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four, and is engaged in the business, as it is authorized to do, of operating under the leases hereinafter referred to, the property and franchises of the parties of the second, third, fourth, fifth and sixth parts hereto; and

WHEREAS, the party of the second part was duly organized as a corporation under the laws of the State of New Jersey, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and ninety-eighth, by a certificate dated on the twenty-ninth day of said November, recorded in the Clerk's Office of Essex County, in Book 15 of Incorporation Business Companies, p. 113, and filed on the day first named in the Office of the Secretary of State, and thereafter, to wit, on the first day of June, in the year of our Lord one thousand nine hundred and three, made a lease of all its property and franchises, except its franchise to be a corporation, to Public Service Corporation of New Jersey, for the term of nine hundred (900) years from the date of such lease, under the terms and conditions therein stated, which lease is duly recorded in the office of the Register of Deeds of the County of Essex, in Book N. 36 of Deeds, p. 176, and in the office of the Register of Deeds of the County of Hudson, in Book 836 of Deeds, p. 389, and thereunder said lessee entered into and took possession of the

said demised property and franchises; which said lease, by various mesne assignments, as well as the leasehold estate therein referred to, became vested in and is now possessed, and the property used and franchises exercised by the party of the first part hereto; and

WHEREAS, the party of the third part became and was formed into a corporation by an agreement of merger and consolidation, filed in the office of the Secretary of State on the thirty-first day of October, in the year of our Lord one thousand eight hundred and ninety-nine, and thereafter, to wit, on the first day of June, in the year of our Lord one thousand nine hundred and three, made a lease of all its property and franchises, except its franchise to be a corporation, to Public Service Corporation of New Jersey, for the term of nine hundred (900) years from and after the date thereof, under the terms and conditions therein stated, which lease is duly recorded in the office of the Register of Deeds of the County of Hudson, in Book 833 of Deeds, p. 569, and in the office of the Clerk of the County of Bergen, in Book 563 of Deeds, p. 443, and thereunder said lessee entered into and took possession of the said demised property and franchises; which said lease, by various mesne assignments, as well as the leasehold estate therein referred to, became vested in and is now possessed, and the property used and franchises exercised by the party of the first part hereto; and

WHEREAS, the party of the fourth part became and was formed into a corporation by an agree-

ment of merger and consolidation, filed in the office of the Secretary of State of the State of New Jersey, on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and ninety-nine, and thereafter, to wit, on the second day of June, in the year of our Lord one thousand nine hundred and three, made a lease of all its property and franchises, except its franchise to be a corporation, to Public Service Corporation of New Jersey, for the term of nine hundred (900) years from the first day of June, in the year of our Lord one thousand nine hundred and three, under the terms and conditions therein stated, which lease is duly recorded in the office of the Clerk of the County of Bergen, in Book 563 of Deeds, p. 471, in the office of the Register of Deeds of the County of Essex in Book L. 36 of Deeds, p. 417, and in the office of the Clerk of the County of Passaic, in Book A 16 of Deeds, p. 415, and thereunder said lessee entered into and took possession of the said demised property and franchises; which said lease, by various mesne assignments, as well as the leasehold estate therein referred to, became vested in and is now possessed, and the property used and franchises exercised by the party of the first part hereto; and

WHEREAS, the party of the fifth part became and was formed into a corporation by an agreement of merger and consolidation, filed in the office of the Secretary of State of New Jersey, on the first day of December, in the year of our Lord one thousand nine hundred and three, and thereafter, to wit, on the thirty-first day of December, in the year of our Lord one thousand nine hundred and

three, made a lease of all its property and franchises, except its franchise to be a corporation, to Public Service Corporation of New Jersey, for the term of nine hundred (900) years from and after the date thereof, under the terms and conditions therein stated, which lease is duly recorded in the office of the Clerk of the County of Middlesex, in Book 353 of Deeds, p. 385, in the office of the Clerk of the County of Union, in Book 425 of Deeds, p. 356, and in the office of the Clerk of the County of Somerset, in Book C. 10 of Deeds, p. 447, and thereunder said lessee entered into and took possession of the said demised property and franchises; which said lease, by various mesne assignments, as well as the leasehold estate therein referred to, became vested in and is now possessed, and the property used and franchises exercised by the party of the first part hereto; and

WHEREAS, the party of sixth part was duly organized as a corporation under the laws of the State of New Jersey on the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, by a certificate dated the fifth day of said December, and recorded in the Clerk's Office of Middlesex County, in Book D of Incorporations, pages 397, etc., and filed on the day first named in the office of the Secretary of State; and

WHEREAS, the said several corporations were duly organized for carrying on business of the same or a similar nature, which business is now being carried on in part by and under said leases by the party of the first part, as aforesaid; and the respective Directors of the several corpora-

tions have deemed it advisable for the purposes of greater efficiency in carrying on and performing the duties incumbent upon the party of the first part, both in its own right and as lessee of the other parties hereto, for the party of the first part to absorb and have merged into it as a single corporation the five (5) other several corporations, parties hereto under and pursuant to the provisions of the act of the Legislature of the State of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," and the various acts supplemental thereto and amendatory thereof, as well as in pursuance of all other legal power and authority for such purpose, vested in and possessed by the said parties hereto and each of them; and

WHEREAS, Public Service Corporation of New Jersey is the owner of ten million nine hundred and ninety-nine thousand nine hundred and ninety (10,999,990) shares out of a total of eleven million (11,000,000) shares of the common capital stock of the party of the first part hereto, and believes it to be to its interest, as owner of such common capital stock, that the property and franchises of the parties of the second, third, fourth, fifth and sixth parts hereto should be merged into the property and franchises of the said party of the first part hereto, so as to facilitate its business and operations, and to that end Public Service Corporation of New Jersey has, prior to the date of these presents, made and entered into an agreement with the party of the first part, providing that if the party of the first part hereto shall make and enter into this agreement, and exchange for each share of the capital stock of Essex and Hudson Gas Company,

the party of the second part, and Hudson County Gas Company, the party of the third part, the sum of one hundred and thirty-seven dollars ($137) in par value of the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part; and for each share of The Paterson and Passaic Gas and Electric Company, party of the fourth part, and New Brunswick Light, Heat and Power Company, party of the sixth part, the sum of eighty-six dollars ($86) in par value of six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part; and for each share of Somerset, Union and Middlesex Lighting Company, the party of the fifth part, the sum of sixty-nine dollars ($69) in par value of the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, said Public Service Corporation of New Jersey will supply of the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part owned by it, an amount sufficient to reimburse the party of the first part as follows, that is to say: For each share of stock of Essex and Hudson Gas Company, the party of the second part, and Hudson County Gas Company, the party of the third part, three dollars and sixty-seven cents ($3.67) in par value; for each share of stock of The Paterson and Passaic Gas and Electric Company, the party of the fourth part, and New Brunswick Light, Heat and Power Company, the party of the sixth part, the sum of two dollars and sixty-seven cents ($2.67) in par value; and for each share of stock of Somerset, Union and Middlesex Lighting Company, the party of the fifth part the sum of two dollars and thirty-three cents ($2.33) in par value; and

WHEREAS, the parties hereto have prescribed the terms and conditions of carrying into effect the

absorption of and the merger into the party of the first part, of the said parties of the second, third, fourth, fifth and sixth parts hereto, no new corporation being thereby formed, the party of the first part remaining and being in existence and possessing all the powers and authority with which it is invested at the time of making this agreement fully and unimpaired:

NOW, THEREFORE, in furtherance of the matters aforesaid, and in order to carry the same into effect, THIS AGREEMENT WITNESSETH, that the said Directors have mutually bargained and agreed, and by these presents do mutually bargain and agree as follows:

FIRST: The party of the first part, Public Service Electric and Gas Company, is to continue and remain a corporation fully possessed of all and singular the powers and authority obtained by it or conferred upon it immediately before the making of this agreement, no new corporation being hereby formed, but the other corporations named herein being absorbed by and merged into the party of the first part, whose principal office is at No. 80 Park Place, in the City of Newark, County of Essex, and State of New Jersey, and the agent therein and in charge thereof upon whom process against said corporation may be served is Charles M. Breder.

SECOND: The Board of Directors of Public Service Electric and Gas Company, the party of the first part, are ten (10) in number, and the names and places of residence of the said Directors and the Officers of the said Company, who hold office until the third Monday in April, in the year of our Lord one thousand nine hundred and twenty-

eight, and until their successors are elected or appointed and qualified, are as follows:

DIRECTORS

Thomas N. McCarter, Rumson, N. J.
S. T. Bodine, Villa Nova, Pa.
Thomas S. Gates, Rex and Seminole Aves., Chestnut Hill, Pa.
A. R. Kuser, Bernardsville, N. J.
Alfred L. Loomis, Tuxedo Park, Tuxedo, N. Y.
Uzal H. McCarter, Red Bank, N. J.
Arthur W. Thompson, Towanda and West Chestnut Sts., Chestnut Hill, Pa.
Landon K. Thorne, 950 Park Ave., New York City, N. Y.
E. W. Wakelee, Demarest, N. J.
Percy S. Young, 830 Lake St., Newark, N. J.

OFFICERS

Thomas N. McCarter, President, Rumson, N. J.
Percy S. Young, Vice President, 830 Lake St., Newark, N. J.
E. W. Wakelee, Vice President, Demarest, N. J.
John L. O'Toole, Vice President, 675 Clifton Ave., Newark, N. J.
Edgar Allegaert, Vice President, 391 Parker St., Newark, N. J.
John A. Clark, Vice President, 34 Beech St., East Orange, N. J.
George Barker, Vice President, 565 Mt. Prospect Ave., Newark, N. J.
R. R. Young, Vice-President, 254 Montclair Ave., Newark, N. J.
Charles M. Breder, Secretary, 64 North Ninth St., Newark, N. J.
W. H. Feller, Asst. Secretary, 733 Summit St., Linden, N. J.

W. T. Crudge, Asst. Secretary, 202 Broad St., Bloomfield, N. J.
T. W. Van Middlesworth, Treasurer, Grant Ave., Highland Park, New Brunswick, N. J.
F. A. Neis, Asst. Treasurer, 214 Franklin St., Bloomfield, N. J.
R. S. Tomkins, Asst. Treasurer, 67 South Parkway, East Orange, N. J.
F. M. Ludlow, Asst. Treasurer, 112 Montrose St., Newark, N. J.

THIRD: All of the shares of stock held by the party of the first part in the said corporations, the parties of the second, third, fourth, fifth and sixth parts, upon the taking effect of this agreement by the adoption thereof by two-thirds of all the capital stock of each of the said corporations, shall be surrendered for cancellation.

FOURTH: In case this agreement is adopted by two-thirds of all the capital stock of each of the said corporations, parties hereto, then and in such case:

For the capital stock of Essex and Hudson Gas Company, party of the second part to this agreement, other than that held by the party of the first part, there shall be issued the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of one hundred and thirty-seven dollars ($137) par value for each one hundred dollars ($100) par value of the stock of the said party of the second part, together with an adjustment of the dividend at the rate of six per cent. (6%) as fixed on such preferred stock and the dividend of eight per cent. (8%) per annum theretofore paid on the stock of the said party of

the second part, from the last dividend date to the time of this agreement taking effect.

For the capital stock of Hudson County Gas Company, party of the third part to this agreement, other than that held by the party of the first part, there shall be issued the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of one hundred and thirty-seven dollars ($137) par value for each one hundred dollars ($100) par value of the stock of the said party of the third part, together with an adjustment of the dividend at the rate of six per cent. (6%) as fixed on such preferred stock and the dividend of eight per cent. (8%) per annum theretofore paid on the stock of the said party of the third part, from the last dividend date to the time of this agreement taking effect.

For the capital stock of The Paterson and Passaic Gas and Electric Company, party of the fourth part to this agreement, other than that held by the party of the first part, there shall be issued the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of eighty-six dollars ($86) par value for each one hundred dollars ($100) par value of the stock of the said party of the fourth part, together with an adjustment of the dividend at the rate of six per cent. (6%) as fixed on such preferred stock and the dividend of five per cent. (5%) per annum theretofore paid on the stock of the said party of the fourth part, from the last dividend date to the time of this agreement taking effect.

For the capital stock of Somerset, Union and Middlesex Lighting Company, party of the fifth part to this agreement, other than that held by the

party of the first part, there shall be issued the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of sixty-nine dollars ($69) par value for each one hundred dollars ($100) par value of the stock of the said party of the fifth part, together with an adjustment of the dividend at the rate of six per cent. (6%) as fixed on such preferred stock and the dividend of four per cent. (4%) per annum theretofore paid on the stock of the said party of the fifth part, from the last dividend date to the time of this agreement taking effect.

For the capital stock of New Brunswick Light, Heat and Power Company, party of the sixth part to this agreement, other than that held by the party of the first part, there shall be issued the six per cent. (6%) cumulative preferred stock, 1925 Series, of the party of the first part, at the rate of eighty-six dollars ($86) par value for each one hundred dollars ($100) par value of the stock of the said party of the sixth part, together with an adjustment of the dividend at the rate of six per cent. (6%) as fixed on such preferred stock and the dividend of five per cent. (5%) per annum theretofore paid on the stock of the said party of the sixth part, from the last dividend date to the time of this agreement taking effect.

FIFTH: Each stockholder in the several corporations, parties of the second, third, fourth, fifth and sixth parts to this agreement, shall be entitled, upon presentation of the certificate of stock standing in the name of such stockholder and surrendering the same to be cancelled, to receive from the party of the first part for and in place thereof shares of the six per cent. (6%) cumulative pre-

ferred stock, 1925 Series, of Public Service Electric and Gas Company, party of the first part, in the ratio and proportion provided in the foregoing paragraph hereof, and in case any such stockholder shall be entitled to a fraction of a share, such stockholder shall be entitled to be paid in cash for such fraction at the same rate, which stock shall thereupon be cancelled.

IN WITNESS WHEREOF, each of the said corporations, parties to this agreement, pursuant and in obedience to a resolution passed by the respective Boards of Directors at regular meetings thereof, have caused their respective corporate seals to be hereunto affixed and these presents to be signed by their respective Presidents or Vice-Presidents and attested by their respective Secretaries or Assistant Secretaries, and the said Directors of the said several companies have also duly signed these presents; dated the day and year first above written.

F. B.
P. S. Y.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
(SEAL) By THOMAS N. McCARTER
President.

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter	Arthur W. Thompson
P. S. Young	Thomas S. Gates
Alfred L. Loomis	S. T. Bodine
Landon K. Thorne	U. H. McCarter
Anthony R. Kuser	Edmund W. Wakelee

Addition by way of Supplement to Amended Bill of Complaint—Exhibit F.

ESSEX AND HUDSON GAS COMPANY,

(SEAL) By P. S. YOUNG,
Vice President.

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter	S. T. Bodine
P. S. Young	Arthur W. Thompson
Anthony R. Kuser	U. H. McCarter
Thomas S. Gates	Edmund W. Wakelee
	Charles M. Breder

HUDSON COUNTY GAS COMPANY,

(SEAL) By P. S. YOUNG,
Vice President.

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter	Arthur W. Thompson
P. S. Young	S. T. Bodine
Anthony R. Kuser	U. H. McCarter
Thomas S. Gates	Edmund W. Wakelee
	Charles M. Breder

THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY,

(SEAL) By P. S. YOUNG,
Vice President.

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter	Arthur W. Thompson
P. S. Young	S. T. Bodine
Anthony R. Kuser	U. H. McCarter
Thomas S. Gates	Edmund W. Wakelee
	Charles M. Breder

Addition by way of Supplement to Amended Bill of Complaint—Exhibit F.

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY,

(SEAL) By A. J. BRUNSON,
President.

Attest:
H. B. MACDONALD,
Secretary.

Directors

H. B. MacDonald
P. S. Young
A. J. Brunson
Wm. H. Pope
T. W. Van Middlesworth

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY,

(SEAL) By P. S. YOUNG,
Vice President.

Attest:
CHARLES M. BREDER
Secretary.

Directors

Thomas N. McCarter
P. S. Young
Anthony R. Kuser
Thomas S. Gates
Arthur W. Thompson
S. T. Bodine
U. H. McCarter
Edmund W. Wakelee

Answer to Addition by way of Supplement to Amended Bill of Complaint.

Filed December 14, 1927.

IN CHANCERY OF NEW JERSEY

R. Irving Outwater, *et al.*, Complainants, vs. Public Service Corporation of New Jersey, *et al.*, Defendants.	On Bill, etc. Answer to Addition by way of Supplement to Amended Bill of Complaint.

The joint and several answer of the defendants Public Service Corporation of New Jersey, Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, Samuel T. Bodine, Thomas S. Gates, Anthony R. Kuser, Thomas N. McCarter, Uzal H. McCarter, Arthur W. Thompson, Edmund W. Wakelee, Percy S. Young, Charles M. Breder, Augustus J. Brunson, Harry B. MacDonald, William H. Pope, and T. Wilson Van Middlesworth to the Addition by way of Supplement to Amended Bill of Complaint, hereinafter called the supplemental bill, filed in the above-stated cause.

The defendants above named jointly and severally answering the supplemental bill say:

1. That they deny the statements in paragraph I of the supplemental bill.

2. They admit the statements in paragraph II of the supplemental bill, except that which says that at the meeting of stockholders therein mentioned the complainants Outwater and Wells and the complainants W. Emlen Roosevelt and others, as a Committee under Agreement dated June 10, 1927, voted against said amendment. That statement the defendants deny. In further answering paragraph II of the supplemental bill, these defendants say that thirty-three (33) individual stockholders of Essex and Hudson Gas Company, owning 1441 shares of the stock thereof, other than Public Service Electric and Gas Company, voted at said meeting in favor of said amendment, and 2825 shares were voted against said amendment.

3. These defendants admit the statements in paragraph III of the supplemental bill, except that which says that at said meeting the complainants Outwater and Wells and the complainants W. Emlen Roosevelt and others, as a Committee under Agreement dated June 10, 1927, voted against said amendment. That statement these defendants deny. Further answering paragraph III of the supplemental bill, these defendants say that forty-three (43) individual stockholders of Hudson County Gas Company, owning 1216 shares of the stock thereof, other than Public Service Electric and Gas Company, voted at said meeting in favor of said amendment; and 4236 shares were voted against said amendment.

4. These defendants admit the statements in paragraph IV of the supplemental bill, except that which says that at said meeting the complainants

Outwater and Wells and the complainants W. Emlen Roosevelt and others, as a Committee under Agreement dated June 10, 1927, voted against said amendment. That statement these defendants deny. Further answering paragraph IV of the supplemental bill, these defendants say that twenty-six (26) individual stockholders of The Paterson and Passaic Gas & Electric Company, owning 902 shares of the stock thereof, other than Public Service Electric and Gas Company, voted at said meeting in favor of said amendment; and 1351 shares were voted against said amendment.

5. These defendants admit the statements in paragraph V of the supplemental bill, except that which says that at said meeting the complainants Outwater and Wells and the complainants W. Emlen Roosevelt and others, as a Committee under Agreement dated June 10, 1927, voted against said amendment. That statement these defendants deny. Further answering paragraph V of the supplemental bill, these defendants say that individual stockholders of Somerset, Union and Middlesex Lighting Company, owning 469 shares of the stock thereof, other than Public Service Electric and Gas Company, voted at said meeting in favor of said amendment; and 869 shares were voted against said agreement.

6. Answering paragraph VI of the supplemental bill, these defendants admit that Public Service Electric and Gas Company voted its stock in favor of said amendment, and further answering paragraph VI of the supplemental bill, these defendants say that seventeen (17) individual stockholders of

New Brunswick Light, Heat and Power Company, owning 466 shares of the stock thereof, other than Public Service Electric and Gas Company, voted at said meeting in favor of said amendment; and that no shares were voted against said amendment.

7. In answer to paragraph VII of the supplemental bill, these defendants say that on October 25, 1927, the defendants mentioned in said paragraph made and entered into a certain agreement, a copy of which is annexed to the supplemental bill and marked Exhibit "F".

8. The defendants admit the statements in paragraph VIII of the supplemental bill.

9. The defendants admit the statements in paragraph IX of the supplemental bill.

10. The defendants admit the statements in paragraph X of the supplemental bill.

11. In reply to paragraph XI of the supplemental bill, the defendants Public Service Corporation of New Jersey and Public Service Electric and Gas Company say that it is their intention at present to vote the stock which they now hold in the lessor companies, parties to the proposed agreement, Exhibit "F" annexed to the supplemental bill, and in each of them, for the adoption thereof at the meetings of the stockholders of said lessor companies that have been called for the purpose of taking the same into consideration, but whether these defendants Public Service Corporation of New Jersey and Public Service Electric and

Gas Company, or either of them, shall vote the said stock of said lessor companies for the adoption of said proposed agreement depends upon conditions that may exist at the time when the vote thereon shall be taken.

12. The defendants, answering paragraph XII of the supplemental bill, say that the merger agreement dated October 25, 1927, is in substance and effect identical with the merger agreement dated April 26, 1927.

13. The defendants admit the statements in paragraph XIII of the supplemental bill.

14. The defendants admit the statements in paragraph XIV of the supplemental bill.

15. In answer to paragraph XV of the supplemental bill, the defendants deny that since the filing of the Bill of Complaint the funded debt of Public Service Electric and Gas Company has increased; they admit that the amount of preferred stock of Public Service Electric and Gas Company has increased, and deny the remainder of said paragraph.

16. In answer to paragraph XVI of the supplemental bill, defendants repeat paragraphs 27, 28, 29, 30, 31, 32, 33, and 34 of their Answer to the original Bill of Complaint, and hereby make said parts of said Answer a part hereof.

17. Defendants deny the statements in paragraph XVII of the supplemental bill in whole and every part thereof.

Answer to Addition by way of Supplement to Amended Bill of Complaint.

18. All admissions made in this answer are intended for the purpose of this case only.

And these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

FRANK BERGEN
Solicitor for and of Counsel
with Defendants.

Common Form of Replication.

Second Addition by way of Supplement to Amended Bill of Complaint.

Filed February 23, 1928.

IN CHANCERY OF NEW JERSEY

Between R. Irving Outwater and others, Complainants, and Public Service Corporation of New Jersey, and others, Defendants.	On Bill, &c. Second Addition by way of Supplement to Amended Bill of Complaint.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The complainants, R. Irving Outwater and H. Prescott Wells, partners trading as Outwater & Wells; W. Emlen Roosevelt, George Emlen Roosevelt, Philip J. Roosevelt, Fairman R. Dick and Archibald B. Roosevelt, partners trading as Roosevelt & Son; W. Emlen Roosevelt, Evans R. Dick, Roscoe C. Ingalls, R. Irving Outwater, William C. Shanley, Jr., and Ernest Sturm, as a Committee under Agreement dated June 10, 1927; and Fidelity Union Trust Company, Substituted Trustee under the last will and testament and codicil thereto of Bernard M. Shanley, deceased, by way of second supplement and addition to the Amended Bill of

Complaint herein, by leave of court first obtained, respectfully show that:

XIX. The meetings of the stockholders of the defendants Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company and New Brunswick Light, Heat and Power Company, called to be held November 21, 1927, to adopt or reject the proposed Agreement of Merger dated October 25, 1927 (Exhibit F annexed to the Addition by way of Supplement to the Amended Bill of Complaint), as stated in paragraph IX of said Addition, were further adjourned to December 19, 1927.

XX. On December 19, 1927, a vote of the stockholders of each of the companies named in the preceding paragraph was taken at the respective meetings of the respective stockholders of said Companies, separately, for the adoption or rejection of the said Merger Agreement. At each of said respective stockholders' meetings, votes of the holders of more than two-thirds of all the capital stock of each of the said merging Companies, respectively, were cast for the adoption of said Merger Agreement.

XXI. At the said stockholders' meeting of the said defendant Public Service Electric and Gas Company, the votes cast for the adoption of said Merger Agreement included the vote of the defendant Public Service Corporation of New Jersey, as holder of the Common Stock (except qualifying shares) and of a substantial part of the Preferred

Stock of said defendant Public Service Electric and Gas Company.

XXII. At the said respective stockholders' meetings of the said defendants Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company and New Brunswick Light, Heat and Power Company, the defendants, Public Service Electric and Gas Company and Public Service Corporation of New Jersey, voted the stock respectively held by them in the said five merging lessor Companies in favor of the adoption of the Merger Agreement, and the several complainants voted the stock respectively held by them in said five Companies against the adoption of the Merger Agreement. The following tabulation sets forth the number of shares respectively voted in favor of the adoption of the Merger Agreement at the said respective stockholders' meetings of the said five Companies by the said defendants Public Service Electric and Gas Company and Public Service Corporation of New Jersey and the total number of shares voted by other stockholders in favor thereof; also the number of shares voted against the adoption of the Merger Agreement at the respective stockholders' meetings of said five Companies by the respective complainants and the total number of shares voted against the adoption of the Merger Agreement by other stockholders; and also the total number of shares not voted at the respective stockholders' meetings of said five Companies; and also the total number of the outstanding shares of capital stock of said five Companies:—

Second Addition by way of Supplement to Amended Bill of Complaint.

	NAME OF COMPANY									
Shares voted in favor of the Adoption of the Merger Agreement By	Essex and Hudson Gas Company	Total	Hudson County Gas Company	Total	The Paterson and Passaic Gas and Electric Company	Total	Somerset, Union and Middlesex Lighting Company	Total	New Brunswick, Light, Heat and Power Company	Total
Public Service Electric and Gas Company	48,287		80,565		41,230		7,919		2,597	
Public Service Corporation of New Jersey	—		60		15		13		129	
Other stockholders	589	48,876	964	81,589	484	41,729	191	8,123	356	3,082
Shares voted against the Adoption of the Merger Agreement By										
Trustee of the Estate of Bernard M. Shanley	2,361		4,370		3,279		188		—	
W. Emlen Roosevelt and others, as Stockholders Protective Committee	3,183		4,642		1,216		981		—	
Outwater & Wells	60		270		135		—		—	
Roosevelt & Son	—		—		—		88		—	
Other stockholders	2,257	7,861	1,947	11,229	1,337	5,967	20	1,277	—	—
SHARES NOT VOTED		8,263		12,182		2,304		1,100		918
Total shares outstanding.		65,000		105,000		50,000		10,500		4,000

Complainants therefore pray:

1. That the defendants to this suit, named in paragraph 212 (1) of the Bill of Complaint may answer this Supplement to the Bill of Complaint and each statement therein made.

WALL, HAIGHT, CAREY & HARTPENCE
PITNEY, HARDIN & SKINNER
Solicitors for and of counsel for Complainants.

Answer to Second Addition by way of Supplement to Amended Bill of Complaint.

Filed February 23, 1928.

IN CHANCERY OF NEW JERSEY

Between R. IRVING OUTWATER and others, Complainants, and PUBLIC SERVICE CORPORATION OF NEW JERSEY, and others, Defendants.	On Bill, etc. Answer to Second Addition by way of Supplement to Amended Bill of Complaint.

The joint and several answer of the defendants Public Service Corporation of New Jersey, Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company,

New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, Samuel T. Bodine, Thomas S. Gates, Anthony R. Kuser, Thomas N. McCarter, Uzal H. McCarter, Arthur W. Thompson, Edmund W. Wakelee, Percy S. Young, Charles M. Breder, Augustus J. Brunson, Harry B. MacDonald, William H. Pope, and T. Wilson Van Middlesworth.

These defendants above named, jointly and severally answering the Second Addition by way of Supplement to Amended Bill of Complaint herein, say:

That they admit the statements in paragraphs XIX, XX, XXI, and XXII thereof.

And these defendants humbly pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

FRANK BERGEN
Solicitor for and of Counsel
with Defendants.

Common Form of Replication.

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Case.

In Chancery of New Jersey.

Between

R. Irving Outwater, *et al.*,
Complainants,

vs.

Public Service Corporation of New Jersey, *et al.*,
Defendants.

Transcript of shorthand notes of proceedings taken in the above entitled matter before his Honor, John H. Backes, Vice Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Thomas C. Haight and Waldron M. Ward, for complainants; Louis Hood and Frederick J. Faulks, of counsel, for complainant, Fidelity Union Trust Company, substituted trustee under the will of Bernard M. Shanley, deceased; Frank Bergen, Robert H. McCarter, William H. Speer and Edmund W. Wakelee, for defendants.

Mr. Ward: As I understand it the stockholders' meetings called by the defendant to adopt or reject the proposed merger agreements have been adjourned from time to time and the adjourned date of those meetings is September twenty eighth, which is, of course, after the date was some time ago fixed for the final hearing of the cause and the complainants deem that under the decisions the case is not now ripe for final hearing and therefore

asks that the hearing be adjourned until after such vote is taken.

Mr. McCarter: We were brought into this suit, your Honor, and we are under restraint and we are very anxious to have a hearing. We have not held the meetings because we felt, in the first place, that the order prevented it, and we have not held the meetings because of this very important further fact. It will appear, as your Honor will see as we go ahead, that a large part of the claim that these companies which desire to merge are not organized for a same or similar purpose has been removed by an amendment that is proposed to be made. Nevertheless there are still a few companies left which it is now said, notwithstanding the proposed amendment, have not a same or a similar purpose. Of course, if that be a fact that can readily be over come by an amendment to those charters. We do not agree with the other side in the view that they are not organized for the same and similar purposes. It is our desire in our anxiety to get ahead and consummate this most important step, and if your Honor thinks from the proofs developed that any one or more of these residue companies are, in your judgment, not organized for the same or similar purposes, to pursue the course that was pursued in the Colgate case by pausing long enough to permit amendments of those charters, just as the other so-called wicked charters had been amended before the bill was filed. It was therefore our purpose to proceed vigorously with this case and for that important reason that the meetings should be continued until this question can be determined by your Honor as to whether or not there is anything left in this claim of dissimilarity and unsameness, and therefore we most urgently recommend that

this suit which was commenced and has been prosecuted to this moment proceed and have it determined whether or not this proposed merger which has received such a large sanction from so many of its stockholders should be permitted to be consummated.

The Court: I think in circumstances of this kind a bill may be filed but that it can not be heard and determined until injury is complete. You want to know where you stand in order to perfect this merger.

Mr. McCarter: That is it.

The Court: Are you fully informed of what particular corporations they claim—— (interrupted).

Mr. McCarter: No, sir. We demanded a bill of particulars and they practically repeated the names of the seventy five corporations involved. Four o'clock yesterday afternoon they served a proposed amendment, which is going to be presented in a moment, in which they excluded about fifty of these companies upon the theory that they are improperly in, that they did not know the amendment had been made, and it leaves a residue, the detail of which we have not had time, for lack of opportunity, to investigate, so that we do not know exactly what they do claim for and we will have to await developments.

The Court: How do you hope to amend the charters of the earlier companies that have already merged? Aren't the companies out of existence?

Mr. McCarter: We do not have to amend them. By operation of law the functions of the merged companies apply to and become part of the charter of the merged companies, and under quite a frequent practice I think we would amend the merging charter, which carries in it and has in it the func-

tions that are said to be dissimilar. That was our expectation and I think in practice it is commonly done.

The Court: You think that would eliminate the inherited evil of the earlier charter.

Mr. McCarter: Yes, sir; if the evil is inherited and passes into the new embryonic corporation and then that embryonic corporation, not because of anything in its charter, but because of some taint that follows in its new birth is not organized for the same and similar purposes, the common practice, I believe prevails of amending the merging charter by striking from it what has been carried along from conception to birth. That would be our purpose.

The Court: You have some six hundred and six charters.

Mr. McCarter: A good many of them are out now fortunately. The ones which probably influenced your Honor in granting the restraint are all gone. I think there will be no question about that.

Mr. Ward: The bill of complaint withdrawn on the certified copies of charters.

The Court: Do you want to make an amendment?

Mr. Ward: Those certified copies were not complete as it now appears and I wish to amend, which eliminates most of the charters of the Public Service Electric and Gas Company. It does not affect the charters of the five other companies. I ask leave to amend the bill and correct that error.

The Court: The Gas and Electric Company is correct, is it?

Mr. Ward: It is different from that which appears on the bill because they amended the charters of some of their constituent companies so that the Electric and Gas Company has certain characteristics other than what appear in the bill.

The Court: Do you still question its integrity and history?

Mr. Ward: No, sir, we do not. The question is similarity of purpose for which the six corporations were organized, of which that is only one. There are six companies parties to this merger agreement. The Electric and Gas Company is one of the six. We claim the charters of the six are not similar.

The Court: Essex & Hudson Gas Company, Somerset, Union & Middlesex Lighting Company, Paterson & Passaic Gas & Electric Company—the five are not like those of the Gas Company.

Mr. Ward: Inter sese—some dissimilarity all along the line.

The Court: Have you pointed out the dissimilarity?

Mr. Ward: I have, sir, quite fully and explicitly, in the bill of particulars.

The Court: Can they be corrected so as to meet with your satisfaction? May they be in law?

Mr. Ward: I am not at all certain that they can. One of the companies involved is, in effect, a gas company organized under the statute for the formation of gas companies; others organized under the General Corporation Act.

The Court: Which one?

Mr. Ward: The Hudson County Gas Company is successor to several companies organized under the Gas Light Companies Act and companies organized under special charter and has for its purpose —the sole purpose of furnishing illumination by gas. The Essex & Hudson Gas Company is organized under the General Corporation Act with power not only to do utility business in some phase, but also general power to buy stocks and bonds and other securities, which comes directly in the deci-

sion of the Court of Errors in the Colgate Company. The Paterson & Passaic Gas & Electric Company is the successor of companies organized under specific charters and companies organized under the Gas Company Act.

The Court: Does it make any difference how they were created?

Mr. Ward: It does make some difference, I think.

The Court: How do you think it makes any difference?

Mr. Ward: I haven't canvassed that legal situation fully, as to what they can do.

The Court: Not what they can do. I want to know whether you think there is any difference how they were created, whether under the General Corporation Act, under the Gas Company Act or Special Act as long as they were organized for a single purpose.

Mr. Ward: I am not prepared to submit the question. I don't know whether all these charters could be amended so as to produce the identity of purpose.

The Court: What do you care to do; let us get the thing in shape.

Mr. McCarter: Your Honor will remember that the allegation in the bill of complaint is simply this upon this point, the companies, a hundred and fifty of them perhaps involved, are not organized for a same and similar purpose. That is all there is to it. There isn't a word more of the allegation in the bill, and yesterday, we having frankly told them that nine tenths of their troubles were out of the case because of amendments to the charters which had been made and of which they apparently were ignorant, they come with this proposed amendment which leaves perhaps twenty companies still in.

The Court: They are the going in companies, the receiving company being the Public Service Electric & Gas Company.

Mr. McCarter: Yes, sir.

The Court: They say the history and integrity of the receiving company is not in question, so that it is the going in companies now that they say are affected.

Mr. McCarter: The Electric and Gas Company which is the receiving company, is still in, as I understand it.

The Court: No. Counsel made the statement that it is not. Am I right?

Mr. Ward: You asked us whether we question its history and integrity.

The Court: For the purposes of this action.

Mr. Ward: For the purposes of this organization, those are now defined by reason of the amendments, to furnish light, heat and power for private and public purposes, yet the gas company is to do other thing which are dissimilar from furnishing light, heat and power.

The Court: Still retains its power to furnish gas light, heat and power.

Mr. Ward: It does, sir.

The Court: I am wondering whether you want to straighten out your structure in that respect as to these going in companies, make the powers become similar to the powers of the gas and electric company.

Mr. McCarter: We do not think there is any dissimilarity in the companies that are left. If, upon proof of these matters it appears to be the fact that they are dissimilar, which we do not think they are, then we shall ask your Honor to pause long enough in the case to amend that.

The Court: They say that the objects of five of

the going in companies are dissimilar to the receiving companies' objects and charters and they also say, Mr. McCarter, they have already pointed out the difference and that testimony would not aid you. That is not so?

Mr. McCarter: That is all they pointed out except they pointed out two thirds of the trouble out of the case by asking for the amendment that will eradicate a large part of the trouble, if there be any trouble in what is left then we will ask your Honor to pause that we may go back and amend the alleged dissimilarities out. I think the only way to find out about that is to prove what they rely on. We cannot tell though, from the papers.

The Court: Do you now attack the earlier mergers?

Mr. Ward: We attack the powers of the Public Service Electric and Gas Company.

The Court: I understand that. Do you attack the earlier mergers—the legality of the earlier mergers.

Mr. Ward: No. The earlier mergers carried to the Public Service Electric & Gas Company certain powers which were dissimilar to the powers of the companies with which they are now about to merge.

The Court: Why didn't you point out the dissimilarities upon which you intend to rest?

Mr. Ward: I think we have done so. That is pointed out in the bill of particulars, as I understand it.

The Court: What they want you to do is to point out to them the dissimilarity.

Mr. Ward: I don't know how to point it out more specifically or fully. The bill of particulars classifies each company and states what its dominant purposes were and by running their eye down

the page in two minutes they can see exactly what it is we want on that point.

The Court: Can't you take the charter of the Public Service Electric and Gas Company as a standard and then point out the dissimilarity?

Mr. Ward: Yes, sir.

The Court: I understand in this contest that the Gas and Electric Company charter is to be the standard and you do not attack its history.

Mr. McCarter: I understand that this proposed amended bill of particulars is nothing but a replica of the original first so-called bill of particulars, which is nothing, really, your Honor, except they confine it now to the residue companies. They do not take a single company and say that company has such and such powers.

The Court: They are going to, taking the receiving company's charter as a standard. State it on the record.

Mr. Ward: The Public Service Electric and Gas Company has succeeded to the power of the Public Service Gas Company to furnish and distribute illuminating gas throughout the state of New Jersey, and certain other companies have the power to do a gas business. It has succeeded to the powers of two companies, the Burlington Company and the Nichols Company organized to do an electric business. It has never amended its charter.

The Court: I understand and have all the way through, from what you said, this, that the Public Service Electric & Gas Company may lawfully merge with another company having the same powers as declared in the Public Service Electric & Gas charter—merger charter—and that its charter is to be taken as a standard, and that the history and integrity of its charter is not questioned. Am I right about that?

Mr. Ward: Yes, sir.

The Court: Why go into it?

Mr. Ward: First, I have to determine its purpose.

The Court: Is it declared in the merger charter?

Mr. Ward: It is not. It is declared in the charters of the companies which it took over, some of which it amended before taking them over.

The Court: Then you do, in some respects, attack the history.

Mr. Ward: I do not attack the equation that two and two make four, but I have to get two and two before I get the total. Its powers are those of a company organized for the purpose of doing a gas business, of a company for the purpose of doing an electric business, and a company organized for the purpose of furnishing light, heat and power. That is the only statement I can make of the charter that your Honor has adopted as the standard. The Essex & Hudson Gas Company organized for the purpose of carrying on the business of selling and distributing illuminating gas and has certain incidental powers, the purpose of dealing in property, also have primary power without restriction, to hold, purchase, mortgage, make leases of, and convey real and personal property of every kind, page 195 of the bill.

The Court: Won't you point out as you go along in what respects they differ, as you claim they differ? Define in what respects you regard that the other companies differ in their powers.

Mr. Ward: As a matter of statement then I state that in our opinion the purposes for which the Essex & Hudson Gas Company was organized are different from those of all of the other companies in that the Essex & Hudson Gas Company have an unrestricted power to deal in real or personal

property, which is dissimilar to the primary power to furnish light, heat and power. It is organized also for the purpose of acquiring and holding stock of other companies, doing a public or a private light business, as the Court of Errors said in the Colgate case, "That would permit it to enter upon a general course of buying and trading in stocks of companies doing business of that nature." That is dissimilar from the standard because the Public Service Electric & Gas Company has no primary power to deal in stocks and securities, nor, much less, has the Hudson & Essex Gas Company such a primary power. Some of the other companies—— (interrupted).

The Court: You criticized some of the incidental powers.

Mr. Ward: I do not criticize the incidental powers, such powers as are necessary or convenient to carry on the primary object. I disregard those. The Hudson County Gas Company. Its charter is a composite of charters of the constituent companies, exhibits 14 to 18 inclusive, beginning page 197 of the printed bill, organized in theory of law only for the purpose of doing a gas business, illuminating and fuel purposes. It has no general or primary powers to trade in stocks—buy or deal in stocks or other securities.

The Court: I am only asking you now to distinguish between these companies and the standard, not each other.

Mr. Ward: Of course, if there is any dissimilarity between each other—— (interrupted)

The Court: Compare the respective charters with the standard charter.

Mr. Ward: The Hudson County Gas Company then, as compared with the standard, has power only to furnish gas, manufacture gas; the Standard company has a power to furnish light, heat and

power presumably either in one of several mediums, or furnishing and distributing light, heat and power—possibly steam. I don't know whether that is claimed to be within that power or not. Paterson & Passaic Gas & Electric Company is a company arising out of consolidations. Its powers—purposes for which it is organized again are found in plurality, doing business for which earlier companies were organized, exhibits 20 to 27 inclusive, beginning at page 206 of the bill; has the power to do a gas business and electric business. As compared with the standard I might say that that comes within it—is not dissimilar from the standard to furnish light, heat and power. It also has succeeded to the power of furnishing steam for heat. That, perhaps, is not dissimilar from the standard, the electric and gas company, but is in our opinion different from other of the coming in companies. Also has succeeded to a general power —exhibit 25,—charter of the Passaic Electric Light Heat & Power Company to carry on a general mercantile business if required or desired, in connection with the said business, and also including, purchase, sale, exchange of real and personal property of every kind; making contracts—in other words dealing in property generally, which we say is dissimilar to the standard, the company having primary object to furnish light, heat and power as no such primary right. The Somerset, Union & Middlesex Lighting Company is a composite of companies which were merged—exhibit No. 28 to 38 inclusive beginning page 215. It has succeeded to the power to furnish gas, to the power to furnish electricity. To furnish electricity, we say, is dissimilar to that of some of the coming in companies which are only gas companies; not dissimilar to the standard. Also has power under ex-

hibit number 28, Plainfield Gas & Electric Light Company to furnish steam.

Mr. McCarter: May I ask whether you say that is different or is not? I do not understand you.

Mr. Ward: I say that it is not different from the power of the Public Service Electric & Gas Company to furnish light, heat and power; it is dissimilar from those of the five lessor merging companies which haven't that power. This company, the Somerset, Union & Middlesex Lighting Company has also succeeded in the object of doing general mercantile business if desired in connection with its other business and the general power of dealing, selling and exchanging real and personal property of every kind. Dissimilar from the standard.

The Court: Hasn't a company the right to do that whether it is incorporated in the charter or not?

Mr. Ward: No, sir; only so far as reasonably necessary for the attainment of its proper corporate object. Somerset, Union & Middlesex Lighting Company also has inherited from the Citizens Electric Company, exhibit 31 page 219, power to buy, sell and deal in stocks, bonds and securities. The primary object differs from the standard, light heat and power, and differs from other coming in companies, gas companies and electric companies.

Mr. McCarter: That is the total of your claim?

Mr. Ward: Yes, sir.

The Court: Are you now fully informed?

Mr. McCarter: I think we are, for the first time.

(A recess of twenty minutes was taken.)

The Court: Do you desire to amend, Mr. McCarter?

Mr. McCarter: Not until we can be heard on the question of dissimilarity, these matters to which

Mr. Ward has alluded. We do not think they are dissimilar.

The Court: If they are sharply contested it would be a matter for final disposition. I will go on and hear the rest of the case.

Mr. McCarter: We are so anxious to get progress in this matter and to have the Court determine what really amounts to something, namely, whether this is a fair and equitable or unfair and inequitable scheme that we will ask the Court for an adjournment to permit the making of these amendments and eradicating the question—the matter which Mr. Ward has alluded to, which I understand now is all he claims, and have the case held until a new agreement of merger that will leave out these matters, but will contain the other matters.

Mr. Ward: I omitted to mention one other company that does not add anything to the argument—adds nothing to the points I have raised.

The Court: If there is any criticism point it out.

Mr. Ward: Page 204. That company was organized for the purpose of carrying on a gas business, electric business, dealing in property, and authorizing the ownership of stock of gas and electric companies.

The Court: Which you claim the receiving company does not possess.

Mr. Ward: Does not possess such broad power.

Mr. McCarter: Now, we have the limit, as I understand it.

The Court: That is so.

Mr. McCarter: Now we ask for an adjournment with the removal of the restraint, if it exists, against holding the meeting.

The Court: If there is any question you may send me in an order.

(Adjourned until December 14, 1927.)

Case.

IN CHANCERY OF NEW JERSEY.

DECEMBER 14, 1927.

Between
R. IRVING OUTWATER, *et als.*,
Complainants,

AND

PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et als.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above entitled matter before his Honor, John H. Backes, Vice Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presence of Pitney, Hardin & Skinner (Waldron M. Ward), Wall, Haight, Carey & Hartpence (Thomas G. Haight), for complainant, Louis Hood and Frederick J. Faulks, of counsel, for complainant Fidelity Union Trust Company, substituted trustee under the will of Bernard M. Shanley, deceased, Ernest P. Hoes (New York Bar) for complainant Archibald Douglas, counsel of the Estate of William C. Shanley, intervening complainant and R. M. D. Richardson (New York Bar) of counsel, Frank Bergen, Robert H. McCarter, William H. Speer and Edmund W. Wakelee, for defendant Public Service Corporation of New Jersey, Lintott, Kahrs

& Young for defendant Bernard M. Shanley, Jr. estate, also Mary S. Dempsey, Adele G. Benziger, Seton Shanley and two infant children.

Mr. Haight: The complainants are prepared to proceed, but we feel that we should call your Honor's attention to this situation, the meeting of the stockholders which was to be called for the purpose of ratifying the action of the directors in entering into the merger agreement has not been held and consequently there may be a question of whether or not we can proceed.

The Court: There is no question that I can hear, is there?

Mr. Haight: Your Honor intimated that at the time of the last hearing.

The Court: The understanding was that they were to hold their election before this hearing.

Mr. Haight: Well, that has not been done and we are quite content to go ahead with the case. We felt that we should bring it to your Honor's attention.

The Court: Why wasn't it held according to the promise?

Mr. McCarter: If the Court please, we deprecate the present situation quite as much as anybody else. Your Honor will recall that at the last time we were here a debate of an informal character, which was taken down stenographically by the reporter, was had as to the present status of the suit, and it was intended by us, after the complainant had, on the spot, offered an amendment to their bill, by which they excluded from it the alleged

dissimilarity of purpose of some of the companies some fifty or sixty of them.

The Court: As many as that?

Mr. McCarter: I think so. They excluded, by the amendment made that day, fifty or sixty companies that theretofore had been in the bill as having charters that were dissimilar. We called attention to that fact and to the fact that with them in or out there was still left a number, and that the only specification about those that were left, which were thirty or forty in number, was that they were dissimilar; that we had asked for a bill of particulars and obtained it, and with our joint ingenuity had been unable to get any nearer the real fact and claims with reference to the alleged dissimilarity than we had been at the time the bill was filed; that we were most anxious to have what we deemed the meritorious question here, namely, as to whether or not this plan of merger is or is not fair and equitable to the minority stockholders of the companies of which they are stockholders, heard and determined—we believed that it was and we cherished a hope to demonstrate that to the Court—and your Honor then asked Mr. Ward to specify which of the remaining companies he deemed were dissimilar in their purposes and objects as expressed in their charters to the standard company which your Honor selected as the electric and gas company, and Mr. Ward specified here in the record those upon which he relied and he put himself on record as stating that they were all. That was his final view. Your Honor then asked us whether we desired to go on upon

the issue as to whether they were or were not of similar purpose or whether we desired to amend, as we had already expressed a desire to do, if there were any dissimilarities extant in the charters. We withdrew and came back and said that we would avail ourselves of the right to amend and we were given an opportunity by a postponement of the hearing to make the proposed amendments. They have been made just exactly as proposed. The certificates have all been filed and were filed, I think, in the month of October, so that exactly what we understood was to happen as far as that is concerned, has happened, and so far as those amendments go, there can be no suggestion that they are any longer dissimilar in purpose, because they are identically in phraseology with the language of the standard charter. However, at the meetings at which these amendments were offered and passed by a very large vote, persons representing the complainant by proxy filed objections to the amendments stating that there wasn't any power to make them, and stating that they were made for an illegal purpose, and a number of such objections, which were all crystalized in the proxies that they filed, and the amendments were made and filed, and it is true that no meeting of the stockholders approving of this merger has been held, for the very reason that by the supplemental bill—the bill in the nature of a supplement, that the complainants have filed since the amendment has been made, they reiterate the charges contained in the proxies to the effect that we could not make the amendments—they are a nullity

and do not amount to anything, and that dissimilarity still exists. Now, obviously we, in that situation were in just the situation we were in when we were here before, namely, if we held this meeting, the final step is taken, and until this question as to whether or not these amendments can be made and until this question as to whether or not the alleged dissimilarity exists, it does not seem to the counsel of this company who are advising the officers as to what course to pursue, safe or prudent for them to say the last step shall be taken, namely the holding of the stockholders meeting, when it will be too late to change anything after that, and while your Honor has suggested it was the understanding the meeting should be held, that understanding, if it existed—I am not saying it did or didn't—but obviously your Honor will remember it was based upon the idea that the amendment should be made which would eradicate the dissimilarity feature from the issue and leave your Honor free and untrammeled to determine the real question in the case, namely, whether or not this is unfair to the stockholders. Now for the reason that that has not been done, we have not felt it was wise to hold those meetings. Your Honor sees that the step once taken, then it is too late to do anything; it is either good or bad forever, and we have not felt that we were authorized under those circumstances to hold the meetings. We are prepared to go on with this case.

The Court: If the amendments are good, then the election would be perfect, wouldn't it?

Mr. McCarter: Yes, sir.

The Court: If the amendments are not good you would be in no worse position than you are now.

Mr. McCarter: No, I think not.

The Court: I see no reason why the election should not have been held. Your client will follow your advice, but the Court of Appeals says that this court has not the power to say whether a scheme of this kind is equitable or not until the parties attempting to merge actually have merged. There is the difficulty before you. If you have the power to merge, and by that I mean that the companies may merge, and only that, then your election would be unassailable. If you haven't the power to merge then the question could be disposed of after the so-called election and you would be no worse off.

Mr. McCarter: Your Honor overlooks this feature. Suppose the meeting is held—— (interrupted)

The Court: You mean you could correct some of the criticism.

Mr. McCarter: We could do this. If these amendments that have been made are a nullity, as they say, although they stood here and heard your Honor go through the motion of having this adjournment of three months of this most important case in order that we might make these very amendments, and now they say they do not amount to a hill of beans —if they are a nullity, then the situation reverts to the original state. That is, back on the unamended state and they say the unamended charters are dissimilar. We don't know whether we are right or wrong about it.

The Court: My difficulty lies deeper than that. I must follow the direction of the Court of Appeals and the Court of Appeals says until the corporation has signified their intention of merging by holding an election, this court has no jurisdiction to pass upon the subject.

Mr. McCarter: That is our view. We agree with your Honor and the Court of Appeals.

The Court: You do not want another three months' adjournment.

Mr. McCarter: No. We do not think the Court has any jurisdiction to determine the bill. We do not want to make that point. You either have jurisdiction or you have not.

The Court: Oh, no. I don't think the Court of Appeals' decision goes as far as that. I think the Court of Appeals' decision intended to indicate that we have not the power to pass finally upon the subject matter at issue and enter a decree.

Mr. McCarter: You have got to read into the opinion what is not there.

The Court: We very often do that.

Mr. McCarter: You cannot go beyond the decree of dismissal. They dismissed the bill. There is no jurisdiction.

The Court: Counsel on both sides were before me yesterday and I expressed my view that we could not try the merits of this case, but this matter is important to the State.

Mr. McCarter: We thought that this question that they harp on still would be eliminated and we have done what we could to eliminate it. They say "You haven't done a thing. We simply get three months more restraint upon your action." They have got a

three months delay and I do not suppose they would be sorry to have a three years' delay. Delay is better than an injunction. We are the ones that are restrained. Have we or have we not rights, and is the Court going to restrain us forever because in the judgment that we counsel for this company deem the proper course to pursue that we are simply to be by inaction treated worse than we would be by action? The complainants have it in their power to eradicate this question of dissimilarity and the case could proceed immediately, and we understood that that is what they had done, and if we would amend those charters that question was out. Now they come back and say it is not out at all. It is still here. Now, are we at fault? Haven't we kept faith with the Court?

The Court: That is a matter that I must decide finally and must necessarily underly a decree that I make in the case. That being so I can't decide until you have your election. I am ready to hear the case. I shall not wait for the election. I will hear the case. I will not decide it until the election has taken place. I cannot.

Mr. McCarter: Well, it seems to me that your Honor does not entertain with seriousness the alternative suggestion that this bill should be dismissed.

The Court: I do not. I think your conduct staring the complainants in the face they may come in here and complain and restrain just as they have done. I do not think that I am prevented by anything that a Court of Appeals said from hearing the case.

Mr. McCarter: I confess—Of course I bow in deference to your Honor's views—but I confess, after forty five years in the practice of law, total mental inability to distinguish between a lack of jurisdiction to determine a case and the power to entertain an issue. If a statement of fact exists which deprives the Court of jurisdiction and which requires the Court of Errors to reverse the Court of Chancery and direct that the bill should be dismissed, how your Honor can—if I may speak with respect—take the bit in your teeth and say "I will hear the case and won't decide it"—(interrupted)

The Court: I didn't say I would hear the case and would not decide it or take the bit in my mouth. I am trying to accommodate both sides. I am not taking any bit in my mouth. I am here to hear and to determine.

Mr. McCarter: You said you would not determine.

The Court: I said I will not determine because the Court of Appeals says I cannot determine.

Mr. McCarter: The Court of Appeals says you should dismiss the bill.

The Court: What is that?

Mr. McCarter: The Court of Appeals says you should dismiss the bill.

The Court: I disagree with you. I am here to hear the case.

Mr. McCarter: The obvious way out of it is for the complainants to do what we understood they were to have done and which I think your Honor understood they were to do, namely to eradicate this question of similarity

from the case and that meeting will be held instantly, at the earliest practical moment. We will be too glad to go on and have the case heard, but with that Sword of Damocles hanging over us—— (interrupted)

The Court: I think both sides are jockeying. Go on with the case.

Mr. McCarter: I give you my solemn promise we are not jockeying. We were here before. We felt that under the authorities the Court had no jurisdiction, but we were glad to have the question determined if this question of dissimilarity was eradicated. We did what we agreed to do. We eradicated it. They come and say, "You haven't done anything of the kind and never could do it," notwithstanding what we did, and they are still dissimilar. I do not see how we have been jockeying. It seems to me if there is any jockeying in the case it is on the other side. We feel it is a serious thing.

The Court: I will hear the case and if you see fit not to hold your meeting, that deprives the Court of the power of deciding finally and you may move to dismiss. I will handle the case and then you will be in a position to go to the Court of Appeals.

Mr. Haight: In order to clear ourselves of any charge of bad faith—— (interrupted)

The Court: I do not care about that. I have no desire to hear any views or apologies for not going on.

Mr. Haight: We are ready.

The Court: Is the case at issue?

Mr. Haight: Yes, sir.

We fell, if your Honor please, that with

the admissions in the bill of complaint that we can rest with the addition of a few other things that I am going to offer now, without bringing any oral testimony before your Honor on our main case.

We offer in evidence an admission of the defendant of the stockholdings of the Fidelity Union Trust Company as substituted trustee of the estate of B. M. Shanley.

(Paper marked Exhibit C-1.)

Mr. Haight: The defendant also stipulates, as I understand it, on the record, that the stockholders committee, consisting of Mr. W. Emlen Roosevelt, and others, as of the date of the last meeting of the directors had the following shares of stock in the five companies, they being parties complainant admitted subsequently to the filing of the bill, there would be nothing in the record at the present time to show their stockholdings—I will read those. The committee holds the following shares of stock. Essex & Hudson Gas Company, 3,028; Hudson County Gas Company, 4,617; The Paterson & Passaic Gas & Electric Company, 1,216; Somerset, Union & Middlesex Light Company, 981; New Brunswick Light, Heat & Power Company, nothing.

The Court: What committee?

Mr. Haight: A committee of the minority stockholders of these five companies that are sought to be merged with the Public Service Corporation of New Jersey. The stock stands in the names of individuals.

The Court: They have been made parties complainant since the bill was filed?

Mr. Haight: Yes, sir. Now, I next offer in evidence the condensed balance sheet of the Public Service Corporation of New Jersey as of August 31st, 1927. I do not know whether your Honor wishes me to pause at this time to point out the salient parts of it or not.

Mr. McCarter: I think we ought to have the purpose defined.

The Court: Do you know the purpose, Mr. McCarter?

Mr. McCarter: No, sir; I do not.

Mr. Haight: The purpose is to show the strength of the Public Service Corporation of New Jersey in order that there may be a complete picture before your Honor.

The Court: Where did you get this?

Mr. Haight: We got it from them. This is in the form of an admission.

(Paper marked Exhibit C-2.)

Mr. Haight: I next offer the condensed income statement of the Public Service Corporation of New Jersey for the twelve months ending August 21, 1927, the same having been furnished to us by the defendant, for the same purpose.

(Paper marked Exhibit C-3.)

Mr. Haight: I next offer in evidence statement of the gross assets and net income of the Public Service Corporation of New Jersey from 1903 to August 31st, 1927, the same having been furnished to us by the defendant, Public Service Electric Company and Public Service Corporation of New Jersey.

(Paper marked Exhibit C-4.)

Mr. Haight: I next offer in evidence balance sheet of the Public Service Electric & Gas Company as of August 31st, 1927, the same having been furnished by the defendant, Public Service Electric & Gas Company.

(Paper marked Exhibit C-5.)

Mr. Haight: I next offer in evidence income statement of the Public Service Electric & Gas Company for the twelve months ending August 31st, 1927, the same having been furnished in the same way.

(Paper marked Exhibit C-6.)

Mr. Haight: I next offer in evidence statement of the income of the Public Service Electric & Gas Company, available for fixed charges after all expenses, taxes and depreciation have been allowed, the same having been furnished in the same way, eight months of 1927; I suppose that is August 31st, 1927.

(Paper marked Exhibit C-7.)

Mr. Haight: I next offer statement of the net income of the Public Service Electric & Gas Company available for dividends after all expenses have been paid, same period, August 31st, 1927, having been furnished to us by the defendant.

(Paper marked Exhibit C-8.)

Mr. Haight: I next offer in evidence a statement showing the increase and fixed capital of the Public Service Electric & Gas Company from 1903 to date, the same appearing on page 70 of the Public Service Review of 1927, and

having been referred to and having been identified as the proper statement by the defendant counsel when requested to admit or furnish a statement of these matters. Now, I don't know whether that should go in in the form of a written statement or whether the book had better be marked. I will leave that to counsel for the defendant to do whatever they want. And then there appears also in the same book on pages 65, 67, 66, 69, 71 and 72 other data which we asked to be furnished with and which we were referred to this Review for, so I suppose we better offer the book.

(Book marked Exhibit C-9.)

Mr. Haight: We also asked the defendant to furnish us with a statement of the formation of the Public Service Electric & Power Company which was one of the subsidiaries of the Public Service Corporation of New Jersey, but which has been merged in the Public Service Electric & Gas Company, probably acquired. I should not say merged. This statement was furnished and I offer it.

(Paper marked Exhibit C-10.)

Mr. Haight: I offer in evidence a booklet prepared by Bonbright & Company, entitled "Public Service Corporation of New Jersey," together with a card signed by Mr. Thomas N. McCarter, President of the Public Service Corporation of New Jersey and stockholders, June 20, 1925, enclosing a copy of this book, and it is offered for information regarding the properties which are owned and properties which are leased by the Public Service Corporation

of New Jersey. The particular page which we refer to is this page marked page 40.

Mr. McCarter: Put the whole book in.

(Book marked Exhibit C-11.)

Mr. Haight: We will stipulate with you later if it becomes necessary to print it, how much should be printed. I don't know whether there is anything in there which you may want or not.

Now, we offer in evidence a letter written by Thomas N. McCarter, President of the Public Service Corporation of New Jersey, to Messrs. J. P. Morgan & Company, and Drexel & Company, dated May 27, 1924, giving the financial set-up of the Public Service Corporation of New Jersey, value of its leased properties as fixed by appraisement, maintenance, and so forth, and it is stipulated as I understand it, by counsel, that this may be offered in evidence as an admission—this may be offered in evidence without calling Mr. McCarter to identify it.

(Paper marked Exhibit C-12.)

Mr. Haight: I offer in evidence a letter written by Mr. McCarter, as President of the Public Service Electric & Gas Company to Messrs. Drexel & Company and Bonbright & Company dated September 18, 1924, appearing, as did the last one, in a circular put out by the two banking houses, and it is stipulated, as I understand it, that this may be received in evidence without calling Mr. McCarter to identify it.

(Paper marked Exhibit C-13.)

Mr. Haight: I now offer in evidence a plan circulated by the Public Service Corporation of New Jersey, entitled "Plan of Adjustment—Readjustment, Public Service Corporation" and I understand that this may be received in evidence without formal proof it being a plan which was put out by the Public Service Corporation of New Jersey. It is not dated.

Mr. Wakelee: We do not recognize this as having been put out by us.

Mr. Haight: I will withdraw the offer temporarily, then.

Mr. McCarter: No signature on it.

Mr. Haight: I now offer in evidence letter written by Thomas N. McCarter, President of the Public Service Electric & Gas Company dated November 22, 1927, addressed to Drexel & Company and Bonbright & Company and made a part of a circular put out by those banking houses. I understand that this may be received in evidence without formal proof.

(Paper marked Exhibit C-14.)

Mr. Haight: We offer in evidence the following pages from the following report of the Public Service Corporation of New Jersey for the following years. Annual report of 1923, showing balance sheet of the Public Service Electric Company, pages 25 and 26, and the pages showing the balance sheet of the Public Service Gas Company, the two companies being predecessors of the Public Service Electric & Gas Company, pages 27 and 28.

(Paper marked Exhibit C-15.)

Mr. Haight: The annual report of the Public Service Corporation of New Jersey for the

year ending December 31, 1924, shown on page 29.

(Paper marked Exhibit C-16.)

Mr. Haight: The balance sheet or combined income account, I don't know which, of the Public Service Electric & Gas Company, Public Service Electric Company and Public Service Gas Company, and page 30 showing the Public Service Electric & Gas Company and Camden Coke Company, consolidated balance sheet December 31st, 1924.

(Paper marked Exhibit C-17.)

Mr. Haight: I next offer in evidence page 29 and 30 of the annual report of the Public Service Corporation of New Jersey for the year ending December 31, 1925, showing on those pages respectively the income account of the Public Service Electric & Gas Company for the year ending December 31st, 1925, and Public Service Electric & Gas Company and Camden Coke Company, consolidated balance sheet, for the year ending December 31st, 1925, as of December 31, 1925.

(Paper marked Exhibit C-17A.)

Mr. Haight: I now offer in evidence the annual report of the Public Service Corporation of New Jersey for the year ending December 31st, 1926, or, rather, page 29 and 30 of it first, showing the income account of the Public Service Electric & Gas Company for the year ending December 31, 1926, and second, the combined balance sheet as of December 31, 1926, of the Public Service Electric & Gas Company and the Camden Coke Company.

(Paper marked Exhibit C-18.)

Mr. Haight: I now offer in evidence statement of the shares of stock owned by the Public Service Electric & Gas Company in the leased companies—the five leased companies which are the subject of this merger, they having been furnished to us by the defendant, as of September 19, 1927; I next offer in evidence statement of the shares of stock of the leased companies owned by the Public Service Corporation of New Jersey as of September 19, 1927, the same having been furnished us by the defendant. I understand that it is admitted that the Public Service Corporation of New Jersey owned all of the common stock of the Public Service Gas Company and of the Public Service Electric Company at the time the merger of those two companies took place, except the qualifying shares of the directors.

(Paper marked Exhibit C-19.)

Mr. Haight: I next offer in evidence a statement of the holdings of the directors of these leased companies in the leased companies respectively, the same having been furnished to us by the defendant, that is, of April 26, 1927, and I understand it is stipulated that at the present time the holdings are practically the same. Is that correct?

Mr. McCarter: Yes, that is correct.

(Paper marked Exhibit C-20.)

Mr. Haight: It is admitted, as I understand it, that the stock of all of the complainants in this case, with the exception of the Fidelity Union Trust Company as substituted trustee under the estate of B. M. Shanley was voted against the amendment to the charter of the

companies in which they respectively hold stock, that is to say these leased companies. That is for the purpose of showing that we did not accede, of course, to the amendment.

Mr. Speer: We have no means of knowing that. We are willing to admit that those men who did constitute the committee did vote against the amendment to the charter.

Mr. Haight: May we put the proxies in later? They will show how they voted and who voted and the reason given for the vote.

(Paper marked Exhibit C-21.)

Mr. Speer: We will get together on that.

Mr. Haight: We will have to offer in evidence a number of the charters of these companies that went to make up the merging companies. As originally drafted the answer admitted the extracts or copies of the charters as set forth in the bill of complaint. We were subsequently compelled to amend those paragraphs because we found that the United Electric Company of New Jersey had amended its charter some time before this consolidation was attempted to be made, and the new answer that the defendant filed denies the allegation regarding the copies of the charter annexed to the bill of complaint, and although the discrepancies, as I understand it, are not material, counsel for the defendant think we should offer the copies of the charters in evidence so that we may have the primary charters, and in order to save time may I make one omnibus offer of the charters?

Mr. McCarter: I think this plan of putting

in as one exhibit a hundred different documents is all wrong.

The Court: I am going to direct that all these exhibits be handed to the reporter and the reporter will give them each a separate number.

Mr. McCarter: There should be some understanding. The inference to be drawn from his remark was that we were standing on a technicality. This book is full of errors. The Oxy-Hydrogen Company charter is all wrong, so we have, out of caution, insisted upon the production of certified copies. That is the only object. We have no desire to be technical.

Mr. Haight: I did not intend to convey that idea.

I offer in evidence certificate of the Essex & Hudson Gas Company, certified copy, Exhibit 13 in the bill.

(Paper marked Exhibit C-22.)

Mr. Haight: I now offer in evidence five charters constituting the constituent companies which made up the Hudson County Gas Company, as follows, The Peoples' Gas Light Company of the City of Hudson, and Bergen and places adjacent, that is number 14 in the bill.

(Paper marked Exhibit C-23.)

Mr. Haight: Supplement to an act, entitled "An Act incorporating The Peoples' Gas Light Company of the City of Hudson and Bergen and places adjacent—" that is number 14.

(Paper marked Exhibit C-24.)

Mr. Haight: An act to incorporate the Jersey City Gas Light Company, number 15.

(Paper marked Exhibit C-25.)

Mr. Haight: Certificate of The Consumers Gas Company of Jersey City, number 16 in the bill.

(Paper marked Exhibit C-26.)

Mr. Haight: An act to incorporate The Hudson County Gas Light Company, number 17 in the bill.

(Paper marked Exhibit C-27.)

Mr. Haight: Next an act incorporating The Bergen Point Gas Light Company, number 18 in the bill.

(Paper marked Exhibit C-28.)

Mr. Haight: Now then, I offer in evidence the consolidation agreement of these last named companies forming The Hudson County Gas Company.

(Paper marked Exhibit C-29.)

Mr. Haight: Next is the certificate of incorporation of the New Brunswick Light, Heat & Power Company, number 19.

(Paper marked Exhibit C-30.)

Mr. Haight: Then follows a number of charters making up The Paterson & Passaic Gas & Electric Company, as follows: Peoples Gas Light Company of the City of Paterson, number 20 in the bill.

(Paper marked Exhibit C-31.)

Mr. Haight: Paterson Gas Light Company, number 21 in the bill.

(Paper marked Exhibit C-32.)

Mr. Haight: The Edison Electric Illuminating Company of Paterson, number 22 in the bill.

(Paper marked Exhibit C-33.)

Mr. Haight: Passaic Lighting Company, number 23 in the bill.

(Paper marked Exhibit C-34.)

Mr. Haight: It ought to be number 24. The Passaic Electric Light, Heat & Power Company, number 25 in the bill.

(Paper marked Exhibit C-35.)

Mr. Haight: Then follows the consolidation agreement between The Passaic Electric Light, Heat & Power Company, which has no number, but which extract in the bill of complaint is number 23.

(Paper marked Exhibit C-36.)

Mr. Haight: Next is The Lodi Light, Heat & Power Company, Exhibit number 26 in the bill.

(Paper marked Exhibit C-37.)

Mr. Haight: The Passaic & Bergen Gas Company, number 27.

(Paper marked Exhibit C-38.)

Mr. Haight: And then the merger agreement between these companies forming The Pater-

son & Passaic Gas & Electric Company, which is one of the merging companies.

(Paper marked Exhibit C-39.)

Mr. Haight: I now offer in evidence a number of charters making up the Somerset, Union & Middlesex Lighting Company, one of the merging companies. Plainfield Gas & Electric Light Company, number 28 in the bill.

(Paper marked Exhibit C-40.)

Mr. Haight: The Somerset Lighting Company.

(Paper marked Exhibit C-41.)

Mr. Haight: The Somerset Gas Light Company, number 30 in the bill.

(Paper marked Exhibit C-42.)

Mr. Haight: Consolidation agreement between The Somerset Lighting Company and The Somerset Gas Light Company, no number.

(Paper marked Exhibit C-43.)

Mr. Haight: Certificate of incorporation of the Citizens' Electric Company, number 31 in the bill.

(Paper marked Exhibit C-44.)

Mr. Haight: Consolidation agreement between the Plainfield Gas & Electric Light Company, The Somerset Lighting Company and Citizens' Electric Company, no number.

(Paper marked Exhibit C-45.)

Mr. Haight: Central Electric Company, number 32 in the bill.

(Paper marked Exhibit C-46.)

Mr. Haight: The Raritan Electric Light & Power Company, number 33 in the bill.

(Paper marked Exhibit C-47.)

Mr. Haight: The Bound Brook Electric Light, Heat & Power Company, number 34 in the bill.

(Paper marked Exhibit C-48.)

Mr. Haight: The Dunellen Electric Light Company, number 35 in the bill.

(Paper marked Exhibit C-49.)

Mr. Haight: The Edison Electric Illuminating Company of New Brunswick, number 36 in the bill.

(Paper marked Exhibit C-50.)

Mr. Haight: Rahway Electric Company, number 37 in the bill.

(Paper marked Exhibit C-51.)

Mr. Haight: Middlesex Electric Company, number 38 in the bill.

(Paper marked Exhibit C-52.)

Mr. Haight: The consolidation agreement, by which certain companies were merged into the Central Electric Company, no number.

(Paper marked Exhibit C-53.)

Mr. Haight: The consolidation agreement of the Central Electric Company into the Somerset, Union & Middlesex Lighting Company.

(Paper marked Exhibit C-54.)

Mr. Haight: Certificate of incorporation of The Oxy-Hydrogen Company of the United States, which changed its name, as I understand it, to the Public Service Gas Company. It is number 39 in the bill.

(Paper marked Exhibit C-55.)

Mr. Haight: Next is the Public Service Electric Company, number 40 in the bill.

(Paper marked Exhibit C-56.)

Mr. Haight: Amendment, which has no number, to the certificate of the Public Service Electric Company.

(Paper marked Exhibit C-57.)

Mr. Haight: The certificate of the United Electric Company of New Jersey, number 41 in the bill.

(Paper marked Exhibit C-58.)

Mr. Haight: And certificate amending the charter of the United Electric Company of New Jersey.

(Paper marked Exhibit C-59.)

Mr. Haight: Now we go to the certificate of the Burlington Electric Light and Power Company, which is number 63 of the bill and number 42 in the amended bill.

(Paper marked Exhibit C-60.)

Mr. Haight: Citizens' Electric Light, Heat & Power Company, number 64 in the original bill and number 43 in the amended bill.

(Paper marked Exhibit C-61.)

Mr. Haight: Certificate of amendment of the Middlesex Electric Light & Power Company, 44 in the amended bill—it was 65 and 66 in the original.

(Paper marked Exhibit C-62.)

Mr. Haight: The Morristown Gas Light Company, number 67 in the original bill and number 45 in the amended bill.

(Paper marked Exhibit C-63.)

Mr. Haight: The Nichols Electric Light & Power Company of Nutley, New Jersey, number 68 in the original bill and number 46 in the amended bill.

(Paper marked Exhibit C-64.)

Mr. Haight: Princeton Light & Power Company, number 47 in the amended bill, representing 69, 70 and 71 in the original bill.

(Paper marked Exhibit C-65.)

Mr. Haight: The amendment of that charter.

(Paper marked Exhibit C-66.)

Mr. Haight: Weehawken Contracting Company, number 48 in the amended bill, number 72 in the original bill. The Princeton took the place of 71 mentioned in the original bill. Now we come to the Weehawken Contracting Company, number 48 in the amended and 72 in the original bill.

(Paper marked Exhibit C-67.)

Mr. Haight: Next is the certificate amending that charter.

(Paper marked Exhibit C-68.)

Mr. Haight: And the agreement of consolidation and merger of the Public Service Electric & Gas Company, taking in the Citizens' Electric Light & Power Company, the Middlesex Light & Power Company, The Nichols Electric Light & Power Company of Nutley, New Jersey, the Princeton Light & Power Company and the Weehawken Contracting Company, and The Morristown Gas Light Company.

(Paper marked Exhibit C-69.)

Mr. McCarter: The certificate amending the Weehawken, is that part of the consolidation or is that separate?

Mr. Haight: The consolidation came later.

COMPLAINANT RESTS.

JOHN A. CLARK, sworn for defendant.

DIRECT-EXAMINATION BY MR. MCCARTER:

Q. How long have you been connected with the Public Service? A. About thirty years.

Q. What is your present position? A. Vice-president in charge of gas operation.

Q. I am referring to the further of the two maps from you on the wall and ask you if that map was prepared under your direction? A. It was, sir.

Q. Will you step over near it and in a general way describe—tell the Court what the coloring upon that map, which is a map of New Jersey, is

designed to show? A. The map is designed to show two things. The territory supplied at the present time by the Public Service Electric & Gas Company, Gas Deparment, and which is shown by that territory within the boundaries of the green line. The colors represent the territory supplied by the underlying companies, which are The Paterson & Passaic Gas & Electric Company, Essex & Hudson Gas Company, Hudson County Gas Company, Somerset, Union & Middlesex Light Company and the New Brunswick Light, Heat & Power Company, which are shown in separate colors.

Q. Please indicate the different companies by the different colors. A. The yellow at the upper part of the map indicates the territory supplied by The Paterson & Passaic Gas & Electric Company at the time of consolidation. The brown, to which I point with my finger, indicates the territory of The Hudson County Gas Company; the red indicates the Essex & Hudson Gas Company, with a small addition in the brown of the East Newark Gas Light Company, which is part of the organization; the yellow represents the territory of the Somerset, Union & Middlesex Light Company, and includes this territory (indicating). This little patch of red represents the terriory which was supplied by the New Brunswick Light, Heat & Power Company.

Q. Now, you are familiar with the fact, as indicated in the evidence already adduced, that leases were made by the five companies particularly alluded to, to the Public Service. A. Yes, sir.

Q. Does the designation in the different colors of the territory supplied by those respective lessors indicate the territory at the time of those leases or at the time of the merger? A. At the time of those leases.

Q. At the time of the leases. Now, what then, as distinguished from those five different companies indicated by the five different colors, is shown by the entire green coloring? A. The territory included in the green line is the actual operating territory of the Public Service Electric & Gas Company today.

Q. Throughout the entire state? A. Yes, sir.

Q. As indicated there, you meaning, of course, confining your testimony to the gas. A. Yes, sir.

Q. Now, won't you just tell the Vice Chancellor what connecting pipes there are intertwining the system? A. For the purpose of economy, a large part of the gas supplied in the upper end of the state of New Jersey is supplied at that point (indicating).

Q. What point is that? A. That is Harrison and Newark. We have a large up to date plant just completed at Harrison.

Q. Is that just across the river? A. Just across the river from the foot of Market—opposite Congress street in the city of Newark. We also have an up to date water gas plant on the Hackensack river, which we call our West End Gas Works, and then we have a contract with the Coke Oven plant for the purchase of a large quantity of coal gas at approximately the same location. The gas is made in that zone and distributed throughout the state of New Jersey north of the Raritan River.

Q. What economy is effected by that plan of manufacture and distribution? A. We are able to maintain fewer organizations, we get decided advantage in the purchase of raw material, such as coal and oil, by being able to bring it into our plant by water delivery, and we have all of the

other economies which go along with large production.

Q. Now, what plants have you in the southern part of the state, in Camden County and what connection does it have with the production and distribution of gas to other parts of the state?

The Court: South of the Raritan.

A. We have a large coke oven plant at Camden, which is able through the process of manufacturing and by-products plants, to make gas economically, and we supply all the territory south of the Raritan River from that plant. The coke oven plant is augmented by a water gas plant at Camden and the emergency and seasonal plants at Trenton.

Q. Where is the coke oven plant at Camden located with reference to the Delaware? A. It is located on the Delaware river at the foot of Walnut street in Camden. The water gas plant is also in the same location.

Q. Now, what interconnection is there between the gas mains of the combined enterprise, and with what results? A. We have our system completely interconnected from Camden to Paterson.

Q. For example. A. We have, starting with the plant of the Camden Coke Company—we have a trunk line which goes up, passes through Trenton, follows the course of my pencil—— (interrupted)

Q. Follows the green line? A. Well, the green line.

The Court: The course of your pencil is not indicated on the record.

Q. Generally. A. Following the red line—the red line does not show distinctly, but it follows the course of the red line to New Brunswick, Plain-

field, Summit, Newark and Harrison, Jersey City. It also— We have another large trunk line from our main center in Newark and Harrison, which goes northward through Passaic, Paterson, to the New York state line.

Q. How about Bergen County? A. Bergen County is also supplied from another large branch from our West End distributing plant which goes nearly to the New York state line and is looped back to Harrison by another course.

Q. The result of this interconnection, as I understand you, Mr. Clark, is that there is a distribution or a possibility—capability of distribution from one end of the state to the other, all the territory supplied by the company, is that right? A. From Camden to the northern part of the state. We do not go below Camden.

Q. I see. Now do you attribute a value to that combined entity? A. Yes, sir.

Q. Why do you say that, Mr. Clark? Please explain. A. Well, we have been able through the concentration of our manufacturing process and the interconnecting distribution system—we have been able to shut down gas plants in South Amboy, Princeton, New Brunswick, Plainfield, Somerville and Morristown—Morristown and Passaic. We have also been able to get along with minor capital expenditure in Paterson and Trenton.

Q. Has the discontinuance of the use of those distributive and separate plants that you have just described and named, result in economy? A. Yes, sir.

Q. Why is that, and tell us how. A. It has resulted in economy by restricting our capital expenditures for the reasons I have just named and

also by enabling us to obtain material at water deliveries at a great saving.

Q. Also operating expenditures? A. Yes, sir.

Q. You said capital expenditures, what did you mean, operating? A. Yes, sir, operating, of course. We have cut down the number of plants required to be operated and that cuts down expenditure.

Q. It has resulted in a great saving in the cost of operation, has it not? A. Yes, sir.

Q. Can't you describe a few of those economies saved in the operation? A. Principal saving is in the freight on coal and oil. The freight on oil to our Harrison plant is one eighth of a cent, the freight on oil to our Paterson plant is seven eighths of a cent. We use in the neighborhood of between forty-four and fifty million gallons of oil a year. By locating our plant on seaboards we are able to save six eighths of a cent in the price of oil alone. A similar saving is made in the freight in the delivery of coal.

Q. Has there been any growth in the demand for gas in the past thirty years in this territory? A. It has increased many times—it has doubled many times.

Q. I will ask you this question. Each one of those companies, the five companies, I suppose, originally at the time of the leases, had a producing plant. A. Yes, sir.

Q. Were those producing plants competent to meet the increasing demand to which you refer? A. No, Mr. McCarter, they would not be able to do that.

CROSS-EXAMINATION BY MR. HAIGHT:

Q. Mr. Clark, is the generating plant in what you speak of as the West End generating plant indi-

cated on the map? A. Yes, sir, it is the small triangle—I will have to show it to you.

Q. It is marked? It is the middle one of the three triangles in the brown portion of the map? A. Yes, sir.

Q. I understand that plant is located in Jersey City on the Hackensack River? A. Yes, sir.

Q. Right near the part of Jersey City known as Marion. A. Correct.

Q. And at that plant there is generated all of the gas which you used to supply the territory shown in brown and also such parts of Bergen County as you supply. A. No; that is not correct. We have a contract with another corporation at a point— (interrupted)

The Court: With what?

The Witness: With another corporation to supply us with a maximum quantity of gas equal to twenty-seven million cubic feet per day. This is all received and distributed from the West End plant.

Q. That is a coke oven concern? A. Coke oven—Seaboard By-Products Coke Plant.

Q. You get the by-products? A. We get the gas.

Q. That is one of the by-products. A. Yes, sir.

Q. That is piped to the West End plant? A. Yes, sir.

Q. And distributed from the West End plant.

The Court: Mixed and treated?

The Witness: Mixed and treated.

Q. And with all the gas that is thus produced and the gas that is generated at the West End plant you supply the territory which I just indicated a moment ago? A. Not entirely. Part of the gas

in the territory which you speak of as Bergen County comes from the Harrison gas plant through another route, that is, the two routes are tied together and it would be beyond the limits of my knowledge to say how much gas from Essex and how much gas from Hudson.

Q. Then the part of Bergen County that is supplied by the Hudson is shown on this right hand red line, is it, on the map, and the part that is supplied from the Harrison plant on the left hand red line that goes up the map through Bergen County? A. I will have to step to the map. I am near sighted. Oh, you mean this line here (indicating)?

Q. That is the right hand red line, yes. A. The right hand red line is the major artery leading from the West End plant up in Bergen County. Here is the red line leading from the Harrison plant and following the course of the Passaic River and is the principal artery leading from the Harrison plant. These two lines are tied together.

Q. At Bogota? A. No, they are— Yes, at Bogota.

Q. Have you any other generating plants in Hudson County? A. We have two other generating plants. One we call the Consumers' Plant located at street, Jersey City.

Q. That is in the Lafayette portion of Jersey City? A. I think so. The other is in Hoboken, near 14th and Willow.

Q. When were these three plants built? A. I can't tell you.

Q. Just approximately. A. The West End plant —I don't care to answer that question. I would have to refresh my memory. They have all been built a long time.

Q. Was the West End plant built subsequent to

the Public Service or before? A. I wouldn't like to answer that without refreshing my memory.

Q. Will you do so? A. Yes, sir; I could find out.

Q. How about the other two? A. The other two were built long before the consolidation.

Q. And they were part of the distributing system of some of the leased companies. A. Yes, sir.

Q. Now, then, the Harrison plant is on the Passaic River, I take it. A. Yes, sir.

Q. Is it on the Essex or Hudson side? A. It is on the Hudson side of the Passaic River.

Q. In the territory that used to be supplied by the Essex & Hudson Gas Company? A. That is right.

Q. And when was that plant erected? A. The plant is not finished yet. We started to make gas a year ago.

Q. And is that a very extensive plant? A. Yes, sir; that is the finest water gas plant in the world.

Q. How much did it cost about? A. I would have to refresh my recollection on that.

Q. Can you give us some approximation? A. Ten million dollars would be an outside figure.

Q. This West End plant, if it was erected subsequent to 1903 it is in the territory that was formerly supplied by the Hudson County Gas Company. A. Yes, sir.

Q. Will you please indicate on that map the territory formerly supplied by the South Jersey Gas & Electric Traction Company? A. The South Jersey Gas, Electric & Traction Company supplied the territory from Woodbury to Trenton.

Q. From the extreme lower part of the map up until the part marked "Trenton"? A. Yes, sir.

Q. Now, what company formerly supplied the

territory from Trenton up to New Brunswick? A. As far as I know it was not supplied.

Q. That was new territory supplied? A Yes, sir.

Q. What was the territory supplied by the Ridgewood Gas Company? A. City of Ridgewood—the City of Ridgewood and the Town of Hohokus.

Q. In Bergen County? A. I think it is the town of Ridgewood—Ridgewood, Hohokus and Glen Rock.

Q. I notice on this map you apparently have a generating station in Plainfield. A. We have a stand-by station which has not been operated in ten years.

Q. Was that station originally there when the lease took effect? A. Yes, sir.

Q. How about the station at New Brunswick? A. The same status as the Plainfield station.

Q. Now, then, there appear to be two other stations on the Newark side of the Passaic River near the Harrison station, do you know when they were erected? A. They were erected a long time ago.

Q. Before—— (interrupted) A. Before 1860.

Q. I do not care to go back any further than 1903. Do you use those? A. The Market street station is still used in winter time.

Q. As a relief station? A. As an auxiliary station.

Q. And how about the one at Paterson? A. The one at Paterson is operated continuously.

Q. I notice that way up at the end of the yellow part of the map there is another station indicated, is that the one you refer to as the Paterson station? A. Yes, sir.

Q. That is operated continuously? A. Yes, sir.

Q. How long has that been there, do you know? A. Before 1860.

Q. I presume that in order to operate these old plants, you have had to make continuous improvement and betterments. A. That is true.

Q. The plant at Paterson—I just want to make it appear perfectly plain—I think it does, but I want to be certain of it, is in the territory of the old Paterson & Passaic Gas & Electric Company, or electric and gas company. A. Yes, sir.

Q. And the one at Plainfield is in the territory of the Somerset, Union & Middlesex Lighting Company. A. Yes, sir.

Q. Are the Somerville plants operated? A. I beg pardon.

Q. Are there any plants at Somerville? A. The Somerville plant has been destroyed and torn down.

Q. That is the one you referred to as the Raritan? A. Yes, sir.

Q. Did you tear down the plants at South Amboy? A. Yes, sir.

Q. And the one at Princeton? A. Yes, sir.

Q. And the one at New Brunswick? A. The one at New Brunswick is not in operation, but is not wrecked.

Q. Dismantled? A. Yes, sir.

Q. And Plainfield? A. The Plainfield plant is in operating condition.

Q. Operating now? A. It is not; obsolete.

Q. It has not been torn down? A. It has not been torn down.

Q. Morristown? A. Morristown has been torn down.

Q. And Passaic? A. That has been torn down.

Q. Has anything been done to supplant those plants that have been torn down? A. The supply

has been taken care of by the connecting distribution system which I have already described.

Q. I think it appears perfectly plain, but I want to make it appear, if it does not—you carry the gas from these distributing plants through pipes? A. Yes, sir.

Q. A very considerable distance? A. Yes, sir.

Q. For instance, the Camden—the gas generated or gotten together at Camden is carried clear to Trenton.

The Court: Clear to New Brunswick.

A. The gas generated at Camden may be carried all the way to the New York State line. It is not good practice to do so.

Q. You can connect them. A. They are connected.

Q. You turn on a valve or something or other of that kind and start the gas flowing if you need it. A. It is a matter of daily operation, how the gas is distributed.

Q. You used the expression that I did not understand, the demand for gas has doubled in the territory shown on this map many times. A. Perhaps it would be plainer if I explained that. In 1903, at the time of this merger, the maximum daily demand was around less than twelve million cubic feet. The maximum daily demand at the present time will be not far from a hundred million cubic feet.

Q. Now you speak of the first—the first date you speak of, at the time of the leases? A. Yes, sir, at the beginning of the leases.

Q. Will you just tell me the comparative capacity of the Harrison plant and the West End plant? A. The Harrison plant has a present ca-

pacity of twenty-four million cubic feet per day, and the West End plant is approximately sixteen million cubic feet per day, excluding the gas received from the Seaboard By-Products.

Q. And how much is that? A. Maximum of twenty-seven million. We have a contract which calls for a seasonal operation, but the maximum is twenty-seven million.

Q. And the East Newark Gas Light Company, you speak of that being part of the system. Exactly what do you mean by that? A. The East Newark Gas Company is physically part of the system of the Essex & Hudson territory and I understand the stock is entirely owned by the Public Service Electric & Gas Company.

Q. But it is not a separate corporation so far as you know? A. I am not in a position to testify on those technical points.

Q. Will you give me the territory of the gas and electric company of Bergen County, that is to say, the territory formerly supplied by that company? A. That territory is not shown on the map, but, up, beginning with the North Arlington line, and extending to the boundaries of the yellow and brown to pretty nearly the New York State line.

Mr. McCarter: We offer that map in evidence.

(Map marked Exhibit D-1.)

EDGAR ALLEGART, Sworn for defendant.

DIRECT-EXAMINATION BY MR. MCCARTER:

Q. What relation have you with the Public Service Corporation of New Jersey? A. I am Vice

President in charge of the electric operation, Public Service Electric & Gas Company.

Q. How long have you been connected with the company? A. Well, I have been connected with the Public Service since 1903, and prior to that I was with underlying companies. I have been in the business about twenty-nine years.

Q. And you are the Vice President in charge of the operation of the electric activities of the defendant company? A. Yes, sir.

Q. Referring to the inner map on the wall, I will ask you if that was made up under your direction. A. Yes, sir.

Q. Will you please step forward and using the pointer designate generally what is meant to be shown? A. It is a map of New Jersey, and the colored portion bound by the red line represents the territory—the electric territory of the Public Service Electric & Gas Company; the green portion is the electric territory of the Paterson & Passaic Gas & Electric Company, and the pink portion is that of the Somerset, Union & Middlesex Light Company.

Q. At what time? At the time of the leases? A. At the present time.

Q. At the present time? A. Yes, sir. We also show on this map the positions or location of ten generating stations, numbers 1, 2 and 3, number 1 being Kearny, number 2 Essex and number 3 Marion; they have a capacity—a combined capacity of over five hundred thousand kilowatts, the entire capacity in the territory being five hundred and eighty-three thousand nine hundred. Those three stations are joined together with a 132,000 volt transmission line, which practically makes them one generating unit, or you might say, a large res-

ervoir of power. Number 4 indicated on the map is Perth Amboy, number 5 is the Paterson station, number 6 the Cranford station, number 7 the Newark station, number 8 the Burlington, and number 9 Trenton and number 10 Camden. The blue lines running in a northwesterly direction from 1, 2 and 3, which I have said are all connected together represent a 26,000 volt transmission line feeding or serving The Paterson & Passaic Gas & Electric Company territory. The blue lines running in a southerly direction are 26,000 volt transmission lines feeding the Somerset, Union & Middlesex Lighting Company, and tied in with the Perth Amboy station in that territory. The green lines, as I have before stated, show the connection between Kearny, Essex and Marion stations, making them one station, and there is in course of construction what might be called a super-power line running from those stations to Athenia, from Athenia to Roseland in West Essex County, and on then down to Metuchen in the Somerset, Union & Middlesex Lighting Company territory. That line, as I say, is a super-power line and the energy is carried at 132,000 volts on steel towers and on a right of way acquired by the company, mainly in fee, or permanent easements. That part of the line between the generating stations 1, 2 and 3, and Athenia is complete. The balance of the line on to Metuchen by way of Roseland, is under construction.

Q. The purpose of the, what you call "super-power line", which you have also described, is what? What is the purpose—purposes and uses that are made of the super-power line to which you have referred? A. Well, first of all, it effects economy.

Q. What? A. It effects economy, or produces

efficiencies; it also improves the service over the entire state, so much of it as is connected, the northern part—the northern and southern parts of the state are not inter-connected at this time, and without those super-power lines it would not be possible, at least it would not be practicable to get energy, for instance in the Paterson & Passaic Gas & Electric Company territory.

Q. What have you to say as to any economy in the cost of production to supply the territory shown on that map by these interconnecting super-power lines? A. Well, we are able to put large generating plants at tidewater and get coal at cheaper rates, and of course, with these lately developed generating stations we are able to use less labor, require less labor.

Q. Well, does that effect economy? A. That effects economy, yes, sir.

Q. And the price of gas? A. Yes, sir, price of electricity.

Q. Electricity, I mean. A. Price of electricity to the public. Without those—— (interrupted)

Q. What about the propinquity to water as entering into the manufacture of steam by condensation? A. Well, taking The Paterson & Passaic territory it would not be practicable to put a generating station in that territory.

Q. Why not? A. For the reason there isn't sufficient condensing water.

Q. What do you mean by that, in what respect? A. It is cooling the steam off and using the feed water again, you know. I just made a memorandum and prepared myself—we have built a half section of the Kearny—— (interrupted)

The Court: What?

The Witness: We have built the first half

section of the Kearny power station. That plant uses three hunderd and fifty million gallons per day for condensing purposes. When the second section of Kearny is built, with a capacity of somewhere around five hundred thousand kilowatts, the requirement will be three hundred million gallons per day. Now, there is no such quantity of water in and about The Paterson & Passaic Gas & Electric Company territory, and by way of comparison, to bring out the very large quantity of water required at these up to date generating stations, the City of Newark uses per day for all purposes, sixty-five million gallons, and the City of Paterson twenty million gallons per day.

The Court: And you—how much do you use?

The Witness: At the present time, with about 215 kilowatt capacity there, we are now using three hundred and fifty million gallons per day for condensing purposes and ultimately, when the Kearny plant is completed, nine hundred million gallons per day.

Q. If, for any reason it should be sought to segregate the Paterson & Passaic district, is there a physical possibility of procuring sufficient water for condensation purposes to supply that territory? A. There is not—we could do it—we could build non-condensing plants in Paterson, but that would be very inefficient, the capital cost would be much greater and the operating cost, we think, would be prohibitive. I made a calculation. We can, under present methods, we can deliver energy from our three efficient generating stations, numbers 1, 2 and 3, to the Passaic territory, at one and

one quarter cents per kilowatt hour at the switching station or sub-station. That covers the operating cost and a fair return on the capital investment. Were we to put in non-condensing plants in the Paterson and Passaic territory, the price would be two hundred percent greater—the cost would be two hundred percent greater or three and three quarters cents per kilowatt hour. That would mean that the public in that territory, if we built non-condensing plants would have to pay a great deal more for their service than they pay today.

Q. In what period of time were you referring to such production? A. At the present time.

Q. I know. Per day, per hour, per minute, or what? A. This is the capacity of the plant, not the number of hours or the kilowatt hours. I have a figure here. If you are seeking the output, I haven't got it, but it is well over a billion kilowatt hours. But I have been referring to the capacity of the plant, the load that can be put on these various places.

Q. Now, has there been in the past twenty five years a great increase in the demand for electric service? A. An enormous increase in demand.

Q. Are you able to give any figures? A. I cannot, offhand.

Q. You cannot? A. I cannot; no, sir.

Q. What connection outside of the state have you besides these super-power wires or conduits, within the bounds of New Jersey itself? A. I will answer that question, but I failed to say something that I intended to say in connection with the 132,000 volt super-power line. That line is being constructed at a cost of nineteen million dollars, and eventually we expect to continue the 132,000 volt line from Metuchen to the three generating stations numbers

1, 2 and 3, at a cost of about six million dollars, which will then give us a complete ring. The lines from the generating station to Metuchen now carry about two hundred thousand kilowatt capacity—that is, have ability to carry—and the line from Metuchen to the generating stations already referred to will make it possible to ship about four hundred thousand kilowatts over those lines. We have also entered into contracts with some neighboring companies, namely, the Pennsylvania Power & Light Company, who operate in the eastern part of Pennsylvania and the Philadelphia Electric Company, which operates in and about Philadelphia, to construct a super-power line at 220,000 volts running from our Roseland station.

Q. In Essex County. A. In Essex County—running over to the Bushkill or Sigfried station of the Pennsylvania Power & Light Company at or near Bushkill. That line will continue from that point down to at or near Philadelphia, connecting with the Connowingo-Hydro Electric Development, of which we have read so much about in the newspapers, of the Philadelphia Electric Company and from Philadelphia that line will come back to Roselands, making a complete ring. That project, as I have said, that 220,000 volts I do not believe there is any 220,000 volt installation in this part of the country, other than what I am talking about. They have them in the Far West. The capacity of that line will be 250,000 kilowatts, the cost will be, for all the companies, twenty six million dollars, of which the Public Service's share will be about nine million.

Q. What is the advantage to the Public Service of that? A. Well, the big advantage to the Public Service and to the other companies—it is a mutual

proposition—is this, the Pennsylvania Power & Light Company supply cement mills and certain coal mines and industries of that character in Pennsylvania and their greatest load—greatest demand on them is made in the month of October alone. Alone, by themselves, they would be required, of course, and are now required to have a capacity equal to that load in October. A good part of the year that capacity, I presume, is idle—in fact, I know it is a good part of the year, is idle—not all of it, but it operates at a very much reduced load. In the case of the Public Service our peak load—our heaviest load is in the month of December—early part of December, likewise the Philadelphia Electric Company have their heaviest load about the same time. When this line is completed we will be able to send energy to Philadelphia, doing the same thing to the P. P. & L., Pennsylvania Power & Light Company, so that as time goes on they will not be required to have the capacity equal the load. We will be taking care of that excess from our line through this line. In December when the cement mills and other activities in Eastern Pennsylvania either close down or operate at reduced production, the Pennsylvania Power & Light will be able and will send us capacity to tide us over the time of our heaviest load. It means a great saving in investment on the part of all the companies. In addition to that we will be able to, certain times of the day and during certain times of the year, close down in any of the territories the less efficient plants and operate only the most efficient plants. For instance, if Philadelphia—Well, take ourselves, if the Public Service has a very efficient plant and not operating it at its full during a part of the day, we will be able to ship current

to the P. P. & L. Company, or the Philadelphia Electric Company as the case may be during that part of the day and sell them current at a cheaper price than they could make it with these less efficient plants, and we, on the other hand, will gain some of the savings. The savings will be divided between the two companies in such case. It also will back up the service of all three companies and therefore make it unnecessary to carry what we call —or at least, allow us to carry less reserve capacity. In the event that the large units went out at Marion or at Kearny, there are forty thousand kilowatt units—the P. P. & L. Company or Philadelphia Electric Company would be able to help out—Well, I might say, at the present time we have got to keep reserve capacity to the equivalent of our largest unit, so that if a large unit goes out, we have got to throw in an additional—the additional unit. This interconnection or super-power line will allow us to not—at least not make it necessary for us to carry that same amount of spare capacity. We can get along with less, because if we have trouble we immediately get it over the Philadelphia line or the Pennsylvania Power & Light line. We also have in contemplation, and the negotiations are now proceeding—we have practically settled on it, an interconnection with the New York Edison Company of sixty thousand kilowatts. That will do for us pretty much—for the two companies—the New York Edison and ourselves—pretty much what the super-power line will do for the three companies I have been talking of.

Q. That will have the same benefit to both services? A. Yes, sir.

The Court: Located where?

The Witness: That will be located at Marion.

The Court: The New York end of it?

The Witness: Our end of it will be at Marion and theirs, no doubt, at the East River—14th street and East River power station.

The Court: New York.

The Witness: New York City. I might say that it wouldn't be possible for a territory such as Paterson & Passaic Gas & Electric to enter into any such interconnection as I have been describing for the reason—I mean to say by themselves—one reason being the very great cost and another reason being that other companies would not be interested in so small a territory, inasmuch as what they gave they could not get back from the other company. In other words, it requires a very great capacity to match up with the capacity of the other station in order to have that mutual advantage.

Q. What have you to say as to whether the interconnection of different territories by super-power plants—super-power wires and interconnection between plants, with manufacturing centralized at two foci, is in the trend of modern views upon the supply of electricity? A. Yes, sir; it is.

Q. Does that tend to economy? A. Yes, sir.

Q. Why is that? A. First of all you are generating with larger units—mass production against small production—all the elements that go to build that up—less labor per kilowatt hour of generation; less fuel per kilowatt hour generated, and that goes all the way through to every item of operating expense.

Q. And, of course, that is reflected in the rate? A. Oh, that is reflected in the rate. I think we might—that is instanced I think by the reductions

which have taken place in electric rates since I have been in the business, and principally since 1903.

Q. Is there less waste in such a system than in distinct and isolated plants? A. Oh, yes.

Q. Does it stabilize production? A. It stabilizes production, yes, sir.

Q. How about duplication, is that reduced? A. Well, their capacity is reduced and duplication of investment is reduced.

Q. In plants? A. In plants.

Q. How about overhead, of course that is very great. A. Of course, the reduction in capital expenditure per kilowatt reduces the overhead, and in the operating overhead, that is also reduced in the manner in which I have indicated—in all items of operating expense—cut down.

Q. Will you furnish us a statement that will give the increase in demand for electric energy by your company in the last ten, fifteen, twenty years? A. Yes, sir.

Q. You are not able to do that? A. I am not in my head. I do not carry those figures.

Mr. Haight: It is in one of the exhibits which we offered.

CROSS-EXAMINATION BY MR. HAIGHT:

Q. Mr. Allegart, what is the territory that, before the lease of 1903, was supplied by the South Jersey Gas, Electric & Traction Company? A. Well, in a general way—of course, there have been some additions which are shown on this map—it covers the additions—but in a general way the South Jersey Gas, Electric & Traction Company operated from in and about Trenton and South Trenton to—well,

Woodbury or Gloucester—Woodbury, somewhere about there.

Q. Woodbury? A. That was the traction company at that time and is the territory now—of course, we have added to it.

Q. The Gas & Electric Company of Bergen County, will you indicate on the map where its territory was before the lease? A. Well, I would say from Rutherford—approximately—Rutherford, north of that point, right up to very close to the New York state line.

Q. And going west? A. That portion of the salmon color.

Q. From Rutherford north and west to the green? A. And west to the green.

Q. And then am I correct in understanding that each one of the numbers appearing on this map indicate a generating station? A. Yes, sir.

Q. And the three big generating stations are located at 1, 2 and 3? A. 1, 2 and 3.

Q. 3 being the one located in Jersey City. A. Yes, sir.

Q. And known as the Marion station. A. Known as the Marion Power Station.

Q. 1 the Kearny station which is on the Passaic river. A. It is on the Hackensack.

Q. On the Hackensack? A. The Essex being on the Passaic river.

Q. The Essex plant being on the Passaic river? A. Yes, sir.

Q. Now, do you know when stations number 8, 9 and 10 were built? A. Well, I couldn't say when they were built, but——(interrupted)

Q. As respects 1903. A. Yes, sir; they were taken over—they were in existence in 1903—taken over at that time.

Q. I suppose they have been very much enlarged and improved since that time. A. No; that has not been the case.

Q. Why is that? A. Well, they are very inefficient, to start with.

The Court: And very smoky.

The Witness: Trenton is now shut down, Vice Chancellor.

The Court: I know it is.

The Witness: So I can refer to the smoky conditions without fear or favor. The Camden station is about to be—is shut down now. We will keep that for about a year and then it will be abandoned. With the Camden station we now have a sub-station—a distributing point getting its current from Burlington and also from the Philadelphia Electric Company. We are also—we have also closed down Trenton. We have closed down Cranford and we have closed down Paterson.

Q. Now, referring to the South Jersey end first. A. Yes, sir.

Q. From what source do you get the energy which was formerly supplied by stations 10, 8 and 9. A. We are now getting our—we have a generating station at Burlington. That, of course, is not large enough to supply the South Jersey territory. We have an interconnection—I meant to mention that, I overlooked it—we have interconnection with the Philadelphia Electric Company at Camden for, I think it is, 40,000 kilowatt capacity.

Q. What territory does that supply? A. That serves in and about Camden. We also have an interconnection, 20,000 volts; we also have an inter-

connection at Trenton with the Philadelphia Electric Company at 66,000 volts, which supplies the territory in and about Trenton; the Burlington generating station supplying energy to both Camden and Trenton.

Q. Now, from what source do you get your energy to supply the part of the map marked pink which is not within the green and blue lines? A. Well, the main part of that energy today comes from the generating station——(interrupted)

The Court: You mean between Metuchen—(interrupted)

Mr. Haight: Between Metuchen and Princeton.

The Witness: Well, Princeton is in the Southern Division. There is no connection. We will have to confine ourself to the pink.

Q. That is what I want. A. Well, that territory is served, as I say, largely from the generating station at 1, 2 and 3.

Q. Through the high power transmission line? A. Through the 26,000 volt lines running as far as Metuchen. There is a generating station there, at Perth Amboy which could supply that territory.

Q. Is that station at Perth Amboy used? A. That is in use, yes, sir.

Q. That was one of the old stations of the Somerset, Union & Middlesex Lighting Company? A. No, sir; that was constructed—I cannot give you the date.

Q. Subsequently to 1903? A. Some time after, yes, sir.

Q. And it is within the territory though that was

formerly——(interrupted) A. Within territory of S. U. & M., yes, sir.

Q. How much did that plant cost? A. I can furnish you with the information. I cannot give that offhand.

Q. Approximately. A. Well, the plants those days were costing more per kilowatt.

Q. If you cannot do it readily, give it to us later. A. I can furnish you with the figures. I would not trust my memory about it.

Q. I am not entirely clear about this water matter. How—from what source do you get the water to supply your needs at stations 1, 2 and 3? A. In the case of station 2, we get the water from the Passaic River, and in case of station one, which is Kearny, and Marion, number 3, which is Marion, we get that from the Hackensack River, that is, the water for condensing purposes; in addition to that we use water for our boilers.

Q. Now, where do you get it for 1, did you say from the Hackensack River? A. The Hackensack River.

Q. You say there is no place in the Paterson and Passaic district where the supply of water to equal that needed for these three stations, is that what you meant to say? A. Any station—any fair sized station—any station that could be built economically.

Q. Why can't you take the water from the Passaic River as well at Paterson as at Newark? A. You can, but you couldn't get the quantity.

Q. Why not? A. It isn't there.

Q. It is the same water. A. The Passaic River at the point of our generating stations is on tide water. It makes quite a difference.

Q. Now, the nine hundred million gallons which you use, is that for condensing purposes or for boilers? A. That is for condensing purposes. That nine hundred million gallons, as I said before, is when the second half of the Kearny will be completed, when that happens, but it will not be many years away—of course it is one of the benefits of the interconnection that I have referred to, the Pennsylvania Power & Light Company and Philadelphia Electric Company—by reason of that interconnection we are going to be able to defer that second half of the Kearny several years, making a saving in the fixed charges just roughly calculated, we will say, if we are able to defer it four years, the fixed charges of two million dollars a year, that is eight million dollars saving.

Q. Your plant at Kearny is the largest generating plant in the world now, isn't it? A. Oh, no, sir.

Q. Are any of your plants the largest in the world? A. No, but I will say this, that when we get tied up with the Pennsylvania Power & Light Company and the Philadelphia Electric Company, that that will constitute the largest pool of power in the world. We know of none greater than that and we think it is the greatest.

Q. When was the Marion station built? A. That was built—I think that was completed around 1904. I can get you that information.

Q. Was it under construction before the leases were executed? A. I don't think so.

Q. And when was the Newark station built? A. Well, the Newark station was built before 1903; that is station number 7.

Q. What company was operating that station? A. At that time?

Q. Before the leases? A. United Electric Company of New Jersey—you mean before the leases?

The Court: That is on the Passaic?

The Witness: Yes, sir.

Q. Are stations 6 and 7 being used? A. Number 7 is being used; number 6 is one of the stations that is now shut down.

Q. And they were, I suppose, the property of the old United Electric Company? A. Well, I am not clear about the Newark—while I am not clear whether it was in the United Electric territory, the United Electric Company did have a station in and about Newark, and I think it was connected with the railway station at that time. That station is under lease to Public Service.

Q. Of course, as it became necessary for the Paterson and Passaic District to have a generating plant at a place where it could get a sufficient amount of water, there would be nothing to prevent it from locating that plant on the Hackensack or Passaic River at tidewater and carrying the power through transmission lines the same as you do to the territory which you refer to here. A. There would be nothing to prevent them, but of course, it would not result in very much economy to erect a station for—merely to supply Paterson and Passaic. It is the consolidation of all these properties that makes it possible to get these economies and lower rates to the public.

Q. I am speaking of the whole territory formerly served by the Paterson and Passaic. A. Yes, sir; it would be possible, but it wouldn't be practical for the reason that you would not—I don't know that you would save very much money by generat-

ing at tidewater for just Paterson and Passaic alone.

Q. If it become necessary to do it? A. It could be done.

Q. In order to get the water it could be done? A. It could be done; yes, sir.

The Court: You said something about storing your energy. What did you mean by that?

The Witness: No. You misunderstood me.

The Court: You do not store your electric energy?

The Witness: No; it isn't possible to store it. It is possible to store a small quantity.

The Court: You did use that term and I wondered whether you stored any part of your energy.

The Witness: No, not at all.

Q. Have you given all the interconnection contracts that you have with other electric companies? A. No, I have not. The others are smaller and more or less incidental. I have them here. I was just trying to show a picture.

Q. And you have one with some company operating on Staten Island? A. Yes, sir; we have an emergency connection with Staten Island Edison Company, 10,000 kilowatts.

Q. Where is that, Bayonne? A. That line runs from Perth Amboy to Tottenville, Staten Island.

Q. Perth Amboy? A. We were able—in 1926 we were shy of capacity in the S. U. & M. territory and by making this interconnection at a cost of something like a hundred thousand dollars to both companies, we avoided the installation of transmission lines which would have cost us, oh, roughly, a million dollars. We tided over that year.

Q. And the Paterson and Passaic district? A. Paterson and Passaic district, I wouldn't call it an interconnection. We have been—we are buying some power from the Society of Useful Manufactures, I think it is about 4,000 killowatts and they have a hydro-plant as well as a mill plant and we take that current, as I recall it, principally at night time. It is what might be called dump power.

Q. That is a Paterson concern, isn't it? A. Yes, sir. It is not firm power. We simply take what they do not require for themselves. Couldn't depend on it.

Q. Have you any connections in either the west or north from other companies to serve that territory? A. I can say "No" to that, but I just want to—no, we have no connection with other companies to the north.

Q. And then all of the Paterson & Passaic districts with that exception is served with the power generated at the plants 1, 2 and 3. A. Yes, sir, all of it.

Q. I suppose there is some limit upon the distance to which energy may be transmitted and carried, and if so will you give us that limit? A. Well, there is a limit.

Q. I do not mean absolutely, but practically, from a commercial standpoint. A. From a commercial standpoint it depends on the voltage, but I should say that 220,000 volts, my recollection is, that they are able to send that about three hundred miles, but the time will come when they may improve that. Of course the lower voltages, such as 26,000——(interrupted)

The Court: You mean you can send that at the point of production.

The Witness: Yes, sir.

The Court: Without any step-up?

The Witness: It has all got to be stepped up. It is never generated at more than 3,000 volts, then, at the place of generation, they step it up to 220,000 and then transmit it to the point to which they wish to send it and then step it down again, and on the way they are able to make what they call taps—they can tap and step it down at points on the way.

The Court: They do not step it up on the way—no pushing plant on the way.

The Witness: No, that 220,000 carries the energy.

Q. There is a very considerable loss of energy the further you go, isn't there, the further the energy is carried? A. Yes, there is. There is loss of energy in transmission, but it is quite economical to transmit current as against generating at a number of places.

Q. How far do they carry the current from the Niagara Falls station? A. Well, I couldn't say that offhand, Judge. I can get you that information.

Q. It is not material. I thought maybe you knew.

The Court: Where does it go if it does not ground? You say there is a loss.

The Witness: Well, you might say it is dissipated.

The Court: How?

The Witness: It is the resistance which, in overcoming those long distances, waste. Just as water would be wasted.

The Court: In the means of transmission, eh?

The Witness: Yes, sir.

Q. From what source did Paterson and Passaic prior to 1903 get its energy? A. It depended on the Paterson station.

Q. That is the one at number 5? A. That is the one, number 5, yes, sir. Well, I think there was a small station at that time at Passaic—I think there was.

Q. That has been abandoned? A. That station has been dismantled and we have in its place a sub-station which is being fed from the three generating stations.

Q. Will you answer the same question with respect to the gas and electric company of Bergen County?

The Court: What is the question?

Mr. Haight: Answer the same question as to the gas and electric company of Bergen County, that is, where it got its energy before the lease.

The Witness: They had a plant at Hackensack; they also had a plant at Rutherford.

Q. Both of those plants have been abandoned? A. Both of those plants have been dismantled or abandoned as generating stations, but they are in use as sub-stations for the supply and distribution of current for that territory.

Q. You mean they are used for local purposes? A. Well, yes, they receive current for instance at 20,000 volts at Hackensack and step it down there for distribution to customers.

Q. Oh, I see, they do not generate any current

there? A. No, but it is necessary to have considerable apparatus in order to go through the stepping down process.

Q. Now this new line that goes to Pennsylvania is supposed to supply new territory through that? A. No.

Q. You are just going to get energy from Pennsylvania and use it within your present territory? A. Yes, sir.

Q. And carry over energy to Pennsylvania. A. Yes, sir.

Q. How many miles will you have to carry it from your stations 1, 2 and 3? A. I think that is 93 miles.

Q. From stations 1, 2 and 3? A. Yes, sir.

Q. To where, Bushkill? A. No, it isn't as far as that, about 43 miles to Bushkill, but the whole ring will be about 93 miles, as I recall it. I might say, Judge, that it would be impracticable to step down 220,000 volts at any intermediate point on account of the prohibitive cost of stepping down—the apparatus necessary.

Q. What is the meaning of that? A. The Judge asked me if we expected to serve any customers along the transmission line. I told him in order to make it available it would be very costly. I suppose a sub-station necessary to step that down would probably cost all of three million dollars.

Q. Then its purpose is simply an exchange. A. Yes, sir.

Q. And the demand is not there. A. The demand is not there.

Q. That territory is served, however, by the electric company—— (interrupted)

A. Well, I am inclined to think not much of it.

Q. Where it may be served is it served by local concerns? A. Yes, sir; it may be.

Q. Morristown and all that section is served? A. Oh, yes.

Mr. McCarter: We offer the second map in evidence.

(Map marked Exhibit D-2.)

RECESS

Mr. McCarter: We offer in evidence certified copy of the certificate of incorporation of the Public Service Corporation of New Jersey.

(Paper marked Exhibit D-3.)

Mr. McCarter: We offer in evidence the document known as Plan for Refinancing, dated March 13, 1924, being exhibit 1 annexed to the answer.

(Paper marked Exhibit D-4.)

Mr. McCarter: We offer the proceedings before the Utility Board on application for approval of the agreement to consolidate the Public Service Electric Company, the Public Service Gas Company, and United Electric Company of New Jersey, in April of 1924, including the copy of the certificate approving the same, being Exhibit 2 annexed to the answer.

Mr. Haight: We have no objection to the certificate, but I think the proceedings are irrelevant.

(Paper marked Exhibit D-5.)

Mr. McCarter: I offer copy of consolidation agreement referred to, meaning Exhibit 1 annexed to the bill of complaint.

(Paper marked Exhibit D-6.)

Mr. McCarter: We offer in evidence mortgage made by the Public Service Electric & Gas Company dated July 24, 1924, together with the certificate of the Board of Utility Commissioners approving thereof.

(Paper marked Exhibit D-7.)

Mr. McCarter: We offer consolidation agreement dated November 5, 1924, approved by the Utility Board on November 20, 1924, whereby three companies were merged into the Public Service Electric & Gas Company.

(Paper marked Exhibit D-8.)

Mr. McCarter: I offer next, the proceedings before the Utility Board on the hearing of the application for approval and certificate approving the same.

(Paper marked Exhibit D-9.)

Mr. McCarter: I next offer the offer to the stockholders of the companies, parties to the proposed consolidation agreement, dated January 10, 1927, Exhibit 8 annexed to the bill.

(Paper marked Exhibit D-10.)

Mr. McCarter: I next offer merger agreement dated April 26, 1927.

(Paper marked Exhibit D-11.)

Mr. McCarter: I next offer certificate approving the merger agreement of April 26,

1927, being Exhibit 5 annexed to the answer, and the proceedings before the board of Public Utility Commissioners prior to such approval.

(Paper marked Exhibit D-12.)

Mr. McCarter: I next offer the merger agreement dated October 25, 1927, that is, the new merger agreement after the making of the amendment, identically with the old one except the date, as I understand it.

(Paper marked Exhibit D-13.)

Mr. McCarter: I next offer the proceedings before the Utility Board to approve the issue of preferred stock to the amount of $42,060,317 by the Public Service Electric & Gas Company, order approving the same dated January 6, 1927, the offer to the stockholders of the parties to the proposed agreement of merger submitted to the Board at the same time the application was submitted to issue preferred stock to the amount of $42,060,317.

(Paper marked Exhibit D-14.)

Mr. McCarter: We offer the amendment to the charter of the Oxy-Hydrogen Company, changing the name to the Public Service Gas Company.

(Paper marked Exhibit D-15.)

Mr. McCarter: I next offer in evidence the amendment of the certificate of incorporation of the Essex & Hudson Gas Company, and the amendment of the certificate of incorporation of the Essex & Hudson Gas Company giving

power to lease or take a lease, dated June 1, 1903.

(Paper marked Exhibit D-16.)

Mr. McCarter: I now offer the original certificate of incorporation of the Essex & Hudson Gas Company.

Mr. Haight: Certified copy is already in. I do not see the purpose of duplicating it.

Mr. McCarter: There is no purpose. If it is in we do not want to have it repeated.

(Paper marked Exhibit D-17.)

Mr. McCarter: I offer in evidence lease of the Essex & Hudson Gas Company to the Public Service Corporation of New Jersey and assignment by the Public Service Corporation of New Jersey of that lease to the Public Service Gas Company.

(Paper marked Exhibit D-18.)

Mr. McCarter: I offer lease of the Hudson County Gas Company to the Public Service Corporation of New Jersey and assignment thereof to the Public Service Gas Company.

(Paper marked Exhibit D-19.)

Mr. McCarter: I offer lease of The Paterson & Passaic Gas & Electric Company to the Public Service Corporation of New Jersey and assignment of the gas powers therein contained to the Public Service Gas Company and assignment of the electric powers therein contained to the Public Service Electric Company.

(Paper marked Exhibit D-20.)

Mr. McCarter: I offer in evidence lease of the Somerset, Union & Middlesex Lighting Company to the Public Service Corporation of New Jersey and the assignment thereof, the gas powers to the Public Service Gas and electric powers to the Public Service Electric.

(Paper marked Exhibit D-21.)

Mr. McCarter: I offer in evidence the lease of the Gas Light Company of the City of New Brunswick to the Public Service Corporation of New Jersey.

(Paper marked Exhibit D-22.)

Mr. McCarter: I next offer the lease of the South Jersey Gas, Electric & Traction Company to the Public Service Corporation of New Jersey.

(Paper marked Exhibit D-23.)

Mr. McCarter: I next offer an assignment of the lease of The Gas Light Company of the City of New Brunswick to the South Jersey Gas, Electric & Traction Company.

(Paper marked Exhibit D-24.)

Mr. McCarter: I offer the assignment of the lease by the Public Service Corporation of ,New Jersey to the Public Service Electric Company, dated July 1, 1910.

(Paper marked Exhibit D-25.)

Mr. McCarter: I next offer the lease of the Newark Consolidated Gas to the United Gas & Improvement Company dated December 1, 1898.

(Paper marked Exhibit D-26.)

Mr. McCarter: I next offer assignment of the lease by the United Gas & Improvement Company to the Essex & Hudson Gas Company and the consent of the Newark Consolidated Gas Company to the assignment.

(Paper marked Exhibit D-27.)

Mr. McCarter: I next offer the assignment of the Essex & Hudson Gas Company to the Public Service Gas Company, October 1, 1909.

(Paper marked Exhibit D-28.)

Mr. McCarter: I next offer the contract between the Newark Consolidated Gas, United Gas & Improvement Company and the Essex & Hudson Gas Company dated the 1st of December, 1898.

(Paper marked Exhibit D-29.)

T. Wilson Van Middleworth, Sworn for defendant.

Direct-examination by Mr. McCarter:

Q. You occupy what position, Mr. Van Middleworth in the Public Service? A. Treasurer.

Q. Are you acquainted with the price list of J. S. Rippel & Company published weekly in the local papers stating the market prices of local securities? A. I am.

Q. Are they looked upon as authentic? A. Very generally, yes, sir.

Q. What are the papers you hold in your hand? A. I have yearly range of prices on New Jersey securities for the year 1913, for each year up to and including 1926.

Q. What New Jersey securities do they cover? A. They cover various municipal bonds, railroads.

Q. Including what of the securities we are interested in in this case? A. Including the stock of the lessor companies.

Q. Five lessor companies? A. Yes, sir.

Mr. McCarter: I offer it in evidence.

Mr. Haight: No objection.

(Paper marked Exhibit D-30.)

Q. Do you know Mr. Rippel? A. Yes, sir.

Q. He is well known financially in this city. A. Yes, sir.

Q. Whose office and banking house is on Clinton street, Newark? A. Yes, sir.

Q. And recognized throughout on matters of this kind, is he? A. Yes, sir.

Q. Have you made a summary or caused to be made a summary of Rippel's prices, for convenience? A. Yes, sir; I have had sheets showing quotations for the year 1913 to and including 1926 of the Hudson County Gas Company, Essex & Hudson Gas Company, The Paterson & Passaic Gas & Electric Company, Somerset, Union & Middlesex Lighting Company, and New Brunswick Light, Heat & Power Company, showing the high, low and last quotations for those stocks.

Mr. McCarter: I offer that in evidence.

(Paper marked Exhibit D-31.)

Q. Have you had prepared a table of Rippel's price list of 1927? A. I have for the eleven months in 1927 which have expired.

Q. Look at the document which is now shown you and tell us what they are. A. I have weekly

quotation sheets published by J. S. Rippel Company from January 8, 1927, up to and including December 31, 1927—weekly quotation sheets.

Q. Including what securities? A. Including the securities of the five companies interested here.

Mr. McCarter: I offer that in evidence.

(Paper marked Exhibit D-32.)

Q. Have you caused a summary or detail of those prices for the year 1927 to be made? A. Yes, sir; I have.

Q. Will you produce that—withdrawn— Do you know whether the complainant, Outwater & Wells, issue price lists of certain securities including the securities in question in this suit? A. Yes, sir; they do publish a quotation sheet monthly.

Q. They are bankers and brokers in Jersey City? A. 15 Exchange Place, Jersey City.

Q. Have you with you such a list or copy of it of March, 1923, to December, 1927? A. Yes, sir.

Q. Will you produce it? A. (Producing paper.)

Mr. McCarter: I offer it in evidence.

(Paper marked Exhibit D-33.)

Q. Have you caused to be made a summary? A. Yes, sir.

Q. Have you made a summary of those sheets with particular reference to any stock? A. For the bid price for the five companies in which we are interested here.

Q. During this same period? A. Yes, sir.

Mr. McCarter: I offer that in evidence.

(Paper marked Exhibit D-34.)

Q. Have you caused to be prepared a summary of the Outwater & Wells prices for Public Service Electric & Gas Company six per cent. preferred stock? A. Yes, sir.

Q. From March, 1925, to December, 1927? A. I have.

Q. Do you hold that in your hand? A. I do.

Mr. McCarter: I offer it in evidence.

(Paper marked Exhibit D-35.)

Q. From the sheets that have already been offered have you caused to be prepared and have you in your hands a table showing the movement or activity of the stocks of the lessor companies? A. I have a table showing the number of certificates issued by years and the shares represented by those certificates from 1913 through the eleven months ending November 30, 1927.

Q. Those are taken from what? A. They are taken from the stock transfer books.

Q. Of these companies? A. Of each of the companies.

Mr. McCarter: I offer it in evidence.

(Paper marked Exhibit D-36.)

Q. Now, have you prepared a similar table or statement showing the activity of the six percent preferred stock of the Public Service Electric & Gas Company? A. I have, from the date of its issue in 1925.

Mr. McCarter: I offer that in evidence.

(Paper marked Exhibit D-37.)

Q. Now, Mr. Van Middleworth, do you know whether or not the document known in this case as

the offer of March 13, 1924, was generally published and circulated throughout the country? A. It was.

Q. Have you made a list of the names of the newspapers in which that offer was contained? A. I have a statement from Doremus & Company, the advertising agency through which the ad was placed, as to the cities and places in which the ad appeared.

Mr. McCarter: I offer it in evidence.

(Paper marked Exhibit D-38.)

Mr. Haight: For the purpose of tying this up may it be stated on the record that the offer referred to is the one annexed to the bill of complaint.

Mr. McCarter: Yes; the famous offer of March, 1924.

Q. Mr. Van Middleworth, I refer you to paragraph 46 of the defendant's answer in this case. Have you a copy in your hand? A. No, sir.

Q. That answer contains certain information with reference to the holdings of the stock of the company named therein. Will you please tell us what is the nature of the interest—nature and extent of the interest of the Public Service Corporation of New Jersey in the stock of the lessor companies, and the extent of that interest, and the total number of shares held by it or any person, corporation or depository on its behalf? A. As of the date of this answer?

Q. Well, at the present time. A. The answer does not go to the present time.

The Court: He is asking you to give it at the present time.

Q. Take at the time of the answer first and then the present time. A. Hudson County Gas Company 40 shares; New Brunswick Light, Heat & Power Company, 132.8 shares. In The Paterson & Passaic Gas & Electric Company, .88 of a share. In the Somerset, Union & Middlesex Lighting Company, 15.68 shares.

Q. Can you give us the figures as of the present time? The information is over there? I haven't got it here. A. 60 shares of stock of the Hudson County Gas Company. 15.88 of the stock of The Paterson & Passaic Gas & Electric Company. 13 shares of the Somerset, Union & Middlesex Lighting Company. 129-4/5 shares of the New Brunswick Light, Heat & Power Company.

Q. Now, what number of shares has the Public Service acquired in the four companies named under the offer dated January 10, 1927—the five companies? A. You want to prove the figures in the answer or present holdings?

Q. We will take the present. A. In the Essex & Hudson Gas Company they have acquired 48,585 shares; in the Hudson County Gas Company 81,558 shares; in The Paterson & Passaic Gas & Electric Company, 41,230.2 shares; Somerset, Union & Middlesex Lighting Company, 7,919 shares; New Brunswick Light, Heat & Power Company, 2,597 shares.

Q. Now, will you give us the number of shares that the Public Service had acquired under that offer at the time of filing the answer? A. Essex & Hudson Gas Company, 42,421; Hudson County Gas Company, 72,181; New Brunswick Light, Heat & Power Company, 2,395; The Paterson & Passaic Gas & Electric Company, 3,700; Somerset, Union & Middlesex Lighting Company, 2,830.

Q. Are you able to give us the number of shares of stock of the lessor companies that the Public Service Electric & Gas Company has acquired in and pursuant to the offer to the stockholders of the lessor companies dated January 10, 1927, at the time of the answer? A. Essex & Hudson Gas Company, 48,265; Hudson County Gas Company, 80,331; New Brunswick Light, Heat & Power Company, 2,597; The Paterson & Passaic Gas & Electric Company, 41,225.2; Somerset, Union & Middlesex Lighting Company, 7,562.

Q. Are you able to give the same figures for the same stock at the present time—you have given that? A. I have given you that.

Q. Will you please give us the number of shares of stock in the several lessor companies that the Public Service Electric has acquired—had acquired at the time of the answer, under and pursuant to the offer to the stockholders of the lessor companies, dated January 10, 1927? A. Essex & Hudson Gas Company, 5,844; Hudson County Gas Company, 8,150 shares; New Brunswick Light, Heat & Power Company, 141 shares; of The Paterson & Passaic Gas & Electric Company, 1,527 shares; Somerset, Union & Middlesex Lighting Company, 521 shares.

Q. Turn now to paragraph 48 of the answer. Can you state how many of the directors of the Somerset, Union & Middlesex Lighting Company who voted for the merger were not interested in any of the other companies parties to the agreement, or to the Public Service Corporation of New Jersey? A. Three.

Q. Three. How many directors of the Somerset, Union & Middlesex Lighting Company were there at that time? A. Five.

Q. Can you give the total holdings of stock in the Public Service Corporation of New Jersey by the directors of the lessor companies who are also directors either of the Public Service Corporation of New Jersey or the Public Service Electric & Gas Company? A. I can get it but I haven't it here.

Q. See if you are familiar with the statement in Section 48 of the answer at the time it was acquired, if it is not correct as put down. A. The holdings as shown in the answer are correct as of the time it was prepared.

Q. Yes.

Mr. McCarter: I offer the statement in the answer which the gentleman said was correct at the time of the answer: "A majority of the directors of Somerset, Union & Middlesex Lighting Company who voted for the proposed merger agreement were not interested in any way in any of the other companies, parties to said agreement, or in Public Service Corporation of New Jersey. These defendants say that the total holdings of stock in the Public Service Corporation of New Jersey by the directors of the lessor companies who are also directors of said Public Service Corporation of New Jersey or of Public Service Electric & Gas Company are 62,533 shares of common stock and 4,505 shares preferred stock of Public Service Corporation of New Jersey out of 4,807,239 shares outstanding, or 645 one thousandths of one per cent, and said directors hold eight shares of common stock of Public Service Electric & Gas Company out of a total of 11 million shares of common stock, and 1,600 shares of preferred stock of Public Service Electric & Gas Com-

pany out of 514,453 shares of preferred stock, or fourteen one thousandths of one percent.

Q. Can you give us a copy of the ledger holdings of stock of the lessor companies by Outwater & Wells from 1923 until September 30, 1927, as well as of Roosevelt & Sons?

Mr. Haight: May I have the materiality of that shown to me?

Mr. McCarter: We want to show since this offer was promulgated the complainants have gone out and bought this stock.

Mr. Haight: We did not vote in 1923. The offer was not promulgated until 1924.

Mr. McCarter: That happens to be the period which we have.

Q. Have you got the document there? A. I have a statement showing the ledger accounts of Outwater & Wells in the Essex & Hudson Gas Company, Hudson County Gas Company and the Paterson & Passaic Gas & Electric Company as of January 1, 1923—as of August 1st, 1924, as of January 10, 1927, and as of April 26, 1927, with the number of credit and debit charges against their account.

Mr. McCarter: I offer it in evidence.

(Paper marked Exhibit D-39.)

Q. Have you the same thing for Roosevelt & Sons? A. Yes, sir.

Mr. McCarter: I offer that in evidence.

(Paper marked Exhibit D-40.)

Q. Have you a table showing the holdings of the

complainants in this action in the lessor companies at the present time? A. Yes, sir.

The Court: The two?

Mr. McCarter: All of them.

The Witness: I have a statement showing the holdings of B. M. Shanley, Roosevelt & Son; Outwater & Wells' shares in the name of the so-called Roosevelt committee.

Q. And shares in the name of the Roosevelt committee? A. Yes, sir.

Mr. McCarter: That, I think, constitutes all of the complainants. I offer it in evidence.

Q. Do the Roosevelt committee shares include the Shanley? A. No, sir.

Mr. McCarter: They are included in the list of the Fidelity Union Trust Company as executor of the Shanley estate.

(Paper marked Exhibit D-41.)

The Court: What stock is represented by the Roosevelt committee, Roosevelt, Shanley?

The Witness: The committee holds stocks of all the companies, except the New Brunswick Light, Heat & Power Company.

Mr. Haight: Of the Roosevelt, Shanley stock, is that what is meant by the Roosevelt committee?

Mr. McCarter: W. Emlen Roosevelt is chairman of the Roosevelt committee, Roosevelt & Sons are individual complainants and the Shanley estate is an intervening complainant, so to speak.

The Court: Whose stock do the committee represent, Roosevelt, Shanley?

Mr. Haight: Stock of a great many people that is deposited with them, but not the Roosevelt stock, no, sir.

Q. Have you a sheet showing the total number of individual stockholders in and the number who deposited stock under the agreement dated December 28, 1926? A. Yes, sir.

Mr. McCarter: I offer it in evidence.

(Paper marked Exhibit D-42.)

Q. Now, have you calculated, in the form of a sheet, the number of shares of stock of the lessor companies owned by the Public Service Electric & Gas Company and the Public Service Corporation of New Jersey on January 10, 1927, of the five lessor companies, when the offer was made, and the number of shares acquired by either the Public Service Electric & Gas Company or the Public Service Corporation of New Jersey in the five lessor companies since the offer dated January 10, 1927? A. I have.

Q. Will you produce it? A. (Producing paper.)

Mr. McCarter: I offer it in evidence.

(Paper marked Exhibit D-43.)

Mr. McCarter: We offer in evidence a deposit agreement, so-called, under which the complainant, as a committee, are operating—committee of five or six gentlemen are operating and under which they as a committee are parties to the suit. We offer in evidence the so-called deposit agreement dated June 10, 1927, and the papers accompanying the same, one dated June 16, 1927 and the others marked respectively B and C.

The Court: Roosevelt committee agreement?

Mr. McCarter: Yes, sir.

(Paper marked Exhibit D-44.)

Mr. McCarter: We offer in evidence a list of the operations by W. Emlen Roosevelt and others, partners trading as Roosevelt & Son, parties complainant in this action, in the stock of some of the lessor companies from January 30, 1925, to May—down to the date of the service of this paper, which is dated September 22, 1927, furnished by the other side.

(Paper marked Exhibit D-45.)

Mr. McCarter: Are you able to give us the same information for Outwater & Wells?

Mr. Haight: Here is a statement Mr. Outwater has produced subject to your request. I am informed it is a statement of the sale prices, giving the dates these stocks have passed through their hands from 1922 until the present time.

Mr. McCarter: We have not asked for the stock they have bought and sold for customers. What we have been trying to get is the stock that they have dealt in themselves.

Mr. Haight: This is the whole transaction.

Mr. McCarter: We do not want that. We have not asked for it. We have been three months trying to get this from the other side, and I think it is time we had it.

Mr. Haight: I do not like the imputation that is contained in Mr. McCarter's statement —(interrupted)

The Court: Anything further of this witness?

Mr. McCarter: Yes.

Q. Please look at the document that Senator Wakelee is now handing you and tell us what that is. A. I have taken off a list of the stock certificates which were transferred to the name of the Roosevelt committee of Hudson County Gas Company, Essex & Hudson Gas Company, The Paterson & Passaic Gas & Electric Company and the Somerset, Union & Middlesex Lighting Company, showing the name of the registered holder, the date that the certificate was acquired and the number of shares.

Mr. McCarter: I offer that in evidence.

(Paper marked Exhibit D-46.)

CROSS-EXAMINATION BY MR. HAIGHT:

Q. Referring now to Exhibit D-34, Mr. Van Middleworth—it is entitled "From Outwater & Wells' quotation sheet" do I take it—am I correct in understanding that it gives the bid prices for the stocks of the four lessor companies—five lessor companies—at the date specified in the reports of Outwater & Wells which have been offered in evidence? A. In their monthly public quotation sheets.

Q. And it does not give the asked for prices, does it? A. No.

Q. Do their sheets give the asked for prices? A. I think they do in some cases.

Q. Why didn't you put that on this sheet? A. We thought the bid price was the price at which a security could be sold.

Q. And the same applies to the Public Service Electric & Gas Company six percent preferred shown on Exhibit D-35? A. Yes, sir.

Q. Referring to Exhibit D-39 I notice that you do not give any holdings of the Outwater & Wells

for the period between January 1, 1923, and August 1, 1924, or the number of shares of stock transferred by them through that period—during that period. A. Yes, sir; it shows the number of shares which were credited to their account and number of shares which were debited, the balance, at that period.

Q. From January 1st, 1923, to August 21st, 1924. A. August 1st, 1924, 327 Essex & Hudson Gas Company were transferred to their name and later transferred out.

Q. Yes, and the same thing goes all the way along? A. Correct.

Q. You, of course, do not know whether during that period of time they were trading in these stocks themselves or for clients? A. No, sir.

Q. Did you make any compilation back of January 1st, 1923? A. No, sir.

Q. Now, referring to Exhibit D-40 the set-up of that seems to be quite different than the set up of D-39. That is to say the set up for Roosevelt & Sons differs from the set-up for Outwater & Wells. Why is that? A. I do not see that it is. They are both the same.

Q. The set-up on D-39 for Outwater & Wells is quite different from the set up of Roosevelt & Sons on D-40. A. This is a transcript of Roosevelt & Sons, this statement, showing the holdings of Roosevelt & Sons as of August 1, 1924, January 10, 1927, and April 26, 1927.

Q. But it does not show the number of shares transferred from and to them. A. No, sir.

Q. During those periods. A. No, sir.

Q. D-39, however, shows the number of shares which were transferred to Outwater & Wells during those periods. A. Yes, sir.

Q. Why didn't you make the same statement for Roosevelt & Sons? A. I have a copy of their ledger transactions in Somerset, Union & Middlesex Lighting Company and The Paterson & Passaic Gas & Electric Company. They did not trade in the Essex & Hudson Gas Company and the Hudson County Gas Company, or, at least, they were not holders of record.

Q. Did any stock go through their name during the period mentioned? The period we have referred to, January 1, 1923. A. Yes, sir, between August 1, 1924, and January 10, 1927 there were credits of 259 shares and debits of 237 in the stock of the Somerset, Union & Middlesex Lighting Company.

Q. But I am talking about the Essex & Hudson Gas Company and Hudson County Gas Company. A. They had no ledger account. They were not holders of record.

Q. They had no ledger account? A. No, sir.

Q. When did they first commence to trade in those stocks? A. In the Essex & Hudson Gas Company and Hudson County Gas Company?

Q. Yes. A. I do not think they have ever traded in either of them.

Q. You mean on the ledger account. A. Yes, sir.

Mr. Haight: May we have this in?

Mr. McCarter: We will offer it now, the ledger account of Roosevelt & Sons of The Paterson & Passaic Gas & Electric Company and Somerset, Union & Middlesex Lighting Company.

(Paper marked Exhibit D-47.)

Q. D-42, as I understand it, shows the number of stockholders who deposited stock under the

deposit agreement of January 28, 1926, and also the number of stockholders of the respective lessor companies at that time. A. Yes, sir.

Q. Have you any statement showing a segregation of the stock deposited—that is to say, the total number of shares and what-not deposited by the respective individuals who deposited? A. No, sir.

Q. You have not. The Public Service Electric & Gas Company or the Public Service Corporation of New Jersey, one or the other company, after the promulgation of that plan, sent solicitors around in the territory that these stocks were held in and solicited stock from the persons who owned it, did they not? A. I think so.

Q. And a substantial amount of the stockholders who deposited were procured by those solicitors. A. No, I think not. We have no way of telling what persuaded the stockholders to deposit, other than the fact that he thought the offer was a good one.

Q. You did not send out men that you did not think could come home with something, did you? A. I am afraid we did. We didn't have the best kind of men to do the work.

Q. You did not send out persuasive men? A. No.

Q. And you have no way of checking what those men produced? A. No, sir.

Q. Didn't you send out your employees to solicit this stock? A. We had some of the agents in the various territories and some of their assistants go out to interview the holders.

Q. And did you send out any special men? A. No, sir.

Q. You just sent out your regular employees? A. Yes, sir.

Q. Did you offer a prize to any of those employees who would produce the most amount of stock? A. We did not.

Q. Taking the percentages which also appear on this page of Exhibit D-42, for instance, Essex & Hudson Gas Company, there were 254 stockholders who deposited their stock out of 665, and the percentage of stockholders depositing was 38.2 percent; and the same way down with the others; in no case did the percentage reach fifty percent. A. Not of the stockholders.

Q. Of the stockholders? A. No, sir.

Q. Now, of this stock that was deposited was a big block of it deposited by the U. G. I. of Philadelphia—United Gas & Improvement Company? A. They were substantial holders in the Essex & Hudson Gas Company, the Hudson County Gas Company and the Paterson & Passaic Gas & Electric Company.

Q. And the most substantial holders, were they? A. In those three companies.

Q. They deposited? A. They did.

Q. They are also very substantial holders of the stock of the Public Service Electric & Gas Company preferred stock. A. Not substantial, no.

Q. Are they substantial holders in the stock of the Public Service Corporation of New Jersey? A. They are.

Q. They are substantial? A. Yes, sir.

Q. How substantial—what percentage? A. Over twenty percent of the common stock.

Q. Over twenty percent of the common stock. What percentage of the stock of the Public Service Electric & Gas Company, that is, of the preferred

stock, do they hold? A. I do not think they hold any.

Q. I thought you said that they were holders of stock. A. They are of Public Service Corporation of New Jersey, but I don't think they are holders of the Public Service Electric & Gas Company.

Q. You don't know about that? A. No.

Q. Can you check up on that and find out? A. Yes, sir.

Q. As I understand it, in order that we may have the picture complete, all of the common stock of the Public Service Electric & Gas Company with the exception of the directors' qualifying shares is owned by the Public Service Corporation of New Jersey? A. That is correct.

Q. And the only stock of the Public Service Electric & Gas Company in the hands of the public is this preferred stock—is the preferred stock. A. Yes, sir.

Q. Twenty million of seven percent preferred stock is held by the Public Service Corporation of New Jersey. A. More than ninety five percent of it is, not the full two hundred thousand shares; some of it in the hands of the public.

Q. And originally it was all issued to the Public Service Corporation of New Jersey, wasn't it? A. It was issued in exchange for the United Electric Company of New Jersey.

The Court: What?

The Witness: United Electric Company of New Jersey.

Q. And the next issue of stock of the Public Service Electric & Gas Company is the six percent preferred? A. Yes, sir.

Q. How much of that is outstanding? A. Five

hundred and seventeen thousand shares, I think it is.

Q. Making a total of? A. Fifty one million.

Q. Par value, fifty one million seven hundred thousand, and the total outstanding of the seven percent preferred is twenty million. A. Yes, sir.

Q. So that there is a total outstanding issue of preferred stock of $71,700,000. A. Something in that neighborhood.

Q. You have not issued any of the six and a half percent preferred which was authorized in your amended certificate of incorporation? A. No, sir.

Q. Are there any other large holders of the stock other than the U. G. I., in the Essex & Hudson & Gas Company and the Hudson County Gas Company, and the Paterson & Passaic Gas & Electric Company who deposited? A. Well, there were other large holders, but nothing as substantial as the holdings of the United Gas & Improvement Company.

Q. Give me instances of the large holdings. A. I cannot tell you offhand.

Q. Were there any large holders in any of these companies who deposited who were also substantial holders in the stock of the Public Service Corporation of New Jersey or the preferred stock of the Public Service Electric & Gas Company, or can't you give me that without referring to the record? A. I don't know, no.

Q. Will you look those two things up for me? A. I do not think I quite understand your second query.

Q. What I want to know is whether there were any large holders of the stock of these three lessor companies that I have mentioned who deposited their stock and who were also substantial holders of

the stock of either of the Public Service corporations. You will look that up for me, will you? A. Yes, sir.

Q. There appear to have been only 114 stockholders of the Somerset, Union & Middlesex Lighting Company who deposited, that is correct? A. Yes, sir.

Q. Was there any one holding a large block of stock in that company who deposited or were they all small owners? A. The president owned 806 shares; he deposited.

Q. Who is the president? A. A. J. Brunson, of Plainfield.

Q. What did he take, which option, A, B or C? A. C.

Q. Option C? A. Yes, sir.

Q. That was what? A. Public Service common stock.

Q. Now, I notice that in paragraph 47 of the answer, comparing it with paragraph 46, that this —it appears that this offer produced a far greater amount of stock to the Public Service Corporation than the Public Service Gas & Electric Company; that is to say that a great many more shares were turned in the corporation than to the electric and gas company. A. That is correct.

Q. The reason for that was, I presume, that the Public Service made an offer of either cash or Public Service common and the electric company made an offer of its six percent preferred stock. A. That is right.

Q. And the six percent preferred stock of the Public Service Electric & Gas offered is the same six percent stock that is offered on this merger to the holders of these stocks. A. Exactly.

Q. Then there came in, for instance, taking the

Essex & Hudson Gas Company, through the Public Service Corporation on its offer 42,421 as against 5,844 shares of the Public Service Electric & Gas Company. A. Correct.

Q. And the amounts were proportionate all the way through? A. They were.

Q. Take the next one, 72,181 as against 8,150. Was there any one stockholder that made out the bulk of the shares deposited for the Essex & Hudson Gas Company, Hudson County Gas Company, and The Paterson & Passaic Gas & Electric Company—the shares deposited with the Public Service Corporation of New Jersey? A. The largest holdings was deposited by the United Gas & Improvement Company.

Q. And what percentage would you say was deposited by the United Gas & Improvement Company of stocks which were deposited and which are shown in paragraph 46? A. Of the three companies?

Q. Yes. A. Approximately fifty percent of the Essex & Hudson Gas Company, the Hudson County Gas Company and The Paterson & Passaic Gas & Electric Company.

Q. Did the U. G. & I. subscribe in the way that I have mentioned for any of the shares of stock of the Public Service Electric & Gas Company six percent stock? that is, preferred stock. A. No.

Q. Now, in paragraph 48 of the bill which Mr. McCarter read into the evidence, there are given the number of shares of stock held by the directors of the Public Service Corporation of New Jersey, the Public Service Electric & Gas Company, who are also directors of the lessor companies. Have you any way of separating those showing the different holdings? A. No, sir.

Q. I notice that it is stated that the directors hold eight shares of the common stock of the Public Service Corporation of New Jersey out of a total issue of eleven million. A. Public Service Electric & Gas Company.

Q. Yes; common stock. That is due to the fact that all the rest of the common stock is held by the——(interrupted)

The Court: Corporation.

Q. Public Service Corporation of New Jersey. Have you any list, and if you have not, can you prepare such a list, of the number of shares that these directors in the corporation and in the Public Service Electric & Gas Company, held by their wives or immediate members of their family? A. I do not know the names of the wives or immediate members of the family. I can fix up a list of the directors themselves.

Q. You won't have much difficulty in finding out whether the directors' wives hold some shares, will you? A. I don't know. I have no means of knowing.

Q. You know a man's last name and his wife's last name, if they compare.

Mr. McCarter: We can get the names.

The Witness: My list is too large to attempt to cover the holdings as to relationship.

Q. Are they alphabetical? A. Yes, sir.

Q. Will you give us a list some time before we finally close this case, of the stock holdings of the respective directors and of persons bearing the same names?

The Court: What has this got to do with the equity of this agreement?

Mr. McCarter: I assume they want to show that the directors had small holdings. I want to pursue that further. I will give you the reason we offered it. We think it is very material to meet the allegation of the bill that one of the reasons that this scheme is iniquitous and should be upset is the fact that the directors of both companies are acting in both capacities—some of the directors of the lessor companies are very large stockholders in the Public Service Corporation of New Jersey and the Public Service Electric & Gas Company and they are really neglecting their duties to the lessor company for the great benefit coming to them as large stockholders in the Public Service Corporation. That is the theory. We think it is not so.

Q. Now I notice in paragraph 46 that a large amount—the large amount of the shares of stock of these lessor companies which were turned in pursuant to this offer of January 10, 1927 to the Public Service Corporation of New Jersey, apparently is not held by the Public Service Corporation of New Jersey, or was not held at the time of the filing of this bill—filing of this answer—the reason for that is what? A. It was transferred to the electric and gas company.

Q. Immediately? A. Yes, sir.

Q. Did you have any way of knowing whether or not any shares of stock of the two Public Service corporations were held in holding companies or under the name of brokers for any of the directors of the five lessor companies who were also directors of either of the Public Service corporations? A. I have no knowledge of that.

Q. And you did not attempt to include anything

of that kind in the statement in paragraph 48 which Mr. McCarter has read? A. No.

Q. Who were the three directors of the Somerset, Union & Middlesex Lighting Company who were not interested in any way in the Public Service Corporation of New Jersey or the Public Service Electric & Gas Company? A. A. J. Brunson, the president of that company; Wilbur H. Pope, vice president, and H. B. MacDonald, secretary and treasurer.

Q. Were none of them stockholders in any other of the Public Service companies? A. They were not.

Q. Are they yet? A. Mr. Brunson is now, due to having turned his stock in.

Q. And the others, did they turn their stock in? A. No. They only have a few shares. They are going to turn in at any time we ask them to.

Q. You were a director of the Somerset, Union & Middlesex Lighting Company at the time this merger was made? A. I was.

Q. How did you fix the price, or the offer to be made to the holders of the stock of the Somerset, Union & Middlesex Lighting Company?

Mr. McCarter: I object, unless he makes this gentleman his witness. I certainly did not examine him on that.

Mr. Haight: I will not press it.

Mr. McCarter: I do not want to be disagreeable at all, but on the twentieth of September we asked the other side to give us information as to what shares of stock the complainants or any of them other than the Shanley Estate owned in the five lessor companies from any time from January 1, 1913 until the present time; what was paid for such stock per share and what price per share was any stock sold to

them since January 1, 1913, and when and for what price, and were any of them the holders of any stock in the lessor companies, or any of them, since the first of January, 1913. In pursuance to that request the exhibit which is in evidence was given to us, giving information with respect to Roosevelt & Sons, but we have never yet been able to get the information with reference to Outwater & Wells, and we understood we were to or we would have required it under the rule. I think the other side ought to, not certainly later than tomorrow morning furnish us with that information.

Mr. Haight: He has furnished what he understood was needed. He hasn't a very large organization. It was a very difficult thing for him to get.

The Court: Get it by tomorrow morning or before the time the case is closed. You will furnish it?

Mr. Haight: Yes, sir.

THOMAS N. MCCARTER, sworn for defendant.

DIRECT-EXAMINATION BY MR. MCCARTER:

Q. How long have you been president of the Public Service Corporation of New Jersey? A. It will be twenty five years the first of next June, or I think, a few days earlier, to be technical.

Q. That means, from its organization? A. From the organization of the company, which I think, technically, was in the latter part of April, 1903, but the new company commenced to function on the first of June, 1903.

Q. At the time of its organization did you at-

tempt to familiarize yourself with the properties it then acquired? A. I did.

Q. And have you kept pace as far as you have been able to, with the progress and growth of the company, and are you familiar with its present financial structure? A. I am.

Q. You, of course, are aware of the leases of the five companies, particularly the object of inquiry in this suit, to the Public Service. A. I am.

Q. And of the properties and their segregated conditions at that time. A. I am.

Q. What was the situation after the leases—or rather, what was the situation with regard to the property that those five lessor companies owned at the time of the leases to the Public Service? A. You mean their physical or financial condition?

Q. Physical first, and financial later. A. Well, the physical condition of the properties transferred by the leases so far as the gas properties went, was pretty good. The bulk of the property had been under the management of the United Gas Improvement Company for some years prior to 1903, and they were in satisfactory condition. It was different with the electric company—electric properties.

Q. Which are the electric properties of the five? A. The electric properties of the five are the Somerset, Union & Middlesex Lighting Company, which is partial electric and partial gas, and The Paterson & Passaic Gas & Electric Company was partially electric and partially gas; the Essex & Hudson Gas Company was altogether gas and the Hudson County Gas Company was altogether gas.

Q. The New Brunswick Light, Heat & Power Company? A. New Brunswick Light, Heat & Power Company was a mixture of both.

Q. Now, the physical condition——(interrupted) A. The United Gas Improvement Company management had not extended beyond the three main companies. They had nothing to do with the New Brunswick Company nor with the Somerset, Union Company. Those gas properties were not in good shape.

Q. Was the New Brunswick gas or gas and electric? A. No. I guess the New Brunswick was entirely gas. The electric came through another company down there. It is hard to remember back twenty five years ago, but I think that is true.

Q. Now, with reference to the condition, physical first, of the electric branches of these companies, such as had any electricity. A. Well, the condition, as we look at it now, it was ridiculous, but from its then standpoint—the electric industry was comparatively in its infancy, and the stuff had grown up over what little previous history there had been in the electric development and they were poor even for that day and generation, and had to be supplanted immediately by newer and more modern generating apparatus.

Q. What was their financial condition, taking the five companies, electric or gas or both? A. The financial condition of the major gas companies was sound with one exception. Their bond issues were exhausted under closed mortgages. Their stock was all in the hands of the public, and except through an increase of stock and sale of it to the public, which I think would have been of doubtful practicability, it had no means of raising capital for their further improvement.

Q. Were they equipped at that time with property and apparatus sufficient to meet the increasing demand? A. Not for the demands of the com-

ing years. They were reasonably equipped to handle the then existing business, but not to take care of the growth even as we then saw it, which was a mere flea bite to what has taken place.

Q. Now, perhaps before we go into the thing, you might tell us a little about what that increase in demand, both electric and gas, has been in these twenty five years. A. Well, the gas business of so much of the state as is covered by the Public Service has, roughly speaking, by and large, on the average, compounded at the rate of six percent per annum. Some years much more. Some years a little less. But I think it is fair to say that it has compounded at the rate of six percent per annum for twenty five years. As was stated this morning it has doubled many times. The output of our gas department now is some twenty two or twenty three billion feet a year. I speak in round figures. My recollection is that the time we took over it was about four, but I wouldn't be exact as to that, except to say there has been an enormous doubling up of the gas business, and the electric business has been even more phenomenal. The electric business has grown by leaps and bounds. I have the figures—many years at the rate of twelve and fifteen percent and is still going full speed ahead.

Q. Now, was there any interconnection at the time of these leases between the several plants of the several companies, or were they isolated and individual? A. They were individual properties.

(ADJOURNED UNTIL TOMORROW MORNING, DECEMBER 15, 1927.)

IN CHANCERY OF NEW JERSEY,

DECEMBER 15, 1927.

Between
R. IRVING OUTWATER, *et als.*,
Complainants,

AND

PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et als.*,
Defendants.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

THOMAS N. MCCARTER, resumed the stand, for further

DIRECT-EXAMINATION BY MR. MCCARTER:

Q. Mr. McCarter, before passing on to the reasons which led up to the adoption of the plan—the proposed merger—I will ask you to designate what two large electric plants have been erected since the leases. A. Two large?

Q. What two electric plants have been erected since the leases in suit? A. First was Marion—the Marion plant on the banks of the Hackensack river in Jersey City.

Q. By whom was that erected and to whom does it belong? A. That plant was erected by the North Jersey Street Railway Company and belongs to the

Public Service Railway Company into which the North Jersey Street Railway Company has since been merged.

Q. Next? A. Well, I should think the next in point of time, although I am not perfectly certain about it, was the acquisition by lease of the plant of the Camden Suburban Railway Company in Camden and the turning of it into a combination railway and electric station.

Q. That was an acquisition by whom? A. Acquisition by the Public Service Railway through various channels—intermediary channels, ultimately getting into the Public Service Railway Company.

Q. Coming back to the five companies involved here, to the location. A. To the location of the five companies. The next plant was probably the plant at Perth Amboy, electric plant located in Perth Amboy in what is a portion of our central division, and in proximity to the territory of the Somerset, Union & Middlesex Lighting Company.

Q. By whom was that erected and to whom does that belong? A. It belongs to the Public Service Electric & Gas Company, having been erected, I think, by the Public Service Electric Company, or its predecessor; I am not sure which.

Q. Any more? A. Then, more latterly, the Great Essex station, situated in the city of Newark on the west bank of the Passaic River; it was built by the Public Service Electric Company before its merger into the Public Service Electric & Gas Company.

Q. And that belongs to—— (interrupted) A. Belongs now to the Public Service Electric & Gas Company.

Q. That includes, I think, all of the important stations. A. No; the more recent one of all, and

the largest one of all, is the Kearny station, erected on the west bank of the Hackensack River in the town of Kearny, and that was erected by the Public Service Electric & Power Company, a company formed especially for that purpose, which has since sold out all its property to the Public Service Electric & Gas Company.

Q. Now I wish, in your own way, you would tell the Court the reasons which induced the promulgation of the plan, one of the final results of which is the proposed merger. A. In my opinion, to get a proper prospective of the issues raised in this case, it is necessary to go back some time and relate the causes that led to the formation of the Public Service and its development resulting in the, seemingly, requirement that the plan of finance of which the merger of these companies is a substantial part, was brought out. From the years of 1898 to 1903, as a practicing lawyer, I was employed by many of the gentlemen who then controlled these constituent companies and were, in some cases, organizing them, in others developing them, and in one or two cases, exploiting them, and I became quite familiar with the utility situation as it then existed in New Jersey. By 1903 serious troubles began to threaten the whole situation, more especially the transportation end of the utility problem in New Jersey, which was brought to a head by a shocking accident that took place here in Newark, resulting in the killing of a large number of children on their way to school on what was known as the Clifton avenue crossing. The major gas properties, while recognized as good earners were known to be approaching a serious time as to their future financing. They all had outstanding mortgages upon them which were either exhausted or were

reaching exhaustion, and it had become apparent that when those mortgages were exhausted and were closed it would be very, very difficult to further finance the large amount that seemed to be necessary for the future gas development. The electric industry, at the time, was in comparative infancy. Such plants as the electric companies in the territory had, were only fairly good even for that day, but the enormous growth and development of the electric business was not then visualized. It was suggested that the way to conserve the whole situation was to combine them all through the medium of a holding company, after the plan that had shortly theretofore been carried into effect successfully by the United States Steel Corporation, and that plan was adopted. I was invited by those in control of it to become president of it, and did so. At the time I was occupying an important state office, which I resigned, and then considered that I was only changing my base of activity from one state activity to another; and that has been my view from that day to this. The properties that were taken over at the start consisted mainly of these five companies under consideration in this case, and the territory that that embraces is shown in the colors in the upper part of these maps. In addition to that, the United Electric Company, which served Hudson, Essex and a part of Union County, was taken over; also the South Jersey Gas, Electric & Traction Company, which is shown in the lower portion of these maps, and later, the Central Electric Company operating in Union, Middlesex and Somerset counties was added to the proposition. As we went along some other railway systems, I believe that of the Camden & Suburban Railway Company, cen-

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tering in and around Camden, the Princeton Electric Light, or whatever the name of the Princeton company was, that controlled the gas and electric in and about Princeton, and the gas and electric company of Bergen County, not originally a part of the combination, was also taken over, perhaps with other lessor properties that I have not enumerated; the result of all of which was to extend the operation of Public Service in electric, railways and gas service, practically over the territory shown on those maps, which, though small in acreage as compared with the total acreage of the state, serves a territory containing from about eighty to eighty five percent of the population of the state, the balance of the state being largely rural or shore resorts. The Public Service started with a ten million dollar cash capital, which in those days seemed like a lot of money. The expectation of those charged with the responsible operation was that three million dollars of new money, wisely expended annually, would take care of the development of the property. The inducement to the lessors, the five companies, and certain other companies that were leased, were two-fold; first, they received a graduated scale of dividend earnings on their stock by way of rental ultimately reaching eight percent, and secondly, it provided for the financing—a way was provided for the financing of the future requirements of those companies over and above their expiring bond issues that did not otherwise exist. The gross receipts of the combined outfit for the first year's operation—full year operation—full calendar year operation, which was 1904, was something rising seventeen millions of dollars. In the year 1926 the gross business done by these properties, with what

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few other additions had been added to it in the interval was something rising one hundred and six millions of dollars, and this year will approximate one hundred and fourteen millions of dollars. The growth of the business has gone way beyond any dream that any of those originally connected with the proposition had. The development of the electric industry in the past twenty five years, not only here, but throughout the United States, has been beyond all comparison and comprehension, and it seems to be just beginning. Our ten million dollars did not last long, and we had to set about other and more substantial methods of financing. Public utilities in those days had suffered their initial set backs and were not in high regard by bankers and banking interests that they are now held. We wearied away and did as best we could in a sort of hand to mouth fashion from the years 1904 to 1909, when we realized that the plan that we had originally set out with was inadequate and that something would have to be done to enable us to get sums of money in larger amounts, and therefore a plan was devised—it seemed wise enough in that day—to transfer the gas properties to a company having a broad gas charter, the name of which was changed to the Public Service Gas Company and a similar transfer of the electric properties to an electric company formed for the purpose of operating them called the Public Service Electric Company; and to place all the railway companies in one company to be called the Public Service Railway Company. The stock of those companies were all to be owned as theretofore by the Public Service Corporation, thus putting the Public Service Corporation in a position to issue a mortgage secured by the stocks thus deposited—

and perhaps I should interject here that some of these stocks, notably the railway stock and United Electric Company stock, were already subject to a prior pledge securing an issue of the Public Service perpetual interest bearing certificates which had been originally issued for the purpose of acquiring those stocks, and so in 1909, or thereabouts, the Public Service Corporation executed its mortgage for fifty million dollars secured by these stocks as collateral, and thereupon sold bonds up to, I think, thirty six millions of dollars, over a period of a few years, and issued the remaining fourteen millions of bonds as collateral securities for an issue of short term notes which were sold to the bankers. And so, over a span of a comparatively few years, that fifty million dollars was exhausted, and again we found ourselves hampered and throttled by an inadequate financial system for an undertaking the size of which had grown to such proportions. Meanwhile the whole situation became affected by conditions brought on, arising out of the great war, which totally changed the picture. Meanwhile, also, great strides were being made in the development of the electric art, entirely changing the old and narrow gauge views that had narrowly obtained in the early days of Mr. Edison's activity and mass production was rapidly displacing local and centralized plants, to the great economy of the industry, and to the resultant benefits to the public. Of course, I have always wanted and expected this large aggregation to make fair returns and to yield them to the people who invested their money in the enterprise, realizing if that was not so, the enterprise could not go forward, but the primary and underlying thought that I have had from the start and until this day has been the development of the

State of New Jersey for the public benefit in rendering service at economical rates, and that is so today. Now, to illustrate the benefit of mass production, perhaps I may do so by calling attention to some statistical information that seems to demonstrate it very successfully in the electric end of the business. In 1904 the total number of kilowatt hours sold by that department of the company was forty two million five hundred and sixteen thousand, including the hundredths; in 1926 that figure of forty two million had jumped to one billion and ninety two million, and while that has been going on enormous economies in cost of production have been made. I have not the figures available at the moment for the cost of kilowatt production prior to 1908, but in 1908 the production cost per kilowatt hour was one and eight one hundredths; in 1926 it was seven tenths of a cent. In 1908 the pounds of boiler coal used per kilowatt hour, to produce, was four and forty seven one hundredths; in 1926 it was one and sixty two one hundredths. And great economies all along the line have been made except in the cost of labor, which, as everyone knows, arising out of the war conditions, has enormously increased; but notwithstanding the increase in the cost of labor, in the electric end of the business, it has more than been absorbed—largely more than absorbed by the other economies that have been put in effect. If the gas figures are interesting for the same period of time, I can give them. In 1903 the Gas Department had one hundred and eighty seven thousand meters; in 1926 it had seven hundred and five thousand. As the electric industry developed, everyone thought the gas industry was at an end, but it has not proven so. The gas companies, it is true, have lost their lighting load,

but they have gained the cooking load and are making large inroads in the industrial business of the communities, and are beginning to do a large amount of gas heating. In 1908, which was the first year that I have the record here, the amount of cubic feet sold was five billion seven hundred and forty million three hundred and seven thousand; in 1926 it was twenty one billion, seven hundred and sixty five million, some odd hundreds.

Q. Has there been any reflection of the reduced cost of manufacture in the rates charged by the company for electrical current? A. Yes, sir; the electric rates have decreased several times during the period I have been speaking of and are practically the only commodity in this country the price of which has not been increased due to war conditions.

Q. Proceed. A. And so, due to this gigantic change in the nature of the business, our 1909 plan of finance has become as archaic as previously the original Public Service plan of 1903 had become. Before the war we used to spend perhaps not three millions a year in improvements, as was the original hope, but about six; with the coming of the conditions brought about by the war and post-war conditions, especially those brought about by unprecedented developments of the electric business, there arose demands for money altogether unprecedented—the budget of the Public Service for the past few years has approached fifty million dollars a year for improvements, of which about twenty millions is raised by the use of our amortization fund, by the use of surplus earnings and by income from securities which Public Service owns. This requires us to go into the market for about thirty million dollars of new capital per year.

Whether this will be a permanent condition I cannot say, but it is so now, and will, I think, last for some time to come. Therefore, I set about personally the development of a plan to meet present day conditions, and I prepared several myself, which, upon completion were submitted to our board and to our bankers and found not to be satisfactory. Thereupon we called in the best advice that we knew of. For many years our banking had been done principally by the house of Drexel & Company of Philadelphia, by all odds the largest banking house in Philadelphia and one of the prominent houses of the country and corelated by partnership relation with the house of J. P. Morgan & Company of New York;—with their ramifications they are the fountain head of this kind of banking in this country,—and in later years we had also become associated with the approval of Drexel & Company with the banking house of Bonbright & Company of New York, which, since its reorganization some five or six years ago, had taken a most active part in Public utility financing and had become recognized experts in those particular lines of financing, and we asked these gentlemen, or the representatives of these gentlemen, to study our problem and to present a plan—a comprehensive plan of financing these companies to us. Now, digressing a moment, with regard to the five companies, those companies had little plants—the gas plants were good as far as they went, the plant of the Paterson & Passaic Gas Company—the gas plant in Paterson was and is a good little plant, it has been thoroughly maintained and added to, and it is a fine little plant so far as it goes, but unable to manufacture gas as economically as larger units such as those installed at Harrison and with gas obtained

from the Seaboard Company as described by Mr. Clark yesterday can provide. The Plant of The Paterson & Passaic Company, the electric plant, amounted to very little; the plant in the city of Passaic amounted to nothing; had to be immediately shut down and current sent, as soon as it could be obtained, from a central source. The plant in Paterson was an old Traction plant with reciprocating engines that we carried along, added to by the introduction of turbines as long as we could—operated it at pretty high expense, and only within a reasonably short time have shut it down altogether as obsolete. Coming to the Essex & Hudson Division, the Hudson County Gas Company had made a start of the West End plant at the time we took it over and this has been substantially added to since, and is a fine, high grade, modern gas plant. There are two other plants in the Hudson Division, one at Hoboken and one known as the Consumers Plant in the Lafayette section of Jersey City, which are used as stand-by plants and sometimes operated over peak loads. There was formerly another plant in Jersey City known as the Sixth street plant which was obsolete and has been scrapped. Coming to the Essex Division, there were two substantial plants, the Market street gas works and the Front street gas works, now known as the Ogden street works. The Market street plant was originally a coal gas plant, now has some water gas machinery in it, and has given good service throughout all these years, and is now either used or available for service if necessary. The Ogden street plant is of smaller capacity and is a good little water gas plant, but all these plants, except perhaps, the West End plant and at times the Market street plant, are totally inadequate for present day

means. Electrically speaking, these five companies were not and are not concerned in the Essex & Hudson Division. They have nothing to do with it, nor in the territory served by the Somerset, Union & Middlesex Lighting Company, that having been a gas property, so that under the leases, all that these five companies is concerned in, is the maintenance of a proper service and the application of the covenants of the lease in the territory of The Paterson & Passaic Gas Company.

Q. By the way, those leases are either for nine hundred or nine hundred and ninety nine years, are they not? A. Yes, sir; nine hundred, I think. These companies have nothing whatever to do in any sense with the Marion plant, with the Essex plant or with the Kearny plant, or with any other of the modern electric plants that have been erected by these companies. They are entitled to have proper service rendered—electric service rendered—which is being done in the territory covered by The Paterson & Passaic Gas & Electric Company, and upon rupture of the lease questions would arise as to whether they were entitled to the maintenance of a plant to serve that particular community under the lease, as to which I cannot say—certainly such a question is not an issue in this case. The whole situation of 1903 was, as I have attempted to show, completely outgrown and changed; the situation over—from that time to this—bears about as much resemblance as a Crusader's spear does to a Big Bertha or modern machine gun in the last war. The covenants contained in those leases, so far as they relate to the maintenance plan and handling of the business, are totally impracticable of fulfillment.

Mr. Haight: I object. It seems to me that —— (interrupted)

The Witness: I am speaking from a business point of view now. I have no desire to say anything, Judge, you do not want me to.

Mr. Haight: I do not want you to go into the question of—— (interrupted)

The Court: Stop. Go on with the story.

The Witness: We will come back to the bankers. The bankers took a—— (interrupted)

The Court: Go on in your own way and tell your own story.

The Witness: The bankers took a protracted period to the consideration of this problem and in the end produced the plan which they recommended—jointly recommended. This plan was thoroughly gone into by all of us charged with the responsibility of the management and received our approval and was infinitely better and more far reaching and comprehensive than any of my inadequate attempts had been to produce the same results. It was then submitted in detail to the board of directors of all these constituent companies, and later to the board—the larger board of the Public Service itself, and was, in time, approved by everybody. It is to provide a plan whereby funds in larger amounts, rendered to meet present day conditions, could, not for a space of a few years only, but perpetually be provided to keep pace with the growth of the property and with the development of the state. We foresaw that the development of the state was going to be abnormal due to its geographical position, abutting the two great cities of New York and Philadelphia, and that facilities already undertaken, such as the con-

struction of the Delaware bridge from Philadelphia to Camden and of the Holland Tunnel from New York to Jersey City, were going to make abnormal what was already a large normal development. The steps in this plan substantially were, that the old fifty million dollar bond issue of the corporation, which had outgrown its swaddling clothes, was to be called for payment and redeemed, that the gas and electric properties of a more solid financial character than the transportation business of the company, were to be combined in one new company, that by the payment of the old fifty million dollars of bonds, the stocks of those underlying companies would be freed from their deposit as collateral, that by an arrangement with the perpetual interest bearing certificate holders to permit preferred stock of the new company to be deposited as collateral for their certificates in place of the old underlying shares, the new company would take title to all the property of these underlying companies, subject to those leases, and to a great lot of property which would be subject to no underlying leases; that these underlying liens should be removed, if possible, through their absorption into the one company, upon, of course, fair treatment to their shareholders, in order that this new electric and gas company thus combined could sell its bonds in the market secured by a practical first mortgage upon all its property of every character—secured by a mortgage drawn along modern lines, without any limit as to the amount of bonds that should be secured by it, except as restricted by covenants in the mort-

gage providing for the issuance of the bonds with relation to the earnings and so forth and so forth, according to well known modern lines. The plan thus evolved, of which the merger of these properties was a later and constituent, and in our opinion, essential step, was next taken to the Board of Public Utility Commissioners and presented to them in the very greatest of detail. They asked for a conference with the bankers who had originated the plan, and that was arranged, and representatives of these bankers came to Newark and held lengthy sessions with the Board of Public Utility Commissioners, at which the plan in its entirety, in each and every step, was discussed in the very greatest of detail, and after full consideration by the Board of Public Utility Commissioners was approved, and the company was authorized to carry it out. Steps in sequence under the plan were then inaugurated, the fifty million bond issue was called, the bonds were redeemed and paid off, deposit of the preferred stock was made with the Fidelity Union Trust Company as trustee under the pledge of the old perpetual interest bearing certificate pledge, without objection from the certificate holders —in fact, with the approval of a very large quantity of them, the new mortgage was prepared and executed, bonds have been sold freely under it, as it was anticipated, and the throttle from around the neck—financial neck of the corporation was, in part, removed and will be altogether removed when the plan in its entirety has been consummated. It was announced in the original plan that one of the steps would be the acquisition upon fair terms

and the merger of the underlying companies into the ultimate and present existing company, and after the more immediate steps had been taken in due course, the consideration of that detail of the plan was taken up. I want to say right here that in addition to the public weal, which I have always regarded as uppermost in this whole transaction, I have always regarded myself as the representative of every security on this property underlying, bond, perpetuity certificates, preferred stock, common stock, guaranteed stock and every other security upon this property, and as much a part of my obligation to see that each and every one of those security holders were properly treated as it certainly was to see that the common stock of the corporation was properly treated. Again we consulted the bankers as to what would be a fair basis to offer for the acquisition of these stocks, and after conference and study between us all, the plan known as the plan of last January was arrived at.

Q. That plan, in brief, is what? A. The present plan for the acquisition of these stocks, which offered to the share holders three alternatives for the transfer of their shares to the Public Service Electric & Gas Company or the Public Service Corporation, as the case might be; first, an offer of cash at an amount in excess of the then market values of those stocks; second, an equivalent offering, or an offering of six percent preferred stock of this new company, which already had a fine status in the financial world, and now has a better one; or third, for those disposed to be in a more speculative turn of mind, to convert into the common stock of the Public Service Corporation at a

figure approximating the then market value of Public Service common. We thought in addition to facilitating the financial reorganization of this enormous aggregation, that we were doing these underlying share holders a favor, because these underlying stocks were narrowly held, had a very restricted market; while they had an income bearing value they had very litle real standing in the financial market in the state and none in the New York market. We also offered these facilities to certain other companies outside of the five. A large proportion of the share holders of these five companies took one or other of the offers made within the time limited, or the time to which that was extended, so that the Public Service interests at the conclusion of the offer, were possessed of more than two-thirds in interest of the shares of these companies, and thereupon, supposedly in lawful manner, in furtherance of the plan which had been known for two or three years and which was one specifically approved by the Public Utility Commissioners as to this particular merger upon a representation of the whole subject to them, we undertook to carry it out, thinking and believing then, and now, that it is in the interest of the people of the state, that it is in the interest of the development of this great quasi-public interest, making possible the growth and expansion of the business in keeping with the growth of the state, the manufacture and distribution of these products to the people at the lowest possible rate, the financial stability of the enterprise, and for the reasons I have indicated, to the benefit of all these underlying shareholders. That, as I view it, is the situation that brings us to the present time.

CROSS-EXAMINATION BY MR. HAIGHT:

Q. Mr. McCarter, this very remarkable and enormous development of which you should be very justly proud, had the result, has it not, of strengthening the financial standing of the stock of these lessor companies? A. I think it has; yes, sir.

Q. And, of course, the bonds of the lessor companies? A. Yes, sir.

Q. Now the present plan of merger of these lessor companies is for the carrying out of one of the steps set forth in the plan of March 13, 1924? A. Yes, sir.

Q. That plan called first for the consolidation of the electric, the gas company and the United Electric Company and the refinancing of the whole situation. A. Yes, sir.

Q. As a result of that plan a mortgage by the Public Service Electric & Gas Company was placed on its properties and the leases of these lessor companies. A. Yes, sir.

Q. I mean on the leases that the Public Service Electric & Gas Company had. A. Yes, sir.

Q. And under that mortgage there have been now issued—is it seventy one million? A. I am not clear as to the exact amount. I think it approximates that, yes, sir.

Q. Maybe I am wrong on that. I guess it is fifty odd million. A. I am not clear.

Q. Sixty seven million, three hundred thousand, I have it; is that correct? A. I am not clear. Whatever the facts are. Mr. Young is right behind you and will know definitely. I am not clear as to the exact amount of the bonds.

Q. That mortgage is an open mortgage. A. Yes, sir.

Q. Bonds may be issued under it to take care of the needs of the company. A. Yes, sir; under the restrictions of the mortgage.

Q. What restrictions, of proportionate earnings and things of that kind? A. Yes, sir; some other restrictions.

Q. What are the restrictions generally? A. My recollection is that the earnings must be twice the bond interest, and, of course, the proceeds must be spent upon the properties mortgaged and—those are the substantial restrictions.

Mr. McCarter: How about the relation between increase of debt and increase in value of property?

The Witness: There is provision for that. I do not carry all the details of the mortgage in my mind, except it is drawn on the most modern lines and thoroughly up to date in all its respects, both as to its covenants respecting the restricting of the holdings and authority to sell bonds.

Q. And the bonds can be issued up to seventy five percent of the cost of the property. A. That is my recollection.

Q. I won't press that, Mr. McCarter, because it is all in the written documents and they are already in the case. A. Yes, sir.

Q. What I wanted to get at was simply the amount. A. One and three quarters—the net earnings of the company shall be at least one and three quarters times the annual interest payable, and they are enumerated in the plan which is already in evidence.

Q. Now, then, there was issued to the Public

Service Corporation in pursuance of the plan twenty million dollars of seven percent preferred stock. A. Yes, sir.

Q. I mean, of the electric and gas company. A. Yes, sir.

Q. And there has been issued substantially fifty one million dollars of six percent preferred stock. A. Whatever the amount is.

Q. Does that comport with what your understanding is? A. I think about that, yes, sir.

Q. I notice that in paragraph 5 of this plan of March 24, which I probably better show to you—now referring to paragraph 5 of that plan it is stated, is it not, that the consolidation of these lessor companies are not an essential part of the plan as the leases extend in practically all cases for terms upwards of nine hundred years. A. Yes, sir. They are not essential in my opinion; they were not essential, and events have proven it, that the plan can begin to function without them, so that this paragraph means if those stocks could not be acquired it would not mean the collapse of the plan, but in my opinion, and in the opinion of those equally familiar with it, it is an essential step in the carrying out of the plan to enable it to be fully enjoyed for the benefit of the people of the state.

Q. The plan can go ahead quite as well, whether these companies are—title to the properties of these companies are acquired or whether you simply have the leases. A. I do not think so.

Q. Why not? A. Because the credit of the company will be enormously improved for future operating if this becomes practically a flat first mortgage upon all of the property of the companies

rather than a mortgage—a first mortgage upon a small portion of the property and the balance upon leaseholds.

Q. Now, a leasehold of nine hundred years has been so treated by you and, in fact, is substantially, to all intents and purposes, a conveyance, isn't it? A. Not so in the judgment of bankers.

Q. It has been so treated of later years to be that, has it not? A. We do own the property, have owned the property, by leases for nine hundred years and we regard it as practically perpetual control of it, but when you go to bankers to offer securities you find you haven't as good reception if you go with mortgage on leaseholds, no matter how long the leasehold is, as if you come with the fee of the property.

Q. Of course, when they made this statement in the plan of March, 1924, the bankers had been consulted? A. Oh, yes.

Q. And they did not think it was an essential part of the plan that these properties be consolidated. A. Not essential in the sense the plan could not be inaugurated without them—the whole thing would fall if the underlying shareholders refused to sell, but they never have wavered in their judgment that it was highly an essential part of the plan to enable the plan to work out to its full fruition.

Q. Wouldn't it be more accurate to say that it would be a better thing from a banking standpoint to have the title of these properties in the Public Service Electric & Gas Company—the leases out of the way—the underlying stock out of the way—than to say that it was an essential thing from a banking standpoint? A. That may be so. That is a distinction in words. It may be so.

Q. I merely want to get what you are driving at. A. Yes, sir.

The Court: A lease for nine hundred and ninety nine years has been held to be fee.

Mr. Haight: Held so in the Ocean Grove case.

Q. You stated that the Public Service Electric & Gas Company at the time of the merger which produced it, or, rather, the stock of that company, demanded a good position in the commercial world, and that its standing at the present time is better. A. The preferred stock.

Q. Well, I mean, the preferred stock. The common stock isn't on the market at all. A. No.

Q. All held by the Public Service Corporation of New Jersey. A. That is right.

Q. Now, that preferred stock today is selling around what? A. One hundred and eight, somewheres about.

Q. And it is redeemable at one hundred and ten. A. I think so.

Q. After three years after issue. A. Yes, sir; whatever the facts are as to that.

Q. That is your recollection of it? A. Yes, sir, about.

Q. And the chances of that stock going any higher, in view of the redemption feature, are very small, if at all. A. I wouldn't say that. That is a banking question, for sometimes these stocks do sell higher than their callable feature, because it isn't so easy to call vast quantities of these stocks and the holders know it.

Q. It would be a very, very small amount if they do go any higher. A. That I don't know. I would rather leave that to the bankers to say. I do not know.

Q. I think you are a pretty good banker. I would as soon take your judgment on it as the bankers. You stated that your banking connections had been Drexel & Company up to the time that you got Bonbright & Company into the picture? A. Yes, sir.

Q. I presume that was about 1924. A. Earlier than that, I should say. I should say it was 1921 or 1922, but I am not clear as to the exact time.

Q. Now, then, when were Morgan & Company consulted? A. Directly—excepting on infrequent intervals, I have not directly consulted J. P. Morgan & Company. The firm of J. P. Morgan & Company and Drexel & Company are practically one, for purposes of this kind.

Q. This particular plan was handled through the Philadelphia office of Morgan & Company? A. Yes, sir.

Q. Not through the New York—— (interrupted) A. I don't know whether J. P. Morgan appears on the circular. Sometimes the name of J. P. Morgan appears upon our financial offers, sometimes it doesn't.

Q. What I wanted to get at was whether the situation was handled through the New York office or the Philadelphia office. A. Handled through the Philadelphia office.

Q. Now, Drexel & Company were bankers for the U. G. I. A. They had been at times, yes, sir.

Q. And were they constituted your bankers through the influence of the U. G. I.? A. I don't know. It goes back so many years. It goes back to way before 1909 and it may be that our first association came about through the participation in our offairs of the prominent United Gas officers. Mr. Randall Morgan was, for many years, an active

officer of the United company, and was of our company, too. How that association first came about I wouldn't say. I think they were our bankers before they were the United's bankers, is my opinion—my recollection.

Q. Do you know how much of the common stock of the Public Service Corporation is held by the U. G. I.? A. It is a large amount. I can't tell you how much. We can give you that figure if you want it. I can't tell offhand.

Q. Do you know whether any of these bankers you have referred to have any interest in the Public Service Corporation of New Jersey? A. You mean—— (interrupted)

Q. Stockholding interests. A. I have known, at times, Drexel & Company have been share holders in and out, of our property. I don't know whether they are now or not.

Q. At the time these plans were prepared? A. I do not know.

Q. Were they substantial stockholders? A. They have been at times, in and out, but—(interrupted)

Q. At the time of the plan. A. I can't tell you; I do not know.

Q. Were they ever stockholders, as far as you know, in any of these five lessor companies? A. Not as far as I know, but I have no knowledge of it.

The Court: Mr. Van Middleworth would know?

The Witness: He would know all that, yes, sir.

Q. Now, the plan originally called for the merger of not only these companies, but of the other lessor companies. A. That is true.

Q. And why wasn't the merger of the other lessor companies submitted to the stockholders? A. Well, there had not been a deposit of two thirds of the stock, which indicated to our mind a disinclination on their part at the time to go forward; we thought we wouldn't attempt what did not seem to be practical.

The Court: Really because you did not have the vote.

The Witness: That is the answer, yes, sir, exactly.

The Court: What were the others?

The Witness: South Jersey is one.

The Court: And one other?

The Witness: Bergen County—The Gas & Electric Company of Bergen County.

Q. Newark Consolidated Gas? A. Newark Consolidated Gas, which is underlying the Essex & Hudson.

The Court: What do you mean "underlying"?

The Witness: In the sense that they carried stock of these lessor companies.

The Court: Lessor to the Newark or—— (interrupted)

The Witness: The five and the South Jersey and Gas & Electric Company of Bergen County are lessor to the Public Service Gas & Electric Company and the Newark Consolidated Gas Company is lessor to the Essex & Hudson Gas Company—underlies that company.

The Court: Does your company hold by direct assignment the underlying companies?

The Witness: No. We hold the Newark Consolidated through the medium of our lease of the Essex & Hudson Gas Company.

Q. In one of the circulars that were put out, namely, that of January 10, 1927, asking the stockholders of the leased companies to exchange their stock under these options which you have referred to, the statement is made, "The holders of large amounts——" I haven't finished quite—the statement "That the holders of large amounts of the stock of these leased companies have expressed their desire that this provision of the plan be carried out at this time and have indicated their readiness to make exchanges on the basis set out below." Will you tell me who those holders were? A. Well, the holders were the United Gas & Improvement Company and various other individuals who were consulted.

Q. Can you give me the names of those, Mr. McCarter, insofar as you recollect? A. I don't know that I can.

The Court: Principal ones.

The Witness: One was the Fidelity & Union Trust Company, the trustee of the Shanley shares, who thoroughly approved of the plan and if they had been allowed to would have deposited their shares.

Q. We know that. The others. A. All of the individual holders, in substance, who were in close touch with the property. I think Mr. Rippel was consulted, here in Newark. I think, generally speaking, people who we thought would have any bearing on it were consulted. There was no attempt of any secrecy about it whatever.

Q. I do not want to infer that. I do not suppose you did. I want to know what large interest there was that was interested in putting this plan through. Let me ask you this. Did Mr. Rippel exchange any stock under any of these plans? A. I don't know. Pretty large organization, Judge. It is hard for one man to keep track of all of this detail.

Q. I appreciate that. Now, at the time you merged the Public Service Electric & Gas—the Public Service Gas and Public Service Electric and United Electric Company in 1924 into the Public Service Electric & Gas Company, the five percent stock of the United Company received seven percent cumulative non-redeemable stock of the new corporation, did it not? A. It received—the United stock was exchanged, as I recall it, for seven percent stock of the new corporation, which was deposited in place of the former shares of the old electric company as collateral for the perpetual interest bearing certificates.

Q. And by whom was the stock of the United company owned? A. The United stock was very largely owned by the Public Service Corporation of New Jersey.

Q. Now, the United company got for its five percent stock, seven percent preferred stock of the Public Service Electric & Gas Company, non-redeemable? A. Whatever the facts are, yes, sir.

Q. Share for share. A. Share for share. The reason that was done was this: The old electric company stock, or a very large portion of it was pledged, together with railway shares, as security for the perpetual bearing certificates of the Public Service Corporation, which had issued those cer-

tificates in consideration of the acquisition of the shares; the railway shares were not regarded by the certificate holders as a very valuable security for their pledge, they relied mainly on the electric shares of the underlying company, and when it was sought to substitute a security for them, consideration had to be given to their equities and stand, which was done.

Q. Now, the United company stockholders receiving seven percent cumulative non-redeemable preferred stock of the Public Service Electric & Gas Company for its five percent stock was treated better than it is proposed to treat the holders of these lessor companies. A. I don't think so, because the seven percent stock at the time of that issue was no better than the six percent stock was at the time of the latter issue. The financial market and value had entirely changed in the interval.

Q. That offer was made in 1924. A. Yes, sir.

Q. Well, if the seven percent stock was no better in 1924 than the six percent stock in 1927, it followed, of course, that the stocks of the lessor companies had become better in the meanwhile. A. They are all reflected in their market price, whatever that fact is.

Q. They would become better securities? A. They have become better securities since the thing started. No doubt about that. They are good securities of a non-negotiable character.

The Court: In practice, not in law.

The Witness: Yes, sir; in practice.

Q. Now, Mr. McCarter, in your judgment is there any real difference in the value between the bonds

of these underlying companies and the stock of the underlying companies? A. Yes; there is.

Q. Why? A. Why the bonds are—they are a bond lien, ahead of everything else, from those particular properties.

Q. And the total amount of bonds issued is about forty-two million of all the lessor companies. A. I can't tell you that offhand, sir.

Q. Well, it is very, very much less than the value of the properties secured. A. Oh, unquestionably.

Q. The value of the property is at least four times. A. Well, I cannot go into the values. I don't know, but it is very, very much more valuable than the bonds. The bonds are a good lien; there is no doubt about that.

Q. And the equity of the stock holders in the assets of the property are many times the par value of the stock. A. If the property—if the leases reverted to the lessors, the growth of the property has added to its value very much. There is no doubt about that.

Q. What I wanted to get at was that the equity of the shareholders in the property of the lessor companies is several times greater than the par value of the outstanding stock of the lessor companies. A. Well, if they have the equity that you are speaking about, that is true. I do not consider a nine hundred year lease, in a going concern, they have much equity while the lease is in effect.

Q. That is the point I am making; that really puts them in almost the same position from a practical standpoint, as a bond, don't it? A. Surely; those dividends would be continued to be paid. There is no question about that.

Q. If you were investing in one or the other, you would just as soon have, for permanent invest-

ment, the stock, as the bonds, wouldn't you? A. No; I would rather have the bonds.

The Court: Because of the mortgage security.

The Witness: If I was looking at it from the cold, every day, financial standing, the bond is superior to the stock.

The Court: Because of the mortgage security.

The Witness: Yes, sir; because it is a bond secured by a first mortgage on the property as distinguished from guaranteed stock with a narrow margin.

Q. Now, do you know what, first, the bonds are selling for? A. No, I do not.

Q. The bonds have a fixed maturity. A. Yes, sir.

Q. And are redeemable, of course, in that way? A. They are redeemable at maturity.

Q. The stocks have no maturity. A. No.

Q. From an investment standpoint—— (interrupted). A. Nine hundred years they have maturity, I suppose.

Q. The world may not be here then. A. Yes.

The Court: They have not got a maturity then; the leases have.

Mr. Haight: That is right; the leases have.

Q. From an investment standpoint, the fact that they have no maturity, they are non-redeemable, is an important feature. A. It may be. I used to own a lot of those stocks and I got rid of them because I couldn't do anything with them; the bank didn't want them—they were narrow—so I sold to some of these fellows that wanted to keep them forever.

Q. Did you invest your property in Public Service then? A. I don't remember. I have troubles enough. I don't know.

Q. You know, as a matter of fact, that so far as these stocks are concerned up until the last two or three years they have been very closely held, and there was a very, very small market for them. A. For these underlying stocks?

Q. Yes. A. I think that is true.

Q. There were few stockholders and they were closely held. A. That is true.

Q. And, of course, we all know a market is made when things are put on the market in quantities. A. Yes, sir; that is true.

Q. And not when they are held. A. Yes, sir; true.

Q. And, of course, the market is always assisted by having influential bankers back of any stock. A. Always helped by having substantial financial people handle it for you.

Q. Mr. Ward called my attention to the fact that he understood you to say that the Somerset, Union & Middlesex Lighting Company prior to the lease was only a gas company. A. That is my recollection, but I may be wrong about it. Maybe they did own some—maybe they owned some small plant somewhere down in what we now call the Central Division. I am not sure. If they did it wasn't good for anything.

Q. In this circular that was sent out by Bonbright & Company, to which is attached your card marked—— (interrupted). A. Well, that is because the—I suppose it must have been—my recollection may be at fault. It may be that the old Central Electric Company was merged into the Somerset. I can't remember about that. Originally, when we

took it over, it did not control any electric properties in that community. It may be as mergers have gone on, one of the underlying companies, the Central Electric Company, which did control the electric business in that section of the state—it may very well be was merged into the Somerset, Union & Middlesex Lighting Company. I am not sure about that. It was not so owned at the time of the lease or did not pass by the lease.

Q. Is the Marion plant leased to the electric and gas company? A. Yes, sir.

Q. Under long lease, Mr. McCarter? A. I do not remember. I do not know. "Lease" is perhaps not the word to use. I am not clear about it. There is an operating agreement between the electric company and railway company for the operation of the electric company—by the electric company of the railway company's electric plant under the terms of which the railway company is supplied with power at a certain price and is assured of the continuance of that supply, and such conditions that may be necessary, upon paying the interest and costs thereof, and the electric company has a right to operate the plant and to add to them for electric purposes—it is a complicated agreement between the companies which has often been before the Board of Public Utility Commissioners. Whether or not we would technically call it a lease or not I am not prepared to say.

Q. Will you give us the comparative cost of producing gas in 1908, or such year as you have the record of before you, and 1926, as you did in respect to the production of electric energy? A. I think I can.

The Court: How is that important? I know he spoke of it as part of the history.

Mr. Haight: He spoke of it as part of the history. We thought it would make the picture complete.

The Witness: In the year 1908, which is the first year I have the figures here, the cost of production of gas—generation of gas, the cost was twenty six and a half cents per thousand cubic feet; in 1926 it was thirty five and thirty three hundredths, reflecting the increase in the cost of coal and other materials and labor.

The Court: As I understand Mr. McCarter's statement and very elaborate argument, it is that that which they are attempting to do is in the public interest, and being in the public interest they should resort to it. That is the purpose of your story?

The Witness: Yes, sir.

The Court: The various details are not interesting.

Mr. Haight: I did not gather the exact purpose of it except to show the enormous growth of this proposition.

The Court: Perfectly obvious. I do not see that very much of the testimony is going to help at all, either side, on the question that I am now called upon to decide, whether this is equitable for the parties, and therefore the bill ought to be dismissed.

Q. Did you tell us, Mr. McCarter, who owned the Harrison gas plant? A. That is owned by the Public Service Electric & Gas Company.

Q. By the Public Service Electric & Gas Company? A. Yes, sir.

Q. And is in the territory of the old Essex & Hudson Gas Company. A. Yes, sir.

The Court: You see, all he has said this morning inures to your benefit, to your credit. The greater the property has been built up, the greater your security. Now, he wants you to exchange that which is secured by all this property for some of the security to the public interest. If you are not satisfied, they, on their side, are doing all this in the public interest and it is in the public interest. Everybody must admit this corporation has furnished wonderful accommodation, and if it is in the public interest, then this Court ought to take that into consideration in deciding the fairness or unfairness and put you to your condemnation. Am I right?

The Witness: Yes, sir.

Mr. Haight: Our position is this merger is not necessary in the public interest.

The Court: I am not speaking of that. The various details he has brought up does not seem to me to be of any interest at all. It is simply to support the history he has given us of this great public utility.

Mr. Haight: The point is that although this company has done a great deal in the development of the commerce of the state—I do not think there is any doubt about that—they cannot, of course, do it in such a way as to deprive us of what we have.

The Court: I am not speaking of that at all. I am not speaking of the issue between you. I am speaking of the testimony he has given and suggest to you there isn't need of cross-

examination into the details because the de-details have simply been a part of the general history, and was only intended as such.

Mr. Haight: But some of the details might be quite necessary for the presentation of our side of the case.

The Court: You may develop that.

Mr. Haight: I will not do so any further than I think absolutely necessary.

Q. Upon what basis are the refunding bonds of the Public Service Electric & Gas Company selling now? A. The new bonds that have recently been issued?

Q. The five percent bonds. A. The prices of the five percent?

Q. Five and a half. A. The five and a half have been called.

Q. What is outstanding now, the issue of—(interrupted) A. There was an issue of approximating forty million of the five and a half bonds by the Public Service Electric & Gas Company put on immediately after the consummation—so far as it has been consummated—— (interrupted)

The Court: Secured by this elastic mortgage.

The Witness: Yes, sir; which, due to the changing conditions of the financial world, made it possible to replace with a lesser interest rate, and we have recently and are right now going through the procedure of calling those five and a half percent bonds at one hundred and five and replacing them with four and a half percent bonds which have been sold through the bankers to the public and are now selling at ninety nine or par, or somewhere in there.

Q. Saving how much a year to the company? A. Saving about two hundred thousand dollars a year to the company, after the first year.

Q. Now, then, you have outstanding the five per-cent bonds amounting to twenty two million. A. Whatever the amount is that were not called.

Q. They were not called, and the four and a half percent bonds which are to be issued to take the place of the five and a half. A. Yes, sir.

Q. The total issue of which will be forty five million about? A. Approximately forty five.

Q. Do you know on what basis the five percent bonds are selling? A. I do not know what they are selling—I know they can be readily sold.

Q. Do you know what basis the four and a half are selling? A. I said they were selling in the market ninety nine and a fraction or thereabouts.

Q. Yielding what? A. Almost four and a half basis. I don't know what it is exactly, but almost four and a half.

Q. Are those bonds any better than the stock of these lessor companies? A. I wouldn't undertake to compare them. They are such a different type of security that I would not undertake to compare them.

Q. The stock of the lessor companies are ahead of them.

The Court: That is part of the argument and perfectly obvious. They are ahead by many years.

REDIRECT-EXAMINATION:

Q. Do you know who owns the United Electric stock to which Judge Haight directed your atten-

tion at the time of the exchange? A. Public Service Corporation.

Q. Owned it all? A. Yes, sir; practically all.

The Court: You mean the stock that was turned in under this agreement?

The Witness: Well, we acquired it in 1903 —the great bulk of the United Electric stock was acquired in 1903.

Q. And the stock that was exchanged for it under the plan was stock controlled also by that company? A. Absolutely; yes, sir.

RECROSS-EXAMINATION:

Q. They got seven percent stock and the lessor companies are going to get six percent stock of the same company. A. Yes, sir, but in the case of the seven percent stock it made no difference one way or the other. It was a financial requirement at the time and it made no difference whether they had seven and had less equity or six and had more equity.

PERCY S. YOUNG, sworn for defendant.

DIRECT-EXAMINATION BY MR. MCCARTER:

Q. Mr. Young, you hold what position in the electric and gas company? A. I am Vice President in charge of finance.

Q. How long have you been associated with the Public Service interests? A. Since its formation.

Q. Upon the propriety of the plan, Mr. Young. Have you before you a statement of the gross receipts of the Public Service Electric & Gas Com-

pany from 1904 to date? A. The statement I have is from 1911 to date. As to that—— (interrupted).

Mr. McCarter: I offer it in evidence

(Paper marked Exhibit D-48.)

Q. Now, I want to direct your attention to certain allegations of fact contained in paragraph 49 of the answer, Mr. Young? Can you state the expenditure that has been made in the way of extensions, additions, improvements and betterments to the premises that have been demised in these five leases from time to time to provide for the growth of the business since the leases were made? A. Yes, sir; those expenditures are stated in that paragraph.

Q. Just tell us what they are, please, of your company. A. I want to know exactly to what date this runs up to. It doesn't run up to the present moment.

Q. You have later figures to date? A. Up to the date of this answer?

Q. Of the answer. A. The expenditures for the Hudson County Gas Company were six million dollars from the date of the lease until some time in 1927; The Paterson & Passaic Gas & Electric Company, eleven million five hundred thousand dollars, for the same period; Somerset, Union & Middlesex Lighting Company, nine million dollars for the same period.

Q. Has the Essex & Hudson Gas Company ever owned a gas plant? A. No.

Q. What interest has it in any such plant, acquired under the consolidated lease? A. Yes, sir, only under that lease, which, of course, it has parted with in assigning that lease to the Public Service Corporation.

Q. What has been the cost of extension, additions, improvements and betterments made to the property of the Newark Consolidated Gas? A. $13,500,000.

Mr. McCarter: That is all now. We are going to call him later.

CROSS-EXAMINATION BY MR. HAIGHT:

Q. How long is the lease from the Newark Consolidated Gas to the Essex & Hudson Gas Company, nine hundred and ninety nine years? A. Nine hundred and ninety nine years; that is correct.

Q. These figures that you have given us as the cost of the extensions, additions, improvements and betterments to the leased premises, are those respective costs exclusive of, or in addition to the moneys which were expended on these properties through the sale of bonds of these companies that had all been sold at the time of the leases? A. There are in addition.

Q. And how much was put into these companies through the proceeds of the sale of the bonds of the lessor companies, which bonds had not been disposed of at the time the leases were made? Can you give me that? A. I haven't that information. I can give you that, though.

Q. Bring that when you come back. How much has been paid on the East Newark Gas Company property? A. That was included in these figures.

Q. Who owns the stock of the East Newark Company? A. Some of it is owned by the Essex & Hudson Gas Company, some of it by the Newark Consolidated and some few shares by the Public Service Corporation.

Q. What do you mean by "few shares"? A. I think a very minor number of shares?

Q. Relatively. A. I have it here.

Q. We have been talking in millions so long I do not dare to trust to that. A. Just one share.

Q. What property does the East Newark Company own? A. Generally speaking it owns the property in the territory frequently described as East Newark; that is, Harrison, Kearny and that locality on the East side of the Passaic River.

Q. Has it the large Harrison plant in it? A. You mean in that territory?

Q. Yes. A. That plant is in that territory; yes, sir.

Q. Is it or is it not owned by the East Newark Company? A. It is not owned by the East Newark Company.

T. Wilson Van Middleworth, recalled for further

Direct-examination by Mr. McCarter:

Q. Have you had prepared and do you hold in your hand a graph or chart made from the statements of Rippel from 1913 to 1926 inclusive of the prices of these stocks, namely, the five companies' stock and the electric and gas? A. I have for the five companies.

Q. Five companies? A. Yes, sir.

Q. Will you produce it? A. (Producing paper.)

Mr. McCarter: I offer it in evidence.

(Paper marked Exhibit D-49.)

Q. Now, will you please explain that graph so that the Vice Chancellor and everybody else will understand it? A. We have taken the annual statements published by J. S. Rippel & Company from 1913 to 1926 inclusive, which are issued as of the

first of each year showing the high, low and last price of the securities quoted.

Q. For the year? A. For that year. And we have indicated the high price by a straight line, the low price by a long dotted line and the last price by a dotted line.

Q. Now, have you likewise prepared a table of the prices as quoted by Mr. Rippel for the year 1927. A. I have for the eleven months of 1927.

Q. From January to December? A. Yes, sir, showing the bid price as per his weekly quotation sheet.

Mr. McCarter: I offer that in evidence.

(Paper marked Exhibit D-50.)

Q. Have you prepared a chart of the summary of Outwater & Wells prices for the Public Service Electric & Gas Company six percent preferred stock as offered in evidence yesterday, a graph of that? A. I have a graph showing the result of the exchange of Essex & Hudson Gas Company and the other companies into the six percent preferred stock of the Public Service Electric & Gas Company based on the monthly quotations of Outwater & Wells from the period from January 1st, 1924, to December, 1927.

Mr. McCarter: I offer it in evidence.

(Paper marked Exhibit D-51.)

Q. Won't you explain that last graph? A. We took the basis of exchange provided in the merger which we wished to consummate, which, in the case of the eight percent stock provided for the issuance of 1.37 shares of the six percent preferred stock of the Public Service Electric & Gas Company. The bid price of the Essex & Hudson Gas Company is

shown by a straight line and the relative value the solid line starting at 110.

Q. At what time do you start? A. We start January 4, 1924 with the Essex & Hudson Gas Company and pick up the Electric & Gas as of March, 1925. It is meant to be a picture of what the value of the Electric & Gas Company six percent preferred stock would be had an exchange been made as proposed in the merger.

The Court: You extended your answer to an electric company and I was trying to follow you. Your answer was with reference to the Essex & Hudson Gas Company eight percent stock.

The Witness: We show the bid price for the Essex & Hudson Gas Company eight percent stock taken from the quotation sheet of Outwater & Wells, using the bid price shown by those monthly sheets.

Q. How does that appear on this graph? A. And appears as a solid line on the graph.

Q. Commencing? A. Commencing January 4, 1924, and continuing to December 5, 1927.

Q. Now, the high peak, under date of May 1, 1927, would indicate what was the price at that time? A. Approximately a hundred and fifty three dollars per share.

Q. That is May 1, 1927? A. Right.

Q. After the announcement of January 1927 plan? A. Yes, sir.

Q. Then there has been a recession in August. A. The price has tapered off from May 1st to low as of August first of about forty two.

Q. Then gone up again a little? A. Then gone

up again as of December fifth, it was one forty eight.

The Court: And it was in January when this merger was first made public at about one forty two.

The Witness: Yes, sir; it went up in the month of December when the rumors of the plan were coming out on the street, from the price of one forty to one forty two.

Q. Now, what does the checked line represent on the same graph? A. The checked line represents the value of shares of the six percent preferred stock of the Public Service Electric & Gas Company which a holder of Essex & Hudson Gas Company would have received under the terms of the merger.

Q. Between the date of March second, 1925—— (interrupted) A. 1925 to and including December 5, 1927.

Q. And the same thing is true of the other attached graph with reference to the stocks of those particular companies? A. Yes, sir.

Cross-examination by Mr. Haight:

Q. Now, this peak in May of 1927 runs through all of the stocks of the five lessor companies, doesn't it? A. Pretty much, yes, sir.

Q. And that followed shortly after the publicity that was given to the decision of this court enjoining the Fidelity Union Trust Company as trustee under the Shanley Estate from selling this stock.

Mr. McCarter: I don't know that the witness knows anything about that.

Mr. Haight: We will find out if he does. I am asking him.

The Witness: I don't know about that.

Q. Don't you know about when that decision in the Shanley estate was? A. No. I am not familiar as to the calendar date of it.

Q. Are the prices shown on the dotted line of the Public Service Electric & Gas Company stock the price at which the stock was sold on the New York Stock Exchange? A. No. The price indicated is the value to the holder of the Essex & Hudson Gas Company had his share been exchanged for the electric and gas company stock.

Q. What do you mean by that? A. Using the bid price of Outwater & Wells for a share of stock of the Essex & Hudson Gas Company, that stock being exchanged for 1.37 shares of the six per cent preferred stock of the Public Service Electric & Gas Company, the broken line indicates what that value would be.

Q. You mean the par value? A. No, the market —the value to the holder had an exchange been made.

The Court: Market or actual value, assuming par to be actual value, is that what you mean?

The Witness: Market value of the lessor companies' stock.

Q. And the par value of the Public Service Electric & Gas Company? A. No—and the exchange value of the Public Service Electric & Gas stock.

Q. Based upon par, however.

Q. Based upon 1.37 shares of electric and gas for each share of the eight percent lessor company stock.

Q. Let me see if I understand it. When you say 1.37 do you mean that is the par value of that stock? A. That would correspond to the par value of the eight percent stock—lessor company stock.

Q. But these figures are not based on any market value then prevailing of the Public Service Electric & Gas Company stock. A. No, sir.

Q. Based on the income—relative income of the property? A. It is meant to be a picture to show the value of the lessor companies' stocks on the basis of exchange as provided in our offer.

Q. What is that basis of exchange as you now speak of based on, the income? You say it is not on the market value. A. It is all based on the bid prices of the lessor companies' stock which is the market value of the lessor companies' stock, but not the market value of the Electric & Gas.

The Court: What is that based on?

The Witness: The chart does not indicate the market value of the electric.

The Court: What is it based on, the dividends that they would pay—that the Public Service would pay, or what?

The Witness: No it is based on the shares of the Electric & Gas stock which would be received by a holder of stock of the lessor companies.

The Court: At what value?

The Witness: At the value provided in the terms of the merger.

Q. Let me understand. By the terms of the merger you were to give for every share of the Essex & Hudson Gas Company stock 1.37 of a share of the Gas & Electric company stock. A. Correct.

Q. In order to get this value did you multiply that by some figure—that 1.37? You had to do so, didn't you? A. Yes, sir.

Q. What figure did you use? A. We took the bid price of the lessor company stock.

The Court: He is speaking about the Public Service.

The Witness: I know, but this table—— (interrupted)

The Court: I wanted to know how you got that value of the 1.37.

The Witness: By using as a basis the bid price of the lessor companies' stock.

Q. Do you mean that, or the bid price of the preferred stock. A. No, sir; the bid price of the lessor companies' stock.

The Court: How could you arrive at these dotted lines unless you assumed some basis of value for the 1.37?

The Witness: We assumed a like value for electric and gas as the bid price of the lessor company stock.

The Court: Based upon yearly income?

The Witness: No, sir.

The Court: Based on yearly dividends and interest?

The Witness: Based on market price of the lessor company stock.

The Court: He has an answer, no doubt, but he has not imparted it to us.

Mr. McCarter: (Handing witness paper.) I think if he will read the footing there he will be able to answer.

The Witness: Under the terms of the merger agreement 1.37 shares of the six percent preferred stock will be given in exchange for one share of the Essex & Hudson company stock.

The bid prices are from quotation sheets published by Outwater & Wells.

Q. Now, then, you had to multiply the 1.37 by some figure in order to get the figure which the dotted line represents, didn't you? A. Correct.

Q. What figure did you multiply that by? A. By the bid price of the Essex & Hudson Gas Company stock.

Q. Shouldn't that bring the dotted line exactly the same as the solid line if that was so?

The Court: Did you make this?

The Witness: It was made under my direction.

The Court: I think we all understand what you are trying to show, but I do not think anybody understands how you arrived at it. I know I do not.

Q. I refer you, Mr. Van Middleworth, to exhibit 8, being, I think, this summary from which you say the graph was taken under your direction. Does that enable you by looking at that to ascertain? A. It does.

Q. All right. Now, let us see. A. We took the bid price of the electric and gas six percent preferred stock—excuse me—using the quantity that they would have received in exchange as per the terms of the offer.

Q. Where did you get the bid price of the electric and gas company stock? A. Outwater & Wells quotation sheet.

Q. And do you know whether they were the bid price in the local market or the New York Stock

Exchange? A. Well, they correspond pretty closely.

Q. They correspond pretty closely.

Mr. Haight: At this point may I ask the witness if he has got the information that he was to get yesterday, or would you prefer that I let that rest?

The Court: Get it now.

The Witness: I have most of the information, I think, you asked for.

Q. Now, what were the holdings of the U. G. I. in the Public Service common stock prior to January 10, 1927? Or whatever date you have. A. I have the figure for December 2nd, 1927.

Q. Give us that. A. They held 1,295,704 shares.

Q. What percentage of the total? A. Which is approximately thirty one percent.

Q. Thirty one percent. Now what did they hold —have you got that as of the time this deposit agreement of December 1926, and January, 1927, went out? A. No, I haven't that figure.

Q. And what was their holdings in the stock of the lessor companies prior to the time they exchanged it for Public Service common? A. In the Essex & Hudson Gas Company they owned 32,424 shares.

Q. What percentage of the total was that?

The Court: How about the electric and gas company?

The Witness: That was Public Service common. They held 32,424 out of a total of 65,000 shares.

Q. Can you give us the percentages as you go along? A. That is roughly fifty percent.

Q. Of each company? A. Of that company.

Q. What of the Essex & Hudson Gas Company? A. That was Essex & Hudson Gas Company.

Q. I thought you were talking about the Hudson County Gas Company. A. Of the Hudson County Gas Company they held 52,901 shares out of a total of 105,000.

Q. Substantially fifty percent again. A. Yes, sir. Of the Paterson & Passaic Gas & Electric Company they owned 32,415 out of a total of 50,000.

Q. A little over fifty percent. A. Yes, sir. Of the Somerset, Union & Middlesex Lighting Company they held none and of the New Brunswick Light, Heat & Power Company they held none.

Q. Now, who were the other substantial stockholders of the lessor companies which exchanged their stock for Public Service common. I think that was one of the questions. A. I have a list of the holders of five hundred shares or over which were deposited, made up of the Essex & Hudson Gas Company a thousand shares owned by the estate of Thomas Dolan, registered in the name of the Fidelity Union Trust Company one thousand shares; Louisa S. Holton five hundred shares; Charles W. Holton, 510 shares; John F. Shanley 500 shares; and of the Hudson County Gas Company, the estate of Thomas Dolan, 4,150 shares; Corn Exchange National Bank of Philadelphia under deed of trust, 550 shares; George J. Roberts, 500 shares; A. J. Wiedenmeyer, 617 shares; John G. Greenberg, 500 shares; Charles W. Holwig, 1000 shares; Grental, Lillienthal & Company 750 shares; Fannie H. Williams 793 shares; the Regal Securities Corporation 1625 shares; on the Paterson & Passaic Gas & Electric Company, Jennie Hobert, 550 shares; the estate of Garret Hobert, 1900 shares.

Q. Who was the executor or trustee? A. I don't know. I think it is the son, Garret Hobert. And on the Somerset, Union & Middlesex Lighting Company, Mary G. Pope, 500 shares; Augustus J Brunson 800 shares; New Brunswick Light, Heat & Power Company, 929 shares by Eisele & King—they are holders of 500 shares or over.

Q. Eisele & King, brokers of Newark? A. Yes, sir.

Q. By whom was the J. F. Shanley stock transferred? A. I think the executors of the estate. I assume. I don't know.

Q. Was the executor the Fidelity Union Trust Company? A. I think not.

Q. Do you know who the executor was? A. No, sir.

The Court: You are asking him as to the holdings of the stock.

Mr. Haight: Yes, sir. He mentioned J. F. Shanley who has been dead a long while. What I wanted to know was, these are holders of stock who turned them in for Public Service common.

Q. Now, let me ask you this. Are any of those persons that you have mentioned directors of the Public Service company, or either of them or any of them? A. None of the first mentioned are directors of the Public Service Corporation or the Public Service Electric & Gas Company.

Q. When were the J. F. Shanley five hundred shares turned over? A. During the time the offer was open. I don't know just what date.

Q. Do you know who Thomas Dolan is? A. It is an estate.

Q. Or was. A. Thomas Dolan was formerly president of the United Gas & Improvement Company.

Q. Did you get the information about the stock holdings in the Public Service of persons who had the same name as the directors of these lessor companies? A. No. I was not able to accomplish that. I got the statement showing the holdings of the eight directors and the shares registered in the names of their wives so far as I knew them, but there would be a mass of names and holdings to show stock held by the same name—we have some ninety thousand stockholders.

Mr. Haight: Instead of putting that in, now that we have that list, I won't ask you for that at this time if you will let us see that and I will go over it and let you know later whether we want anything further. If we do not, we will put that in.

Mr. McCarter: Have you got the figures we asked for yesterday of Outwater & Wells?

Mr. Haight: We have a lot of stuff here. Suppose we go over it at recess.

McCarter: We want that after recess. We have been three months trying to get it.

Mr. Haight: We will try to get it.

THOMAS S. GATES, Sworn for the defendant.

DIRECT-EXAMINATION BY MR. MCCARTER:

Q. Mr. Gates, what is your business? A. I am in the banking business, sir.

Q. With what firm or firms are you a member? A. I am a partner in the J. P. Morgan Company and partner in the Drexel Company, which is the same firm.

Q. How long have you been connected with

either one of those companies? A. I became associated with Drexel Company as partner there in 1918—since 1918, April first.

Q. Have you had an opportunity to become familiar with the financial structure and make up of the Public Service interests? A. Yes, sir.

Q. How long has your attention been directed to that? A. Since 1918—since my association with Drexel & Company I have been interested in its financing and financial structure.

Q. Prior to that time, if you know, was the firm of Drexel & Company acting—had they acted as bankers and made a study of the securities of the Public Service interests? A. They had; yes, sir.

Q. And your present connection arose after your entry in the firm in 1918. A. In that intimate way, yes, sir; it did. I had association before that.

Q. What was that? A. Used to purchase its securities. I was president of the Philadelphia Trust Company and I remember when the general mortgage bonds of the company were offered by J. P. Morgan & Company and Drexel & Company we bought some of them, and have bought the perpetuals and various other securities which it sold.

Q. So that you have personally, without regard to your connection with Drexel & Company, had a more or less intimate knowledge of the financial make up of the securities of the Public Service Electric Company since when? A. I should say since 1912.

Q. Are you a member of any of the boards of directors of the Public Service interests? A. I am, yes, sir. I am a member, I think, of all the boards, sir.

Q. When did you become a member of the board? A. Upon the death of Mr. Randall Morgan in Feb-

ruary or March, 1926. I was asked by the president to take his place on the board.

Q. Prior to the death of Mr. Morgan, which occurred, I think, in the summer of 1926, you were not a member of the board of directors of the Public Service? A. I was not, no, sir.

Q. And your relations then were those of banker, member of the firm of Drexel & Company? A. Yes, sir.

Q. Do you remember being a member of the committee to consider the plan which is known as the plan of 1924? A. I do.

Q. Who served upon that committee? A. Mr. Loomis, of Bonbright & Company, and myself, with the president, I think, and Mr. Young.

Q. And Mr. Young. A. I think that was the committee, sir.

Q. Now, what consideration did you give to the matter? What problem was presented and what conclusion did you reach? A. The president has stated so very well the general difficulties which confronted the company in connection with its financial problem then, that much that I would say would reiterate that. By reason of the fact that the general mortgage bond of the Public Service Corporation was a five per cent bond, and was a closed issue, the power of the company to extend had really passed. The problem therefore was to find a way by the study of the corporation and its integral parts to make possible the financing requirements which its growth demanded, and with that in mind we made an intensive study covering quite a period of time of the whole structure of the corporation and its constituent companies, and in which the president took a very active part, and, of course, was vitally interested. As a result of that

study all of us brought out this plan which was discussed by us as bankers with our partners and by holders of the bonds themselves, particularly the large holders, to whom we had to—whose support we would need in making the exchanges, and after we had reached a conclusion that it was possible to free the company from the restrictions it then labored under by making the exchange of the general mortgage bonds which were then outstanding for a new bond secured by a first mortgage on the gas and electric properties, which would be then merged into a new company, we went forward with the plan.

Q. Now, you said you consulted some individuals who were interested. Can you name some of them? A. Yes, sir. Of course, in matter of this sort, which involves not only the exchange of securities but the exchange of collateral which was held for the perpetuals—perpetual interest bearing certificates—it was necessary to talk with large holders of each group, which we did. We talked with, for instance, the Fidelity Union Trust Company, the Prudential Life Insurance Company, Mr. Stedman, and several counsel, Mr. Lindabury who was then living, and we went—and we went—and they had at that time quite a large amount of five percent bonds which would be available for exchange if they approved of the plan. We talked with, of course, Fidelity Union and its counsel in connection with the perpetual interest bearing certificates, and with a great number of holders of those certificates and dealers who had sold them.

RECESS.

AFTERNOON SESSION:

THOMAS S. GATES, recalled.

FURTHER DIRECT-EXAMINATION BY MR. MCCARTER:

Q. Mr. Gates, did Mr. McCarter at the time of the appeals to the bankers for a plan to provide for the emergency that he described this morning, at first present a plan of his own to the committee? A. He did, yes, sir.

Q. Yes; did the committee study that plan? A. They did.

Q. Did they adopt it, or what did they do? A. They did not adopt that, no, Mr. McCarter; the bankers made an independent study of the structure of Public Service and its constituent companies in detail, and they felt that the plan which was recommended by them, and which was later adopted, would be the one which would give the relief which needed to be afforded.

Q. And the ultimate result was the formulation of the plan which has been carried out thus far, and which, if this merger is permitted, will be consumated to that extent? A. Yes sir.

Q. Now you united in the view that that plan was the proper plan? A. I did.

Q. You still think so? A. I certainly do.

Q. Did you at the time consider the position of the holders of the stock of the underlying companies and bear in mind what their position was and did you feel that the offer that was made to them under the plan was fair and equitable to them—the lessor companies,—the stockholders of the lessor companies? A. You are talking now about the plan which was then made?

The Court: Yes.

Q. The plan that was finally adopted. A. Oh yes, we did indeed.

Q. You of course are familiar with the plan of January 1927, the later plan that constituted the proposition——

The Court: He said he thought it was fair?

A. I though you had skipped to that, sir, in your last question. I do of course.

Q. What have you to say upon the question of the fairness of the alternative propositions that were made to the stockholders of the lessor companies, of that plan? A. I think now and I thought then, sir, that it was an eminently fair plan to those stockholders, and——

Q. Are you able to state your reasons? A. Yes. If I may be permitted to go back a moment to the original plan of reorganization of the whole structure of the corporation, one of the important elements in that plan was to change the underlying lease structure to an owned structure.

The Court: To a what?

Witness: To an owned structure. That would make possible a modern plan of financing, upon better terms than the leased, the old leased structure would do. We had that point to consider equally, when we were—when we had under consideration the plan of 1924, because we had to decide whether to lease the United Company, United Electrical Company, if its stock were left still under the perpetuals and allow therefore a whole lease structure to exist for the electric companies or substantially all of it leased and attempt to finance with that existing basis or whether we should attempt to

merge the United Electric Company with the Public Service Electric Company and Gas and Electric Company which was finally adopted. By doing the latter we increased the amount of the owned property of that whole structure and got away from all leased structure which we had found from our own experience, in all the securities which we had to sell for the Public Service Corporation, had led to embarrassments and explanations and details which investors of course had the right to know and had difficulty in understanding.

Q. Now at that time, or previous to that time, the United Electric had been leased to the Public Service? A. Yes, had been leased.

Q. And your plan—— A. Was to merge that company with the Public Service Electric Company by getting rid of the stock.

Q. Yes; now what had been the experience of your firm with undertakings to finance concerns that were based on leaseholds, entirely independent now of the Public Service? A. Well, we have had some experience, for instance, although there was really no comparision for this structure here on any large scale, of a gas and electric company, and therefore it did present for a corporation of this size a unique problem, if it were wholly on a leasehold basis. We have had some experience with railroad properties, as for instance the Reading Railroad, where there are leasehold liens and stock, of its underlying companies, et cetera, and that presented difficulties even there, because those stocks, by reason of the fact that they are little known, sell frequently on a cheaper basis than the stocks of the railroad companies themselves, even

though they are parts, integral parts of the railroad, if you please, and occupied, to that extent, as to those parts, a better position.

Q. Can you explain a little more at length the practical banking difficulty in financing a schedule that is based on leasehold, rather than on what you call owned property, although the leaseholds be of long term? A. The practical banking difficulty is this, that the investor will not buy, as a rule, a stock of a leasehold company. It requires so much explanation, as to what it is.

The Court: Simply not as inviting.

Witness: Yes, not as inviting.

The Court: Isn't that the answer?

Witness: That is the answer from a practical banking standpoint, yes sir.

Q. Have you any other illustration besides the Reading Railroad, where you experienced troubles of the same kind.

Judge Haight: I don't understand he said he had troubles with the Reading Railroad.

Witness: I was only presenting that as an illustration.

The Court: He had trouble in facilitating the sale of the stock. Ownership will facilitate the sale of stock better than a leased holding.

Witness: I had difficulty personally, in selling some of the underlying stocks of the Reading Railroad, by reason of the fact that they were stocks of leased properties.

Q. That is the point I understood him to make. A. And they had a limited market, were not salable.

The Court: Had a "what" market?

Witness: Had a limited market, were not

salable. That is simply a personal matter, that is not a banking matter, so far as our firm is concerned.

Q. Have you in mind any other instances? A. Well, there are a number. The Philadelphia Rapid Transit Company, in Philadelphia, presents one. It has sold over the last few years a large amount of 7% Preferred Stock at par, and I had stocks of its underlying roads, or parts of roads, which are leased to it, as for instance, the River Avenue or the Chestnut and Walnut, and so on, lines, selling on a cheaper basis.

Q. Yes—— A. And in a very limited way, and you couldn't sell very much of them.

Q. Yes; well, have you any other reasons to give for your view that the exchange is a fair and equitable exchange that is offered under this merger? A. Yes sir, the consideration that was given to the plan of exchange this last year was the result of a study of the situation ever since 1924. We have had in mind always the making of an offer which would be a fair offer, because we represented both sides, you might say, of the problem, so far as we were concerned as bankers, we, on our part, who were in trust companies and estates, the Dolan Estate for instance has been mentioned, was one of them, would of course, exchange and would naturally receive only a fair offer, if we were going to make it to them, and we, therefore, had the interests of the holders of stock of these companies quite as much at heart as we had the operation from the standpoint of Public Service Corporation, to whom, from a Public standpoint, it was obviously better in the interest of those financing their service, to have this accomplished. The matter was therefore studied in great detail.

Q. Yes,—— A. And a study was made of the holders, with a view of ascertaining what type of offer, or what types of offer might in one form or other be acceptable to them. Some might prefer cash; some might care to have stock, or some might care to have stock of the corporation, Public Service Corporation itself.

Q. So the plan was evolved of making the three offers? A. Yes sir, and it was felt that on any one of the three offers the Public Service Corporation was leaning over backward in endeavoring to—in an excessive fairness to make what would appeal and what probably could not be refused by the holders.

The Court: Was the Dolan Estate your client?

Witness: No sir.

The Court: Was the U. G. I. your client?

Witness: Well, we were acting at the time as bankers for the Public Service Corporation, sir, but the Dolan Estate happened to be administered by the Fidelity Trust Company of Philadelphia.

The Court: You said you also had an interest?

Witness: Yes, we did.

The Court: ——with U. G. I.

Witness: Yes sir, we had, and also we had the Dolan Estate.

The Court: Whose interests you had to look after?

Witness: Yes sir, the Dolan Estate is administered by the Fidelity Trust Company.

Q. You mean of Philadelphia? A. Yes, and Mr. Stotesbury and I are both directors of that.

Q. He is a partner of your firm? A. Yes sir.

Q. And you are familiar with the business, gross and net, that has been done by the Gas and Electric Company for the past ten years, and with the apparent prospects of the business in the future? A. Yes sir.

Q. Have you any doubt as to the fact that the proposed exchange of stock under the merger, to the stockholders of the lessor companies, is fair and equitable? A. I have not sir, not the slightest.

Q. In the first place, the income, assuming that the gas and electric company will earn its dividends, will be slightly more under the plan, under that stock, than it would be under the old? A. Yes sir.

Q. Now what elements, as you look at it, enter into the market value of a security? A. Well, the market value of a security is determined, of course, by the supply and demand.

The Court: By the person that wants that particular thing?

Witness: Yes, by the person that wants that particular thing, as his Honor says. The marketability of a security depends upon the relative size of the issue, the character of the structure back of that issue, and the equities that follow that structure.

Q. Well now, does the fact that the securities are listed have any effect upon its market value? A. Yes, somewhat, that is to say in sense that at times a very great company—the fact that there is a market—no market makes it possible for securities to be borrowed against, or loans made thereon by banks or trust companies. Brokers can use it with

their other reasons. If they are not listed, if they have a special market, they can't take them.

The Court: Does the O. K. of the stock exchange have any value?

Witness: Yes, it has a value of marketability.

The Court: Does the okaying, or approval by the stock exchange have any value?

Witness: Yes, it has some value. It has a value from the marketability standpoint, clearly but also from the standpoint of the security.

Q. Do I understand you to say that the ability to borrow on a security has a reflection in its value, its market value? A. Yes, it makes a great difference.

Q. Exactly, well now, are unlisted securities generally accepted as collateral for loans? A. They are not.

Q. In the banking world? A. No, they are not.

Q. Are the securities of these lessor companies listed on the New York or any other exchange? A. I know of none that they are listed on, no sir.

Q. Has there been, so far as you know, any considerable sale for these securities in the past fifteen or twenty years? A. There has not, no. There has been a very limited market and from time to time we have experienced that. I remember very well when an effort was made to sell quite a large block of the two gas company stocks and there was practically no method of selling them whatever.

Q. What companies do you refer to? A. I mean the first two companies on our list.

Q. The Essex and Hudson and the Hudson County? A. I do, yes sir.

Q. You have had great difficulty—— A. It was

impossible to do it. The incident that I recall was when it seemed desirable, when the United Gas and Improvement Company was considering selling their holdings, and they found they could only sell it at such a sacrifice as to make it utterly out of the question; there is no real market for the stock, and it is a very difficult stock to sell, very.

Q. Now in reaching the conclusion that you did, did the fact that the stock of these five lessor companies covered limited and separated parts of the state organization, and their prosperity or success depended upon the amount of business done, in those specific localities, whereas the stock that was to be offered in exchange covered a company whose operations were throughout the entire state, enter in as a consideration? A. Yes, that was a very important factor of course.

Q. Can you enlarge a little on that? A. I can, yes sir.

Q. I wish you would? A. The Public Service Gas and Electric, preferred stock, is known all over the world, and what it has back of it; the company whose security it is, is known. On the other hand —and it represents of course the activities of that company in the gas and electric field throughout the entire state, which represents again in value, not only the value of these leased properties, which form part of that structure, but also properties of its own, which have been built up as a result of the sale of its securities. The underlying stocks on the other hand meet a sales resistance, because the purchaser understands that they are only a part of a system, which, if you please, could not specifically, perhaps, again ever be operated as a part, or as a whole. The times have grown past that. It is all one system, and therefore there is a practical

difficulty in finding people who care to buy stocks of a company that is a part of a thing. That is very real.

Q. Do you recall the financing that was undertaken and accomplished, for the purpose of raising money to build the Kearny super-power plant? A. I do, yes sir.

Q. Have you anything to say with reference to the leasehold company there? A. Yes sir.

Q. What was it? A. A separate company was formed and that company was to build the power plant, and to sell it to the electric company, and the company was leased to the electric company, and the lease was guaranteed by the electric company. The conditions of the lease were undertaken by the company.

Q. In other words the Public Service Power Company was formed, to own in fee the plant that was to be erected? A. Yes sir.

Q. Rather than base it upon any leased property. A. Yes sir.

Q. And then afterwards an arrangement was made by which—— A. ——the power——

Q. ——the power company leased, or did otherwise with its company—— A. ——yes, the financing.

The Court: To the gas and electric company?

Witness: To the electric company, at that time. That was before the gas and electric merger took place. And they had to resort to the formation of a separate company at that time. This had to be done otherwise it would have gone under the general mortgage bonds of the company which would have been impossible to finance. It never would have been done unless it had been done by a separate company at that time.

Q. Isn't that, then an example of the difficulties arising in financing upon a leasehold basis? A. Yes sir.

Q. Now have you any other reasons which you can suggest, Mr. Gates for the conclusion that you felt at that time and still entertain, that this offer of stock, under this merger of the Public Service Gas and Electric Company is a fair and equitable offer to the holders of stock of the five lessor companies?

The Court: Have you anything to think of?

Witness: I can think of one thing, yes sir, the lessor companies stock——

The Court: The what?

Witness: The stocks of the lessor companies, as a type of Public Service, or Public Utility investment security, have been found not to be popular. I mean apart from the marketability, that they are not liked, they are not popular generally, people don't understand them and will not buy them and this variety of financial structure really is antiquated. Other companies have sought to get rid of their leased structure by mergers or consolidations or otherwise and so present to the purchaser of their securities a type of security which can be exchanged very quickly and which after a while becomes known as a type which will sell.

Q. Well now, turning for a moment to the stock in the Electric & Gas Company. You, of course, as I think you already indicated, are familiar with the growth of that company, its prosperity, its net and gross receipts and so forth. Is there any better example of your faith in that company than the fact that your concern has underwritten, or under-

taken to put through a refunding mortgage, in place of this present mortgage, at a very much lower interest?

Judge Haight: I object to it, as in the first place it does not appear his firm has to do it.

Mr. McCarter: Has to do it?

Judge Haight: Has agreed to do it.

Witness: It is done.

Judge Haight: And furthermore it seems to me that the question goes beyond all bounds of propriety in its leading character. I of course don't object to leading character ordinarily, to a witness of this kind, but I do think I must object to that.

Mr. McCarter: I don't think it is leading.

The Court: I have already ruled, go on.

Witness: In answer to the question sir, the suggestion which was made is, I think, a clear indication of the point we have been talking about because——

The Court: That would be so without your testifying to it, wouldn't it?

Witness: Yes sir, because the new bonds, sir, are being sold at 4½% and are selling nearly at par now, or at par, whereas the stocks of these lessor companies are selling upon something like a five and one quarter basis or five and one half basis, I forget just what.

Q. What is your opinion, as a banker of long experience, as to the value of the six percent preferred stock of the Electric and Gas Company? A. As to its value?

Q. Yes? A. I think it is one of the best securities in the world.

The Court: As to its value?

Witness: I think it is a splendid security; none better.

The Court: What would you say if Mr. Thomas N. McCarter quit the company?

Witness: I think that would be a great loss.

The Court: As to the future of the company?

Witness: I think Mr. McCarter would feel his job was only half done.

The Court: Would you still have the same great confidence in his corporation?

Witness: I would.

The Court: Without the driving force of Mr. McCarter?

Witness: I wouldn't like to picture it without that sir, but I still think it would be perfectly sound.

The Court: Not as sound as with Mr. McCarter at the driving wheel, in the driver's seat?

Witness: That would not be because of the fact that perhaps someone else might not come along sir, who had to do it. I think all these great things which have been built up depend a good deal upon the personality of a man, but they sometimes outgrow that, I think this has.

The Court: Do you think they have outgrown Mr. McCarter?

Witness: Outgrown the personality. I don't think it depends upon one man.

Q. You think the company is so organized, and its field of activities is so large that no one man is essential to the organization? A. I am sure of it.

Q. I agree with you, and I think Mr. McCarter does also.

The Court: What is that?

Mr. McCarter: I think I agree and I think my brother does also.

CROSS-EXAMINATION BY MR. HAIGHT:

Q. When you said that there is no better security than the stock of the Public Service Electric Company you, of course, did not mean to exclude the bonds of the Public Service Electric and Gas—include the bonds? A. I think that they are—that the bonds are better from the standpoint of security, of the bond type.

Q. Well, it is a better security, isn't it? A. Yes, I think so, perhaps if you want me to give a frank answer—they are both so good——

Q. (Interrupting.) I always want a frank answer, Mr. Gates. A. They are both so good, Judge Haight, they are of different types. One is a bond, and one is a stock.

Q. And one is selling on a basis of 4.50. A. Yes.

Q. That is the bonds? A. Yes.

Q. And the other is what? A. Six and a half, 109. There is a difference, of course, but they are splendid securities, both of them.

Q. What about the difference between that stock and Public Service common? A. What comparison do you mean?

Q. Do you think the Public Service Electric & Gas is better than Public Service common? A. Yes.

Q. You do? A. Yes, from the standpoint of security.

Q. Do you think it is a better security? A. Yes, I have said so, sir—I mean one is a holding company and the other is held company.

Q. But I understood your answer to Mr. McCarter was that as a security, not as the security, but as a security, you mean, as a stock or a bond, that there was none better in the world. A. Than——

Q. Public Service Electric & Gas. A. I think I will stand by that.

Q. Do you think that is better than the common stock of the Public Service? A. Yes, of course, I would qualify, by that, I don't want to answer indirectly, sir, because there are a variety of ways of looking at these things. I think it is better from the standpoint of security, yes.

The Court: And the bond is still better.

The Witness: Yes, but I might prefer to buy one over the other.

Q. Are you familiar with the guaranteed stock of the Morris & Essex Railroad? A. I was—if you will tell me, sir—I have had no recent transaction in it.

Q. Do you think that that—the Public Service Electric & Gas is as good as that?

Mr. McCarter: What?

Q. Public Service Electric & Gas is as good as that. A. Yes, I do.

Q. I mean the guaranteed stock of the Morris & Essex—Do you know what basis that is selling on? A. No, I don't know without thinking it out, probably—I don't know recently. I would rather have it than the other stock.

The Court: What stock?

The Witness: I mean the Public Service Gas & Electric stock. I was talking about stocks, of course, of that type, of a common type of preferred stocks.

Q. You are not referring to types of securities that are of the bond type, but you are referring to preferred stocks of public utilities? A. Well, yes.

Q. Unguaranteed? A. I would go pretty far, I

think, sir, in covering other public utilities perhaps, if that is what you want.

Q. Well, take other preferred stocks, the ordinary unguaranteed stocks. What is your comparison of the Public Service Electric Company to those kinds of stocks, as distinguished from bonds and guaranteed stocks like the underlying stocks of this structure? A. Well, I don't quite know how to answer you, sir, but I will try my best this way. I would rather have the preferred stock of the Public Service Gas & Electric company, than I would any bonds of the public utilities, other public utilities, and many preferred stocks of even other types of securities, or even some guaranteed stocks. I think it stands almost in a class by itself.

Q. Well, now, this stock, the Public Service Electric & Gas, is redeemable at 110, three years after issue, isn't it? A. Yes, sir.

Q. It has a limit, therefore, to the price at which it can sell? A. Yes.

Q. It has at the head of it an open mortgage upon which there has been issued at the present time over sixty millions of dollars. A. That represents property, sir, though, which goes in.

Q. I understand that, but that is so, isn't it? A. With that qualification, yes.

Q. And it has twenty million dollars of seven percent preferred stock and fifty million dollars of six percent preferred stock issued with it? A. That is true.

Q. Now, then—and it has ahead of it still further, the bonds of the lessor companies, and the stock issues of the lessor companies? A. Those are not ahead of it, sir, generally speaking. They are ahead of the stock.

Q. I mean, ahead of the stock, aren't they? A.

Yes, they are ahead of the stock, but not ahead of the bonds.

The Court: What?

The Witness: They would not be ahead of the bonds, sir, except as to the various properties we are discussing. For instance, a stock of one of these properties would not be ahead of the bonds of the gas and electric company covering all the properties.

Q. Now, from the standpoint of security the Public Service Electric & Gas stock is not as good as the stock of these lessor companies. A. Well, I don't agree with you there, sir.

Q. I mean, from the standpoint of security. A. I don't agree with you, sir.

Q. You don't? A. No, sir.

Q. Notwithstanding that these stocks are ahead of sixty millions of bonds and seventy one millions of preferred stock?

A. Well, may I just say how it appeals to me, sir?

Mr. McCarter: Yes, go ahead.

Q. I want to know on the basis of security. A. I think, as I understand it—I mean, this is a legal question, perhaps——

The Court: No, a practical one, a factual one is what we want.

The Witness: From the standpoint of facts you might say that the stocks of these underlying companies or these lessor companies, are ahead of the stock of the Public Service Electric & Gas Company—I understand that is the question you asked.

The Court: No. What he really wants to

know whether in your opinion there is an equality of security between the stocks of these corporations—lessor companies——

The Witness: The equality of the stocks of the lessor companies?

The Court: ——and the preferred stock of the Public Service Light & Power Company——

Mr. McCarter: Electric & Gas.

The Witness: You mean from the standpoint of security?

Q. Yes. A. Security, pure and simple—no, I suppose the stocks of the lessor companies——

The Court: We want to know your opinion; we don't want the reasons.

The Witness: I would regard the Public Service as the one, the security of which would appeal to me as being better, if that is what you want to know.

Q. Well, now, let's see; suppose the Public Service Gas & Electric Company ceased paying dividends. They would still pay the guaranteed dividends, would they not, providing they earned that amount? A. I don't think so.

Q. You don't think they would pay it? A. No, sir, I doubt it.

Q. If they didn't do that the whole structure would fall, wouldn't it? A. That is probably what would happen, I should think. I had that experience once in Pittsburgh.

Q. Has that been the experience of the public utilities, that the whole structure has fallen; hasn't it been the experience when they have not paid the dividends, on the stock of the larger company, that they have always paid the guaranteed dividends and the interest on the bonded indebtedness of the

lessor companies, as long as they earned enough to do so? A. They didn't do it in Pittsburgh. I was chairman of the bond holders committee——

The Court: That is because the concern could not pay its debts.

The Witness: Couldn't pay anything. They had money to pay a whole lot of guaranteed obligations of the Philadelphia company, through the Pittsburgh Railway, all interwoven through the Pittsburgh Street Railway system.

The Court: They actually did not do it, through the orders of the court.

The Witness: They did it after a five years' fight.

Q. They did it? A. Everything went down to nothing, before that.

Q. That was the West Penn Traction Company? A. Yes.

Q. A Street railway company? A. One of them —there were several companies involved.

Q. They were all street railway companies? A. No, there were several of them, gas companies, too, Consolidated Gas was one of those.

Q. And the dividends on the underlying stocks, and the interest on the bonds was paid before anything else was paid? A. I don't think so. I was chairman of the committee and tried to bring about the result you speak of but the whole business was tied up by the receivers.

Q. It was paid under the order of the court? A. Finally, yes.

Q. Do you know of any other instance of a company which has been built up of underlying companies, when it has not made enough to pay divi-

dends, that has not paid the dividends on the guaranteed stocks and the underlying bonds, as long as they made sufficient money to do so? A. I don't recall any in my experience, but I do that one.

The Court: You don't mean to say that one paid dividends before it paid its debts, do you?

The Witness: No, sir, but the question was whether it paid dividends on its guaranteed dividends first. It paid the whole thing under one order. It was done all at one time.

The Court: That may be in the mechanism.

The Witness: It took about four or five years to do it.

Judge Haight: What was that, your Honor?

The Court: That is the judicial mechanism of it.

Q. Now in order for this plan to be fair you would expect, would you not, that what a stockholder of the lessor company would get, could be invested in a security of an equal character and produce a revenue or return equal to that which he was getting from the stock that he held in the lessor company.

Mr. McCarter: I object; he is getting stock, not cash.

I object to the question.

The Court: Answer the question.

The Witness: I think I understand it. You asked whether he ought to have stock of an equal standing, from which he would get at least the same return. I should think he would. That was the purpose of this offer.

Q. Now, let's take, say, one hundred shares of this Public Service preferred. Let's take as an ex-

ample, one hundred and thirty seven shares of the Public Service Electric & Gas, which would be exchange, as I understand it under the plan for, say, one hundred shares of Essex & Hudson Gas Company, and if that were sold in the present market, which has been testified to as one hundred and eight or one ought nine it would produce approximately fifteen thousand dollars, would it not? A. If you have done that, sir—whatever you say I accept, I will accept it.

Q. What is that?

The Court: He says he will accept your figures.

Q. Now, then, can you tell me any security comparable to these lessor stocks, in which that fifteen thousand dollars could be invested today to produce the income that those lessor company stocks are producing to the holders. A. What about this very stock? This sells on a five——

Q. That is one of your examples, is it? A. Yes, sir.

Q. Give me some others. A. Well, I am trying to—let's see, the question is, sir, as you now explain, if you did not exchange, but took your money out, to reinvest your money so as to bring the same return.

Q. No, I want to know, give me ten securities——

Mr. McCarter: (Interrupting.) Ten?

Q. Well, limit it to ten; give me ten securities in which you would invest your fifteen thousand dollars, which would produce to the person who had the stock in the Essex & Hudson Company, the same return that he is getting now. That security

being of the same character as the security which he is giving you.

Mr. McCarter: Does he have to give ten?

The Court: Let the witness tend to it, Mr. McCarter; he may know a lot. You can easily give ten, can't you? If there are not ten——

The Witness: I think so. I think what Judge Haight has in his mind is—I am trying to answer it——

The Court: He wants to know where you could invest it just as well.

The Witness: Where you could invest your money just as well?

Q. To produce the same return. A. Five and a half percent.

Q. And a stock or bond of the same character of security. A. That is a hard question to answer, because the market price of securities has changed somewhat——

The Court: Well, you have already said that there is no better security than the Public Service.

The Witness: That is what I would have suggested.

The Court: Backing up the stock of the lessor company—you can't find any other in the United States, can you, equal to it?

The Witness: Well, you mean the underlying company stock?

The Court: The security of the underlying stock, having in back of it this great wealth of the Public Service Corporation—is there another concern in the country——

The Witness: Some of the underlying railroad stocks would be as good.

The Court: United New Jersey?

The Witness: Yes, whether you could find—we are not discussing marketability or anything like that. We are just discussing security and position.

The Court: No, security.

The Witness: For instance, under the Pennsylvania Railroad there are some very good stocks.

The Court: United New Jersey?

The Witness: Yes, and that is true of the big systems; there are some underlying stocks—take the Pittsburgh-Fort Wayne stock.

Q. Now, then, can you give us the basis on which those stocks are selling?

Mr. McCarter: Which stocks?

Q. Those stocks of the railroad companies which he compares with the stocks of the lessor companies. A. I wouldn't try to compare them with anything other than this type. I am not trying to compare the security value, not for a minute.

Q. Well, take the United New Jersey Railroad & Canal Company that his Honor referred to. That has back of it the Pennsylvania Railroad, has it? A. Yes, sir.

Q. Now, then, do you know upon what basis that stock sells? A. I do not.

Q. If I told you that the basis was 4.37 would you think that is about right? A. I would.

Q. You would think that is about right? A. Yes, sir.

The Court: Based upon a ten percent dividend?

The Witness: Based upon a ten percent dividend, yes, sir.

Mr. Haight: These bankers, when they start to resolve things into comparative figures, always take a basis of sale. Your Honor understands it. That is the reason I am using the illustration.

The Court: Yes.

Q. Now, what would you say as to the value of the security of the United New Jersey Railroad & Canal Company, with the type of security of these lessor companies? A. I would say it was a very much better type of security, larger issue, bigger market, better known; I should say that it was—there are a great variety of reasons. That is a real railroad. That represents the Pennsylvania Railroad System, which is a thing in itself.

Q. Don't you consider the Public Service a real utility? A. I am not talking about that, sir. I am talking about the underlying companies; they are not complete entities.

The Court: Is the United?

The Witness: I think it is, your Honor.

The Court: It only has a board of directors and a secretary.

The Witness: I think it could be operated separately.

Q. The bond issue on the United Railroad is not closed, is it? A. I really have made no study of that, I don't know. I only know the security type and about what it ought to sell for.

Q. Is the only preference that stock has over the stock of the Essex & Hudson, the fact that there is more of it out, and that it thereby has a larger market? A. No, it is a different type of security. It

is a railroad. It is better known. It has all the ear marks of a different type of security, of an underlying railroad stock of a great system.

The Court: It has no greater field than these gas companies, the old United.

The Witness: How much stock is there, sir, of the old United? It is very seldom we trade in it.

The Court: Twenty million, I am told.

The Witness: There is a difference, sir, you see, there is a good deal of that out, whereas here there is not very much of these stocks, comparable to that.

Q. Hudson County, I am told, is ten and a half millions. A. That makes a difference, of course.

The Court: United New Jersey, restored, could hardly run as a railroad in these days.

The Witness: It could not do it, of course, but you think of it a little bit more in a different light.

Q. As a type of security it is a security of the same type as the stocks of these lessor companies. A. I don't think so, no, sir.

Q. Well, it is a stock in a company the property of which has been leased to a large system, that is right, isn't it? A. In that respect they are the same.

Q. And the large system, in order to operate the property, to acquire the property, has agreed to pay a certain rental?

The Court: Similar in type, but of a different degree?

The Witness: Yes.

Q. And the degree is in the number of shares outstanding? A. And the attitude of the public towards one stock, as against the other.

Q. Well, now, you know as a matter of fact, that so far as these lessor stocks are concerned, that not until the last three or four years has the public known anything about them. A. They have been held by a group of people——

Q. And very closely held. A. Yes, and very little traded in by the public. But the public knew about them when the Public Service Corporation started to grow.

Q. What I mean is this, that the investing public generally did not know about them—they were held very closely. A. That is true.

Q. And if they did know about them the prices of them would go up, wouldn't they? A. No, sir, that is my opinion.

The Court: Have they gone up after this suit?

Mr. Haight: Yes, sir; they have.

The Witness: They went up after your committee sent out some literature on the matter which held out hope to depositors.

Mr. Haight: This is for your Honor's information; the peak. According to schedule D-51 was 153 or 4, which was on May 1st, and that was immediately after the Shanley suit, and not after any literature went out from this committee.

Mr. Speer: It was not after the Shanley suit at all, Judge; you are mistaken when you say that.

Mr. Haight: The Shanley suit was in March.

Mr. Speer: The listing was in April.

Mr. Haight: What Mr. Gates referred to was our committee, wasn't it?

The Witness: Yes, sir, your committee.

Mr. Haight: That did not come out until June.

Q. So that by June, assuming that that committee was formed, that is to say, the Stockholders Protective Committee of these five companies was formed in June, and the literature went out at that time—I show you Exhibit D-51; that would indicate to you, wouldn't it, that the stock had not gone up as the result of anything this committee did? A. I wouldn't say that, no.

Q. You see a drop there. A. I don't know what your committee may have done.

Q. That is not what I am talking about at all. You said the stock went up after this committee circulated some literature, as I understand it. Now I show you an exhibit put in by the defendant and ask you if that does not show, assuming that the committee's literature did not go out until June, that the stock did not go up as a result of anything that this commitee did. A. I don't know, sir, what the committee did. I have no knowledge of what the committee did, sir.

Q. Are you familiar with the Pittsburgh-Fort Wayne & Chicago Railroad? A. I am.

Q. And what type of security is that, as compared with the stocks of these lessor companies? A. That is one of the strongest stocks that the Pennsylvania underlying railroad system offers, and I have purchased some only recently for a company of which I am a director in Philadelphia, and I think that the last stock we bought was so close to a four percent basis, that it——

Q. Well, it is selling at 4.22. A. Four and a quarter, something like that.

Q. 4.22. Would you say that is a better stock than the Essex & Hudson or Hudson County Gas? A. I would.

Q. And why would you say it is a better stock? A. Well, that is a great system, Pennsylvania Railroad. It represents an important, well known railroad facility, that has been held by trust estates, and by groups of people who wanted that type of investment, for years. It has had a public standing that I do not think these underlying company stocks have had.

Q. So far as security is concerned, and so far as yield is concerned, there is no difference between the two? A. Yes, sir, the yield, we just pointed out, one is 4.15 and the other is on a 5.15 basis.

Q. I meant on the basis of par. A. I don't understand you.

The Court: He means on the basis of par.

The Witness: I don't understand that, sir.

The Court: He says you have not made yourself clear.

Q. I will just try to do it—maybe I am twisted—I get terribly twisted in these financial matters. A. I do, too.

Q. What was the guaranteed dividends on the Pittsburgh-Fort Wayne & Chicago Railroad? A. What was it, sir?

Q. Yes. A. It is four percent—let's see——

Q. The guaranteed dividends. A. You mean the amount?

The Court: Equal to four percent.

The Witness: It is five percent, isn't it—seven percent. That is right.

Q. Now, the Essex & Hudson is eight percent. A. Yes, sir.

Q. And so far as security is concerned the Essex & Hudson is just as good as the stock of the Pittsburgh-Fort Wayne & Chicago, isn't it? A. No, sir.

Q. Why not? A. The stock—I would like to explain more accurately if I could look at the——

The Court: It suggests itself to me that the stock of these four companies have the security of this great corporation behind them, while the Pittsburgh-Fort Wayne & Chicago has the security of the Pennsylvania Railroad behind it.

The Witness: Yes, sir.

The Court: And you have already told me that that is one of the greatest companies in America as to security.

The Witness: Yes, sir.

The Court: Do you still say No after that?

The Witness: Yes, I think in type they are different.

The Court: Tell me why.

The Witness: The Pittsburgh-Fort Wayne stock is directly guaranteed, is it not, by the Pennsylvania Railroad?

The Court: Well, isn't this stock of these underlying companies directly guaranteed by this great Public Service Corporation.

The Witness: It is a leasehold obligation.

The Court: What is better, isn't that a guarantee?

The Witness: There is a difference in the way the public look at those things.

The Court: Oh, the selling; we are talking of the security.

The Witness: From the standpoint of security I still feel that these are excellent; I mean, as good as you can get, that is, when you discuss security in that sense.

Q. Let me take the Portland & Chicago, do you know anything about that? A. A little bit, yes, I really—it is rather hard to answer these questions.

The Court: We appreciate that.

The Witness: I don't believe I know enough about that to answer.

Q. Then I won't press you. A. No, sir; I don't know enough about that to answer.

Q. But you know that the company that has guaranteed the stock of the Portland & Chicago is in the hands of a receiver. A. The Chicago-North Western?

Mr. McCarter: Don't let us get inquiries into the audience.

Q. Chicago & Alton? A. Yes, they guaranteed it, yes.

Q. Assuming that the stock of the Portland & Chicago is guaranteed by the Chicago & Alton, and assuming that the Chicago & Alton is in the hands of a receiver, and assuming that that stock is selling on a 5.01 basis——

The Court: 5.1.

Mr. Haight: No, 5.01.

Q. What would you say as to the comparison between that stock and the stock of the Essex & Hudson? A. I couldn't say anything, sir, unless I knew an awful lot more about it, because what

you say indicates that there must be some reason——

The Court: What is your opinion, if you have one?

The Witness: I haven't any, sir, on that. I don't know what it is, except that the road itself must be intrinsically worth that, and that the guarantee has been cast aside, and counts for nothing—it sells on its own.

Q. Let's take the Philadelphia & Trenton, do you know anything about that? A. That is the portion of the Pennsylvania between Philadelphia and Trenton——

Q. And do you know what the guaranteed dividend on that stock is? A. I do not.

Q. And we can't make a comparison, I take it, between that stock and the lessor company stock, because you don't know enough about it. A. I don't enough about it to speak with any degree of accuracy.

Q. Well, now, just take the Morris & Essex Railroad, you know about that, don't you? A. Yes, if I could refresh my recollection as to just what——

Q. Well, the Morris & Essex is one of the branches of the D. L. & W. A. I know that, yes, sir, but I mean as to the particular——

Q. It is selling on a 4.30 basis—do you think that is right?

Mr. McCarter: What is right?

Q. 4.30 selling basis. A. It would be, that is, of course——

Q. Assuming it is selling at a 4.30 basis, should these stocks sell on any higher basis, the lessor stocks? A. I don't follow the comparison, sir, because I think these stocks would be held down just

as other stocks are held down for which there is no real demand.

Q. Then it all comes down to the question of market—Am I right in that? A. Largely, marketability is a better word.

Q. Marketability, all right, we will put it that way. Now, of course, there are a great many investors who are required to invest in securities of the type of these lessor company stocks, aren't there? I don't think so, no, sir; what type do you mean?

Q. I mean the type of investors who are required to invest in bonds secured by mortgages. A. They wouldn't buy this type, sir.

Q. They wouldn't buy this type? A. This type, the underlying stocks—they wouldn't buy stocks.

Q. Why not, why wouldn't they buy stocks of this kind as readily as a mortgage? A. Well, they don't; that is the answer. They won't do it for two reasons, first, because that has been the whole purpose of our testimony and our investigation, and our belief that they don't; that the marketability of these stocks is such that they don't attract people and they wouldn't buy them.

Q. Well, isn't that due to the fact that there has not been any effort upon the part of the people who hold these stocks to sell them? A. No; there has been an effort. I have seen it made myself.

Q. Well, you talk about a large block of the U. G. I., that is, some thirty thousand odd shares in one company and forty thousand odd in another company—that is the one you are talking about? A. No, I am talking about others. I have been familiar with the sales such as there have been of these stocks over a period of years.

The Court: How have you been familiar with them by handling them?

The Witness: No, we have handled very few of them, but we have known about them, because it has been our business to keep in touch with that since this plan first started.

Q. That is, since 1924? A. Yes, before that.

Q. Now, your basis of the cash offer, the January 1927 plan, was what these stocks had been selling for in the limited market in which they were traded in, is that right? A. No, sir, that was the highest price that those stocks had sold for any time since 1913. That is as far back as my examinations extended, but we haven't any record, I believe I am correct in saying, in those years, of as high a price as was offered here for the eight per cent stocks, starting with the organization——

Q. Well, was this open on the market at that time? A. It was above the market, sir.

Q. How much above the market? A. Well, there were a few sales of the stock in December. There is a chart there which we have, which I think answers it better than I could. The price which was selected was the high price up to that time, when the news that this plan was being prepared came out, or in advance, really, of the action by the board of directors. There were a few transactions in the stocks, which were at about this price, or perhaps a little higher.

Q. At about that time? A. Yes, sir; just about that time.

Q. Now, then, let us go back once more to this Public Service Electric & Gas stock. Let's assume an estate——

The Court: A what?

Q. An estate, having two millions and a half of these stocks, of the lessor companies, and let's as-

sume that as a matter of law it could not reinvest those stocks in Public Service Electric & Gas Company stock. Can you tell me of any security, any stock having the same security and bringing the same yield as the lessor stocks have and did, respectively, in which that money could be reinvested?

Mr. McCarter: I respectfully suggest that this question is utterly immaterial. It excludes the very thing we are giving to them. We are offering to them stock of the company he is excluding. If you include that, what has the court to do with the case? How is your Honor helped by any discussion as to what would happen if this particular stock could not be given to them?

The Court: The witness is here as an expert to help the Court, and the cross-examination, as I understand it is to test the quality of the witness.

Mr. McCarter: I understand that, your Honor.

The Court: I think in that light the question is perfectly proper.

(Question repeated as follows: "An estate, having two million and a half of these stocks, of the lessor companies, and let's assume that as a matter of law it could not reinvest those stocks in Public Service Electric & Gas Company stock having the same security and bringing the same yield as the lessor stocks have and did, respectively, in which that money could be reinvested?")

A. If you mean securities, sir, it could have been reinvested in mortgages at six percent.

Q. Outside of mortgages. A. You could have bought a mortgage at six percent.

Q. But it could not have been reinvested in anything other than mortgages?

The Court: Did you mean other public utilities?

Judge Haight: My question was any stocks of the same security and giving the same return, in which that money could have been reinvested. Now Mr. Gates says mortgages, which, of course, is not stock.

The Court: Will you answer his question, aside from mortgages?

The Witness: You mean stocks, sir, of any type, that is to say, whether they are railroad or industrial?

The Court: Of a type of this kind, having the same security.

Q. Having the same security.

The Court: If you can't offhand——

The Witness: I think there are some securities—two million dollars is a great deal of money to invest at one time in anything. You would have to buy on the market, to begin with. If you want to buy just one stock, if you please, and put two million dollars in it, you would have a great deal of difficulty in getting it without advancing the price, wouldn't you?

Q. I want you to picture an investor who has a large amount of money, two million dollars which he must invest, and which he must invest in securities—when I used that term I mean stocks or bonds affording to him the same security as these lessor companies and giving to him the same return and

yield, and I want you to tell me of any security which would give that to him. A. Yes, I think the list can be made up without any great difficulty, of a number of securities.

Q. Can you do so now? A. You mean offhand?

Q. Yes.

The Court: That would be an awful hard to do. Think it over tonight. It would be rather a tax for you. Think it over over night.

Q. And if you think it over, over night, will you please also give me the basis upon which those stocks are selling? A. Selling now, as contrasted with what they were?

The Court: Yes, selling now.

Q. I just want the basis upon which they are selling now. A. I see.

Q. Or, take it as of October twenty fifth, the date of this last offer. A. Is the concrete problem to have two million dollars, that you can't buy this stock and you want something that is quite as good, some other list of stocks that are fairly comparable with this, in which the money could be invested.

Q. Either stocks or bonds affording to the holder of the security, the same measure of security as due these stocks, and giving him the same return, and I would also like you to give me the basis upon which those stocks are selling, or the bonds, as the case may be.

The Court: Are you through with the witness?

Judge Haight: Just one more——

Q. The interest rate affect—change in interest rates affects the market price of stocks, doesn't it? A. Yes, sir.

Q. And what would be the effect of lower interest rates so far as stocks of this kind are concerned—what would be the effect on the market price—cheaper money in other words? A. It does not have as much effect upon this type of stock as it does on other stocks, because money does not seek for investment, this type of stock.

Q. And what effect would it have on other types of stock? A. Well, of course, when money gets its cheapest as a rule there is an advance in price, to a certain extent.

Q. What effect would it have on the Public Service Gas & Electric Company stock that is in question here? A. That has already shown its effect by going up, from the price at which it was quoted when this offer was made first, I think about 102 or 3 to 109. Money has become easier.

Q. Well, the fact that this stock may be redeemed at 110 is going to prevent it going any higher, isn't it? A. A little bit higher.

The Court: It may go higher than 110?

The Witness: Yes, sir; it might go up to 111 or 112, for instance whatever the—that would depend on how long it would take to call it and the likelihood of it being called, also the pressure for money, and frequently, you take an advance half of the dividend, if you please, and add it to the market price.

Q. You mentioned in your direct examination and I neglected to ask you, that this particular preferred stock would produce a slightly greater dividend than do the stocks of the lessor companies? A. Yes, sir.

Q. How much per share? A. The offer had that analysis.

Q. Is that stated in the offer? A. Yes.

Q. Then I won't ask you for it. I can answer it directly, though.

Mr. McCarter: Better answer it.

The Witness: The eight percent stocks, of course, the present annual dividend was eight dollars, had the option to exchange to Public Service Electric & Gas six percent preferred stock would be accepted; the return would be eight dollars and twenty two cents.

Q. $8.22? A. Yes, sir. The advance from the five percent stocks was to 5.16 percent, of the four to 4.14 and the two to 2.07. The offer was purposely made so that the persons who were asked to exchange from one stock to the other would make something, we thought, by way of marketability, income and general security, in the sense that they would be part of a larger picture in the sense of the smaller unit which they were then in.

The Court: That was the bait, wasn't it?

The Witness: That was the bait. It was bait both ways though, I mean, we were biting as well as fishing.

The Court: That was the inducement.

The Witness: Yes, sir, exactly.

Q. Now, did you know on what basis the refunding bonds of the Public Service Electric & Gas Company are selling today? A. Par I should say, four and a half percent.

The Court: Which is that?

The Witness: The Gas and Electric bonds—the bonds of the gas and electric company, that is to say, the four and a half percent bonds are selling at about four and a half percent,

the fives, I think, are selling perhaps a little less than that, because I think there is a call price that affects them, the five or five and a half.

Q. That is about as favorable a basis as could be expected, isn't it? A. No, it is not; of course, in one way it is favorable, yes, but it is favorable because the investors of the company believe that the whole structure is being cleared up as the result of these merger proceedings. That has some effect on it, sir.

Q. Well, the bonds have retained this favorable place, this favorable position in the market, notwithstanding that the leases are outstanding and that the suit to enjoin the merger has been given publicity for the last six months. A. I think that the answer is that the dealers——

Q. (Interrupting.) Well, that is so, isn't it.

Mr. McCarter: Let him answer it.

The Witness: It is true they have maintained a position, but we think the position would be a little stronger if—in good times and bad, if these mergers were carried through, of course, and we believe that the dealers think they are being carried through and that is one reason for the position the bonds now occupy.

Q. You believe the dealers believe that notwithstanding that it has been published in the newspapers that this suit has been instituted, that a stockholders protective committee has been formed and that you have abandoned an attempt to merge a number of the other companies——

Mr. McCarter: (Interrupting.) Who published that?

Q. I am asking the question, Mr. Gates. A. Yes, I think that is so.

The Court: Can't tell what the stock market will do, Mr. McCarter.

The Witness: We have all of us said we would back up these consolidations.

Q. Now, do you think it an important factor or do you not think it an important factor that the stockholders of the lease companies have a right to vote whereas if they take the stock of the Public Service Electric & Gas Company they would have no vote. A. I don't think that has anything to do with it, no, sir.

Q. You don't think that has anything to do with it? A. Not with the marketability of the stock, no, sir.

Q. Does it affect your judgment as to the comparativeness of the two stocks, the lessor on the one hand and the Public Service Electric & Gas Company on the other, that on a dissolution the preferred stock would get only a limited amount of the assets, namely the par value of the stock whereas on a dissolution the leased stocks would get all the equity? A. No, sir, I don't think that affects the consideration of the market value, no, sir.

Q. Does not affect it? A. No, sir.

Q. And let it be assumed that the value of the leased stocks in 1924, leased properties, was one hundred and fifty two million dollars as appears in the Day & Zimmerman report, referred to in one of Mr. McCarter's letters, which are in evidence, and that the total liabilities of the lessor

company's bonds and stocks are only eighty million dollars——

Mr. McCarter: (Interrupting.) You are including in that statement, you know, Judge, the other companies as well as these five.

Judge Haight: Yes, I can't separate them. They have never separated them, and I don't see why I should do it.

The Court: The witness here has testified that he thinks this is a fair deal, and you have a perfect right to question him as to the soundness of that view; that is all he is here for.

Judge Haight: That is what I am trying to get at.

Mr. McCarter: We don't object to any line of cross-examination that is proper, but the question as put to him about the value of underlying companies would lead him to suppose that Mr. McCarter had set the value of these underlying five companies at so and so—whereas it was all the companies.

The Court: I think the witness is able to take care of himself on that.

Q. Let it be understood that the valuation I have given is as to all the lessor companies. Let us assume that their value was, in 1924, at the time of the Day & Zimmerman report, which I understand was gotten up as a part of the whole plan, of which your committee was another part, was one hundred and fifty two million dollars, and let's assume that the bonds outstanding against that stock were forty two million dollars, and the stock thirty six million dollars, leaving for the stocks over and above the par value eighty four million dollars

equity. Do you think that that is a consideration to be taken into account in determining whether or not that is—the stock of the electric and gas company is the equal of the stock of these lessor companies. A. No, sir, frankly because the property is leased for nine hundred and ninety nine years and therefore while that equity may be there the benefit of it belongs, during that period to the corporation that has the lease, doesn't it?

Q. Do you think that a bond is a preferable security to these stocks?

The Court: What?

Q. A bond of one of these lessor companies to these stocks. A. Yes, because it becomes due.

Q. Because it becomes due? A. Yes, it has a maturity.

Q. Do you think that is an advantage rather than a disadvantage? A. I do, yes.

Q. Do you think that a bond which may be called, say, in 1935, or 1930, let's take it that way, because it may be called, and because it may become due, and they may receive the par of it, is preferable to a stock upon which there is a guaranteed dividend of eight percent, and which may never be called? A. Yes, I do—you ask whether it is preferable from the standpoint of security?

Q. I am talking about the feature——

The Court: Standpoint of marketability.

The Witness: Marketability, I do, yes, sir, I do undoubtedly. The bond is better from the standpoint of marketability because it becomes due. It has a due date.

The Court: Yes, but the other has a guaranteed income of eight percent.

The Witness: Yes, sir, but a bond of an underlying company is easier to sell, always than a stock of the underlying company.

Q. Isn't the reason a bond is easier to sell because a purchaser says, "That is nearer the property; I know that if anything happens I have got the first lien on that property." A. Yes, that is so.

Q. That is so, isn't it? A. Yes, sir.

Q. Then why isn't it so that these securities being nearer to the property, and having this enormous equity of over eighty million dollars against an issue of thirty six million dollars par value, is better than a stock which is removed all the distance away from the security that these Public Service Gas & Electric Company stocks are. A. Well, it is a matter of marketability, sir. If you define——

Q. It comes down again to the question of marketability. You think these Public Service Electric & Gas have a better market than these lessor company stocks? And that is the basis for your idea that the offer to exchange one for the other, upon the basis mentioned, is a fair one? A. Yes, sir.

The Court: And the real basis for that is the public confidence.

The Witness: Yes, sir, back of all these things.

The Court: Public confidence in Public Service securities—that is, they are more easily marketable than these underlying securities, merely because the belief of the public.

The Witness: Yes, sir, and it is well founded.

The Court: Well, whether well founded or not.

The Witness: Absolutely, sir.

Q. In this particular case the fact that these lessor company stocks has not had a large market has been due, has it not, to the fact that they have been closely held rather than anything else? A. No, no, sir.

Q. Didn't you say so a while ago? A. You asked me that question, and I said they had been closely held, but they did not have, and would not have a wide market in any event, that they are not the type to get it.

Q. They are the type of security somebody would get, put in a strong box, and go to Europe, and feel when he came back that he would still have what he went away from? A. He would have it; it would still be good. They are an antiquated form of security, from the standpoint of a banker they are the type of security which the buyers do not want today.

The Court: From the standpoint of a widow with a small fortune, they are very desirable, aren't they?

The Witness: Yes, except there again you come up to the same point, they are desirable from the standpoint of security, but when the widow wants to sell, she can't do it.

Q. How about the fire insurance companies? A. I don't know whether fire insurance companies have ever bought these stocks.

Q. Don't you know that a good many of them are

held by the Continental Fire Insurance Company? A. I didn't know that any of them were bought.

The Court: They are not looked upon in the market as a sort of frozen asset, are they?

The Witness: Yes, sir, that is to say, in one way they are. You realize it when you make an effort to sell one of these stocks. We have it happen all the time at our public sales in Philadelphia, that underlying stocks of even the Reading Railroad, and other systems like that, go off in price because there are no buyers for them. People like liquid things now, something they can turn into cash.

The Court: You mean by that the speculative or conservative public?

The Witness: The conservative, sir, and the speculative too, but the conservative public are becoming more and more willing to have their affairs standardized. They like to have securities that have a yard stick, that they know all about. One evidence of it would be the very bonds of the Public Service Gas & Electric Company which found their way so quickly into investors' hands, and stayed there. I mean there are not many transactions, were not many transactions are trading indulged afterwards.

The Court: What the public really like is a stock or bond that brings a big income and that they can go to their own banker and sell promptly.

The Witness: That is exactly what they like, sir. They do indeed.

Q. Do you know what the bonds of the Newark Consolidated Gas Company are selling for, as com-

pared with the Newark Gas Company bonds? A. Newark Consolidated Gas, are they the 5's?

Q. 5's, yes. A. I would guess at it.

Mr. McCarter: Oh, well, don't do that.

Q. I don't want you to guess. A. I frankly don't know.

Q. I wanted to know whether you knew whether they were selling on the same basis. A. As what?

Q. As the Newark Gas Company bonds. A. I didn't know it, no, sir.

Q. One being Junior to the other—do you know that one is junior to the other? A. I dare say I think I do.

Q. Do you think the fact that these stocks are free from the normal income tax?

The Court: Are what?

Q. Free from normal income tax, and that bonds are subject to normal income tax has any effect upon the comparative attractability of these stocks, with a bond of similar character?

Mr. McCarter: Same objection; the offer of exchange is both stock, which is subject to the same income tax exactly, and what reference to a bond that has not the income tax has to do with the case, I can't see.

The Court: Answer it.

Q. Mr. Gates, will you answer that? A. I should think the income tax does play a part in many cases. The absence of a normal income tax, if you please, is an advantage, and is the basis for preferring stocks, of course, as against bonds, providing, as you say, they have equal security.

Q. Take an insurance company, for instance, it is a very material factor. A. They would save thirteen and a half percent.

Q. And if the new law goes through they will save eleven and a half percent. A. That has an effect, if the security is exactly the same, there is no doubt about that.

Q. And wouldn't that make these stocks more attractive to an investor who is interested in saving the normal income tax than, say, the refunding bonds of the Public Service Gas Company? A. No, that would not, sir.

Q. You don't think that would? A. No, I know that would not.

Q. You don't think an insurance company, having surplus funds to invest, which could save eleven and a half percent income tax by investing in these stocks would not prefer these stocks over the refunding bonds of the Public Service Gas & Electric Company. A. They haven't done it, I know it, because the insurance companies have bought great quantities of the four and a half percent bonds, and do not own any of these stocks.

Q. Well, if I tell you the Continental owns large quantities of these stocks, would that change your opinion? A. No, it would not, they may have some stock, but that does not change the principle.

Q. Were you talking about life insurance companies or fire insurance companies? A. Either.

Q. What effect, do you think, Mr. Gates, it would have had on the marketability and the market price of these stocks if they had been put out, sold and pushed by J. P. Morgan & Company, Drexel & Company and Bondbright & Company.

The Court: Stocks of the five companies?

Q. Yes. A. We never had anything at all to do with them. You are suggesting something that is impossible. These stocks have been distributed for years.

Q. I am asking your opinion of what would be the effect upon the marketability and the prices of these stocks, had they had back of them, the same way that the Public Service Gas & Electric Company has had back of its stock, Morgan, Drexel & Bonbright, instead of Outwater & Wells, of Jersey City. A. They did not distribute them, did they, sir? I think, of course, a proper distributon of any security——

The Court: The mere handling of them by your concern would make them marketable?

The Witness: I think perhaps it might. I think if we had the whole thing all over again that we were now selling some of these things you might possibly be able to create some kind of market, but I doubt it. I think the type so antiquated——

Q. Why do you say it is antiquated? A. I don't think we would do it.

Q. You are continually putting out bonds secured by mortgages. A. Yes, sir.

Q. And they are commanding a good price and ready market? A. Yes, sir.

Q. What is antiquated about a stock, the interest on which is guaranteed, or the dividends on which are guaranteed by a corporation like the Public Service Corporation for all time, and which is secured as these stocks are secured, by the property? A. It is antiquated, sir, in the sense that I have said that the whole system of security or capital for great corporations is based upon a very

different sort of structure. The nearer you can get to a direct first mortgage, the cheaper your money is. The more you have it confused by lease arrangements, the dearer it is.

The Court: Couldn't that be really reduced by pooling all this stock, and then creating a new issue, just as the banker to whom we have been referring here has pooled, I think, twelve thousand shares of the stock of the Fidelity and is now selling the stock of a company backed by that—wouldn't that revive it?

The Witness: I doubt it, sir.

The Court: What is the name of the banker you mentioned?

Mr. McCarter: Rippel, bought a large block of the Fidelity.

The Court: That is underlying and he is financing that.

Mr. McCarter: That is a different situation.

The Court: No. I understand the corporation formed is selling its stock, secured by twelve thousand shares of the Fidelity. That is the same situation as here.

The Witness: Yes, but they have a very limited market for it; if it comes out it does not get the transfer from person to person—it is exceedingly difficult—I don't know, of course, the transaction you refer to.

The Court: This man has in hand twelve thousand shares of the Fidelity Trust Company. He is not selling that stock.

The Witness: He is selling certificates against it of some sort, against a pool, trust certificates perhaps.

Q. You may have answered this question before, but let me ask it again because I am not sure you did. To a satisfied investor who wants a fixed permanent return, are not the leased stocks better than the Public Service Electric & Gas, and does the greater marketability of the latter have any effect whatsoever as to such a person? A. It does to my way of thinking, yes, absolutely.

Q. To the satisfied investor who wants to put the money away, in his pocket? A. I understand that, but sometime the stock has to be sold, or he wants to borrow on it some time.

The Court: Opportunity of good sale?

The Witness: Yes, sir.

The Court: It is a very important element.

The Witness: Yes, sir; it is, indeed.

Q. Do you think the United New Jersey Railroad & Canal Company's stock is antiquated? A. I think it is really so—I thought so when we were discussing that stock, but I think it is antiquated in a certain sense.

Q. In the same sense that you have the stock of these lessor company stocks antiquated? A. Yes, but I think it is a better one—it is really more widespread.

The Court: Greater variety?

The Witness: I think all modern methods of financing are tending to a simplification of its foundation. The Reading Railroad did it when it split up, under the decree of the Court. It merged a lot of those companies together to get rid of this very thing.

REDIRECT-EXAMINATION BY MR. MCCARTER:

Q. Just one question, Mr. Gates. I want to know, from your experience whether the elements of marketability, and the rate of return are as essential elements in ascertaining the market value of a given stock, as the security itself, of that stock. A. Oh, yes.

Mr. McCarter: That is all.

RECROSS-EXAMINATION BY JUDGE HAIGHT:

Q. Now I notice that in this plan which was first put out the three options were given——

The Court: Are you going back?

Judge Haight: I am just going back one question.

The Court: You have exhausted the witness and the Court and yourself.

Judge Haight: If I have exhausted the Court I will stop.

The Court: I will have to hold you down to further recross on the subject brought out on redirect. Is it something you omitted?

Judge Haight: It is something I omitted.

The Court: Is it important?

Judge Haight: I think it is.

Q. Do you know why the U. G. I., when these options were presented, took the common stock of the Public Service Corporation rather than the Public Service Electric & Gas preferred?

The Court: Do you know?

The Witness: I think I do. I was not on the board of that company at that time, but——

Q. Would your statement be just a guess, or would it be knowledge? A. I think it would be more or less of a guess.

Q. All right. I don't want guesses.

The Court: Are you finished?

Q. Did you consult them? A. I did.

The Witness: May I ask your Honor a question, sir?

The Court: You might start something, too.

The Witness: I was just going to ask one thing. Would it be possible for me to send a list to you, sir, instead of coming over tomorrow?

Judge Haight: Send the list over.

The Witness: Would that be agreeable to you?

Judge Haight: Certainly, sir.

(At this point an adjournment was taken until Friday, December 16, 1927, at ten o'clock A. M.)

IN CHANCERY OF NEW JERSEY,

DECEMBER 16, 1927.

Between

R. IRVING OUTWATER, *et als.*,
Complainants,

AND

PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et als.*,
Defendants.

Continuation of hearing pursuant to adjournment at the place and in the presence of the parties as before.

ALFRED L. LOOMIS, sworn for defendant.

DIRECT-EXAMINATION BY MR. MCCARTER:

Q. You live where? A. Tuxedo, New York.

Q. With what banking concern are you connected? A. I am vice president of Bonbright & Company, New York City.

Q. Do they specialize in any particular securities? A. They devote their entire activities to power and light securities—a study of power and light companies, and the securities of those companies.

Q. Without asking you to blow the trumpet of your own house, I will ask you if there is any house that is larger that you know of, either in New York or elsewhere in this country who specializes in this particular kind of security? A. I think we are the largest house that specializes in power and light

securities. We have offices all over the country and our whole activity is devoted along that line.

Q. How long have you been connected with Bonbright & Company? A. Since 1919.

Q. And previous to that time had you had any affiliations with the banking business and becoming acquainted with securities for investment? A. I had been counsel for Bonbright & Company prior to that.

The Court: Been what?

The Witness: Counsel for Bonbright & Company.

The Court: A member of the Bar?

The Witness: A member of the Bar.

Q. Now, when did you become director of the Public Service Electric & Gas Company? A. In 1922 and 1923.

Q. That was the Public Service Electric & Public Service Gas Company? A. Yes, sir.

Q. Are you the Mr. Loomis who was included yesterday by Mr. Gates as one of the gentlemen who formed the committee to investigate this subject of reorganization? A. Yes, sir; I served on that committee.

Q. Yes. Did you give the matter careful attention? A. Very careful, not only myself but many members of our organization.

Q. Do you recall the fact that the president of the company himself personally suggested a plan which was submitted to the scrutiny of yourself and Mr. Gates and others and modified by those gentlemen? A. I so recall, yes, sir.

Q. I beg your pardon? A. Yes, sir; I do recall that.

Q. Without going into the details I will ask you

if the plan that was finally adopted, which included the merger of these—the proposed merger of these companies was, in your judgment a fair and equitable plan? A. It certainly was.

Q. Will you give your reasons for that conclusion? A. I, possibly, could do that better by going back just a moment to show how the plan came into existence.

Q. Tell us in your own way? A. Our experience with the securities of the Public Service Corporation—the first experience I personally had—was the attempt to sell some of the eight percent preferred stock in 1920. At that time this corporation had to buy more equipment. It was not in a position to pay for it in cash. It made an attempt to make an arrangement with some of the large manufacturers to take stock in payment for their equipment, and they declined to do so unless they could make arrangements with us to sell the stock for them. The reason the Public Service at that time had such difficulty in raising money was due to this fifty million dollar mortgage that was testified to yesterday and which was removed under the plan of 1924, and the reason that the mortgage made it so impossible to finance was that the mortgage was closed at fifty million dollars, that is, no more bonds could be issued under that mortgage, and it also contained restrictions and provisions that no underlying company could issue securities for any amount, so the company was completely throttled and the only possible securities that it could issue was the eight percent stock of the parent company, which was an unknown security at that time, and when we attempted to sell it we had a great deal of difficulty. The securities of this company—the stock of this company was unknown practically out

of this state, and in attempting to find a nationally wide market for this security we met with a great deal of difficulty and one of the reasons was due to the fact that the structure of the entire organization was so complicated that an investor who tried to understand the whole thing was exhausted and finally said he would rather buy something that had a simpler structure, and it was with that thought in mind that we broached the problem of the reorganization in 1924. In 1922 I prepared a chart indicating what in our opinion would be the growth of this company for the ensuing ten years. The figures were problematical in a sense, but showed that the company ought to require at least fifty million dollars a year for the years 1926, 1927, 1928 and 1929. That amount——(interrupted).

Q. For improvement? A. For improvement. That amount was based on the experience of similar companies throughout the United States. We recognized that a public utility company was different from an ordinary company that could decide whether or not it would expand. A public utility company has to expand because every customer has a right to demand additional service. In 1923, when I was a director of this company, I recall a statement that certain customers had to be asked to shut down their plant, particularly in the afternoon as there was not enough equipment available at that time, due to the difficulty of this company—that this company had in raising money in 1921 and 1922, resulting in a shortness of equipment in 1923, which required certain big customers to shut down their plant in the afternoon, which made this company extremely unpopular with those customers at that time. The problem therefore was how to remove the fifty million dollar mortgage and how to sim-

plify the structure so that vast additional sums of money which would have to be raised from year to year could be raised at a lower and lower cost to the company, because we realized that it is just as much the province of a financial advisor to try to advise on reducing the cost of money as it is for the engineer to advise on reducing the operating cost, and we could see that if the needed money, over a period of years was to run into two or three hundred million dollars, a one percent difference in the interest rate on that sum of money would be an enormous item, and for this company to be able to reduce its rate from time to time it was essential that that money be obtained at lower and lower prices. With those things in mind we broached the problem of the reorganization of 1924. By that time it had been an established practice in the power and light industry that the ideal company should have approximately sixty percent of bonds, twenty percent of preferred stock and the balance in common stock and the company for their future was attempting to approach that ideal. In turn the large investors, the insurance companies and institutions were becoming accustomed to that type of security and they were looking askance at securities that were different from that standard type. We saw that it was possible to bring such a situation about, over a period of years, with this company, if the gas and electric companies were merged into one large operating unit and that operating unit issued a bond issue which would ultimately be a first mortgage bond issue, but the issue had to start out as a first and refunding issue; there would then be secondly a certain amount of preferred stock and thirdly there would be a vast amount of money invested in the property by the parent company, the

Public Service Corporation, which would be represented by its holdings of the common stock. To bring this about involved preparing a plan that was equitable and fair to all the different types of security holders, because if any one security were preferred to the other securities, the other securities would not come along under the plan, and the whole plan would fail. The first steps were taken in 1924, the holders of the five percent fifty million dollar bond issue cooperated very cordially, and that was the most essential part of the plan; without that the plan would have collapsed. The next step was the issue of additional securities to provide these large sums of money required, and I think it is a fact that each new issue that this company has put out since 1924 has been at a lower and lower cost to the company for the money, and at the same time its large issues were becoming better known to the big investors and the situation has changed completely from 1923 to 1927, in that large amounts of Public Service bonds, Public Service preferred stock are now held by institutions all over the country, and the matter of raising these large sums now does not present the grave difficulty that it did at that time; nevertheless even at the present time the situation is still complicated by these leasehold situations, and this company does not at the present time command as high a price for its securities as other power and light companies that have a completely simple structure. It is our belief that as this plan is consummated that condition will be changed and that there will be no company in the United States commanding a better credit than this company. Our experience in 1922, I think it was, with some of the underlying securities, some of these lessor company stocks,

showed us that it was extremely difficult to convince large investors who lived out of the State of New Jersey and who were not thoroughly familiar with all the details over here, to purchase these securities, for the reason that they were quite unknown to them. They were called "leased stocks", and I remember one case, because it was an important sale we attempted to make to one large investor in New York, a trustee, he required that his counsel examine the leases in detail, and it was weeks before he agreed to buy them, because he said that he knew there were different kinds of leases, some leases provided for cancellation and some leases did not provide for taking care of any additional tax that might be levied, and he was not prepared to buy the securities unless his own counsel had advised him on the securities; and when we were attempting to find purchasers for the eight percent preferred stock of the parent corporation we were embarrassed by the fact that those purchasers at that time called our attention to the fact that even the underlying eight percent stock at that time was selling at substantially the same price, which was par, and they asked us why it was that such a good underlying stock was selling at such a price, and our only answer was that it was so—so difficult to explain to a purchaser who was not already familiar with the corporate structure that he preferred to buy something else. In the plan of 1927——(interrupted)

The Court: You were speaking of what underlying stock?

The Witness: That particular underlying stock.

The Court: You mean of the five companies?

The Witness: Of the five companies. I forget which one. One of those stocks.

The Court: You spoke of the "parent" company, you mean the gas and electric or public service?

The Witness: The parent company, the Public Service Corporation, that owns the common stock of the companies we are considering in this case.

The Court: You spoke of the eight percent stock of that parent company.

The Witness: Of that company; that was the stock we were attempting to sell at that time. In 1927, this year, this same committee considered this second step in the plan of 1924, and that was to prepare an equitable basis to be offered to the holders of the lessor stocks to unite with the Public Service Electric & Gas Company so that in the final analysis this company would become a simple, clear-cut, operating, public utility company, and we gave weight to three factors, in particular, that I can remember being discussed, the relative securities, the relative yield—returns—and the relative marketability. Marketability meant the relative ease of finding purchasers, and that meant a security was more marketable if there were many purchasers throughout the United States that were familiar with the security, even though they had not bought it, compared to a security that was not well known. In regard to the relative security between the preferred stock of the Public Servive Electric & Gas Company and the lessor stocks, our organization could see no practical difference in their securities, they both

seemed to us so secure that the other considerations were the things we devoted most of our time to. We were led to this belief by a study of the power and light industry which shows at the present time that there is no preferred stock of any power and light company in this country that does a business of more than a million dollars a year that is in default, and we are further enabled to judge the relative likelihood of default to an industry where there are no defaults to our knowledge at the present time. This preferred stock is not like an ordinary preferred stock. It is far better because of the enormous amount of money invested in this company by the parent company. That is to say all of the obligations of this company including its bond interest, its rental, its preferred stock dividend requirement, are all relatively small compared to its earnings. A large part of its earnings are available for payment on the common stock to the parent corporation. We therefore devoted most of our time to considering the other two factors; the increase in the yield appears on its face. A man that was getting eight dollars a year, if he accepted the offer, or under the terms of the merger, would get, as I recall it, eight dollars and twenty-two cents, and over a long period of years that amounts to a considerable difference. The third point was on the relative marketability. There could be no possible question, it seems to us, on that point, that the security that was being offered was far more marketable. The type of this security was perfectly clear cut; it did not require a lawyer to examine the terms of any

indenture. It was a first preferred stock of the Public Service Electric & Gas Company and the Public Service Electric & Gas Company owns in fee colossally valuable property, it owns the big generating station, and as the years would come and go we could see under the policy that was being carried out that it would own more and more permanently and in fee. That the stock was listed on the New York stock exchange, that alone does not count for much unless it is well known by many purchasers. The thing that weighed most with us was that it was already owned by many large important investors, insurance companies, institutions, educational institutions, and, owning such stock, it is far more easy to sell to those institutions additional amounts, if they are already familiar with it. It seemed to us, therefore, that the offer was eminently fair between the two types of securities, as I said, and it was those considerations that led me to make the statement that in my opinion the offer is fair and equitable.

CROSS-EXAMINATION BY MR. HAIGHT:

Q. How long were you counsel for Bonbright & Company before you became vice president? A. I was a member of the firm of Wainwright & Simpson, New York City, from 1916 until I resigned from that concern and became the vice president of that company in 1919.

Q. And as a member of the firm of Wainwright & Simpson you represented Bonbright & Company? A. Yes, sir.

Q. There are two or three things in your testimony that I do not altogether understand. I want

you to clear them up for me, if you can. I understood you to say that the holders of the five percent bonds of the Public Service Corporation which were outstanding before the plan of 1924 was put into effect, cooperated very cordially in accepting the bonds of the Public Service Electric & Gas Company which were offered in exchange. That is correct, is it? A. There were fifty million dollars worth of those bonds outstanding. The problem was how to get rid of that bond issue because of the restrictions of the indenture that prevented this company from doing any underlying financing.

Q. I understand that, but what I want to get at is this, the people or persons, individuals and what not, who held these bonds, you stated cooperated very cordially. A. Yes, sir.

Q. In the plan of exchanging those bonds for the bonds of the Public Service Electric & Gas Company. A. By that I mean that there was no power to compel them. They were requested to deposit their security under the plan which provided that if sufficient number deposited their securities, the issue would be called and new bonds, the ones you referred to, issued in lieu thereof. If they had not very largely cooperated by depositing their bonds and agreeing voluntarily to the exchange, it would have been a very serious thing for this corporation and for the state in regard to the ability to keep on giving service.

Q. They did exchange. A. They did exchange.

Q. And what was the basis of exchange, bond for bond? A. The basis for exchange was bond for bond. They turned in a five percent bond—— (interrupted)

Q. And they got a five and a half. A. And they got a five and a half percent bond in return.

Q. And the half percent additional was what was expressed yesterday as the bait for getting them in.

The Court: Inducement.

A. Inducement.

Q. Yes; and they readily accepted the exchange of bonds with this additional amount of interest and recommended by Drexel, Bonbright and Morgan. A. Yes, sir.

Q. And, of course, the recommendation of those three firms was of no little consideration to investors. A. In our experience with large investors, they went into the matter very carefully themselves.

The Court: Can you answer the question?

The Witness: Yes, sir; I think it had some weight.

Q. It had a great deal of weight, didn't it?

The Court: Yes.

Q. In your experience. A. Some weight. I wouldn't say a great deal. The proposition had to stand on its merits irrespective of who recommended it.

The Court: Your three concerns are not in the habit of recommending anything unless it has substantial merit.

The Witness: I think the recommendations implied that we thoroughly believed in it and believed it was fair.

Q. Well, all of the three concerns that I have mentioned have the reputation of not advocating any securities unless it is absolutely believed by

themselves to be what it was represented to be. A. We carry that reputation.

Q. And that is generally known? A. I hope so.

Q. Now, you stated that you had had some experience in selling the eight percent stock. Do I understand that to be both the guaranteed stock and the eight percent preferred of the Public Service Corporation? A. I referred primarily to the eight percent preferred stock of the parent corporation, which was the only security then available to the corporation to raise new money with.

Q. Then did you try to sell stock—some of these guaranteed stocks? A. We were forced to attempt to do this, seeing that these guaranteed stocks were selling—at such a poor market—they were making it difficult for us to sell the stock of the parent corporation and from time to time we bought amounts of those securities and tried to resell them to our customers. We didn't have very great success with them.

Q. Well—— A. And we confined most of our efforts to selling the eight percent stock of the parent corporation.

Q. I do not hear you. A. We confined our efforts largely in consequence to selling the eight percent stock of the corporation.

The Court: Preferred stock?

The Witness: Preferred stock.

Q. Now, the difficulty you encountered in disposing of the lessor companies stock was that they were not known, was it not? A. That they were not known, and what was behind that intrinsic security was not known without a thorough and careful investigation by the purchaser.

Q. And when was it that you attempted to sell any of these stocks? A. From time to time.

The Court: You mean the five companies' stock.

Mr. Haight: Yes, sir.

The Witness: From time to time during 1921 and 1922, as I recall the years. It was at the same time that we were trying to sell the eight percent preferred stock of the corporation.

Q. Of course, the structure of the corporation so far as it affects these particular stocks, that is the lessor stocks, was not as good then as it is today.

The Court: Were what?

Mr. Haight: Were not as good then as it is today.

The Witness: Yes, sir, and the——(interrupted).

Q. (Question read.) A. That is correct.

Q. And the growth of the electric and gas business since that time has been very great. A. Enormous.

Q. And has proportionately added to the value of these lessor companies' stocks. A. Largely because of their connection with the Public Service Electric & Gas Company. As independent companies they would not have advanced anywheres near as fast, because they are largely gas stock, and the growth of the gas business has not been anywhere in keeping with the growth of the electric business.

Q. That is just what I am trying to bring to you, that the prosperity of the parent company which came as a result of the merger of the gas, electric and United electric companies in 1924, has added

to the value of these lessor companies stocks. A. The obligation of the Public Service Electric & Gas Company to pay rental has been considered more and more the greatest possible part of these stocks as distinguished from the value of their individual property.

Q. Before the merger of 1924 the gas company stocks had back of them the guaranty simply of the Public Service Gas Company. A. That is correct.

Q. And the electric company had back of them simply the guaranty of the Public Service Electric Company. A. Yes, sir. Putting it this way, this merger of 1924, this whole plan, enormously benefitted these guaranteed stocks.

Q. And the property that has come to the company since 1924, the business having increased, has continued to increase the value of these stocks. A. I wouldn't use the word "value". I will use the word "intrinsic security", yes, sir.

Mr. Haight: I think we mean the same thing.

The Court: I think the witness has accurately stated it.

Q. Now, when you came to the determination of the yield of the stock which was to be offered in exchange for these lessor company stocks, you felt that the amount—the increased amount of dividends of twenty-two cents on the eight percent stock, fifteen cents on the five percent stock—using those as examples—would be a very material feature, you stated, over a period of years, that is correct? A. Yes, sir. On that question we were guided in a measure by the relative demand for the two types of securities as judged by their sales price during the preceding years. That is to say they could, by reason of any change from one to the other

in the market at those relative prices——(interrupted)

Q. Did you take into account that this preferred stock which was going to pay an increased dividend, would be called at any time within three years—after three years subsequent to its issue? A. Oh, by all means that was—we considered the preferred stock as the then existing security as it stood including its callable feature, its rate of return and its general credit.

Q. Doesn't that make the yield feature a rather uncertain reed upon which to lean?

The Court: Because of the recallability?

Mr. Haight: Yes, sir.

The Witness: Almost all stocks of Public utility companies are callable at some price.

The Court: Please answer the question. It is very important.

Q. Doesn't the fact that this preferred stock could be called after three years make the yield feature a very uncertain thing? A. It means that—it doesn't make it uncertain except to the extent that it means that above a price of one hundred and ten, the yield cannot go.

The Court: Your answer is really "Yes, because it may terminate at the end of three years, the yield feature."

The Witness: Yes, sir.

Q. Let us take these bonds as an example. You issued five and a half percent refunding bonds. A. Yes, sir.

Q. In 1924. A. Yes, sir.

Q. They have been called, have they not? A. Yes, sir.

Q. And you are issuing in substitution for them four and a half percent bonds. A. Yes, sir.

Q. And there has been a drop therefore to the holders of those bonds of one percent, so far as the yield in the future is concerned? A. They were sold to those holders at ninety six and called at one hundred and five. They have had additional money to reinvest in bonds.

Q. But that additional money over a period of year will not in any way make up the difference in the loss of income, will it? A. I would have to calculate that. It would be very close.

Q. It will be absorbed in a very few years, won't it?

The Court: It is a matter of calculation.

The Witness: Matter of calculation.

Q. Why are all public utility stocks made redeemable? A. We advise—I cannot answer that. I can tell you why we advised the companies with which we are associated to make them redeemable.

Q. I understood you to say that all public utility stock was generally made redeemable. A. That is a fact.

Q. Why is it done?

The Court: What is the reason for it, as you understand it?

The Witness: As I understand it, the reason for that is to preserve the freedom of action of the corporation to take advantage of the development of the industry. We have seen many cases where companies have merged—they have called the stock of the constituent companies and have refunded that with stock of the larger company. It, in our opinion, is merely a further protection to the corporation

from getting into a position where it could not move because of the non-callability feature of the security.

Q. In a practical sense it is to reserve to the corporation the power to merge, is that it? A. Yes, sir.

Q. Reserve to itself the power to merge? A. The real answer is, if it isn't in there, they have to go through the more complicated proceeding of dissolving the corporation. They can always call the land.

Q. And it is also the purpose of allowing the corporation to refinance when it deems advisable or necessary to do so. A. Yes, sir.

Q. On a lower basis. A. Yes, sir.

Q. And experience has taught you, has it not, that that has happened a great many times of later years? A. In the power and light industry a large number of bonds have been retired. Are you referring to bonds or preferred stock?

Q. Either one. A. Not very many preferred stock, a large number of bonds.

The Court: That is one of the reasons why we have the present large companies.

Q. Now on this question of security, do you know of any stocks of the same general character as this stock, in the matter of security, the lessor companies' stocks? A. I have a list of all the stocks of the power and light companies of the United States here, and in my own opinion a large number of these have equal security.

Q. I want it without your opinion as to the character of the securities—I want you to give me the names of some companies where there is an equity such as there is back of these stocks and where there

is a corporation with the power and resources, territory and prosperity of this corporation back of them. A. The Consumers Power Company of Michigan, six percent preferred stock is very similar.

Q. Is that a lessor stock? A. It is not a lessor stock.

Q. What I want is lessor stock. A. As I testified to, there is practically no lessor stock in the entire industry.

Q. There is probably not. A. No, in the entire industry.

Q. Are you familiar with railroad stock? A. I am not at all familiar with railroad securities except in a general way.

Q. And if I should ask you about the United railroad and Canal Company of New Jersey or any of those companies whose stocks—whose properties are leased to a large company and the dividends from these stocks are guaranteed you wouldn't know that? A. I would not.

The Court: Have you any intimate familiarity with it?

The Witness: I would not have any intimate familiarity with it.

Q. Now, I suppose in making this offer to exchange you were, as Mr. Gates testified yesterday, very largely influenced by the superior marketability of the electric and gas company stock to the lessor companies' stocks. A. Yes, sir.

Q. And that was really the determining feature, wasn't it? A. One of the features, yes, sir. It was as important as any other single feature.

Q. Wasn't it really the determining feature? A. Yes, sir.

Q. And when I use the term "marketability", in

order that there may be no misunderstanding, I mean the ability to sell it easily and readily, is that what you mean? A. I mean partly that and partly the fact that it is far better known to investors. That is our real test of marketability.

Q. The knowledge of it among investors makes the sale of it easier. A. The number of prospective purchasers is enormously larger.

Q. The more it is known the more readily it can be sold, that is right? A. The larger it is known and the more it is already held; that is—that has a big bearing on it.

Q. The electric and gas company was listed on the New York stock exchange. A. Yes, sir.

Q. Which was, of course, a very important feature. The electric and gas companies were not listed, is that correct? A. That is correct.

Q. Do you know of any reason why these stocks could not be listed on the New York Stock Exchange? A. Nothing whatever, and in our opinion it would not help their marketability at all.

Q. It wouldn't? A. No, sir.

Q. Notwithstanding it is a feature that helps every other kind of stock. A. Not in the case of preferred stock.

Q. You mean to say that if these stocks were listed on the New York Stock Exchange and had back of them the guaranty that comes to them from enlisting them on that stock exchange that they would not be more readily marketable than they are at the present time unlisted? A. In my opinion, no.

Q. You mean that as your single opinion. A. In our own opinion and as practiced in our organization in enlisting stock.

Q. Why is that? A. For the reason that a secur-

ity to be listed on the Exchange at all, the Exchange requires that it be fairly widely held, so that there shall be a broad market in it. The Exchange does not permit the listing of a security that is narrowly held.

Q. I understood you to say there was no objection to listing these stocks on the market—on the Exchange. Now, we are going to assume that they can be listed on the Exchange and if listed on the Exchange I understand you to say that that would not increase their marketability, using that term in the same sense you and I discussed a moment ago —Now I want to know the reason why. A. The reason is a technical reason, and it is this. In our experience a security that is not well known a single sale of a few shares is liable to produce a quotation three or four points lower. The publicity—it immediately takes the publicity of the lower sale which shakes the confidence of the investors in that security. A security that is largely distributed and well known, if a block comes on for sale there are enough people to know about it and they realize if it sells only a point lower or half a point lower, that it is a bargain and they intend to buy it. That is why in the small issues we have we do not list them.

Q. Why, if these were listed on the Stock Exchange, is there any reason why large blocks of it could not be sold? A. The listing on the Exchange does not find a purchaser for you. There are many inactive securities on the Stock Exchange—that are listed on the Exchange—that are not held, or dealt in, years on end.

Q. All right, but are they good securities in many cases? A. Some are and some are not.

Q. Of course you find many investors who desire to take an investment and put it away in their safe deposit box and keep it. A. Yes, sir.

Q. And they are influenced more with the security and the yield than with the marketability. A. They consider all three very carefully.

Q. But they weigh the first two that I mentioned very much more than the last one. A. The larger experienced investors, the institutional investors, weigh, I think, the latter the largest.

Q. I am speaking about the many investors who want to put the stock or security away in their deposit box. Am I correct in that? A. Many—yes —there are many of all kinds.

Q. Would the fact that a stock is listed on the Stock Exchange assist its availibility for borrowing purposes? A. That would depend very largely on the size of the issue and the number of transactions that took place in the security over a period of time.

Q. Can you give me the names of any companies, or the name of the company which you say are comparable with the Public Service Electric & Gas Company which do not sell upon as favorable a basis—whose bonds sell on more favorable basis than the bonds of the Public Service Electric & Gas Company? A. New York Edison Company, Philadelphia Electric Company, Commonwealth Edison Company of Chicago, Boston Electrical Illuminating Company—I think I can state as a fact without exception that the large companies of the large cities that I have mentioned, and possibly several others—— (interrupted)

The Court: What?

The Witness: Their bonds sell at a price so

that the cost to the company for new money is less than can this company—than with this company at the present time.

Q. What are the bonds with the New York Edison Company which you say are selling more favorably than the bonds of the Public Service Electric & Gas Company, as to terms and yield, and so forth —rate and interest? A. I cannot answer you in detail on any one of those companies at the present moment, but I have studied within the year and found that in studying—bringing out of this last issue of this company we had a comparison made of similar securities of the other large companies that I have mentioned and it showed that the purchase of these new four and a half percent bonds of the Public Service Electric & Gas Company afforded the purchaser a better return than the bonds of those other companies. I do not carry in my mind the details of that list.

Q. You do not carry the details? A. No.

Q. Upon what basis did this new issue sell? A. It sold at slightly better basis than four and a half percent.

Q. Now, you do not expect a bond issue in the present money market to sell better than that, do you? A. Yes, sir; on these other well known companies.

Q. Can you give me an instance of a single company whose bonds are comparable with these bonds that have been sold on the present market at a better rate—better basis than the bonds of the Public Service Electric & Gas Company? A. I think I can get the list for you. I haven't it in my hand this minute.

Q. Hasn't the New York Edison Company a complicated structure—a considerable part of the prop-

erty which is not subject to a direct mortgage lien? A. I cannot answer that in detail as we have never financed that company. My recollection is that while it has certain small complications the bulk of its property is very clear cut and owned in fee.

Q. Do you know whether a very large quantity is owned by the United Light & Power Company? A. I am not familiar with it.

The Court: Owned by it?

Mr Haight: Yes, sir.

The Court: You mean the United Light & Power Company.

The Witness: I am not familiar with it.

The Court: Owned by it?

Mr. Haight: Yes, sir.

The Court: You mean the United Light & Power Company of New York City.

Mr. Haight: Yes, sir.

The Witness: I am not familiar with the details of that company, as we have never financed it.

REDIRECT-EXAMINATION:

Q. In view of the very large earning power of the electric and gas company can you give any reason why the cost of money is higher than these other companies to which you have alluded? A. Largely an historic reason, sir. Its credit in 1921, 1922, and 1923 was not as good as the credit of these other companies and while its credit has been rapidly overtaking the other companies due to the plan of 1924 and the growth of the company, of course, it has not yet quite overtaken those companies.

Q. Has the fact that its structure is invested to some extent upon leaseholds any effect on that?

Mr. Haight: He has answered the direct question and given his reason and I do not think another reason, which is very important in this case, should be suggested to him.

Q. In your opinion is the fact that the structure of the electric and gas company is to some extent based upon leasehold interests anything to do with that difference in the cost of their securing money? A. In my opinion, yes, sir, by all means.

RECROSS-EXAMINATION:

Q. What do you base that opinion on? A. I base it on the fact that we have again and again tried to explain to prospective purchasers what the situation really was, we have prepared charts, one of which is in evidence, that book which is in evidence was prepared largely to explain to purchasers that while the situation was complicated it still could be understood.

Q. But you haven't had any difficulty in selling this last series of bonds. A. At a price it is. It is all a question of relative price.

Q. But you are selling it to yield what? A. Four fifty five.

Q. That is a very much lower price than you sold as to the yield of the previous bond issue that was put out? A. Yes, sir. As I understand the question it was with regard to other companies that had no leasehold structure—why were they being sold on a better basis?

The Court: It was not as broad as that. I do not think Mr. McCarter's question is quite as broad as that. The question as I under-

stood it was whether or not the fact that a part of the property of the Public Service Electric & Gas Company were leaseholds affected the price at which it could sell its bonds.

The Witness: May I have the question repeated?

The Court: That is the question now that he asks. Now do you say that is so?

The Witness: I do say so, yes, sir.

Q. Now I want to know the reason why. A. A purchaser is not as partial to a security that requires a careful study and analysis before he is assured as to what his rights are as he is to a security, assuming it is on comparable property, assuming that it is clear cut and easily understandable.

Q. Now, then, in the sale of this issue of electric and gas company bonds, have you experienced that as a difficulty in disposing of these bonds at the price at which you have heretofore mentioned? A. Yes, sir.

Q. Give me a single instance. A. In Massachusetts the statute—— (interrupted)

Q. Give me an instance where you have experienced difficulty in disposing of these bonds on that basis. A. I can only answer that by saying we sold less in Massachusetts than we would have otherwise for the reason that the Massachusetts statute provides that bonds that are on leaseholds are not legal for investment in Massachusetts.

Q. And that is the only respect? A. Beg pardon.

Q. And that is the only instance? A. Only insofar as that theory of the Massachusetts court is valid——

The Court: Only instance in which you have had difficulty?

The Witness: I cannot answer that for my organization. It is the only one I particularly remember.

Q. Now, then, it is the fact, isn't it, that if these bonds were not sold on as favorable a basis as some other public utility bonds comparable to these bonds, it is because of the financial history of this company which it has not yet overcome. That has been the fact? A. That has been the main factor.

Q. And the other is quite subordinate. A. I understand it—it is part of the same financial history—it is a changing situation.

Q. The financial history has been changed now, or the financial structure has been changed now. A. By doing away with some of the leases. Already two leases have been done away with.

Q. What two leases? A. The two most important leases on the whole situation, the lease of the United Electric and Public Service Electric & Power Company, two most important things that have come in and are now owned in fee.

Q. But prior to the consolidation of the gas company and electric company and United Electric Company the financial structure of this company, Public Service Corporation, was not attractive to investors. A. It certainly was not.

Q. Now, the unattractiveness of that structure has followed through up to the present time. A. As I testified, things are becoming more and more attractive every year.

Q. They shied, put it that way. That was because of that history of the Public Service that in those days when the structure was of that kind, has followed it up, becoming less and less as time has gone on. A. Yes, sir.

Q. And it has become less—it first started to lessen when the Public Service Electric & Gas Company was formed by the consolidation. A. And the elimination of the leasehold of the United Electric at that time.

Q. That simplified things a great deal. A. Yes, sir; it meant that the company could own in fee.

Q. It simplified the whole situation when you got hold of the three companies together. A. Yes, sir; it did away with the leases.

Q. I didn't ask you that. You insist upon tacking that on. A. You asked me why that was my opinion.

Q. I asked you whether or not that was the result of the merger of these three companies. A. Yes, sir.

Q. Don't you find that it is more difficult to sell a bond on Jersey—or sell Jersey securities than Chicago and Boston and Philadelphia and New York? A. I do not understand the question, sir. What is it?

Q. Utility securities—doesn't the fact that the utility company whose securities you are attempting to dispose of is operating in the state of New Jersey make it more difficult to dispose of those securities than a utility company that is operating in the great centers, New York, Chicago, Philadelphia and Boston? A. No, sir.

Q. Do not? A. This section is looked upon as one of the best in the country.

The Court: Would it make any difference in the attractiveness of the securities of the Public Service Corporation if that corporation or the Public Service Electric & Gas Company should have the fee of these various properties with an outstanding obligation by the corpora-

tion to pay the stockholders of these corporations eight percent on their stock? Would the mere possession of the fee make any difference?

The Witness: Yes, sir.

The Court: In what respect?

The Witness: It would simplify the problem that we had to explain to an investor. You can say to an investor, "Here is the property; there is a first charge on it to pay bond holders and you can see exactly what they have to pay; after they are taken care of everything that is left over belongs to the preferred stockholders and you can see just how much belongs to you, and what is left over after that goes to the common stockholders." He is attracted to that picture and he says, "Tell me more about it," because he can understand it; then he begins to look into the financial history of the company.

Q. You mean to say he couldn't understand the difference or distinction at all between leases of nine hundred and ninety nine years and a fee, is that what you mean? A. I mean he would have to inquire whether the leases contained provisions for the payment of taxes, for example, as we know of cases where the return has been reduced very largely because it did not contain a provision that the lessee should pay the taxes. That would have a bearing on his income, and investors of experience know those things, where they have lost their income because the lessee was not required to pay taxes.

The Court: The essence then of your answer is confidence or lack of confidence.

The Witness: Easily understandable.

The Court: Make confidence.
The Witness: Yes, sir.

Q. Do not all large investors before they undertake to purchase a security—I mean large investors, now—have their counsel go into the security back of the security? A. That is not our experience with investors that have confidence in our recommendation.

Q. You have found it to be—it is a very general practice, though, isn't it? A. With certain insurance companies, yes, sir.

Q. If you were going to sell a million or more securities to an insurance company, the insurance company's attorney would go through the whole situation to find out the nature of the security and what was back of it. A. In case of insurance companies, yes, sir.

Q. And do you not find that insurance companies are now one of the largest outlets for utility securities? A. No, because they are not legal in many states for insurance companies.

Q. I am speaking of the securities that are legal. A. Insurance companies and other institutions, educational and other types.

REDIRECT-EXAMINATION:

Q. You have spoken of the complication arising from leaseholds with reference to the taxes. Can you recall other complications that may or may not be found in leases that give rise to questions such as you suggest? A. I can recall the elevated situation in New York City where they had a lease, as I recall it, of six percent, and they were induced to give it up and take a lower return, and as I recall it—we were not directly involved there, but we had some

securities, but that was largely—they were persuaded to sacrifice their income because of a fight around the lease, and the relative rights between the lessor and lessee in regard to the new addition.

Q. Do leases have varying clauses with reference to the refunding of the debt that is upon the property leased? A. Yes, sir.

Q. There is a variation? A. There is a variation. I cannot answer in detail.

Q. What variations exist with reference to the extent of the obligation of the lessee to maintain and repair? A. The whole lease has to be carefully studied as the lease to any other property, to see the relative rights with regard to cancellation.

Q. And obligation. A. And obligation.

RECROSS-EXAMINATION:

Q. As we went into the railroads may I ask one question? You know, of course, that the New York Central and Pennsylvania System is mostly built up on leaseholds. A. Yes, sir.

Q. That fact has not prevented the New York Central and Pennsylvania from selling their securities at advantageous prices and terms, has it? A. No, because they are quite different.

Q. They are well known? A. Their leasehold is usually on the main line and power and light has no main lines. I cannot compare them otherwise. They are quite different.

Q. Suppose you have a leasehold on the most populous section of the state of New Jersey, namely, the counties of Essex and Hudson, can't we call those the main lines of the Public Service Electric & Gas Company? A. No, sir, the power stations can be built anywhere.

ALFRED G. B. STEEL, sworn for defendant.

DIRECT-EXAMINATION BY MR. MCCARTER:

Q. Mr. Steel, what is your business? A. I am not engaged in active business at the present time, Mr. McCarter.

Q. What business have you had? A. I have been engaged in the investment banking business, it is commonly known, and distribution of securities for all my business life.

Q. And where were you located? A. I was connected with the firm of Graham, Parsons & Company, Philadelphia and New York.

Q. Did you, as such, have occasion to become familiar with the financial structure of the Public Service Electric & Gas Company? A. In general, yes, sir.

Q. And with its underlying securities? A. Yes, sir.

Q. Have you dealt in the underlying securities? A. During practically all the time I was in business we were dealing in the various issues of securities connected with the Public Service situation.

Q. Are you familiar with this plan which includes a merger of the five companies, the Essex & Hudson Gas Company, The Hudson County Gas Company, The Paterson & Passaic Gas & Electric Company, the Somerset, Union & Middlesex Lighting Company and the New Brunswick Light, Heat & Power Company by an offer of exchange of the securities at the rate contained in the offer? A. In general, yes, sir.

Q. What have you to say in your opinion and from your experience as to the fairness and propriety of that?

The Court: What study did you give it?

Q. What study have you given to the subject? A. I haven't given anything like the study—— (interrupted)

The Court: What is that?

The Witness: I considered the thing from the point of view of the security holders—the security holders of these so-called leased company stocks, and the general situation, as to whether it is a fair proposal or not, sir. I have not studied it in the technical and legal detail that a person in active business would.

Q. Do you consider that your study and investigation has been such and sufficient to enable you to give an opinion upon the subject of its fairness? A. Yes, sir; I do.

Q. What is that opinion? A. My opinion is that it is an entirely fair proposition—fair plan of exchange for the security holders.

Q. What is your reason for that opinion? A. In looking at it from the point of view of a security holder, of the three elements which my experience as an investment banker led me to find was necessary, that is, the question of security, which primarily means the assurance of the principal, in the second place marketability, which means the ability to sell it promptly, to know for what you are going to sell it, which carries with it its availability as collateral, and many other issues in addition to that, and thirdly, income or the rate of return on the investment.

Q. Yes. Have you any present connection in any official capacity whatever with the Public Service Company or any of its allied interests? A. None whatsoever, sir.

Q. Did you personally or as trustee ever own any

of these underlying securities we are speaking of? A. No, sir; I have never owned any of them personally, as a trustee in our dealings in them at Graham & Parsons, they were very limited inasmuch as we were not particularly enthusiastic about them in comparison with other securities of the corporation—I am speaking of all—I am not speaking of any one issue of the securities.

Q. Of the five? A. No, I mean of any securities connected with the Public Service Corporation.

CROSS-EXAMINATION BY MR. HAIGHT:

Q. Have you read the leases of the lessor companies, Mr. Steel? A. No, sir, I have not; I have not read them in detail.

Q. Have you considered the amount of obligations—prior obligations that are ahead of the lessor stock? A. In general, yes, sir. I cannot give that to you in detail.

Q. Well, how much, in the aggregate, of all the lessor companies, in your survey of this subject, did you find was ahead of the lessor company stock? A. How many—how much—what amount of bonds are ahead of these stocks of these lessor companies?

Q. Yes. A. Not a great deal—not a great amount compared with present day amounts in financing.

The Court: Have you really made a survey? Are you informed?

The Witness: I am informed by having dealt with the securities in the past.

The Court: With the structure—the financial structure of the Public Service Corporation and of these five companies?

The Witness: I believe I am, sir, but not in connection with the actual amount in dollars

and cents; because of not having been in active business during the past year I have not had occasion to continually refresh my memory on it.

The Court: As to whether you ever were fully informed.

The Witness: Yes, sir. I frequently looked up the amount outstanding.

The Court: You have given me your opinion. I want to know what this is worth. That is only worth anything to me if you are fully informed of the financial structure of this whole institution?

The Witness: Yes, sir; I am informed as to the financial structure. As I tried to explain before, sir, I could not pass a cross-examination on the details.

The Court: That is only because a year has elapsed.

The Witness: Yes, sir.

Q. Now can you tell me how much in bonds are ahead of these stocks? A. I cannot answer that; no, sir; I could not.

Q. You cannot. Do you know what the equity in the property over and above the bonds and stock of the lessor companies is? A. The equities in the bonds and stocks in back of it?

Q. No, the equities in the property over and above the amount of the bonds and stocks of the lessor companies. A. You are not talking about the equities of the Public Service Corporation and the electric and gas company—you are talking about the lessor companies.

The Court: The question is very plain.

The Witness: Is that what you asked me?

Q. No. I want to know if you know the equity in the property of the lessor companies over and above the stocks and bonds of the lessor companies which have been issued and are outstanding. A. I do not know that because that information could not be available to any ordinary investment banker and would not accrue to the stockholders until the expiration of the lease nine hundred and ninety nine years from now.

Q. Do you know that that has been circulated, the value of the lessor companies' properties and the amount of the stock and bonds outstanding, has been circulated generally since 1924 in at least three or four circulars? A. Yes, sir.

Q. Put out by Bonbright and Drexel and Morgan or others? A. Yes, sir; it has been available in the manuals since the date of the issue of the bonds and stock.

Q. It has been available since 1924, hasn't it? A. Yes, sir.

Q. You do not know what it is. A. I do not see what there is for me to answer.

The Court: Answer; do not argue.

Q. You do not know what it is. Do you know what the earnings of the lessor companies' properties have been over and above the fixed charges, that is to say, the amount necessary to pay the interest on the bonds and the guaranteed dividends on the stocks? A. No, sir; because I do not think that they were——

The Court: The answer is No.

The Witness: No, sir.

Q. You do not think that is an important consideration that anyone must have to know whether or

not one security to be exchanged for another represents a fair exchange. A. Not in the situation of a long time lease for another security, sir.

Q. Well, the ability of the leased properties to earn is always an incident and a very important element to be taken into consideration in determining the value of the stocks or bonds of the leased company, isn't it? A. The amount of earnings?

Q. What? A. The amount of earnings?

Q. Yes. A. Of the leased company to be taken into consideration?

Q. Yes. A. Yes, it is; that is one of the things you would weigh in the value.

Q. Now do you know the amount of bonds outstanding in the Public Service Electric & Gas Company? A. I think it is approximately sixty seven million, sir, isn't it?

Q. Do you know the amount of the preferred stock of the Public Service Electric & Gas Company outstanding? A. I think it is fifty million, if you include the twenty million that is up for collateral, which I presume, for the purpose of answering this question, is outstanding.

Q. Seventy one million; would that change your answer at all? A. No, sir.

Q. It would not change it? A. Practically the same, property of the value of this size, fifty or seventy millions.

Q. Doesn't make any difference? A. In the earning capacity.

Q. Doesn't make any difference. A. Of course, twenty millions is twenty millions, but you are asking me questions which—— (interrupted)

The Court: Please do not argue with counsel.

The Witness: I beg pardon. Again, sir?

Q. Now, do you know whether or not these leased stocks, in nearness to the property, are ahead or behind the bonds of the Public Service Electric & Gas Company? A. These leased stocks?

Q. Yes. A. I presume they are ahead of the bonds, sir.

Q. Ahead of the bonds and ahead of the stock. A. They are ahead of the stocks? I am certain you are asking me a legal question which I do not know the answer to. I have never gotten it satisfactorily explained.

Q. How can you express an opinion as to the worth of electric and gas company stock if you do not know whether the stocks are ahead or behind these lessor stocks? A. I beg pardon. I did not understand the question.

Q. That is what I asked you. A. Ask me the question again. I misunderstood it.

Q. I asked you whether if you knew—whether or not the stocks of these lessor companies were ahead of the bonds of the Public Service Electric & Gas Company. A. As I understand the situation these stocks are the obligation of the lessor company, which leases are in the Public Service Electric & Gas, and that the obligation—the bonds of the Public Service Electric & Gas are the first charge against its earnings and these lessor companies would have the first earning from their particular property ahead of the bonds, but not on the properties as a whole.

Q. How about on the properties themselves as distinguished from the earnings? A. On the properties of the lessor companies, do you mean?

Q. Yes. A. They would—I presume they would be ahead of the bonds.

Q. Did you take that into account at all in reaching your—— (interrupted) A. Yes, sir.

Q. ——your determination as to whether it was equitable and fair? A. Yes, sir; I did, sir.

Q. Well, did your determination that the offer was a fair one depend in its final analysis upon the fact that the electric and gas company stocks would command a more ready market than the stock of the lessor companies? A. Was that the sole reason?

Q. Yes. A. No, sir, because I not only believe that it would command a very much greater marketability, but that I believed to all practical purposes the security was as good.

Q. Had you ever dealt in any of these lessor company stocks? A. In a very limited amount. We had never been particularly interested in them because they are an almost unknown situation and were too difficult to explain to customers what they were.

Q. How limited was your dealing? A. I have no means of remembering that, sir.

Q. A hundred shares? A. I honestly couldn't tell you. I mean it was not a great amount. I doubt if it was, over a period of fifteen or twenty years, it would exceed a thousand shares in each issue.

Q. And you know very little about the marketability of these stocks, don't you?

The Court: You mean the underlying stocks.

The Witness: You mean at the present moment or in the past—our past experience?

Q. Past or present. A. I have known at times in the past it was almost impossible to sell these underlying stocks, that there have been market conditions, and those obligations of the company

such as the electric and gas company, having the present old mortgage—you know what it can be sold for, and that under conditions such as those you endeavor to dispose of these lessor company stocks for clients, and find the market non-existent.

Q. I understand you to say you only dealt, in fifteen years, with a thousand shares of this stock. A. Yes, sir, to try to find a market is not dealing.

Q. What? A. Trying to find a market does not mean dealing. I may offer you a piece of real estate, you may refuse to buy it—that is not dealing in it.

Q. Have you tried to sell many of these stocks? A. No; I cannot say we have tried to sell a great many of them. They haven't enjoyed an active market.

Q. How do you know that, by general reputation? A. No, sir; by experience.

Q. Why? By experience? A. By experience.

Q. And how large have been your attempts to sell stock—that is to say, what has been the size of the blocks? A. That is absolutely impossible for me to answer. I have not access to the Graham & Parsons books to look that up.

Q. Did you attempt to look it up before you reached a conclusion that this offer was fair and equitable? A. No, sir, because I didn't think it was necessary. I thought my own impression—— (interrupted)

The Court: When did you form that opinion?

The Witness: On this plan? My first impression of the plan was when it was originally published in January, and at a later date when the final plans came out, sir.

PERCY S. YOUNG, recalled for further

DIRECT-EXAMINATION BY MR. MCCARTER:

Q. Were you asked to produce some figures the other day by Judge Haight? A. Yes, sir.

Mr. Haight: What were they?

The Witness: Your question, I think, was the amount of extensions and betterments made to certain of these companies out of the proceeds of the bonds of the lessor companies.

Mr. Haight: Will you give me that, Mr. Young, please?

The Witness: Betterments and extensions to The Paterson & Passaic Gas & Electric Company out of the proceeds of the securities of that company $154,000; for the Somerset, Union & Middlesex Lighting Company, $720,000; to the property of the Hudson County Gas Company, $750,000.

Mr. Haight: For what period was that, Mr. Young?

The Witness: Over the period of the leases—from the date of the leases.

Q. I understood you to testify the other day that there was paid in by way of extensions, additions, improvements and betterments to the demised properties of the Hudson County Gas Company, six million dollars. A. That is right.

Q. What is this $750,000 that you speak of? A. These are expenditures made on these properties which were paid for out of the proceeds of bonds of those companies.

Q. The unissued bonds of this company? A. That is correct.

Q. Was there anything more that Judge Haight wanted from you? A. I think not.

Q. Now, have you prepared a detail of certain schedules which you bound together in the blue cover, and if so present it and tell us what they are. You are the vice president in charge of the finance of the company? A. I am. I prepared these tables to show—— (interrupted)

Q. Are they correct? A. They are correct.

Q. Showing? A. They show the security back of the six percent cumulative preferred stock of the Public Service Electric & Gas Company based upon the time the interest is to run, the dividends earned on that stock—it shows that the—— (interrupted)

The Court: What period?

The Witness: For the period ending October 31, 1927.

The Court: From what time?

The Witness: For one year. This statement shows that the dividends on that stock was earned, both the six percent and seven percent stock was earned for and one third times, which is evidence of the security of that stock.

Mr. McCarter: We offer this statement or compilation in evidence.

(Exhibit D-52.)

The Court: The first page is the summary is that right?

The Witness: Some of the pages are.

The Court: Your first page is the summary, isn't it?

The Witness: The first page shows the earnings, the second page is a tabulation of the capitalization.

The Court: I say they are the details which make up the summary.

The Witness: That is correct; except an additional statement has been prepared and shows in the tabulation giving the net earnings for the past five years applicable to fixed charges and dividends of that company, which is shown on the last page in the table.

The Court: All tending to show that the preferred stock is good enough.

The Witness: It is a very valuable security.

Mr. Haight: I do not think there is any cross-examination, but upon examination there may be some details which we may want explained.

Mr. Wakelee: Exhibit D-7 was the original mortgage of the electric and gas company, and we ask that a copy be marked instead.

(Paper marked Exhibit D-7.)

Mr. Wakelee: Place was reserved for exhibit D-16. A copy of the document could not be found, but we have it here and offer it. Amendment of the charter of the Electric & Gas Company.

(Paper marked Exhibit D-16.)

Mr. Wakelee: We desire to offer in evidence the charter of the Newark Consolidated Gas Company which was not marked and no place was reserved for it. We ask that it be marked.

(Paper marked Exhibit D-53.)

Mr. Wakelee: Exhibit D-11 was the merger agreement of April 26, 1927 and through an

inadvertence another paper was so marked. We ask that it be marked.

(Paper marked Exhibit D-11.)

Mr. Wakelee: In offering the deposit agreement of the stockholders committee we offered the copy of Mr. McCarter with notes on it and we ask that that be withdrawn and have a new copy marked.

(Paper marked Exhibit D-44.)

Mr. Wakelee: In response to demand made by the defendant on the complainant's counsel we have been furnished with the transactions of Outwater & Wells in the stock of these five leasor companies for several years last past. We ask that it be marked in evidence.

(Paper marked Exhibit D-54.)

The Court: If there are any papers that are essential which have not been offered they may be offered at any time.

DEFENDANT RESTS.

FAIRMAN R. DICK, Sworn for complainant.

DIRECT-EXAMINATION BY MR. HAIGHT:

Q. Mr. Dick, what is your business? A. I am in the investment banking business.

Q. Are you a member of any investment banking firm? A. I am a member of the firm of Roosevelt & Sons.

Q. And where does Roosevelt & Sons do business? A. 30 Pine street, New York.

New Jersey State Library

Q. When was the firm of Roosevelt & Sons founded? A. 1797.

Q. Mr. Dick, was President Roosevelt's father a member of this firm? A. He was.

The Court: What has that got to do with this case?

Mr. Haight: It has got to do with it, to show what this concern is; it is not a fly by night concern.

The Court: Do you think that will have influence on the court above?

Mr. Haight: We want to prove that these people will not bring suit for the purpose of strike.

Q. Will you tell us the nature of the business that you do? A. We are not an investment house in the ordinary sense of the term; that is, not like most houses. We do not finance corporations as part of our business. We have no obligations to finance corporations or to purchase their securities. We are not selling securities of corporations. We are advising clients, individuals, insurance companies, as to what they should buy. In dealing in securities our one purpose is to find suitable securities for our clients.

Q. You seek securities for customers rather than customers for securities. A. Right.

Q. When did your firm first become interested in the stock of any of the lessor companies underlying the Public Service Electric & Gas Company? A. I think it was 1923.

Q. And what member of your firm has made a specialty of those stocks since that time? A. I have given a great deal of attention to that.

New Jersey State Library

Q. Has anyone given as much attention in your firm as you have? A. I do not think so.

Q. What study did you make of these lessor company stocks in 1923 and what study have you made since that time? A. We went into the situation quite thoroughly. I sent men over to the offices of the Public Service Corporation, who were very cordial to give us information. They gave the information as to earning power and assets of these leased companies, such as information to convince me that they were securities of the very highest grade. Since then we have continued our study—continuing our study of the securities which we deal in—I cannot draw a sharp line.

Q. Now, not as to what you learned in 1922, 1924 or 1925, but have you studied the whole financial structure of the Public Service Electric & Gas Company and the Public Service Corporation of New Jersey of these lessor companies? A. I have insofar as it affected the security in my opinion, of these lessor companies.

Q. Now, why did you become interested in these lessor companies? A. In my business we are always looking for investments. We are searching for investments. I say we do not finance companies. We search over the general market to find safe investments. In spite of the fact that I have been in this business for a great many years I did not know these leased stocks until 1923—I did not know them in a way that had ever led me to look into them. I found they were selling far below their intrinsic value. They were dealt in by certain local dealers in New Jersey. I did not at that time know of any New York house that was dealing in these securities. I do not think I knew a single institution, insurance company, in New York or

in Hartford, where we had a great deal of business, who knew of these securities. It was an opportunity to purchase a security of the very highest grade which was selling far below its intrinsic value.

Q. Now, at the time you became interested in the purchase of these securities for your clientele, had the merger-agreement,—merger proposition of March, 1924, come out? A. I do not think so.

Q. Was your interest in these stocks in any way influenced by this proposed plan of 1924? A. None whatsoever.

Q. Has it been in any way influenced by the plan of January 10, 1927, that is to say, the plan that was put out at that time or by the merger? A. The plan of 1927 is—was a threat to the continued holding of these securities and as such we had to give it consideration.

Q. Has it influenced you to purchase stocks? A. No. I would say the opposite effect has taken place.

Q. Now, what has Roosevelt & Sons done in these stocks? What have they done in the way of creating a market? Have they pushed them and made them better known since you first became interested in it? A. We prepared an analysis of these stocks, communicated with our clients, private investors, insurance companies and explained they were security of the very highest type and suitable for them to buy. I have got a list here of some of the institutions that now hold these stocks.

Q. Will you give us a few of the more well known and important institutions that hold these stocks? A. The Eagle Fire Insurance Company,

New Jersey Insurance Company, Commercial Casualty Insurance Company, American Eagle Fire Insurance Company, City of New York Insurance Company, Continental Insurance Company, Fidelity Phoenix Fire Insurance Company, First American Fire Insurance Company, Home Insurance Company, New York Indemnity Company, Phoenix Insurance Company, United States Casualty Company, Aetna Insurance Company, Mechanics & Traders Insurance Company, Firemen's Insurance Company, Girard Fire & Marine Insurance Company, Mechanics Insurance Company, Newark Fire Insurance Company, Connecticut Fire Insurance Company, Aetna Life Insurance Company, Hartford Steam Boiler Insurance Company, Automobile Insurance Company of Hartford, National Surety Company.

Q. Have you placed these stocks with all of those concerns? A. I would not say that we have sold every one of these concerns—in most cases these are concerns that bought stocks from us on our recommendation.

Q. Have you bought these stocks, when you bought them, in your own name? I mean when you went out to buy the stocks, did you buy them directly yourself or through somebody else? A. We always used a broker.

Q. Why was that? A. We were very much afraid if it was known that Roosevelt & Sons were buying these stocks—if it was known to our competitors it would affect the market and we would have difficulty in buying them.

Q. Affect the market in what way? A. Put the market up.

Q. And it was your object to get them as low a figure as possible. A. Naturally. We were acting

for our client. When we buy for our client we like to buy to the best advantage possible.

Q. Since you first commenced to deal in these stocks for your client, have you been able to get all of the stock—a sufficient amount of stock to supply the wants that you had? A. No. I think it is true to say that our demand for these stocks has always been greater than the supply. In other words, we have found it difficult to buy these stocks. I want to qualify that to this extent, that in conferring with the officials of the Public Service Corporation we picked out certain of these stocks as being particularly desirable, that was the Newark Consolidated Gas, the South Jersey Gas, Electric & Traction and the Bergen County Company and practically all our purchases have been limited to these companies; I will add to that The Paterson & Passaic Gas & Electric Company. We bought quite a little of that, too.

Mr. McCarter: Does your Honor understand the first three companies are not here involved at all?

Q. Now, what is your judgment, Mr. Dick, based on your experience and your knowledge of these stocks and what has happened to them and your dealing in them as to their future marketability.

Mr. Speer: We conceive this is not proper rebuttal in this case. The complainant in the case saw fit to rely upon what he chose to call the admissions made in the answer and to rely upon certain documentary evidence which was interposed by him in the case. Now we believe that he is confined in the trial of this case, under the rules of law with respect to the burden of proof, to the evidence to be introduced

in rebuttal of what was interposed by us on the main case, and we therefore object to this testimony.

The Court: It is leading up to a denial of what you assert. Objection overruled.

Q. (Question read.) A. The answer to that question is influenced, of course, by the talk of this—— (interrupted).

Mr. Speer: Which stock is he talking about. If you are talking about the three stocks in which alone he seems to be conversant, outside of The Paterson & Passaic Gas & Electric Company, the inquiry is irrelevant.

The Court: He has already testified that he was dealing in stock of this kind and he has made an examination of the subject throughout. I suppose the testimony will lead up to getting from him his opinion as to the fairness of this merger. Go on.

The Witness: I said the answer to that question will be influenced by the talk about the attempt to merge the companies.

The Court: What companies?

The Witness: To merge these five companies.

The Court: Please answer the question if you can and if you cannot, say so.

Q. Assume that the merger is not going through. A. If the merger isn't going through?

Q. Of either these companies or the other companies which the Public Service expressed a desire to merge and which Mr. McCarter said yesterday they had not attempted to merge because they had not acquired sufficient stock to do so.

Mr. McCarter: We object to anything about the other companies.

Mr. Haight: I ask him to assume that there was no merger going through.

The Court: Confine yourself to the five companies. Reframe your question.

Q. Assuming that there is no merger of these five companies going through, what have you to say as to the future of these stocks, particularly their marketability and the ease which they can be disposed of at proper prices on the market?

Mr. McCarter: I object.

The Court: Objection overruled.

The Witness: The future market of these companies in my opinion would improve tremendously over the market of the past when they were unknown to dealers largely and unknown to buying institutions. The growth of the securities—assets behind these companies have been so great and is gaining so fast all the time; the popularity of Public Utility Companies is increasing, and in my opinion the time will not be very far away when these guaranteed stocks will enjoy a market comparable with the very highest guaranteed stocks of a railroad corporation.

Q. Now, referring to the question of marketability just for a moment, do you find that that is an important factor with a great many investors as compared with security and rate of return? A. A great many investors are concerned rather slightly with marketability. We find the first requirement of all is security; second is the highest yield obtainable with security, and the third is marketability. That does not mean to say that certain institutions, like banks, who like quick assets do not pay any great regard to marketability, but

the private investor or the institution who buys for income is concerned primarily with the security and yield.

Q. Have you found the fact that a security is free from normal income tax and which produces a good yield and has a good security back of it is an attractive feature to investors; that is to say the fact that it is free from normal income tax? A. It makes the security especially attractive to corporations like insurances companies; it saves them twelve and a half percent under the recent law; and it is also of value to private investors.

Q. Now, let us turn for a moment from—to this, how and why did Roosevelt & Sons become interested in trying to prevent this merger? A. When the terms of this merger were published I looked into them and we found that the terms—we could not advise our clients to accept these terms, and I thought it wise at once to go right to the Public Service Corporation and explain exactly our position, the stocks we held and the reasons why we could not accept these terms, so I called up Mr. Wakelee, who I knew, and said "I would like to talk to you about this merger, because we cannot recommend our clients to accept any of the terms."

Q. Did you at that time have any stock that belonged to you yourself? A. Personally?

Q. No, the firm. A. Oh, we are dealing in stocks from time to time. I assume we did. Subsequent to that I was called on in New York by Mr. Van Middlesworth, who has always been very helpful in giving us information, and Mr. Young. I showed them a list of the stock we had placed with our clients and I explained that we could not recommend our clients to take either the common stock option, because it changed practically the character

of the security; we couldn't recommend that they take the six percent preferred stock, because it is a security of a lower—distinctly lower degree of safety that the guaranteed stock, and that the cash price offered was such that we could not reinvest the money to get an equally good security without a diminution of income. Mr. Young and Mr. Van Middlesworth were very nice and said they didn't think anything could be done about it, but if they had anything to say they would let me know. I thereupon consulted counsel and I said, "What shall we do to protect our clients?—— (interrupted)

Q. Without going into the details of the thing to that extent, did you acquire any stock for the purpose of blocking this merger? A. Absolutely not.

Mr. McCarter: What was that?

The Witness: Absolutely not.

Q. Or did you acquire any stock by reason of this proposed merger—was that an influencing factor in acquiring any stock whatsoever? A. It has influenced us against acquiring stock.

Q. It did not influence you to acquire stock? A. No. We have acquired stock, but we have acquired it after hestitation and less freely than we would if the merger had not been proposed.

Q. Now, Mr. W. Emlen Roosevelt is chairman of a stockholders protective committee, is that correct? A. That is correct.

Q. And who is W. Emlen Roosevelt? A. He is the senior partner of Roosevelt & Sons.

Q. Do you know the circumstances which brought about the formation of this committee? A. Yes, sir.

Q. Will you please relate it? A. As I say, we consulted counsel upon finding out the Public Service Corporation was not inclined, did not communicate with us with regard to our statement. Counsel looked into the New Jersey law and advised us to do nothing. That went on for some time; then as the notices and advertisements followed, and they watched the situation, they told us that they thought it was necessary to organize in defense of our rights. We communicated with our clients, and, as I remember, at that time we communicated with the Shanley interests, who were in the situation. Those conferences resulted in the formation of this committee. I will add this, that before the Continental Fire Insurance Company—— (interrupted)

The Court: Hold your witness down to what you want to know. I am not interested in the motive. I do not think it has been assailed even by innuendo.

Mr. Haight: I thought it had.

The Court: Has the good motive of the complainant been assailed?

Mr. McCarter: We question their motive decidedly. We do question the motive decidedly.

Q. Go ahead, without going into the details. The Continental Insurance Company—I wanted to go into more detail to show that the formation of this committee—— (interrupted)

The Court: The Court directed the trustee of the Shanley Estate to interpose as a party, did it not?

Mr. Haight: Yes; subsequent to the bringing of the suit.

The Court: Did I not make such an order?

Mr. Haight: Yes.

The Court: How then can the matter of improper motive on the part of the initial complainants have any serious bearing upon the final disposition of the case?

Q. Did you have any other motive in the formation of this committee than the protection—and the institution of this suit, than the protection of what you conceive to be the interest of your client? A. Absolutely not. This suit is—— (interrupted)

The Court: Stop.

Q. Now, Mr. Dick, will you give us the connection—the business connection of the other members of the committee? A. Mr. Sturm is the head of the Continental Fire Insurance Company. William C. Shanley, Jr. is Shanley of the Shanley Estate; R. Irving Outwater is a dealer in Jersey City; Roscoe C. Ingalls is an investment dealer in New York City. Evans R. Dick is my father. He is not in business.

Q. Now, Mr. Dick, some of the witnesses for the defendant or one of them if not two, have expressed the opinion that there is no better security than the six percent preferred stock of the Public Service Electric & Gas Company. What have you to say about that? Are you familiar with the Public Service Electric & Gas Company six percent preferred stock? A. I am.

Q. What examination have you made of that stock and the security back of it and so forth? A. I made a careful examination.

Q. How careful? A. I have taken all the available figures.

The Court: Are you familiar with the financial structure of the so-called Public Service Corporation of New Jersey? By that I do not mean the parent company only but what is known as the Public Service.

The Witness: The parent corporation?

The Court: Everything, the whole structure.

The Witness: In a general way. We have never dealt in the securities of the Public Service Corporation, but in a general way I am familiar with it.

Q. Are you familiar with the structure of the Public Service Electric & Gas Company? A. In very much greater detail because it was a question of accepting that stock that was under consideration.

Q. Are you familiar generally with the earnings of the Public Service Electric & Gas Company since its formation? A. Yes, sir.

Q. Are you familiar with the bonded indebtedness of the Public Service Electric & Gas Company? A. Yes, sir.

Q. And are you familiar with the properties that the Public Service Electric & Gas Company owns or operates? A. Yes, sir; not from an engineering point of view, of course.

Q. I mean from a banker's point of view. A. From a banker's point of view.

Q. Are you familiar with the territory which this company serves? A. Yes, sir.

Q. And the commodities in which it deals? A. Yes, sir.

Q. Are you in a position then do you think to

express an opinion as to the stock of the Public Service Electric & Gas Company, that is to say, the six percent preferred stock that is in issue here? A. Yes, sir.

Q. Will you tell us whether in your judgment that stock—there is no better security than that stock on the market? A. That is not so.

Q. What grade of security do you place that stock in? A. Good preferred stock—high grade preferred stock.

Q. Would you put it one, two, three or four? A. I rate high grade preferred stocks as securities of the third grade.

Q. Third grade. Now, then, what grade would you put the stocks of the lessor companies in?

The Court: What is his standard? We do not know what one, two and three means.

Mr. Haight: I was going to compare it with these.

The Witness: I can give my standard.

Mr. McCarter: It doesn't appear that he knows anything about it.

The Witness: I placed the leased stocks—— (interrupted)

Mr. McCarter: I object. It doesn't appear that he knows anything about the value of the leased stocks belonging to the five companies involved here.

The Court: He said he did.

Mr. McCarter: He said he had investigated the South Jersey—— (interrupted)

The Court: If he doesn't know, it will go very seriously to the weight of his opinion.

Q. Mr. Dick, in your investigation of the lessor companies, was your investigation confined to the

companies other than in this present merger, or did it go to all of the lessor companies underlying the Public Service Electric & Gas Company? A. Went to all the lessor companies.

Q. And the investigation you have heretofore spoken of applied to them as well as to the others? A. Yes sir.

Q. Now, then, will you please to compare these stocks as to grade, or any other way, with the stocks of the Public—six percent preferred stock of the Public Service Electric & Gas Company? A. Briefly I will state my standard—investment standard. The highest grade security, the security of the first grade are the closed underlying obligations of parts of big systems, United New Jersey Railroad & Canal, New York & Harlem, part of the New York Central—issues that can never be increased; they are first mortgages, or outstanding in such a small amount in relation to the value of the property that they have unquestioned security, such as Pennsylvania Railroad first mortgage bonds. Securities of the second grade are the open junior mortgages, and generally second mortgages, that can be increased in amount. If they need new money they sell more bonds. It is impossible in five or ten years from now to know how many bonds will be out. They are good securities, but they cannot compare in security with the closed issues which can never be increased, but they have a mortgage position the same as first mortgage. After the mortgages—after the security of the second grade come your equity, and preferred stock ranks the first security in the class of equity; they come third. After that you have your common stock. When your company gets in trouble first it passes dividends on the common stock; next it passes

dividends on the preferred stock; thirdly it passes dividends on its junior mortgages. The last thing that is threatened are the fixed charges to hold together the component parts of the system——(interrupted)

Q. Now, then, in what grade, as you have graded them do you place the stocks of the lessor companies that are here in issue? A. Securities of the first grade.

Q. Now, will you give us a list of stocks which you think are of the same character and comparable with the stocks of the lessor companies here in issue? Have you prepared such a list? A. I have.

Q. In the first column of this list——(interrupted)

Mr. McCarter: We object to this as utterly irrelevant and immaterial. What possible relation is there between a list of railroad securities and this——(interrupted)

The Court: Attempting to rebut the case which you set up, only doing it in a different way. Yours was much more satisfactory to me—I mean the way you presented it. You first qualified your witness and then got his judgment and then followed it up by detail. Counsel in his own way is doing it the other way. You do not object to the matter of convenience. They did not.

Mr. McCarter: Order of proof?

The Court: I mean the convenience of the paper.

Mr. McCarter: No. The thought I had in mind and endeavored to express was this, that it seems to us the fact that the witness has been able to collate fifteen different stocks of

fifteen different railroad companies throughout the country, whose stocks he thinks are a good investment, is utterly irrelevant to this controversy.

The Court: Illustration only, as I understand it.

Mr. Haight: He said those were the stocks which he considered comparable and of the same character as of these stocks. Now, that is the witness' opinion. Your Honor may accept it or reject it, but nevertheless it is the witness' opinion, and rather than go through all this list and have him explain, why, I thought it would be very much better—— (interrupted)

The Court: Counsel does not object to that.

Mr. McCarter: To the technique of the presentation we do not want to make any objection, because we want to get it in in the clearest way possible, but it seems to us that there should be some similarity.

The Court: I will overrule the objection. You may make a motion to strike later.

Q. Will you explain this sheet? In the first column what do we find?

The Court: It speaks for itself. What is it generally?

The Witness: It is a list of securities which I believe have equal value with the securities of these leased companies.

The Court: Let it be marked.

(Paper marked Exhibit C-1 of this date.)

Q. Now, why, Mr. Dick, do you say that these stocks are comparable with the stocks of the five

lessor companies which are in issue here? A. Because they are lease obligations on important parts of big systems of closed amounts. They can never be increased; as the system grows, the security becomes greater and greater, and it is just as unbelievable that the Public Service Corporation of New Jersey would be unable to retain their Newark property, Essex and Hudson property or Hudson County Gas property as it is to think that the Pennsylvania Railroad would give up the United New Jersey Railroad & Canal line, which is a four track line from Jersey City to Trenton. I have never known of a loss—— (interrupted)

The Court: Do not let us have any more argument:

Q. If you were required to take the stock of the Public Service Electric and Gas Company which is offered for these lessor stocks and asked to reinvest it in securities presenting the same characteristics of security and of the same kind, that is to say, stocks rather than bonds, do you know of any other securities in which that money could be invested than those shown on this list? A. That list does not include every security where this money could be invested safely, but it is the type of security, and the yield of security which represents the type in which this money would have to be invested to retain the present security.

Q. Now we have talked a lot in this case, at least possibly I have talked, about the stock selling on such and such a basis. That has been rather confusing to me, and although I assume his Honor knows it it may not always be known and I am going to ask you to take a concrete example. For instance, take a hundred shares of five percent

stock of one of these lessor companies and assume that you get for it what is offered in this merger agreement, which would be eighty six shares, as I understand it, and that you are required to sell that eighty six shares on the present market, how much would you get? A. If you sold that eighty six shares of preferred stock at one hundred and ten, you would get nine thousand, four hundred and sixty dollars.

Q. Now, then, suppose you wanted to invest that stock—that money in the stock of the United New Jersey Railroad & Canal Company at its present market price to produce the same income that you were getting on the five percent stock which you exchanged, how much money would you have to invest in that stock to do it?

Mr. Mc Carter: I object as immaterial.

A. Approximately $11,500.

Q. In other words it would require two thousand dollars more. A. Approximately.

Q. Now, on what basis is the United New Jersey Railroad & Canal selling today?

Mr. McCarter: Same objection.

A. Four thirty five.

Q. Four thirty five; just explain to his Honor, with that concrete example, what you mean by basis of selling? A. An investor who buys a ten percent stock at two hundred and thirty dollars a share is getting a return on his money exactly of 4.35 percent.

Q. I do not think that is entirely clear. Try once again. A. If an investor buys fifty shares of United New Jersey Railroad & Canal Stock and pays therefor $11,500 he receives an income of $500 a year; $500 a year is 4.35 percent of $11,500.

Q. Now, then will you tell us how much this person who has $9,460, which is the price—the callable price of the Public Service Electric & Gas Company six percent preferred, and substantially the present market price, would have to pay at the present market for one of the four and a half percent first and refunding mortgage bonds of the Public Service Electric & Gas Company—— (interrupted).

Mr. McCarter: Same objection.

Q. ——in order to get the same yield that he is getting on his five percent stock which he is exchanging for the Electric & Gas Company stock. A. He would have to buy—if he bought eleven bonds he would get an annual return of $495.

The Court: Answer the question.

The Witness: Approximately $11,000.

Q. Approximately $11,000. Now, Mr. Dick, I think you have already expressed the opinion, but I ask you the concrete question, do you, as a banker, with your knowledge of the situation and the study which you have made, think that the offer contained in this merger is a fair and equitable one? A. I do not.

The Court: Why? Now go on.

Q. Now, give us the reason. A. The reasons are that if our clients accepted the cash offer and we reinvested that money without loss of security, they would have a reduction in income; if we maintained the income, they would have a loss of security. If they accept the preferred stock——

Mr. McCarter: There is no cash offer in this merger. The witness is confusing the general offer of January 1, 1927, with the merger.

Q. Go ahead. A. If our clients accept the preferred stock they are taking a substantial loss in security; if they sell the preferred stock at the market they cannot obtain the same income without putting up more money.

Q. Unless they take an inferior security. A. This offer forces us to reinvest this money for our clients either with loss of income or loss of security.

RECESS.

CROSS-EXAMINATION BY MR. MCCARTER:

Q. Mr. Dick, may I ask when, in that period between 1797 and 1923, you became connected in any way with the firm of Roosevelt & Son? A. 1919.

Q. Were you then made a partner? A. I was then made a partner.

Q. Had you been connected with them in any other capacity prior? A. I had not.

Q. Was that your entrance on Wall street? A. It was not.

Q. You had been familiar with securities generally prior to that time? A. Yes, sir.

Q. For how long a period? A. Since 1908.

Q. So that your familiarity with investment securities generally extends to the present time from 1908. A. Yes, sir.

Q. Now, I understood you to say that in 1923 you never had heard of the so-called underlying securities— I refer now specifically to those which we are here concerned in, namely, Essex & Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat & Power Company, The Paterson & Passaic Gas & Electric Company, and Somerset, Union & Middlesex Lighting Company? A. I do not say that I had never heard the names,

but I had never heard of them in such a way as to cause me to investigate them.

Q. You knew nothing about them? A. Knew nothing about them.

Q. Had never bought or sold any of them? A. Not to my recollection.

Q. Knew nothing of their relation to the Public Service Corporation? A. No.

Q. In fact, they were at that time entire strangers to you. At that time had you ever heard of the Atlanta & Charlotte Air Line? A. Yes, sir.

Q. Very well known company? A. Yes, sir.

Q. Securities then on the market and at established price? A. Yes, sir.

Q. Had you heard of the Beach Creek Railway? A. Yes, sir.

Q. The same is true of it? A. Yes, sir.

Q. Boston & Albany, you heard about that? A. Yes, sir.

Q. The same is true of its securities? A. Yes, sir.

Q. At that time—I am speaking now of 1923—— A. Yes, sir.

Q. ——the Catawhisky Railroad first and second preferred, you heard of them? A. Yes, sir.

Q. They had an established market at that time? A. Yes, sir.

Q. Cleveland & Pittsburgh original stock—the same thing is true, without going over this list of fourteen companies, of all of them? A. Yes, sir.

Q. They were, you are satisfied, old, established railroad lines or parts of railroad lines whose securities were on the market? A. Yes, sir.

Q. Stabilized and had a market value? A. Yes, sir.

Q. Do you know whether or not the valuations that are placed upon this circular, which you were

kind enough to hand us, C-1 of today's date, whether the figures—their return based on established price reflects about the price or return that there has been on these roads during this period. A. There has been a great change in the interest rates during this period.

Q. Up and down? A. Largely up, since 1923, and the interest rate had been declining and stock had been appreciating in value since that time.

Q. Now, what time was it in 1923 that you bebecame personally interested in the stock of these five underlying companies that I have named? A. I cannot recollect the exact time. I think it was the latter part of 1923.

Q. And to whom and when did your concern sell any shares of these five companies? A. During this entire period?

Q. Yes. A. I cannot remember that.

Q. Is it on this list? A. No; that is only a partial list of holdings of certain well known insurance companies.

Q. The number of insurance companies according to this list that hold the stock of these five underlying companies is three, Eagle, New Jersey —four, I think—Eagle, New Jersey, Commercial Casualty, Phoenix and Aetna—five. A. I cannot remember. I assume you are reading correctly from the list.

The Court: The Home.

Mr. McCarter: No; not of these five companies.

The Court: Is the Home on that?

Mr. McCarter: Not that I know of.

The Court: I misread it. I thought the Home was on there.

Q. Do you think that the business of the railroads in the past fifteen years has suffered the change, or enjoyed the change, if that is the best way to put it, that has obtained in the electric and gas business? A. I do not quite understand the question. "Enjoyed the change." What change?

Q. Has there not been a very great increase in demand of the electric and gas too, to a certain extent, during the past fifteen or twenty years? A. Very great.

Q. And the gas has become inferior to the electric. A. I believe so.

Q. Now the railroads haven't enjoyed any such increase. A. The railroads have had a very much smaller increase in traffic.

Q. Haven't they, if anything, fallen back, owing to the automobile and other industries that came along? A. They haven't gone back.

Q. They haven't increased, have they? A. They haven't increased nearly as much as the public utilities.

Q. Now, have you—are you able to prognosticate as to their growth in the next fifteen years with reference to the electric and gas business? A. I assume that there will be a large increase.

Q. I asked you if you were able to prognosticate. A. No; not accurately.

Q. No, of course not. Now when did you sell Hudson County Gas Company stock to the Eagle Fire Insurance Company? A. I cannot remember.

Q. Approximately. A. I cannot remember.

Q. Was it in 1924 or 1925? A. I cannot remember the date of these sales. It is in the Sales Department, that I watch over, and I do not carry in my head.

Q. Did you ever sell any stock of the Hudson County Gas Company or the Essex & Hudson Gas Company to the Eagle Fire Insurance Company? A. I cannot remember.

Q. You cannot remember? A. No; I cannot remember. The Sales Department isn't under my direct supervision. I had these figures made by the Sales Department.

Q. You do not know whether the sales were made through you, do you? A. I have been informed by the members of my organization responsible that that figure here is correct.

Q. What? A. I have been informed by the members of my organization who handled that business that this list they gave me is a correct statement.

Q. This list of what? A. List of sales. The list you have in front of you.

Q. Does this purport to be a list of sales or does it purport to be a list of insurance companies holders of this stock? A. It is a list of insurance companies holders of this stock.

Q. Do you know whether you sold them shares, your company, I mean? A. I know we have sold them stock.

Q. Who, the Eagle? A. I cannot say.

Q. The New Jersey Insurance Company? A. I cannot say.

Q. The Commercial Casualty? A. I cannot say.

Q. Isn't each one of them a local Newark Company with head offices here? A. I don't know.

Q. You don't know? A. No.

Q. Do you say now to the best of your knowledge and belief your company sold any stock of these five companies to either the Eagle, New Jersey or Commercial Casualty? A. I would have to consult my record to give you an actual statement.

Q. Did you sell the Phoenix Insurance Company any of these stocks? A. I would have to consult my records.

Q. You do not know? A. I cannot tell you offhand.

Q. Who were the clients whose interests you were protecting when you looked into this thing after the publication of the plan? A. We have a list of hundreds of clients. I cannot give you the names.

Q. Hundreds of clients? A. Hundreds of clients.

Q. Who were investors in these securities? A. Who had bought securities of us, guaranteed stocks.

Q. At the time, in 1924, when you made a particular investigation into the status of these securities of which you never heard before, you say you had hundreds of clients investors in these companies? A. Not at that time. We hadn't started to sell them when we investigated them.

Q. I am asking you who the clients were whose interests you were protecting when you undertook to protect them. A. At the present time—— (interrupted).

Q. No. I am talking about 1924 when you came and had an interview with Mr. Young and the treasurer of the company, who were the clients? A. We were not protecting clients in 1924. We did not assume this stock would be menaced. We conferred with Mr. Van Middlesworth to get data on which to base a judgment as to whether these stocks were sound investments.

Q. The plan of 1924 was dated March 13, wasn't it? A. I cannot remember.

Q. Well, look at it and see. A. I assume your statement is correct.

Q. Now, it was after that that you made the investigation, wasn't it? A. I don't think so.

Q. Did you make an investigation after that? A. Oh, yes, we have investigated ever since—watched them ever since.

Q. You say the menace was not known at the time? A. Absolutely not.

Q. What do you mean by "menace"? A. The forcible consolidation at figures that deprived our clients of their property without just compensation.

Q. Yes. Was the proposed merger known at that time? A. What do you mean by "proposed merger", the terms of the merger.

Q. The facts that it was proposed to merge the subsidiary companies into the electric and gas company? A. No.

Q. It was not? A. It was not known definitely.

Q. Did you make an affidavit in this cause? A. I said it was not known. I did make an affidavit; I did.

Q. Did you make an affidavit? A. I did; yes, sir.

Q. I am reading from page 297 of the book and see if you said as follows, and if you wish to stand by it or go back on it. "18. Early in the year 1924, the Corporation prepared and announced a Plan for the Readjustment of certain of its securities and intercompany relations. This plan, beside providing for certain readjustments in the security issues of the Corporation, provided for the consolidation of the Electric Company and the Gas Company, together with the United Electric Company, which consolidation took effect in 1924, thereby forming the Electric and Gas Company, and for the creation of the First and Refunding Mortgage of the consolidated corporation, dated August 1, 1924. That mortgage is of a modern type, and is adapted to serve for

many years to come as the medium for senior financing through the issue of bonds secured on the electric and gas properties, subject only to the closed underlying bonds of the leased companies and merged companies (provision for refunding which is made in said indenture) and subject (as to the leased properties) to the prior fixed charges due as rent under the leases and available for dividends on the stock of the leased companies.

It was also a part of that plan that ultimately the other leased companies should be merged or consolidated with Public Service Electric & Gas Company." Do you stand by that? A. I do.

Q. It was part of the plan as you understood, in 1924, that the other leased companies including the five in question here should be merged or consolidated with the Public Service Electric & Gas Company, is that right? A. It was not a definite part of the plan.

Q. Answer my question. It was not? A. It was not a definite part of the plan.

Q. It was part of the plan, wasn't it? A. I would say it was part of the plan.

Q. Will you go back on your affidavit? You did say so, didn't you? Didn't you? Didn't you also say it was also a part of that plan? A. I was trying to make my statement clear.

Q. I haven't finished my question yet. Did you or did you not swear on the fifteenth of June, 1927, in the affidavit that was attached to the bill of complaint for the purpose of securing a preliminary injunction as follows: "It was also a part of that plan that ultimately the other leased companies should be merged or consolidated with Public Service Electric and Gas Company." Did you swear to that? A. I did.

Q. Now your company itself, as such, has in the meantime become the owner of certain stocks in this company, have you not—these companies? A. Since 1924 we have bought stock in these companies.

Q. You did not own any previous to the promulgation of this plan, did you? A. I don't know. I think we did.

The Court: 1924 or 1927 plan?

Mr. McCarter: 1924 plan.

Q. Look at this document, which you probably will recognize as having been made up by you or your counsel and served upon us, and see if it is not true that every share of stock that you designate there in these five companies that you owned from 1913 down were acquired after March 1st, 1924? A. The list of stocks here, according to this statement, were purchased after March, 1924.

Q. Now, do you stand by the list or don't you? A. I stand by the list.

Q. Let me understand. In the investment that you made—I mean by you, the firm of Roosevelt & Sons, were made after the promulgation of the plan of 1924 with which you were familiar. A. That applies to these five stocks?

Q. I mean these five stocks. I am not speaking of any other stock. Now you know, don't you, that you have sold a good many of the stocks in these five companies in the meantime? A. Yes, sir.

Q. Yes. And sold them at a profit, haven't you? A. I tried to.

Q. Hasn't the price of these stocks, these five subsidiary companies increased from 1924 to the present time? A. It has.

Q. Yes. And if that increase in the price was due to the promulgation of the plan, then you shared in the increase, didn't you? A. Yes, sir.

Q. Yes. Now, with that panorama before you there now, looking at that list of holdings by your concern, you show—it is shown there exactly the date of each purchase and each sale of the stock of these several companies, isn't it? A. I think so.

Q. Yes. Now, at the time of serving this document, September 22nd, 1927, your concern owned no New Brunswick Light, Heat & Power Company stock at all, did you? A. I cannot tell you from memory.

Q. Look at it and see there. A. That is correct.

Q. That is correct. At the same time, according to this document, you did not own any Hudson County Gas Company, did you? A. I think that is correct.

Q. Now, the plan of 1927, January 10, you remember that? A. Yes, sir.

Q. The second plan. A. Yes, sir.

Q. Do you state it to be a fact that ever since the month of December, 1926, just previous to the promulgation of the plan of January 10, 1927, the Public Service Corporation of New Jersey and Public Service Electric & Gas Company made and have been making efforts to purchase or cause to be purchased, the stocks of the lessor corporations with a view to the ultimate merger or consolidation thereof into the Public Service Electric & Gas Company—is that a fact? A. Will you read the question?

Q. (Question read.) A. I have no knowledge of any effort made by the Public Service Corporation to purchase stock except through the terms of the published offer.

Q. Yes. Well, that offer was in the statement of January 10, 1927, wasn't it, the offer to which you allude? A. Yes, sir.

Q. Now look at the statement of your holdings since 1913 in these several stocks. On January 12, 1927, your concern bought a hundred shares of The Paterson & Passaic Gas & Electric Company, didn't it? A. That is correct.

Q. That was after the promulgation of the plan. A. Yes, sir.

Q. On January 14 you bought ten more. A. Yes, sir.

Q. On January 18 you bought seven more. A. That is correct.

Q. On May 5th you bought twenty five more. A. That is correct.

Q. On May 6th you bought thirteen more. A. That is correct.

Q. On May 9 you bought two hundred and forty four shares more. A. That is correct.

Q. On May 9, 1927, you bought ten shares more. A. That is correct.

Q. All since the announcement of this plan which specifically included the proposition of merger. A. That is correct.

Q. You purchased during the year 1927 all the shares of stock your company ever owned in the Hudson County Gas Company, didn't you? That is correct? A. I think that is correct.

Q. And you do not own any of that today, or did not in September. A. I think that is correct.

Q. Now, since the promulgation of that plan, you have purchased of the shares of the Somerset, Union & Middlesex Lighting Company forty shares on January 17, 1927, fourteen shares on January 18, five shares on January 31st and seven shares on February 10, 1927, haven't you? A. That is correct.

Q. Has there been an increase in the price of

these stocks since January first, 1927? A. Yes, there has.

Q. And you have sold at the increase, haven't you? A. Why, we have endeavored—— (interrupted)

Q. What? A. We endeavor to sell at a profit.

Q. At a profit. A. Sure.

Q. I don't suppose the promulgation of this plan had anything to do with that profit. A. Yes, sir, it reduced the profit.

Q. Yes? A. It reduced the profit.

Q. So that the position you wish to occupy—— (interrupted)

The Court: It produced a profit.

The Witness: No.

The Court: What is the fact?

The Witness: The fact is it reduced—— (interrupted)

Mr. McCarter: Yes; reduced. What is your basis for that remark, Mr. Dick, that it reduced the price?

The Witness: These stocks have been unfavorably affected in desirability to investors from the fact they are menaced by this proposed compulsory merger.

Q. Are you familiar with the market set prices of these stocks from 1913 down? A. In a general way. I cannot carry all the fluctuations in my head.

Q. I suppose it has something to do with the case, hasn't it? A. No, I think not.

Q. Nothing to do with the case. A. I think not.

Q. You think that the price at which these stocks have sold say, since 1917 to 1926, a period of nine years, has nothing to do with their—the effect of

this merger on them and the effect of this plan on them?

Mr. Haight: That was not the question. The question was did it have anything to do with this case.

Mr. McCarter: Question withdrawn.

Q. Does the market value as evidenced by the sales of these securities from 1917 or 1918 down to the present time, closing at 1926, because that is as far as the exhibit goes, have any weight in your fixing upon the value of the securities? A. None whatsoever.

Q. None whatever? A. None whatever.

Q. You ignore what the public are willing to give and the public are willing to take for stock in estimating its value? A. I ignore the market price as value—as a true evidence of its value.

Q. I am asking you to answer the question I put to you. In reaching the market value of that stock do you ignore the prices in the market which persons willing to sell and willing to buy give and take? A. I do not understand the question.

Q. Do not understand it? A. No, sir.

Q. Does the fluctuation in the market and the market price of stock under the circumstances I have stated have weight in passing upon the fairness of an offer of exchange? A. It would have some weight.

Q. Yes. Well, now, are you aware of the fact that the price of Hudson County Gas Company in 1920, before the announcement of either of these plans, the highest price was ninety five and the lowest price was eighty five? A. I knew that they sold at a very much lower level, but I cannot—— (interrupted)

Q. Are you aware of the fact that in 1926 the

highest price of Hudson County Gas was one forty two and a half and the lowest price was one forty two? A. That would be my estimation of what the market had been. I cannot carry past markets definitely.

Q. Well, it is stated so on the exhibit. Do you question the figures? A. No; I do not question the figures.

Q. What caused that change? A. What caused the rise in price?

Q. Yes, from 1920 to 1926. A. It was caused by two things; in the first place the reduction of interest rates, which caused all good securities to advance, Government bonds and everything; secondly, to the improved earning and credit standing of the Public Service Corporation.

Q. These are the stocks of the underlying companies I am talking about now. A Correct.

Q. Then you think that the plan had nothing to do with it? A. I do not think that the plan advanced the price of these stocks at all.

Q. Did the carrying out of the plan have anything to do with it?

Mr. Haight: I submit that the witness should be told what plan is referred to. We have had three plans. We may be led to confusion if we do not know what plan it is.

Mr. McCarter: He knows perfectly well what I am talking about, the plan of 1924, as supplemented by the plan of 1927. There is no confusion. It is all one plan.

Mr. Haight: One plan came three years after the other.

The Court: Different plan—not a supplement.

Mr. McCarter: No; one is part of the other.

The Court: It has been said here that the 1924 plan was objected to by your bankers.

Mr. McCarter: No. The president of the company had a plan of reorganization of his own which he submitted to these bankers, but did not accept it but modified it and produced the plan, one publication of which came in 1924, supplemented by a completion and further definite statement of the same plan in 1927.

The Court: I was mistaken, Mr. McCarter. My understanding was that the plan of 1924 was not acceptable to them and they evolved the plan of 1927.

Mr. McCarter: We speak quite glibly of these things, forgetting your Honor is not as familiar as we are, but your Honor has it right now.

Mr. Haight: The plan of 1924 had, primarily the consolidation of the Public Service Electric Company, Public Service Gas Company and United Electric & Improvement—the forming of the Public Service Electric & Gas Company—the redemption of the fifty thousand dollar bond issue and what they called perpetual interest bearing certificates, and substituting in place thereof the stock of the Public Service Electric & Gas Company and certain of the bonds—then, in paragraph 5 of this plan, it said, "An offer to the stockholders of certain other electric and gas companies leased to the corporation have the opportunity to exchange their stocks for other securities, so that eventually these companies also may be consolidated with the Public Service Electric & Gas Company—the holders of a

large amount of these stocks have already expressed their desire to take this exchange—these consolidations are not an essential part of the plan, however, as the leases in question extend in practically all cases to upwards of nine hundred years." Now paragraph 6—— (interrupted)

Mr. McCarter: I object to having counsel in the midst of my cross examination of his principal witness, sum up this case.

Mr. Haight: I am not summing it up—Does your Honor wish me to proceed?

The Court: No. You have no right to interfere with the cross examination.

Q. Now, Mr. Dick, I notice that in 1920 the high figure for the stock of The Paterson & Passaic Gas & Electric Company was eighty and the low figure, sixty five. I notice that in the year 1926, the highest figure for the same was ninety three, and your figure was ninety three. Do you say that the announcement of this plan had nothing to do with that? A. I believe that the plan—— (interrupted)

Q. Will you answer that? A. You haven't said which plan. There are two separate plans, as far as these securities are concerned, and they have different effects on these stocks.

Q. Whatever you wish to call them, two plans or a dozen plans—we will call them then, if you will, these plans. I do not care what you call them. One was announced in 1924, the other announced January, 1927. I will ask you if the increase in the value of the stock of The Paterson & Passaic Gas & Electric Company from eighty in 1920 to ninety three in 1926 had anything to do with the announcement of this plan? A. The 1924 an-

nouncement helped the stock; the 1927 announcement injured the stock on the market.

Q. That is your opinion? A. That is my opinion.

Q. Now, upon what do you base your opinion as to what you call the value of a security? A. You mean the market price at which it sells or the intrinsic security?

Q. The market value. A. Market value is based entirely on demand and supply.

Q. Nothing else? A. That is all. Demand and supply.

Q. For instance, a security that has—as some of these securities—very much smaller return than the others will have, if the demand and supply is the same in each, it would be of the same value? A. If the demand and supply was the same it would have the same effect.

Q. For instance, a security or stock whose ultimate, final revenue is four percent, will have the same market value that a security whose outside ultimate revenue is eight percent, if the demand and supply both being equal. A. Exactly the same.

Q. The same thing? A. Yes, sir.

Q. That is your system of political economy.

The Court: You mean actually or relatively?

The Witness: I mean the four percent stock and the eight percent stock, if nobody is willing to pay more than par for the four percent stock it sells at par,—if no one is willing to pay more than par for the eight percent stock, it sells at par.

Q. Now, have you given us the basis of your value, or your opinion as to the value of a stock—the supply and demand only? A. The actual mar-

ket value is based on supply and demand. Supply and demand are influenced by the intrinsic value of the stock, the dividends it pays, the security of it —— (interrupted)

Q. Marketability. A. Yes, sir.

Q. You do not know what market these securities had previous to 1923, do you, because you knew nothing about them? A. I knew very little about them.

Q. Have they ever had a market such as your railroads to which you referred in your list of fourteen, exhibit C-1 of today? A. They have not as yet.

Q. Not as yet, and yet you want the Court to feel that the comparison between the value of securities of a concern whose market value in the past you know nothing about, and as far as you do know never had had anything like the market value of these railroads to compare them with the stabilized roalroad securities that have had an established market such as you portray upon your paper for as long as you have been on Wall street, do you? A. Will you read that? That is a very long question. I can not follow it all.

Q. (Question read.) A. I cannot understand that question.

Q. Cannot understand that question. All right. I think it is a very bad question. The railroads, fourteen of them, have a return based on a price of four fifty one, haven't they? A. That is correct.

Q. What has been the price of the underlying securities of these five companies since you have been familiar with it, been about five something, hasn't it? A. Yes, sir; they have yielded—— (interrupted)

Q. Then the public don't agree with you.

Mr. Haight: He hasn't allowed him to answer it.

Mr. McCarter: Have you answered?

The Witness: I think I did. The Question was—— (interrupted)

(Question and answer read.)

Q. What has been the average price of these securities since you have become—average yield since you became familiar with them? A. It has been substantially higher than the yield on these railroads.

Q. How much higher? A. It varies from time to time, but it has been substantially higher.

Q. It has been as much as more than one point, hasn't it? A. I wouldn't like to guess at that; it has been substantially higher.

Q. You think a comparison between securities having those differences in yield a fair comparison? A. Comparison as to safety.

Q. As to safety? A. As to safety.

Q. As to safety alone? A. As to safety.

Q. You are only leaning on safety. A. Safety is the first purpose.

Q. You ignore all the other elements? A. No, I do not.

Q. I ask you again if you think a comparison between a series of securities that have had a yield of an average of four fifty one is fair in estimating the value—market value of securities—with securities that have had an average yield of at least a point in excess of four fifty one. A. I think the comparison is eminently fair from the point of view of safety.

Q. Is that your best answer? A. That is my answer.

Q. Why hasn't the public felt so? A. The public

haven't known about these underlying guaranteed stocks.

Q. You know more than anybody about that. A. I do not wish to be—— (interrupted)

Q. What? A. I do not want to go to that extent.

Q. You take that flattery next to your soul, is that what you mean? Without being egotistical you take that to your soul, that you know more about these underlying securities than anybody.

The Court: He hasn't said that.

The Witness: I didn't want to say that. I say, No, I wouldn't say that.

Q. Does the investing public know anything about it? A. They don't know very much except what I have told them.

Q. What you have told them? A. Yes, sir; and what they looked up themselves after I called them to their attention.

Q. And you do claim to know more about them than anybody. A. Not than anybody, no.

Q. Who knows more than you?

The Court: You mean an outsider?

Mr. McCarter: Anybody.

Q. Who knows more than you? A. As regards the value of these securities?

Q. I am talking about these five underlying securities. I want to know who knows more about them than you. A. Comparisons of this kind are rather odious. I would say the president of the Continental Insurance knows as much as I do.

Q. Do you know whether that company owned a single share of stock in these five companies? A. It does in the leased companies. I don't know just about that five. I have said the Continental In-

surance Company owned stock in these leased companies.

Q. Does the Continental Insurance Company own a share of stock in the five companies in question? A. I think that the president of the Continental is also president of the Eagle. I am not sure. The Eagle Insurance Company owns stock in the Essex & Hudson and the Hudson County Gas Company. I am not sure about that.

Q. Who is the president of the Eagle Fire Insurance Company—that happens to be a Newark company—who is it? A. Mr. Sturm is the man I speak of, president of the Continental group—there is a group of insurance companies.

Q. You say Mr. Sturm is the president of the Eagle Fire Insurance Company? A. No; I said I wasn't sure.

Q. Now which one besides somebody that apparently has no interest in these five companies, knows more than you? A. I don't know. I can't answer that.

Q. You don't know and yet you think your judgment on that subject is better than the judgment of everybody else in the world except Mr. Sturm.

Mr. Haight: I object.

The Witness: I think I can explain that. Would you like me to explain it to you?

Q. I ask you to answer my question. A. I say that my judgment as to the intrinsic value of the securities is not based primarily on what the general public think about it.

Q. I didn't ask you that. I say, you think that your opinion as to the value of these securities of these five underlying companies is better than that

of anybody in the world. A. That is a statement —I wouldn't make that statement.

The Court: He asked you whether you think so.

The Witness: I do not think so, no.

Q. Do you admit from the figures that have been directed to your attention that apparently such of the investing public as goes into these securities is of a contrary view to your own? A. I believe that the general investing public does not place the value on these securities that I do.

Q. I see. The investing public are the eleven suffering jurors and you are the one that is right.

The Court: You need not answer that.

Q. Now, I will ask you to answer this question. You testified today at the outset that when the plan of 1924 was announced, you felt it incumbent to protect your clients, and I was unable before to get you to tell us who those clients were. Perhaps you have had an opportunity since to remember. Who were the clients?

Mr. Haight: I object, because it contains an unwarranted assumption of fact. He never said so far as the plan of 1924 was concerned that he found any duty to protect any client. It was not until the plan of 1927 came about and the merger was undertaken.

Mr. McCarter: There is no such distinction in my notes of the evidence.

Q. When do you say you took hold, protecting your clients? A. After the plan of 1927 was announced.

Q. All right. Very good. Now whom did you protect? A. I would say there was a list of several hundred clients.

Q. No, no. How many shares? A. The total investment in stock of these leased companies amounted to between two and three million dollars.

Q. Your clients? A. Our clients.

Q. At the time of the announcement of the plan of 1927? A. Yes, sir; a large part of which is in Newark stock, Bergen County stock and the South Jersey stock.

Q. I am talking now about the five companies involved in this suit. A. Yes, sir.

Q. Who and what are the names of your clients who had invested in those stocks after the promulgation of the plan of January 10, 1927? A. Our appearance in this case is to protect the clients that have the Newark stock, South Jersey stock and Bergen County stock.

Q. Then you are not here fighting this case, but fighting some other supposititious case.

A. We believe this case jeopardizes our rights in those other companies.

Q. Had you any clients whose interests received your so-called protection who hold stock in the five companies involved in this suit? A. I think that we have considerable holdings in The Paterson & Passiac Gas & Electric Company; a number of clients; how many I cannot remember now.

Q. Can you not mention one whose interests you were protecting? A. I think that the Fidelity & Casualty Company has some Paterson & Passaic Gas & Electric Company, but I cannot carry in my mind the names of our clients and just what stock they hold. We can furnish that.

Q. You are unable to name anybody now with any degree of certainty, is that right? A. I do not care by memory to give the names of our clients or exactly what stock they hold. It is a matter of record in our office.

Q. So far as you are able to answer my question you cannot remember the name of a single client who, after the promulgation of the plan of 1927, had any investment in the stocks of these five companies. A. Have you got that list? Do not some names appear on that list?

Q. What list? A. List of the insurance companies. This list shows—— (interrupted)

Q. I am not asking you what the list shows. I am asking you to name a single client whom you say you were protecting by investigation and steps you took after the promulgation of the plan of 1927. A. Phoenix Insurance Company of Hartford.

Q. They had bought of you? A. I think so; I am not sure.

Q. Didn't you tell us before that you hadn't, or that you didn't know anything about it? A. I said I think so. I don't know. We did—— (interrupted)

Q. Do you now say they were clients of yours and had bought that stock of you? A. The Phoenix Insurance Company is a client of our firm. Whether they bought this stock, I don't know, from us.

Q. Is that the only one? A. The Aetna Life Insurance Company has two hundred shares of the Somerset, Union & Middlesex Lighting Company.

Q. You have already told us you didn't know whether you sold to them or not, didn't you? A. I didn't remember.

Q. Didn't remember? A. No.

Q. Are you able to remember one—— (interrupted) A. I have just given you two.

The Court: Is that a client?

The Witness: Aetna Life is a client of ours, but then again there I cannot remember if we or our firm sold them this stock.

Q. Do you know whether they owned the stock in any of these five companies January 10, 1927 or shortly thereafter when you started out on your protection of interest? A. I don't like to testify as to—on a thing where the record is clear in the office and I am asked to remember about it. I do not remember.

Q. In other words when you said this morning you had the interest of your clients at heart, you didn't know to whom you referred, did you, and you cannot remember now, can you? A. Yes, sir.

Q. Is that right? A. As a group I can remember.

Q. Now I show you Exhibit D-44, which is the so-called deposit agreement. Did you have anything to do with the preparation of that document? A. Only in a very general way.

Q. Well, you read it, did you not, before it was promulgated? A. No.

Q. What? A. I didn't read it.

Q. You didn't read it? A. I didn't read it. I trusted counsel to make up a satisfactory deposit agreement.

Q. Your company is one of the committee. A. Yes, sir.

Q. Your partner is one of the committee. A. Yes, sir.

Q. You were familiar with its contents before it went out. A. The general provisions of it, yes, sir.

Q. What do you mean by "general provisions"? A. As to who the depositary was to be, the question of expenses, how much we would have to assess these stock holders in order to pay our expenses, as to the length of time it would run, as to whether there was a privilege of withdrawal.

Q. What was it all about? What was it for, the deposit agreement? A. The deposit agreement was to unify the opposition.

Q. To what? A. To this merger.

Q. On the ground that they were entirely satisfied to hold the stock. A. Exactly.

Q. No other purpose whatever. A. None whatsoever.

Q. Prevent the merger and permit the depositors to continue holders of the stock. A. To protect the stockholders from being deprived of their rights without just compensation.

Q. Did you object to the merger or did you object to the—about the possible money that was to be had out of it. A. We objected to having our clients deprived of their stock without just compensation.

Q. That is the best you can say. A. That was the main—the entire motive behind that.

Q. Did you object to the merger, or were you quite willing that a merger should take place? A. We did not care whether the merger took place or not, providing the interests of our clients were not jeopardized.

Q. So you wanted, in order to prevent jeopardization, to do what? A. To protect our clients.

Q. Well? A. In every way possible.

Q. Secure more money for them, is that it? Secure more money for them? A. If they were forced

to sell the stock, to sell it at a price above what you offered.

Q. Forced to sell. Do you recall the recitation "In and subsequent to the month of December, 1926, the said Public Service Corporation of New Jersey and Public Service Electric & Gas Company made, and have been making efforts to purchase or cause to be purchased the stock of the lessor corporations with a view to the ultimate merger or consolidation thereof into the said Public Service Electric & Gas Company or some other corporation or corporations affiliated therewith, and in connection with such efforts did in or about the month of January, 1927, make certain offers for the stock of the lessor corporations, including a cash offer." Do you remember making that recital in there? A. No; I didn't read it. I have never read it.

Q. Never read that? A. No.

Q. Are you aware of the fact that the provision is that the parties signatory to this paper will receive their full dividends pending the life of the committee and that all the committee will ask for compensation is the following: "The following percentages of the amount by which the sum of money or the value, as determined by the committee, of any property received, receivable, recovered or offered in settlement, the payment for exchange for any of the respective stocks of the lessor corporations, exceeds the amounts of cash heretofore offered." Are you aware of it? A. In general, yes, sir; I did not read it.

Q. Look at it. Look at the body. A. No; I do not doubt you can read correctly.

Q. In other words, you were starting on this plan promulgated June 10, 1927 to get more money for the holders—the depositors and that the only ex-

pense that they would be subjected to, and the only compensation that the committee would expect to get was percentages of the amount by which the sum of money or the value, as determined by the committee, of any property recovered or offered in settlement, payment or exchange as shall exceed the offers made by the company under the offer of 1927, is that right? A. I think you are probably reading correctly.

Mr. Haight: He has not read it all. If the whole thing is read it is entirely different from what Mr. McCarter has read to the witness.

Q. In other words, the plan of this committee specifically stated to the proposing depositors that their dividends would remain unimpaired and that the expenses to which they would contribute by becoming a party to this deposit agreement was (a) Two dollars for each share of each of the eight percent stocks, one dollar and twenty five cents for each of the five perecent stocks, one dollar for each of the four percent stocks and fifty cents for each share of the two percent stocks, or (b) the following percentages for the amount by which the sum of money or the value as determined by the committee of any property received, receivable, recovered or offered in settlement, payment or exchange for any of the respective stocks of the lessor corporations exceeds the amount of cash heretofore offered therefor respectively, namely, in the case of the eight percent stock, ten percent of such excess over a hundred and forty two dollars per share ($142.00), in the case of each of the five percent stocks, twelve and a half percent of such excess over $90.00 per share; in the case of the four percent stock, twelve and a half per cent of

such excess over $72.00 per share, and in the case of the two percent stock, twenty percent of such excess over $36.00 per share. That was right, wasn't it? A. I think that is right.

Q. Now don't you know that at the time that this agreement was promulgated and dated June 10, 1927, the offers in the plan had closed; don't you know that? A. I assume that it is true if you say so.

Q. Then you expected to reopen the plan, did you? A. I didn't really figure what the outcome would be. It was a legal question to protect our rights and to prevent us being deprived of these securities. Details I do not know.

Q. Are you aware that the same agreement has this in it? "The committee may in its absolute discretion charge its expenses to any one or more of the several stocks deposited hereunder, whether or not such expenses shall be incurred in connection with the lessor corporations to the stock of which such expenses or any part thereof shall be charged," do you remember that? A. No; I cannot remember those details.

Q. But this plan, this committee are parties complainant, and they have provided in the agreement that they can charge to this suit any effort that is made to protect the stocks of the other companies other than involved in this suit; that is the object of it exactly. You are aware of that provision, aren't you? A. Will you repeat that?

Q. You are aware of the fact that the committee, on page 14 of this agreement reserves to itself the right to charge the holders of the stock of any of these five companies for any efforts that may be made in preventing the plan being consummated with reference to the other three companies or vice

versa. A. My general recollection is—— (interrupted)

Q. Will you answer that? A. I cannot say yes or no. My recollection is they treated all these securities the same.

Q. Have you a Mr. Slater connected with your office? A. Yes, sir.

Q. Is he a clerk? A. He is a salesman.

Q. Did your office send Mr. Slater out to seek signers to this deposit agreement? A. To solicit depositors, yes, sir.

Q. What? A. Yes, sir.

Q. I show you a copy of a letter addressed to Mr. John L. Kuzer, Trenton, New Jersey, and purporting to have been signed by Roosevelt & Sons. Did your concern send that letter—the letter of which that is the original? A. Of course I cannot tell, but it looks all right. This is a copy. I cannot tell if it is a correct copy or not. I say it looks all right.

Mr. Haight: The committee solicited depositors and tried to get your company to give us a list of stockholders so that we could go ahead and solicit them.

Mr. McCarter: I am cross examining the witness and he is making another stump speech.

Q. I ask you, Mr. Dick—you stated that Mr. Slater was a clerk of yours and that he was sent out to endeavor to get signatures to the agreement, and I show you a letter purporting to be a copy of the letter sent by your concern to Mr. John L. Kuzer of Trenton and ask you whether you repudiate or acknowledge that letter, or that copy.

Mr. Haight: I object to the question. I do not think this witness can be asked whether

he repudiates or acknowledges. He has already stated he doesn't know anything about it.

The Court: Objection overruled. I do not see the force of any of this part of the testimony.

The Witness: He wants to know if I acknowledge everything in it. It is two pages.

The Court: Generally, it was one of a circular letter.

The Witness: I assume it is.

Mr. McCarter: Overnight will you look up your file and produce your office copy of a letter of September 22, 1927, signed by Roosevelt & Sons to Mr. John L. Kuzer of Trenton, New Jersey?

The Witness: Yes, sir.

REDIRECT-EXAMINATION:

Q. You stated in answer to one of Mr. McCarter's questions that you ignored the market value of the stock in fixing its intrinsic value. Why did you do that? A. My studies as to securities are based on the analysis of the factors comprising the security. Security and market value very often do not adjust themselves.

Q. Give us some concrete example. A. There was a rather interesting case in 1915. The New York Central Railroad consolidated with the Lake Shore; the Lake Shore collateral trust three and a half bonds were outstanding; they exchanged, I think it was two thirds of those bonds for the New York Central consolidated mortgage fours. These New York Central consolidated mortgage fours were never offered by the house of issue; they

were just given to the security holders; they were a mortgage on New York Central; they were first mortgage and they were prior in lien to the junior open refunding mortgage of the New York Central covering the same mileage and due to the fact, as such uncallable. They were superior in security, a first mortgage is more secure than a second mortgage on the same property——(interrupted)

The Court: Haven't you enough without bringing in something else?

The Witness: The market price on the first mortgage bonds, the prior lien bonds, yielded more than the junior bonds—in other words, the best security sold at a lesser price.

Q. Let me ask you this question. Do you know what happened to utility stock generally following the war in 1919 and in 1920 as to marketability or price received from them? All stocks were very low.

Q. Utility companies in particular, did they fall off? A. I would say they did, because utilities with increased cost and sluggish adjustment of rates, were troubled for a time.

Q. When you spoke of yield in answer to one of Mr. McCarter's questions on the lessor company stock, did you base it on the then prevailing market price; you said it had a five percent yield. A. The price of five percent stock from 1920 advanced from around ninety to ninety five or par.

Q. You spoke of yield on it. Do you base the yield at the then prevailing market price? A. Yes, sir; the then prevailing market price.

R. IRVING OUTWATER, Sworn for complainant.

DIRECT-EXAMINATION BY MR. HAIGHT:

Q. Where do you live? A. Passaic, New Jersey.

Q. What is your business? A. Dealer in stocks and bonds.

Q. How long have you been dealing in stocks and bonds? A. You mean for myself or how long have I been in business?

Q. How long have you been in business? A. I started October first, 1896 with Mr. Zabriskie in Jersey City.

Q. Have you been located in Jersey City since that time continuously? A. Yes, sir; continuously.

O. And are you one of the complainants in this case? Yes, sir.

Q. Who is your partner? A. Mr. H. P. Wells.

Q. How long have you and Mr. Wells been partners? A. Since December, 1910.

Q. What business have you and Mr. Wells been engaged in? A. Generally dealing in New Jersey securities, stocks, bonds, municipal bonds, gas, public utility, in New Jersey securities.

Q. How did you come to institute this suit? A. In January, 1927, this plan of the Public Service was published—in January of this year, 1927—the plan was issued or published by the Public Service, sent to all stockholders of the underlying Public Service securities, such as the Hudson County Gas Company and what we know as the leased companies, and as we had been dealing in those stocks and bonds for the past—since 1913, I will say, a great many of our clients—I will say some of our clients came to us and asked what we thought of the plan.

Q. Did you study it? A. I studied the plan.

Q. And what did you advise them? A. My advice was that I thought the security that they still had was better than either of the two plans which they wanted to exchange stock. I said: "If you accept Plan B—— (interrupted)

Mr. McCarter: I object to what was said.

Q. Now, then, was, as a result—I was trying to get the reason why he instituted this suit, without asking him the direct question. Did you have any purpose in instituting this suit other than to protect the interests of your client and the interest you had in the stocks of the companies? A. No, sir.

Q. Did you purchase any stock of any of these lessor companies for the purpose of instituting this suit—for the purpose of attempting to block the merger? A. No.

Q. Did you purchase any of this stock in these companies because of the proposed merger? A. No, sir; not with that direct idea.

Q. Now, then, Mr. Outwater, have you dealt in these stocks quite extensively? A. Yes, sir.

Q. For how long a period of time? A. I think ever since the beginning of all these underlying companies. When I was with my uncle, Mr. Zabriskie, he was connected with the company, and I dealt in them continuously except during the war when it was impossible to sell these stocks.

Q. Have you ever found any difficulty in disposing of these stocks? A. In any particular one—they or all of them.

Q. Any one of them or all of them.

Mr. McCarter: You mean the five?

Q. The five companies. A. I will say we always had more of a demand for these stocks than we

could secure—we couldn't secure stock enough in most cases. I am not speaking of banking houses. I am saying in the general run, we were always looking for these stocks and would like to have bought more and could have sold more had we been able to secure them.

By Mr. McCarter:

Q. You handed us, I think yesterday, Mr. Outwater, some papers. A. Yes, sir.

Q. Which were marked in evidence as Exhibit D-54. Does this correctly state the purchases that have been made by Outwater & Wells in their several capacities of the stock of the several companies named? A. It does for the past—I was just trying to find the date—about, I will say roughly, seven years ago, when we changed our system of bookkeeping. In other words, prior to seven years ago I cannot tell whether those were commission orders or not, but I can say after that time, with possibly one of two exceptions, they were all stocks bought for the account of Outwater & Wells, and also sold for our account, in other words, we bought wholesale and sold retail. We owned those stocks for such time as they were in our possession.

Q. You made several purchases for clients of those stocks in these five companies other than is displayed upon these lists? A. No, sir; every transaction, purchase or sale, subject to a few typographical errors are on that list, that Outwater & Wells made, whether it was bought for a client or bought for our own account, up I will say, to since seven years.

The Court: What?

The Witness: For seven years back where

we have records that I can prove that these securities after that time were bought for our own account. You take back of the war period our books were not kept as up to date as they are today. I cannot tell unless you ask me for specific items there and give me a little chance to check it—tell whether those stocks on those sales were made for the account of a customer or not.

The Court: The last seven years they were your own purchases.

The Witness: Our own purchases. I have given the balance—— (interrupted)

The Court: All right; that is all.

W. Emlen Roosevelt, Sworn for complaint.

Direct-examination by Mr. Haight:

Q. Mr. Roosevelt, are you the senior partner of Roosevelt & Sons? A. I am.

Q. And you are one of the complainants in this suit? A. I am.

Q. And you are the chairman of the stockholders protective committee of these lessor companies? A. Yes, sir.

Q. How long have you been engaged in the investment business? A. I became a member of my firm April 30, 1878. We have been continually in the business of investing for our clients since that date—nearly fifty years. I have been a member of the concern since July, 1898.

Q. Have you been or are you on committees of any concern; I mean by that, banks, institutions and so forth, that have to do with the investment of securities—investment of money in corporate securities? A. I am.

Q. Will you please name them and your connection with them? A. I am a director and member of the Trust Committee of the Central Union Trust Company of New York; I am a director of the Chemical National Bank; I am director of the Fidelity & Casualty Company—undoubtedly a member of others, but those are companies that run in this line of investment that I think of for the moment.

Q. Give us some other companies if there are in which you have charge either as member of the committee or as chairman of the committee of the investment features of the company's business. A. I wish I had a directory and I could pick out some. I am, of course, on a number of boards, and in almost all cases I am consulted on this particular line of business, but at the moment—— (interrupted)

Q. Now, in instituting this suit did your company—your firm have any other motive than to protect the interest of the client to whom you had sold stock of these lessor companies—I mean all of the lessor companies, and the stockholdings of your own company in any of the lessor companies? A. That was our only motive.

Q. Now, so far as you know, did the committee, or has the committee any other motive or purpose? A. No, sir; I don't know of any other motive.

Q. Now, Mr. Roosevelt, based on your many years' experience in investment securities will you tell us, please, whether there is a class of investor who weigh the securities and in return—give greater weight to the security and return than to the marketability of a certain stock or bond? A. Yes, sir; the private trusts of the State of New

York are organized on the idea of permanent investment and not buying and selling continually so that ready marketability is not of the first importance. Security and return are the most important factors.

Q. Do you find that that kind of investors are proportionately large? A. Very large.

Q. Or otherwise? A. Very large.

CROSS-EXAMINATION BY MCCARTER:

Q. Mr. Roosevelt, those people to whom you have just referred constitute a part of the great buying public, do they not? A. Yes, sir.

Q. And of course that influence is reflected more or less in the market price of the securities that are bought and sold? A. Yes, sir.

COMPLAINANT RESTS.

Mr. McCarter: It is conceded that this is a copy of the letter that was written by complainant, Roosevelt & Sons to Mr. John L. Kuzer, therefore I will ask to have it marked in evidence.

Mr. Haight: I now offer in evidence a letter written by J. S. Rippel & Company to Joseph Kahrs under date of June 6, 1927, offering to purchase at the figure mentioned in the letter the holdings of the Shanley estate in these five lessor companies as well as in the other lessor companies. I understand that objection is made to it on the ground of its immateriality.

Mr. Speer: We object. There is no evidence whatever that connects either of the defend-

ant companies with the offer mentioned in the letter. The offer is an offer of an entire block of stock containing stocks of several companies and therefore does not differentiate or indicate the value of the stock at all. It was not in the ordinary course of business and consequently not anything that could be used as a basis upon which value or market price could be fixed, and it would require a great deal of explanation as to how it came into being and why it came into being and we repudiated it absolutely when we got notice of it. We object on the ground that it is irrelevant, immaterial and incompetent.

The Court: Objection sustained.

Mr. Haight: If the objection goes to that extent I will have to ask your Honor to hold the case over until I can produce either Mr. Kahrs or Mr. Rippel.

Mr. Speer: I make the point that if either testified to the subject matter contained in the letter it would be inadmissible. We do not make any point that Mr. Rippel isn't here to prove his signature.

The Court: Do you object to the contents of this letter going in because Mr. Rippel isn't here to testify that he made the offer?

Mr. Speer: We do not.

The Court: Then I will let it in for what it is worth.

(Paper marked Exhibit C-2 of this date.)

WILLIAM C. SHANLEY, Jr., Sworn for complainant.

DIRECT-EXAMINATION BY MR. HAIGHT:

Q. Mr. Shanley, you are one of the executors of the estate of your father, William C. Shanley, deceased? A. I am.

Q. William C. Shanley, your father, was one of the children of Bernard M. Shanley? A. He was.

Q. Did you know of the offer which was contained in this Exhibit C-2 of today? A. I knew of it, yes, sir.

Q. Do you know whether the Shanley beneficiaries, including yourself and your mother, your grandmother and the others accepted or rejected the offer? A. I know that they rejected it.

The Court: Any documents that have been overlooked counsel may offer or the Court will call for them.

TESTIMONY CLOSED.

Opinion.

Filed November 15, 1928.

IN CHANCERY OF NEW JERSEY.

Between

R. IRVING OUTWATER, *et al.*,
Complainants,

AND

PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et al.*,
Defendants.

Opinion.

A merger agreement which provides for the exchange of capital stock of a merging company for redeemable preferred stock of the consolidated company does not effect a merger but is in substance a sale with deferred payments, payable at the option of the purchaser. It is unauthorized by the merger statute and unfair to dissenting stockholders of the merging company.

On final hearing.

For complainants, Mr. THOMAS G. HAIGHT, Mr. FREDERICK FAULKS, Mr. WALDRON M. WARD, and Mr. LOUIS HOOD.

For defendants, Mr. FRANK BERGEN, Mr. ROBERT H. MCCARTER, Mr. EDMUND W. WAKELEE, Mr. WILLIAM H. SPEER and Mr. E. A. ARMSTRONG.

BACKES, *Vice Chancellor:*

This bill is to enjoin a merger of five public utility companies into the Public Service Electric & Gas Company; viz. Essex and Hudson Gas Company, Hudson County Gas Company, Paterson & Passaic Gas and Electric Company, New Brunswick Light, Heat & Power Company and Somerset, Union & Middlesex Lighting Company. The Public Service Corporation owns all the capital stock of the Electric & Gas Company. The Electric & Gas Company owns more than two-thirds of the capital stock of the merging companies. Directors of the Public Service Corporation compose the board of directors of the Electric & Gas Company; members of the latter board form the directorate of four of the merging companies. A majority of the board of the fifth company is made up of a director and an officer of the Public Service Corporation and a sympathetic stockholder. The plants of the five merging companies are in the possession of the Electric & Gas Company under nine hundred year leases at net rentals that insure the stockholders of the two lessor companies first named annual dividends of eight percent the next two, five percent and the fifth, four percent. The avowed object of the Public Service Corporation, in merging its subordinate companies, is to get rid of the leases and to acquire the fee to the plants, and to that end caused its directors, directors in control of the subordinate companies, to resolve upon a merger agreement, and upon submission of the agreement to the stockholders caused it to be approved by the votes it controlled. Under the terms of the agreement the stockholders of the companies to be absorbed are to be, in exchange for their shares, six percent, cumulative, preferred stock (non-voting) of the Electric

& Gas Company, redeemable in three years at $110. The basis of exchange is one share of preferred stock, at par, for a share of the stock of the two first named merging companies at a value of $137.; the next two at $86., and the fifth at $69. The annual yield on this basis would be slightly in advance of the dividends from the net rentals, viz. on the eight percent stock, $8.22; on the five percent, $5.16, and on the four percent, $4.14, and, it would appear, that the appraisal was influenced by a comparison of annual income rather than the market value of the stocks of the merging companies, which was then selling, in a narrow market, at approximately the exchange figures. The complainants, stockholders of four of the merging companies, object to the merger as unfair and inequitable.

The attack upon them, that they are actuated in their objection by ulterior motives finds no justification in the record; surely not as to the Fidelity-Union Trust Company, which, as trustee of the Shanley Estate, represents more than ten thousand shares of the merging companies. This trustee, an appointee of this court, was ordered to intervene to protect the interest of the estate. And the subtle insinuation that the Public Service Corporation, in a measure, was moved to the merger *pro bono publico* is equally gratuitous. The merger has not the merit of joining two or more utilities for greater public service. It is solely for greater financial convenience of the Corporation, albeit, economy in financing a public concern of this magnitude, like savings in purchasing any other commodity, is reflected in the rate making by the state.

The Public Service Corporation originally acquired local producing units upon long term leases, and, as integral parts, fashioned them into its pres-

ent unified system of state wide service of light, heat and power. In recent years this leasehold structure proved undesirable in modern financing. Fee ownership was less complicated and more inviting to investors and conducive to more conveniently financing this vast organization, involving hundreds of millions of dollars borrowed from or invested by the public. Pursuing a policy which was later employed in the instant case, many leaseholds were vacated and estates in fee acquired by merger, until nine companies were left, the five here involved and four others referred to as group "B". In 1927 the Public Service Corporation offered to the stockholders of the nine companies for their shares, three alternative bids; cash, exchange for common stock of the Public Service Corporation or exchange for preferred stock of the Electric & Gas Company; the latter the same as offered by the merger agreement. More than two-thirds of the stockholdings in the five companies here involved was acquired through some one of these offers and the merger followed. Group "B" was omitted from the merger because the Public Service had not the vote to put it over as to them. The merger agreement, procedurally, is in legal form, and the right to merge is in entire harmony with the complainants' corporate contract, but as the merger is, in reality, an appropriation of corporate property by a majority of stockholders, by force of numbers and the grace of the statute, and while no valid legal objection can be interposed on that score (Colgate *v.* U. S. Leather Co., 73 N. J. Eq. 72) the agreement calls for careful judicial scrutiny, and the burden is on the majority to show that the consideration is fair and equitable, and judgment, as to fairness, is not to be influenced by the heavy vote of approval,

as it otherwise would be if the vote were independent, as indicated in Berger *v.* U. S. Steel Corp., 63 N. J. Eq. 809. The decision must rest on the merits, and to that end it has been shown that when the merger was in contemplation it was referred by the Public Service officials to responsible bankers to work out a scheme of conversion, and they recommended the alternative offers, and in respect of the one now the basis of the merger, supported their recommendation at the hearing and stressed the fact that the marketability of the Electric & Gas Company preferred stock gave it a marked advantage. The conversion prices, as already stated, were about the average ruling prices in the market at the time for the stocks of the merging companies. The market, it is true, was "thin". The stocks were closely held as investments and there was little activity. Sales were few and intermittent, but they were listed and the stocks dealt in by brokers, and by two of the complainant firms, which specialize in that type of securities, and sufficiently to be acceptable as a guide in determining the "full market value" (C. S. 1661). The complainants' objection that sales were infrequent and casual, so that no market value can be said to have existed, and that resort should be had to proof of intrinsic value, might have some degree of persuasion had they come forward with that line of proof, but they contented themselves with supinely resisting the offer, simply claiming that the shares were worth more. How much more, they would not say. They refused to fix a price, demurring that they did not care to part with their holdings. That unreasonable attitude was not helpful to the court in determining the fairness of the exchange, and, in that respect, that issue is held against them.

Now, in addition to fair exchange values, exchange for relative equality of securities in the merged company is implied in all mergers, and relative permanency is a vital element of the securities. The five companies were originally leased to the Public Service Corporation and it assigned the leases to the Electric & Gas Company, which in turn assumed the rental obligation. With this double undertaking the payment of dividends on the lessor companies' stock is assured beyond peradventure. This security excels in priority all the outstanding obligations of either company. The preferred stock of the Electric & Gas Company, on the other hand, is the next lowest—common stock being lower—security issued by that company, and, of this, there is now outstanding more than $71,000,000. It is subordinate to outstanding bonds and certificates of indebtedness of more than $82,000,000, and also to debts and liabilities incurred and to be incurred. As against these liabilities the corporation has abundant assets, far in excess in value. There can be little question of the soundness of the preferred stock at this time. The company has made large annual profits and the future holds promise of continued prosperity. Though the possibility of adversity is decidedly remote, such things have come to pass, as, for instance, the New York & New Haven Railroad Co. and the Georgia Central Railroad & Banking Co. Then, the dividends on the preferred stock are payable only if earned, whereas the dividends on the stocks of the complainants (companies are insured in practical perpetuity, underwritten, as they are, by the entire Public Service System. The complainants' resistance and their contention that they ought not to be compelled to exchange their first

lien securities for gilt edged second lien security is not without appeal, and were the decision to rest here there would be some embarrassment in squaring the merger with fairness. But there is a more serious inequity; the preferred stock lacks permanency. It is redeemable within three years at the option of the Electric & Gas Company. Thus the merger, in effect, is nothing less than a forced sale by the majority stockholders to itself at a price fixed by it and payable at its pleasure. The preferred stock is but the equivalent of a six percent promissory note payable in three years at the option of the buyer. The merger legislation countenances no such perversion of the contractual obligations of stockholders *inter sese*. Continued membership, until dissolution, is an inherent property right in corporate existence. A merger is but a fusion of corporate assets and franchises and an allocation of stock in the merged company and works a conversion not a destruction of that right. In the ordinary case of merging going concerns and the conversion of share for share upon parity of value, all rights, including voting rights, are reserved to stockholders. The right to vote is a property right. Lord *v.* Equitable Life Assurance Society, 194 N. Y. 212. This is adverted to because the loss of it is complained of. That right, however, has lost importance, for the complainants' companies are not going concerns, and never will be, in that respect having been absorbed, and the exchange for non voting preferred stock is harmless. That may be dismissed, but not the complainants' right of permanent participation in the merged company relatively as they enjoyed that right in the merging companies. The contingency of elimination after three years is unfair and the

right to exercise the option at that time, given by the merger agreement, is oppressive and inequitable. The unlikelihood of the option being exercised, as suggested by the company, is purely speculative and the burden of anxiety is not to be put upon the complainants. If money should become cheap and the Public Service could float a new issue at an appreciably profitable lower percentage of interest, redemption would undoubtedly follow, consistently with its past policy of good business.

The redemption feature at $110, offers no adequate compensation, for the complainants would be obliged to reinvest their capital at a correspondingly low rate of return, and besides suffer loss of interest pending reinvestment. It is true, the complainants would encounter the same disadvantages if their stocks were appraised under the compensation provision of the statute, but that is presently subordinate for, before the Electric & Gas Company may resort or the complainants be driven to that extreme measure the fairness of the merger must be vindicated, (Colgate *v.* U. S. Leather Co. *supra*) and it would then be available to the Electric & Gas Company only if non-voting stockholders dissented therefrom or refused or neglected to convert their stocks. The purpose of the statutory grant of eminent domain in this limited form is to perfect, not accomplish a merger. It is not overlooked that under the merger act the merger agreement may provide for "converting the capital stock of each of said merging or consolidating corporations into the stock or *obligations* of such new or consolidated corporation", thus implying that obligations may be given in exchange. Here, obligations are not offered and the question does not directly arise. On the contrary, the exchange for the

preferred stock may later become an obligation of the complainants to take. The offer amounts to that. However, fairness in mergers dictates, that when obligations are given in exchange for stocks of the character here involved, they at least should bear a corresponding permanent investment value, such, for instance, as the Perpetual Interest Bearing Certificates of the Electric & Gas Co. or like obligations, otherwise a merger would be a simple medium for a compulsory sale; and that is not permissible.

The Public Service Corporations contest the right of a court of equity to interfere in the internal affairs of the merging companies in the absence of fraud, actual or constructive. There is, of course, no suggestion that the majority stockholders entered into the merger agreement with actual intent to defraud the minority. Neither have they earned a decoration for unselfishness. The objection of the defendant corporation is, as an abstract proposition, accepted doctrine, and the principle was recognized in Bingham *v.* Savings Investment & Trust Co., 138 Atl. Rep. 659, where dissatisfied stockholders sought to prevent their company from absorbing two others. That case involved purely internal management of a going concern, honestly pursued. Here the situation is different. The complainants' companies are about to be absorbed and the minority stockholders face the possibility, if not the probability, of being cast into the discard. This, by right of might and by means unwarranted and oppressive, and their only appeal for relief is to this court. The merger will be enjoined.

The complainants' contention that the merger is *ultra vires* because the contracting companies were

not organized to carry on business of the same or similar nature is not sound. The agreements by which many former public utility companies were merged into the Public Service Electric & Gas Company are silent as to corporate purposes of the consolidated company so that resort must be had to the charters of the merging companies. The totality of these disclose the object to be "to furnish light, heat and power for domestic and public use in New Jersey". Sometimes this definition is couched in other language descriptive of the same purpose, viz. "The manufacture, use and sale of gas for illuminating, heating and other purposes" or "for the carrying on the business of an electric company" or "to manufacture and sell gas for the purpose of lighting streets, buildings, etc." After the bill raised the question of dissimilarity, the charters of the merging companies here involved were amended in respect of corporate purpose so that now each is identical with the one quoted. Thereafter a duplicate merger agreement was acted upon. A protest followed, that the powers mentioned in the amended charters, by means of which the common purpose is to be effected, are in some charters by the use of gas, in others by gas and electricity, and therefore the purpose is dissimilar. This is hypercritical. The avowed purpose is to furnish light, heat and power, and whether it be produced by gas or by gas and electricity does not militate against the common corporate object; they have the same or similar purposes of service. A gas company may consolidate with an electric company. 7 Thompson Corporation, Sec. 8220; Municipal Gas Co. of Albany *v.* Rice, 138, N. Y. 151.

The complainants also set up that the Essex & Hudson Gas Company had not the power to amend

its charter to furnish "light, heat and power for domestic and public use in New Jersey" because of a provision in its charter that "the company, however, shall have no right to entend its business operations beyond the limits of the territory above described (Essex and Union counties and certain territory of Hudson County) without the unanimous consent of the stockholders of the said company", and, therefore, is not eligible to join in the merger. This restriction to a field of operation is not a barrier to a merger with another company operating in a different territory. The right of merger extends to companies whose business is of the same or similar nature. The location of the contracting companies is irrelevant. A gas company in Sussex may merge with one in Cape May.

The remaining objection to consolidation is that the Hudson County Gas Company is not qualified to join in the merger because it is a consolidation of five gas companies, four of which were organized under special acts, the fifth under the gas act of 1876, and had not the power under the 27th section of the Corporation Act to amend its charter as to objects of its incorporation so as to harmonize with those of the other companies engaged in the merger. The point is that the 27th section permits such changes only "by corporations organized under this act". The Hudson County Gas Company, by consolidation, came into existence as a new company in 1899 under the Corporation Act of 1896. It was in fact and in law organized under that act and literally comes within the definition of the section granting the power to amend. See Bingham *v.* Investment Security & Trust Co. *supra et*, 146 Atl. Rep. 321.

Final Decree.

Filed November 27, 1928.

IN CHANCERY OF NEW JERSEY

Between R. IRVING OUTWATER and others, Complainants, AND PUBLIC SERVICE CORPORATION OF NEW JERSEY and others, Defendants.	On Bill, etc. Final Decree

This cause coming on to be heard in the presence of Thomas G. Haight and Waldron M. Ward, of counsel with the complainants; and Louis Hood and Frederic J. Faulks, of counsel with the Complainant Fidelity Union Trust Company, as Substituted Trustee under the will of Bernard M. Shanley, deceased, and Robert H. McCarter, Frank Bergen, Edmund W. Wakelee, Edward A. Armstrong and William H. Speer, of counsel with the Defendants, and the pleadings and proofs having been read and considered, and the arguments of the respective counsel having been heard and considered, and it appearing to the court that the Complainants are entitled to relief, as prayed in their amended Bill of Complaint and the addition by way of supplement thereto,

IT IS on this 27th day of November, A. D. 1928, by EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, on motion of the solicitors for complainants, ORDERED, ADJUDGED and DECREED, and the said Chancellor, by virtue of the power and authority of this court, doth hereby ORDER, ADJUDGE and DECREE, that the Joint Agreements of Merger, dated respectively April, 26, 1927, and October 25, 1927, made by and between the de-

fendants Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company and Somerset, Union and Middlesex Lighting Company, are, as to the complainants, unfair and inequitable, and that the said defendants and their respective directors, officers and agents, be and hereby are enjoined from certifying the adoption by the stockholders of said respective companies of the joint Agreement of Merger dated April 26, 1927, or the adoption by the stockholders of said respective companies of the joint Agreement of Merger dated October 25, 1927, and from filing the same or either of the same in the office of the Secretary of State of New Jersey, or otherwise perfecting or consummating the same or either of the same.

And it is further ORDERED, ADJUDGED and DECREED, that the defendants Public Service Corporation of New Jersey, and Public Service Electric and Gas Company, do pay to the complainants the costs of this suit to be taxed, including the sum of $107. paid by the complainants as their share of the cost of the Court's copy of the transcript of the testimony, and including the sum of $405, as and for the reasonable cost of printing the pleadings for the final hearing, together with a counsel fee of $20,000. to Messrs. Thomas G. Haight and Waldron M. Ward, of counsel for the complainants, and a counsel fee of $10,000. to Messrs. Louis Hood and Frederic J. Faulks, of counsel with the complainant Fidelity Union Trust Company, Substituted Trustee as aforesaid, which are hereby allowed to the complainants.

Respectfully advised,

JOHN H. BACKES, *V. C.*

E. R. WALKER, *C.*

Notice of Appeal.

Filed November 30, 1928.

IN CHANCERY OF NEW JERSEY.

R. IRVING OUTWATER, *et al.*, Complainants and Respondents	On Bill, &c.
VS.	Notice of Appeal.
PUBLIC SERVICE CORPORATION OF NEW JERSEY, *et al.*, Defendants and Appellants.	

These defendants in the above stated cause, Public Service Corporation of New Jersey, Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, Samuel T. Bodine, Thomas S. Gates, Anthony R. Kuser, Thomas N. McCarter, Uzal H. McCarter, Arthur W. Thompson, Edmund W. Wakelee, Percy S. Young, Charles M. Breder, Augustus J. Brunson, Harry B. MacDonald, William H. Pope and T. Wilson Van Middlesworth hereby appeal from the final decree made in this cause on the 27th day of November A. D. 1928, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

Dated November 30th, 1928.

FRANK BERGEN
Solicitor for and of counsel with Appellants.

I conceive there is good cause for appeal in the above-stated cause.

ROBERT H. MCCARTER
Of Counsel with Appellants.

Petition of Appeal.

Filed December 10, 1928.

To the Honorable the Court of Errors and Appeals of the State of New Jersey:

The petition of Public Service Corporation of New Jersey, Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, Samuel T. Bodine, Thomas S. Gates, Anthony R. Kuser, Thomas N. McCarter, Uzal H. McCarter, Arthur W. Thompson, Edmund W. Wakelee, Percy S. Young, Charles M. Breder, Augustus J. Brunson, Harry B. MacDonald, William H. Pope and T. Wilson Van Middlesworth, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the 27th day of November, A. D. 1928, in the cause wherein the said R. Irving Outwater and others were complainants and the petitioners above named were defendants, in this respect, to wit: the said decree adjudged and decreed that the Joint Agreements of Merger, dated respectively April 26th, 1927 and October 25th, 1927, made by and between the defendants Public Service Electric and Gas Company, Essex and Hudson Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company and Somerset, Union and Middlesex Lighting Company, were as to the complainants, unfair and inequitable, and

that the said defendants and their respective directors, officers and agents should be and thereby were enjoined from certifying the adoption by the stockholders of said respective companies of the joint agreement of merger, dated April 26th, 1927, or the adoption by the stockholders of said respective companies of the joint Agreement of Merger dated October 25th, 1927, and from filing the same or either of the same, in the office of the Secretary of State of New Jersey, or otherwise perfecting or consummating the same, or either of the same; and that the petitioners should pay the costs and counsel fees named therein.

And your petitioners humbly appeal from the said decree and every part thereof, on the ground that the same is erroneous and that the said bill ought to have been dismissed.

Your petitioners therefore pray that the said decree of the said Chancellor may be, for the reasons aforesaid, wholly reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

FRANK BERGEN
Solicitor for and of Counsel
with Appellants.

Answer to Petition of Appeal.

Filed December 13, 1928.

COURT OF ERRORS AND APPEALS OF NEW JERSEY.

R. Irving Outwater and others Complainant-Respondents, vs. Public Service Corporation of New Jersey, and others, Defendants-Appellants.	On Appeal Answer to Petition of Appeal.

The answer of the respondents R. Irving Outwater and H. Prescott Wells, partners trading as Outwater and Wells; W. Emlen Roosevelt, George E. Roosevelt, Philip J. Roosevelt, Fairman R. Dick and Archibald B. Roosevelt, partners trading as Roosevelt & Son; Fidelity Union Trust Company, as Substituted Trustee of the Estate of Bernard M. Shanley, deceased; Mary Regis Shanley, William C. Shanley, Jr., and Bernard M. Shanley, 2nd, individually and as Executors of William C. Shanley, deceased, and Grace B. S. Hanson, Mary Regis Shanley and Helen L. Shanley, an infant, by Mary Regis Shanley, next friend; W. Emlen Roosevelt, Evans R. Dick, Roscoe C. Ingalls, R. Irving Outwater, William C. Shanley, Jr., and Ernest Sturm, as a Stockholders' Protective Committee under Deposit Agreement dated June 10, 1927, to the Petition of Appeal of the appellants;

These respondents, not acknowledging all or any of the matters which in the Petition of Appeal are

contained to be true, for answer thereto, nevertheless, say and admit that a decree was, on the 27th day of November, one thousand nine hundred and twenty-eight, made and entered in the Court of Chancery in the cause for the purpose mentioned in the said Petition as is therein stated.

And these respondents are advised and believe that the said Decree is agreeable to equity, and pray that same may be affirmed with costs to be adjudged to the respondents.

WALL, HAIGHT, CAREY & HARTPENCE
PITNEY, HARDIN & SKINNER
Solicitors for and of Counsel with
Respondents.

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D 18	Lease Essex and Hudson Gas Co. to P. S. Corp. and assignment thereof to P. S. Gas Co. (offered page 78, Vol. II)	109		495
D 19	Lease Hudson County Gas Co. to P. S. Corp. (offered page 78, Vol. II)	90		495
D 20	Lease of The Paterson & Passaic Gas & Elec. Co. to P. S. Corp..... NOTE: The assignment of this lease to the Electric Co. and Gas Co. is incorporated in assignments of other leases—D 18 for the gas and D 25 for the electric (offered page 78, Vol. II).	131		495

DEFENDANTS' EXHIBITS—(*Continued.*)

Exhibit Nos.		Page Numbers. Vol. I	Vol. II	Vol. III
D 21	Lease of Somerset, Union & Middlesex Lighting Co. (offered page 79, Vol. II)		138	496
D 22	Lease Gas Light Co. of the City of New Brunswick to P. S. Corp. (offered page 79, Vol. II)		119	496
D 23	Lease South Jersey Gas, Elec. and Trac. Co. to P. S. Corp. (offered page 79, Vol. II)			496
D 24	Assignment of lease of Gas Light Co. of the City of New Brunswick to South Jersey Gas, Elec. and Trac Co. (offered page 79, Vol. II)			496
D 25	Assignment of the electric properties by the Corporation to P. S. Elec. Co. (offered page 79, Vol. II)			497
D 26	Lease Newark Consolidated Gas Co. to United Gas Improvement Co. (offered page 79, Vol. II)			497
D 27	Assignment of Newark Cons. Gas Co. lease to Essex and Hudson Gas Co. (offered page 80, Vol. II)			497
D 28	Assignment of the above by Essex and Hudson Gas Co. to P. S. Gas Co. (offered page 80, Vol. II)			497
D 29	Contract between Newark Cons. Gas Co., United Gas Improvement Co. and Essex and Hudson Gas Co. (offered page 80, Vol. II)			498
D 30	Printed price lists of Rippel & Co.—1913 to 1926 (offered page 81, Vol. II)			521
D 31	Summary of above Rippel prices (offered page 81, Vol. II)			522
D 32	Rippel's price list for 1927 (offered page 82, Vol. II)			523

DEFENDANTS' EXHIBITS—(*Continued.*)

Exhibit Nos.		Page Numbers. Vol. I	Vol. II	Vol. III
D 33	Outwater & Wells' price lists Mar. 1923 to Dec. 5, 1927 (offered page 82, Vol. II)			523
D 34	Summary of above Outwater & Wells' prices (offered page 82, Vol. II)			524
D 35	Summary of Outwater & Wells' prices of P. S. Elec. and Gas Co. 6% Preferred Stock, from Mar. 1925 to Dec. 1927 (offered page 83, Vol. II)			525
D 36	Table showing activity in stocks of lessor companies (offered page 83, Vol. II)			526
D 37	Table showing activity of 6% Preferred stock of P. S. Elec. and Gas Co.—1925 to 1927 (offered page 83, Vol. II)			527
D 38	List of newspapers in which original offer of Mar. 13, 1924, was published (offered page 84, Vol. II)			528
D 39	Ledger holdings in lessor companies of Outwater & Wells (offered page 88, Vol. II)			531
D 40	Copies of ledger holdings of stock in lessor companies of Roosevelt & Son, Outwater & Wells, and Fidelity Union Trust Co., substituted Trustee in Estate of B. M. Shanley—1924 to 1927 (offered page 88, Vol. II)			532
D 41	Holdings of complainants and others in lessor companies at the present time (offered page 89, Vol. II)			533
D 42	Statement showing percentage of stockholders depositing under offer of Jan. 10, 1927 (offered page 90, Vol. II)			534

DEFENDANTS' EXHIBITS—(*Continued.*)

Exhibit Nos.		Page Numbers. Vol. I	Vol. II	Vol. III
D 43	Statement showing shares in the five leased companies owned by P. S. Elec. and Gas Co. and P. S. Corp. on Jan. 10, 1927, and the number of shares acquired in pursuance of the offer of Jan. 10, 1927, together with the total of said shares (offered page 90, Vol. II)			535
D 44	Roosevelt Committee agreement dated June 10, 1927, and three leaflets in connection therewith (offered page 91, Vol. II)			536
D 45	The information of Roosevelt's holdings furnished by plaintiffs in response to our demands (offered page 91, Vol. II)			581
D 46	Roosevelt Committee holdings in leased companies and when acquired (offered page 92, Vol. II)			584
D 47	Roosevelt & Son's holdings in stock of the Somerset, Union & Middlesex Lighting Co. and The Paterson and Passaic Gas and Elec. Co. (offered page 94, Vol. II)			592
D 48	Operating Revenues Gas and Electric years 1911-1926, inclusive, and eight months 1927 (offered page 145, Vol. II)			593
D 49	Chart of price range of stock of five lessor companies 1913-1926 (from Rippel's quotation sheets) (offered page 147, Vol. II)			594
D 50	Chart or bid price range of stock of five lessor companies eleven months 1927 (from Rippel's quotation sheets) (offered page 148, Vol. II)			599

DEFENDANTS' EXHIBITS—(*Continued.*)

Exhibit Nos.		PAGE NUMBERS. Vol. I	Vol. II	Vol. III
D 51	Chart or bid price range of stock of five lessor companies and exchangeable amount of 6% preferred stock of P. S. Elec. and Gas Co. Jan. 4, 1924-Dec. 5, 1927 (from Outwater & Wells quotation sheets) (offered page 148, Vol. II)		600	
D 52	Income statement, summary of capitalization and balance sheet Oct. 31, 1927 of P. S. Elec. and Gas Co. (offered page 255, Vol. II)		605	
D 53	Agreement of merger and consolidation forming Newark Cons. Gas Co., Nov. 4, 1898 (offered page 256, Vol. II)		614	
D 54	Purchases and sales of capital stock of five lessor companies by Outwater & Wells (offered page 257, Vol. II)		614	
D 55	Copy of letter from Roosevelt & Son to John L. Kuser, Sept. 22, 1927 (offered page 314, Vol. II)		646	

Exhibit C 1.

HOLDINGS OF FIDELITY UNION TRUST COMPANY AS SUBSTITUTED TRUSTEE OF THE ESTATE OF B. M. SHANLEY OF THE STOCK OF THE FIVE LESSOR COMPANIES PROPOSED TO BE MERGED, AT APRIL 26, 1927 AND SUBSEQUENT THERETO.

Hudson County Gas Company....	4 370 Shares
Essex and Hudson Gas Company..	2 361 Shares
The Paterson and Passaic Gas and Electric Company	3 279 Shares
Somerset, Union and Middlesex Lighting Company	188 Shares
New Brunswick Light, Heat and Power Company	None

Exhibit C 2.

PUBLIC SERVICE CORPORATION OF NEW JERSEY

BALANCE SHEET AS OF AUGUST 31, 1927.

ASSETS

10	Cash	$2 174 757 93
	Accounts Receivable	247 069 22
	Interest and Dividends Receivable	744 940 81
	Marketable Securities	757 656 25
	Prepayments	85 921 64
	Subscribers to Capital Stock	166 415 00
	Purchasers of Cumulative Preferred Stock Under Deferred Payment Plan	2 478 119 71
	Investments in Affiliated Companies	229 112 927 93
	Miscellaneous Investments	11 103 781 60
	Sinking Funds	1 505 359 62
20	Miscellaneous Special Funds	10 929 62
	Deferred Charges	2 532 478 61
	Reacquired Securities	4 937 24
		$250 925 295 18

30

40

Exhibit C 2.

LIABILITIES

Capital Stock		
6% Cumulative Preferred Stock	$22 215 300 00	
7% Cumulative Preferred Stock	28 908 000 00	
8% Cumulative Preferred Stock	21 531 200 00	
Common Stock 4,153,482 Shares	84 400 163 04	$157 054 663 04
Premium on Capital Stock		23 000 00
Capital Stock Subscribed		250 000 00
Sales of Cumulative Preferred Stock Under Deferred Payment Plan		3 328 600 00
Long Term Debt		
Secured Gold Bonds 6% Series due 1944 dated August 1, 1924	$20 000 000 00	
Public Service Newark Terminal Railway Company 5% First Mortgage Bonds dated June 1, 1915	5 000 000 00	
Perpetual Interest Bearing Certificates	20 111 910 00	
Real Estate Mortgages	1 412 500 00	
5½% Installment Note Payable to Public Service Electric and Gas Company	19 133 771 39	
Secured Gold Bonds 5½% Series due 1956 dated July 1, 1926	15 000 000 00	80 658 181 39
Accounts Payable		670 375 88
Miscellaneous Current Liabilities		483 90
Interest Accrued		847 763 55
Miscellaneous Accrued Liabilities		15 553 39
Advances from Affiliated Companies		2 629 226 25
Retirement Reserve		262 493 89
Contingency Reserve		313 333 34
Miscellaneous Reserves		7 300 00
Miscellaneous Unadjusted Credits		114 53
Profit and Loss—Surplus		4 884 206 02
		$250 925 295 18

Exhibit C 3.

PUBLIC SERVICE CORPORATION OF NEW JERSEY

INCOME ACCOUNT FOR TWELVE MONTHS ENDING AUGUST 31, 1927.

Revenues:		
Dividend Revenue	$17 218 215 12	
Interest Revenue	1 089 169 11	
Rents and Miscellaneous Revenues	822 311 65	
Total Revenues		$19 129 695 88
Revenue Deductions:		
Expenses	$984 343 94	
Taxes	229 635 57	
Retirement Expenses	102 933 61	
Total Revenue Deductions		1 316 913 12
Gross Income		$17 812 782 76
Income Deductions:		
Interest Charges	$5 050 595 86	
Amortization of Debt Discount and Expense	120 469 33	
Other Contractual Deductions from Income	32 121 79	
Total Income Deductions		5 203 186 98
Net Income or Loss		$12 609 595 78
Appropriations:		
Miscellaneous Adjustments of Surplus		4 511 80*
		$12 605 083 98
Dividends on Capital Stock:		
Eight Per Cent. Cumulative Preferred Stock	$1 722 496 00	
Seven Per Cent. Cumulative Preferred Stock	2 020 543 61	
Six Per Cent. Cumulative Preferred Stock	771 539 00	
Common Stock	7 144 547 25	
Total Dividends		11 659 125 86
Net Increase or Decrease in Surplus		$945 958 12

* Debit.

Exhibit C 4.

Aggregate Assets of Public Service Corporation of New Jersey	
Dec. 31, 1903	$32 719 306
1904	37 563 408
1905	41 892 504
1906	46 532 037
1907	49 891 644
1908	54 830 589
1909	61 912 449
1910	72 870 383
1911	77 387 770
1912	80 190 797
1913	90 186 279
1914	104 185 395
1915	109 696 582
1916	118 218 202
1917	120 715 311
1918	123 696 475
1919	126 563 829
1920	126 703 443
1921	136 071 677
1922	137 923 944
1923	155 499 258
1924	160 185 695
1925	181 538 502
1926	221 138 843
Aug. 31, 1927	250 774 903

Net Income of Public Service Corporation of New Jersey Before surplus adjustments and dividends.	
Year 1903	$42 846 83
1904	***252 497 23**
1905	394 012 49 10
1906	528 938 49
1907	258 747 95
1908	250 533 10
1909	1 391 825 27
1910	1 995 024 67
1911	1 326 759 76
1912	1 693 525 12
1913	1 344 391 77
1914	2 389 993 20
1915	1 936 900 96
1916	2 493 258 20 20
1917	2 859 845 52
1918	1 096 866 94
1919	1 024 276 29
1920	2 363 225 75
1921	2 377 246 09
1922	3 266 531 88
1923	4 266 384 92
1924	5 765 072 04
1925	8 148 199 65
1926	11 325 159 30
8 Months ending Aug. 31, 1927	6 182 053 96

* Figures in bold face red in original.

Exhibit C 5.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BALANCE SHEET AS OF AUGUST 31, 1927

ASSETS

Fixed Capital			
Electric Department		$191 983 683 16	
Gas Department		52 743 097 94	$244 726 781 10
Current Assets			29 764 219 02
Miscellaneous Assets			
5½% Installment Note of Public Service Corporation of New Jersey		$19 133 771 39	
Investments in Affiliated Companies		35 924 737 54	
Other Miscellaneous Assets		1 204 708 95	56 263 217 88
Deferred Charges			4 741 809 53
Reacquired Securities			2 914 000 00
			$338 410 027 53

Exhibit C 5.

LIABILITIES

Capital Stock			
7% Cumulative Preferred Stock		$20 000 000 00	
6% Cumulative Preferred Stock		51 500 100 00	
Common Stock—11,475,000 Shares		114 750 000 00	
6% Cumulative Preferred Stock Liability for Conversion			$186 250 100 00
Premium on Capital Stock			337 500 00
Long Term Debt			
First and Refunding Mortgage Gold Bonds 5½% Series due 1959		$26 586 000 00	
First and Refunding Mortgage Gold Bonds 5½% Series due 1964		15 000 000 00	
First and Refunding Mortgage Gold Bonds 5% Series due 1965		22 300 000 00	
Bonded Obligations of Merged Companies—			
United Electric Company of New Jersey 4% First Mortgage Bonds	$18 617 500 00		
Consumers Light, Heat and Power Company 5% First Mortgage Bonds	885 000 00		
North Hudson Light, Heat and Power Company 5% First Mortgage Bonds	2 000 000 00		
Weehawken Contracting Company 6% First Mortgage Bonds	30 000 00		
Middlesex Electric Light Light and Power Company 5% First Mortgage Bonds	181 000 00		
Princeton Light, Heat and Power Company First and Refunding Mortgage 30 Year 5% Sinking Fund Gold Bonds	98 300 00	21 811 800 00	
Other Long Term Debt		1 954 313 85	87 652 113 85
Current Liabilities			5 258 648 52
Accrued Liabilities			6 535 914 29
Reserves			
Retirement Reserve—Electric Dept.		$25 951 889 81	
Retirement Reserve—Gas Dept.		4 977 029 77	
Other Reserves		5 489 258 58	36 418 178 16
Miscellaneous Unadjusted Credits			1 651 453 99
Profit and Loss—Surplus			14 306 118 72
			$338 410 027 53

Exhibit C 6.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

INCOME ACCOUNT FOR TWELVE MONTHS ENDING AUGUST 31, 1927

Operating Revenues		
Electric Department	$50 832 580 36	
Gas Department	26 536 993 80	
Total Operating Revenues		$77 369 574 16
Revenue Deductions		
Electric Department	$32 911 270 16	
Gas Department	19 578 234 20	
Total Revenue Deductions		52 489 504 36
Operating Income		
Electric Department	$17 921 310 20	
Gas Department	6 958 759 60	
Total Operating Income		$24 880 069 80
Rent for Lease of Other Plant		6 110 274 36
Balance of Income Applicable to Corporate Property		$18 769 795 44
Total Miscellaneous Income		2 470 202 39
Gross Corporate Income		$21 239 997 83
Deductions from Gross Corporate Income		
Interest Charges	$4 067 265 90	
Amortization and Other Deductions	640 975 77	
Total Deductions from Gross Corporate Income		4 708 241 67
Net Income		$16 531 756 16
Total Profit and Loss Accounts		42 902 23 *
Balance Before Dividends		$16 488 853 93

* Debit.

Exhibit C 7.

INCOME AVAILABLE FOR FIXED CHARGES AFTER ALL EXPENSES, TAXES AND DEPRECIATION

	Public Service Gas Co.	Public Service Electric Co.	Public Service Electric and Gas Co.
1911	$4 812 546 76	$3 547 592 73	
1912	4 879 432 03	3 902 005 71	
1913	4 683 452 69	4 564 197 77	
1914	4 657 479 22	4 812 464 29	
1915	4 861 036 76	4 828 029 74	
1916	5 104 805 86	5 418 607 21	
1917	4 828 592 02	5 674 099 17	
1918	5 238 434 28	5 931 103 49	
1919	4 885 606 98	6 538 724 83	
1920	5 858 826 75	6 738 733 93	
1921	5 904 235 77	7 582 002 64	
1922	5 929 711 46	8 685 104 61	
1923	6 982 196 07	9 886 495 77	
1924			$19 084 661 47
1925			22 433 549 78
1926			25 642 510 67
1927 8 Months			17 886 400 50

Exhibit C 8.

NET INCOME AVAILABLE FOR DIVIDENDS AFTER ALL EXPENSES, TAXES, DEPRECIATION AND FIXED CHARGES, INCLUDING RENTALS

	Public Service Gas Co.	Public Service Electric Co.	Total
1911	$916 766 28	$934 722 75	
1912	967 356 85	1 164 073 89	
1913	704 322 27	1 820 414.02	
1914	638 392 61	2 052 666 84	
1915	852 173 53	2 069 325 13	
1916	1 095 025 15	2 658 023 18	
1917	600 480 44	3 093 735 00	
1918	1 115 178 80	3 084 846 76	
1919	587 870 19	3 676 627 93	
1920	1 757 523 59	3 813 372 57	
1921	1 632 275 30	4 525 879 28	
1922	1 654 472 71	5 520 834 92	
1923	2 698 928 61	6 742 970 01	
1924			$11 177 784 53
1925			13 660 783 17
1926			15 150 407 16
1927 8 Months			10 762 981 75

Fixed charges of Public Service Corporation of New Jersey (1903-1910) were not allocated between Departments. Figures requested not available prior to formation of Public Service Gas Company and Public Service Electric Company.

Public Service Electric and Gas Company was formed August 1, 1924. Figures for 1924 are combined figures for that year.

Fixed charges of Public Service Electric and Gas Company not allocated between Departments.

Exhibit C 9.

PUBLIC SERVICE GROWTH—BUSINESS

INCOME—HOW OPERATING REVENUE MOUNTED BETWEEN 1903 AND 1926

Year	Electric Properties	Gas Properties	Transportation Properties	Total
1903 (7 Mos.)..	$1,756,952.81	$3,000,879.34	$4,462,690.64	$9,220,522.79
1904	3,458,827.68	5,302,841.32	8,388,174.02	17,149,843.02
1905	3,673,213.24	6,034,262.36	9,286,145.06	18,993,620.66
1906	4,112,261.87	6,544,097.69	10,053,502.86	20,709,862.42
1907	4,619,365.94	7,014,459.37	10,671,553.13	22,305,378.44
1908	4,572,885.15	7,170,306.43	11,063,286.62	22,806,478.20
1909	5,092,028.32	7,599,132.67	12,087,011.50	24,778,172.49
1910	5,842,227.63	8,346,857.88	13,258,677.31	27,447,762.82
1911	6,656,039.15	8,854,454.45	14,416,555.31	29,927,048.91
1912	7,499,367.71	9,592,510.44	15,224,211.44	32,316,089.59
*1913	8,500,122.00	9,960,937.54	16,131,414.26	34,592,473.80
1914	9,293,661.50	10,320,536.59	16,310,255.56	35,924,453.65
*1915	10,425,851.78	10,475,933.18	16,569,443.28	37,471,228.24
1916	12,814,597.36	11,558,413.17	18,175,764.57	42,548,775.10
1917	15,168,255.44	12,729,060.87	19,394,025.82	47,291,342.13
1918	17,587,806.75	14,578,269.71	20,831,762.27	52,997,838.73
1919	20,054,659.90	14,941,745.80	24,140,356.97	59,136,762.67
1920	23,563,929.63	20,872,062.04	27,882,095.72	72,318,087.39
1921	24,390,321.49	23,516,318.23	27,404,867.81	75,311,507.53
1922	27,660,026.21	23,152,426.42	27,544,509.91	78,356,962.54
1923	31,188,595.51	24,814,283.34	23,105,003.63	79,107,882.48
1924	34,889,632.66	24,542,643.63	28,257,177.10	87,689,453.39
*1925	40,016,174.91	24,181,431.50	30,517,918.79	94,715,525.20
1926	46,954,362.27	26,286,246.50	33,062,600.77	106,303,209.54

* Change in classification of accounts effective January 1st.

Exhibit C 9.

CUSTOMERS—HOW THE NUMBER OF PERSONS RELYING FOR SERVICE UPON PUBLIC SERVICE HAS INCREASED, 1903-1926

Year	Number of Electric Meters in Service Dec. 31	Number of Gas Meters In Service Dec. 31	*Number of Passengers Carried
1903	18,262	187,384	†121,513,815
1904	25,499	209,155	215,400,000
1905	32,115	242,352	235,079,986
1906	37,219	269,881	261,312,488
1907	42,257	290,768	282,663,974
1908	45,799	305,044	294,110,602
1909	53,900	331,034	319,720,235
1910	63,186	360,101	341,398,688
1911	73,488	388,606	362,550,395
1912	83,350	410,649	383,104,247
1913	96,486	435,383	404,411,105
1914	110,305	454,389	407,277,914
1915	124,433	473,644	414,422,040
1916	141,918	496,885	451,698,012
1917	159,131	516,745	476,974,983
1918	170,630	526,213	451,220,806
1919	196,807	538,574	‡396,689,234
1920	234,496	553,343	453,505,154
1921	280,408	565,711	435,679,801
1922	344,309	583,842	410,212,814
1923	426,606	609,140	§356,146,992
1924	525,578	643,055	504,279,684
1925	616,013	675,264	562,841,858
1926	704,243	705,550	597,330,872

* Includes transfer passengers.

† Seven months 1903 number of passengers carried estimated.

‡ Mile zone system in effect from September 14 to December 7.

§ Trainmen's strike August 1 to September 20, inc.

Exhibit C 9.

OUTPUT—HOW THE VOLUME OF ELECTRIC, GAS AND STREET TRANSPORTATION SERVICE HAS GROWN

Year	K. W. H. of Electricity Sold	M Cu. Ft. of Gas Sold	Car and Bus Miles	Car and Bus Hours
1903 (7 mos.)....	*21,461,489	2,875,555	18,126,921	†2,256,006
1904.....	*42,516,790	5,120,814	32,168,888	4,003,614
1905.....	48,894,308	5,756,202	35,068,223	4,228,344
1906.....	56,666,749	6,473,835	37,462,804	4,464,162
1907.....	65,472,561	7,003,793	39,178,277	4,671,246
1908.....	69,274,132	7,162,588	39,519,972	4,598,714
1909.....	78,911,840	7,676,574	40,890,360	4,747,729
1910.....	89,742,689	8,404,760	42,632,760	4,961,608
1911.....	103,144,595	8,894,571	44,561,141	5,159,073
1912.....	122,486,832	9,636,733	47,355,292	5,465,926
1913.....	141,936,243	10,221,097	49,853,408	5,696,066
1914.....	159,044,648	10,907,541	50,792,889	5,665,119
1915.....	197,079,581	11,231,828	51,873,660	5,573,670
1916.....	280,871,843	12,399,852	54,964,708	5,911,131
1917.....	371,509,459	13,610,865	56,087,403	6,021,225
1918.....	440,676,475	14,783,231	54,039,150	5,698,089
1919.....	442,641,630	14,900,704	57,644,927	6,039,453
1920.....	505,813,937	16,493,276	60,798,743	6,539,207
1921.....	432,073,405	16,644,298	58,309,883	6,212,276
1922.....	534,465,033	17,736,689	56,419,982	5,983,122
1923.....	666,838,087	19,558,279	§49,777,400	§5,266,755
1924.....	743,084,455	19,857,632	69,650,178	7,590,838
1925.....	919,515,074	20,294,361	77,621,612	8,675,809
1926.....	1,091,749,572	22,165,087	81,714,635	8,943,160

* K. W. H. sold seven months 1903 and year 1904 estimated.

† Total car hours seven months 1903 estimated.

§ Due to strike of trainmen Public Service Railway Company did not operate from August 1 to September 20, inclusive.

Exhibit C 9.

ELECTRICITY, SPREAD OF USE—HOW RATIO OF SALES FOR MUNICIPAL STREET LIGHTING TO TOTAL SALES HAS DECREASED

Year	Kilowatt Hours Sold for Municipal Street Lighting	Kilowatt Hours Sold For All Purposes	Per Cent. of Municipal Lighting Current to Total
1905	19,868,392.510	48,894,308.000	40.5
1906	21,259,319.842	56,666,749.000	37.0
1907	22,456,297.922	65,472,561.000	34.0
1908	23,428,005.006	69,274,131.556	34.0
1909	24,384,979.934	78,911,840.016	31.0
1910	25,006,837.160	89,742,689.088	28.0
1911	24,263,204.394	103,144,594.967	23.0
1912	25,093,305.232	122,486,832.019	21.0
1913	25,744,753.031	141,936,242.847	18.3
1914	25,543,875.684	159,044,647.724	16.0
1915	26,192,009.657	197,079,580.600	13.0
1916	26,009,212.253	280,871,842.659	9.3
1917	25,695,842.858	371,509,458.578	6.9
1918	23,024,327.408	440,676,474.728	5.2
1919	25,186,639.575	442,641,629.787	5.7
1920	25,448,766.631	505,813,937.363	5.0
1921	26,378,055.925	432,073,405.751	6.1
1922	28,192,136.973	534,465,033.369	5.3
1923	31,113,593.386	666,838,087.472	4.7
1924	35,324,985.155	743,084,454.791	4.7
1925	39,849,099.999	919,515,074.117	4.3
1926	45,582,461.060	1,091,749,572.338	4.2

Exhibit C 9.

DIVIDENDS—THE RATE OF RETURN RECEIVED BY THE OWNERS OF THE STOCK OF PUBLIC SERVICE CORPORATION OF NEW JERSEY

Year	Dividend Rate			
	Common Stock	8% Preferred*	7% Preferred†	6% Preferred¶
1903	....	....	....	....
1904	....	....	....	....
1905	....	....	....	....
1906	....	....	....	....
1907	3%	....	....	....
1908	4%	....	....	....
1909	4½%	....	....	....
1910	5%	....	....	....
1911	6%	....	....	....
1912	6%	....	....	....
1913	6%	....	....	....
1914	6%	....	....	....
1915	6¼%	....	....	....
1916	7¾%	....	....	....
1917	8%	....	....	....
1918	6%	....	....	....
1919	4½%	8%	....	....
1920	4%	8%	....	....
1921	4%	8%	....	....
1922	6½%	8%	....	....
1923	§	8%	7%	....
1924	$4.25‡	8%	7%	....
1925	$5.00‡	8%	7%	6%
1926	A	8%	7%	6%

* 8% Preferred Stock not issued until March 1, 1919.

† 7% Preferred Stock not issued until February 5, 1923.

§ At the rate of $2.00 per share on the 300,000 shares of $100 par value for the first quarter and at the rate of $1.00 per share on the 600,000 shares, no par value (issued in exchange for the par value stock) for the last three quarters of the year.

‡ Per Share.

¶ 6% Preferred stock not issued until November 2, 1925.

A. At the rate of $1.25 per share for the first three quarters of the year. An exchange on the basis of three shares for each share outstanding was made during October, and for the quarter ending December 31, 1926, a dividend of 50 cents per share was paid.

New Jersey State Library

Exhibit C 9.

Power—Statistics of Increase Which Show the Development in the Use of Electric Energy in Industry

Year	Connected Load (Except Railway) In Kilowatts	Year	Connected Load (Except Railway) In Kilowatts	Year.	Connected Load (Except Railway) In Kilowatts
1911.....	48,000	1916.....	154,964	1922.....	330,567
1912.....	60,322	1917.....	201,216	1923.....	378,415
1913.....	76,569	1918.....	252,006	1924.....	436,136
1914.....	94,187	1919.....	263,681	1925.....	507,591
1915.....	118,892	1920.....	291,018	1926.....	606,195
		1921.....	298,491		

Per Capita Use—Figures Which Show How the Individual Requirements of the People Have Increased

Year	Inhabitants Per Meter (Electric)	K. W. H. Sold Per Inhabitant	Inhabitants Per Meter (Gas)	Thousand Cubic Feet of Gas Sold Per Inhabitant	Rides Per Inhabitant
1905	48	32	6	4	168
1910	30	47	5	5	196
1915	18	90	4	6	195
1920	11	203	4	7	187
1925	4	333	4	8	207
1926	4	388	4	8	213

New Jersey State Library

Exhibit C 9.

PUBLIC SERVICE GROWTH—FACILITIES

CAPITAL—TABLE THAT SHOWS THE MILLIONS OF DOLLARS THAT HAVE GONE INTO EXTENSIONS AND BETTERMENTS

Year.	Corporation	Electric	Gas	Transportation	Total
1903†....	.....	$561,396.47	$947,096.55	$2,021,397.43	$3,529,890.45
1904.....	.....	732,063.16	1,324,441.13	4,380,564.99	6,437,069.28
1905.....	.....	1,341,248.14	1,490,532.86	3,053,587.53	5,885,368.53
1906.....	.....	1,359,511.34	1,614,424.85	4,145,159.17	7,119,095.36
1907.....	.....	1,346,429.89	1,055,434.29	2,637,803.14	5,039,667.32
1908.....	.....	641,537.25	681,518.34	2,155,040.03	3,478,095.62
1909.....	.....	1,091,060.61	1,659,459.16	1,610,788.91	4,361,308.68
1910.....	.....	2,111,737.36	2,075,396.24	2,470,373.04	6,657,506.64
1911.....	.....	2,635,689.23	1,415,723.18	1,149,157.53	5,200,569.94
1912.....	.....	2,744,858.68	1,012,441.77	2,351,065.01	6,108,365.46
1913.....	.....	3,235,763.13	1,250,817.18	1,991,015.99	6,477,596.30
1914.....	.....	2,644,099.26	857,074.96	1,389,961.58	4,891,135.80
1915.....	.....	2,881,199.28	814,666.16	4,605,355.30	8,301,220.74
1916.....	.....	3,558,092.35	1,374,329.76	2,303,837.45	7,236,259.56
1917.....	.....	4,880,462.95	1,556,847.58	2,243,160.76	8,680,471.29
1918.....	.....	2,189,323.40	1,046,735.22	1,403,848.95	4,639,907.57
1919.....	.....	2,339,184.41	1,110,513.03	1,096,657.71	4,546,355.15
1920.....	.....	3,358,368.98	1,481,794.49	1,821,370.93	6,661,534.40
1921.....	.....	4,758,265.08	2,556,837.71	1,073,906.31	8,389,009.10
1922.....	.....	5,656,154.85	2,817,711.25	*114,343.32	8,359,522.78
1923.....	.....	16,167,910.50	4,429,417.05	2,047,729.80	22,645,057.35
1924.....	.....	23,881,885.95	4,951,361.37	6,030,726.80	34,863,974.12
1925.....	$305,009.57	34,349,195.87	7,807,265.86	5,801,341.81	48,262,813.11
1926.....	1,338,064.35	20,352,325.63	8,715,907.05	7,715,943.77	38,122,240.80
Total...	$1,643,073.92	$144,817,763.77	$54,047,747.04	$65,385,450.62	$265,894,035.35

† months.
* Credit.

Exhibit C 9.

ELECTRIC FACILITIES—EXPANSION OF PLANT AND EQUIPMENT SET FORTH IN FIGURES

Year	Capacity Generation Stations K. V. A. Dec. 31	Capacity of Substations: Light and Power Transformer Capacity K. V. A. Dec. 31	Capacity of Substations: Substation Railway Capacity K. W. Dec. 31	Miles of Transmission Lines Dec. 31	Miles of Distribution Wire Dec. 31
1903	40,075	1,730	5,400	47	4,244
1904	50,275	3,267	12,784	96	6,175
1905	57,965	5,057	16,384	134	6,743
1906	68,215	10,422	21,384	162	7,323
1907	86,095	16,793	27,684	196	7,671
1908	86,095	19,562	30,984	216	7,779
1909	105,482	27,272	42,750	340	8,649
1910	124,158	48,881	50,200	374	9,686
1911	134,158	50,300	52,700	425	11,246
1912	147,408	71,413	64,950	475	12,355
1913	177,408	96,563	73,000	576	14,070
1914	171,033	117,213	82,000	636	15,080
1915	227,813	137,313	84,500	685	16,108
1916	224,483	189,363	91,000	772	17,330
1917	265,348	197,363	90,600	835	18,100
1918	268,055	261,305	84,884	920	18,299
1919	277,555	277,565	87,184	925	18,731
1920	291,855	289,690	88,184	925	19,818
1921	293,755	302,085	88,684	947	20,882
1922	290,900	331,085	89,084	957	22,517
1923	361,500	404,001	90,392	1,029	24,866
1924	414,800	456,750	98,892	1,061	27,804
1925	447,550	562,256	102,092	1,186	30,478
1926	609,500	721,625	100,042	1,284	33,567

Exhibit C 9.

GAS FACILITIES—HOW CAPACITY HAS BEEN INCREASED TO MEET THE NEEDS OF THE PEOPLE

Year	Capacity of Gas Plants Dec. 31	Miles of Main Dec. 31	Total Services Installed During Year
1903	22,932 M	1,495	*7,043
1904	29,282 M	1,584	11,795
1905	31,257 M	1,856	13,371
1906	38,440 M	1,987	16,031
1907	39,250 M	2,060	14,277
1908	42,050 M	2,119	10,711
1909	45,250 M	2,241	15,218
1910	49,850 M	2,456	15,232
1911	53,210 M	2,637	15,327
1912	57,003 M	2,741	14,154
1913	65,403 M	2,844	13,192
1914	66,693 M	2,906	10,787
1915	68,400 M	2,977	11,452
1916	68,700 M	3,041	11,037
1917	68,900 M	3,089	7,629
1918	71,500 M	3,096	3,227
1919	75,500 M	3,126	7,166
1920	75,600 M	3,170	7,590
1921	78,200 M	3,223	12,335
1922	77,700 M	3,332	18,550
1923	77,700 M	3,467	21,654
1924	81,950 M	3,646	24,679
1925	82,130 M	3,865	27,027
1926	114,050 M	4,131	26,262

* 7 months.

Exhibit C 9.

Taxes—How Imposts Have Been Growing Each Year

Year	Amount of Taxes	Taxes Per Cent of Operating Revenues	Taxes Per Cent of Operating Income Before Deducting Taxes
1904	$836,928.80	4.8%	10.9%
1905	885,651.21	4.6%	9.4%
1906	939,297.48	4.5%	9.2%
1907	1,006,949.32	4.5%	9.3%
1908	1,068,672.46	4.6%	9.3%
1909	1,225,582.78	4.9%	9.4%
1910	1,420,920.28	5.1%	9.8%
1911	1,611,428.64	5.3%	10.7%
1912	1,844,436.04	5.6%	11.5%
1913	2,006,073.76	5.8%	12.0%
1914	2,145,737.74	6.0%	12.7%
1915	2,285,508.63	6.1%	13.0%
1916	2,631,054.30	6.2%	13.7%
1917	3,893,818.90	8.2%	19.1%
1918	4,621,530.93	8.7%	22.5%
1919	4,689,832.36	7.9%	23.2%
1920	5,800,441.47	8.0%	25.8%
1921	7,312,177.84	9.8%	28.2%
1922	8,235,736.56	10.5%	28.8%
1923	8,555,924.85	10.7%	29.7%
1924	8,816,309.79	9.9%	27.6%
1925	10,186,632.95	10.7%	28.3%
1926	11,542,293.30	10.6%	27.7%

Exhibit C 10.

In April 1923, Public Service Electric Power Company was organized as a subsidiary of Public Service Corporation of New Jersey and erected at Kearny, New Jersey, a steam generating electric power plant of 205,100 Kv-a. capacity.

Public Service Electric Power Company issued $14,000,000 principal amount of 6% First Mortgage Bonds due 1948, guaranteed as to principal and interest by Public Service Corporation of New Jersey and redeemable at 107½ up to October 1, 1933 and thereafter at a diminishing premium, $6,000,000 par value 7% Cumulative Preferred Stock redeemable at 115 after three years from the issue thereof, and 300,000 shares of no par value common stock, all of the common stock, with the exception of directors' shares being owned by Public Service Corporation of New Jersey.

The power plant was leased to Public Service Electric Company for 999 years from July 18, 1923 at a fixed annual rental of $2,100,000. Early in the year 1927, the property of Public Service Electric Power Company was sold to Public Service Electric and Gas Company, all of the bonds and preferred stock of Public Service Electric Power Company being redeemed and the company dissolved.

PUBLIC SERVICE CORPORATION of NEW JERSEY

Public Service Electric and Gas Company

This company was organized in 1924 as a merger of

Public Service Electric Company
Public Service Gas Company
United Electric Company of New Jersey
Middlesex Electric Light and Power Company
Burlington Electric Light and Power Company
Citizens Electric Light, Heat and Power Company
The Morristown Gas Light Company
The Nichols Electric Light and Power Company of Nutley, New Jersey
Princeton Light, Heat and Power Company
Weehawken Contracting Company

It owns or controls electric and gas systems serving sections of New Jersey with a population estimated at over 2,600,000, or over 80% of the population of the State. Over 200 communities, including Newark, Jersey City, Paterson, Trenton, Camden, Elizabeth, Bayonne, Hoboken, Passaic, the Oranges, Perth Amboy, West Hoboken and New Brunswick are served.

The principal properties owned in fee by the company are

Essex Station, Newark	195,900 KVA
Perth Amboy Station	22,500 KVA
Burlington Station	37,500 KVA
Hoboken Station	3,950 KVA

Substations and practically the entire electric distribution system in Newark, the Oranges, Montclair, Jersey City, Bayonne, Elizabeth and Hoboken.
The gas and electric systems in Princeton and vicinity.
The gas system in Morristown.

It also controls and operates under lease the properties of the following companies:

Public Service Railway Company

Public Service Railway "System" supplies electric street and interurban railway service to 147 cities and towns in New Jersey, with an aggregate population estimated at over 2,600,000, or more than 80% of the population of the State. With one exception the Company has more miles of track than any other electric railway system in the world.

The principal properties owned in fee by the Company consist of street railway or interurban lines:

In and about Hoboken, Jersey City, Weehawken, West Hoboken, North Bergen and Union.

In and about Paterson and Passaic.

From Newark through Irvington to Maplewood, Newark and South Orange.

To Montclair and Caldwell through Glen Ridge and various lines in Newark, Jersey City and Bayonne.

Certain lines in Elizabeth and from Elizabeth through Cranford, Plainfield, Dunellen, Bound Brook, Somerville to Raritan.

In New Brunswick, and lines from New Brunswick to Bound Brook, to Perth Amboy and to South Amboy.

The company also owns:

The company also operates under lease the properties of:

Essex and Hudson Gas Co.

Including Newark Consolidated Gas Company leased to Essex & Hudson Gas Company for 999 years from December 1, 1898.

East Newark Gas Light Company controlled through stock ownership.

Owning gas properties in Newark, the Oranges, Montclair, Bloomfield and other municipalities in Essex County and in Harrison, East Newark and neighboring municipalities in Hudson County. Owns two gas generating plants in Newark.

Public Service Electric Power Company

Building a modern centrally located steam electric power plant near Newark, N. J., with an initial installed capacity of 205,100 KVA.

Electric Equipment of Public Service Railway Co.

Including

Marion Station, Jersey City	103,500 KVA
Secaucus Station	3,150 KVA
Cranford Station	4,350 KVA

Paterson & State Line Traction Company

Owning approximately 6½ miles of electric railway from Paterson to Ridgewood, N. J.

Bergen Turnpike Company

Owning approximately 13.3 miles of track on the turnpike running between Hoboken and Hackensack.

Consolidated Traction Company

The system includes almost the entire street railway system in Newark, together with lines between Newark and Elizabeth, Newark and Jersey City, Newark and Passaic, etc. The subsidiary companies are

Newark Passenger Railway Co.
Newark Plank Road Company
Jersey City and Bergen Railroad Co.
Passaic & Newark Elec. Traction Co.

East Newark Gas Light Company

Newark Consolidated Gas Co.

Gas and Electric Co. of Bergen County

Owning gas and electric properties in 47 municipalities in Bergen County.

Hudson County Gas Co.

Owning the gas properties in Jersey City, Hoboken, Bayonne and other municipalities in Hudson County. Owns gas generating plants in Jersey City and Hoboken.

South Jersey Gas, Electric and Traction Co.

Owning gas and electric properties in Camden, Gloucester, Burlington and Mercer Counties, including gas and electric generating plants in Camden and Trenton. Also owns the Coke Oven plant in Camden. Owns the capital stock of Camden, Gloucester and Woodbury Railway Company.

New Brunswick Light, Heat and Power Co.

Owning the entire capital stock of

The Gas Light Co. of the City of New Brunswick

Owning the gas properties in New Brunswick and vicinity.

Somerset, Union and Middlesex Lighting Co.

Owning gas and electric properties in Somerset, Union & Middlesex Counties, including the gas properties in Plainfield, Somerville and Bound Brook and the electric properties in Plainfield, Somerville, Bound Brook, New Brunswick, Metuchen, Perth Amboy and South Amboy.

Paterson and Passaic Gas and Electric Co.

Owning gas and electric properties in, and in the vicinity of, the cities of Paterson and Passaic, including gas and electric generating plants in Paterson.

Bordentown Electric Company

Owning electric property in Bordentown (Stock owned by Riverside Traction Company).

Ridgewood Gas Company

Owning the gas properties in Ridgewood and Glen Rock.

Cinnaminson Electric Light, Power and Heating Co.

Owning electric property in Riverton, Riverside, Beverly and vicinity. (Stock owned by Riverside Traction Company.)

New Jersey and Hudson River Railway and Ferry Co.

Owning 54 miles of track. Runs from Edgewater to Englewood, Hackensack and Paterson; also from Hackensack to Hasbrouck Heights, Woodridge, Rutherford and Arlington and from Hackensack to Lodi. Owns the entire capital stock and bonds of

Riverside & Fort Lee Ferry Company

Operating between Edgewater and 125th Street, New York City.

Camden, Gloucester and Woodbury Railway Co.

Owning 27 miles of track running from Camden to Gloucester and Woodbury and with branches to Blackwood, Mantua and National Park. Stock owned by South Jersey Gas, Electric and Traction Company.

Riverside Traction Company

Owning 35 miles of track running between Trenton and Riverton. Also owns all the capital stock of Bordentown Electric Company and Cinnaminson Electric Light, Power and Heating Company.

Orange and Passaic Valley Railway Company

Owning 10 miles of track in Bloomfield and the Oranges.

Jersey City, Harrison & Kearny Railway Co.

Port Richmond & Bergen Point Ferry Co.

to Staten Island.

The South Orange and Maplewood Traction Co.

Owning approximately 5.5 miles of track in Orange and South Orange.

Camden and Suburban Railway Company

Including Camden Horse Railroad Company leased to Camden and Suburban Railroad Company for 999 years from April 1, 1896, and West Jersey Traction Company, controlled through stock ownership.

Owning approximately 93.7 miles of track in the city of Camden and lines to various suburbs, including Riverton, Merchantsville, Moorestown, Haddonfield, Haddon Heights.

West Jersey Traction Co
Camden Horse Railroad Co.

Rapid Transit Street Railway Co. of the City of Newark

Owning approximately 12 miles of track in the City of Newark.

Public Service Railroad Company

Controls and operates under lease

Elizabeth and Trenton Railroad Company

Owning lines running from Trenton to Millville Junction and from New Brunswick to Elizabeth, N. J.

Public Service Transportation Company

Organized to own and operate a fleet of motor busses.

Public Service Production Company

Organized to undertake engineering and construction work for governmental agencies, public utilities and other corporations anywhere in the United States, Canada, Mexico, Central and South America.

Public Service Stock and Bond Company

Organized to sell securities of the "Public Service" system, and other securities.

Holland Company

A real estate holding company.

LEGEND

Indicates stock ownership.

Indicates control through lease.

PORTO SERVICE CONDOMINIUM & NEW TERRITORY

Exhibit C 12.

J. P. Morgan & Co.
23 Wall Street
New York City

Drexel & Co.
Chestnut and 5th Streets
Philadelphia

Exchange of

PUBLIC SERVICE CORPORATION OF NEW JERSEY

General Mortgage 5% Sinking Fund Gold Bonds

for

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

First and Refunding Mortgage Gold Bonds

5½% Series due 1959

To the Holders of

Public Service Corporation of New Jersey General Mortgage 5% Sinking Fund Gold Bonds:

We beg to enclose a notice of Public Service Corporation of New Jersey offering in exchange for the $31,859,000 General Mortgage 5% Bonds of Public Service Corporation outstanding in the hands of the public, $31,859,000 First and Refunding Mortgage Bonds, 5½% Series due 1959, to be issued under a mortgage to be made by a proposed new Company, Public Service Electric and Gas Company.

We recommend to the holders of the General Mortgage 5% Bonds that they make this exchange, because in our opinion the security of their bonds will be greatly improved, in addition to which they

will receive an increase of ½ of 1% in annual income. This Plan was initiated by us and has been developed under our supervision. In connection with the new 5½% bonds, we refer to a letter addressed to us by Mr. Thomas N. McCarter, President of Public Service Corporation, copy of which is annexed, which he summarizes as follows:—

SECURITY. The property securing the new bonds has been valued by Day & Zimmermann, Inc., Engineers, as of January 1, 1924, as follows:—

First mortgage property....	over	$40,000,000
Direct mortgage property, subject to $21,718,825 underlying liens.....	over	48,000,000
Pledged securities (market value)		11,000,000
Equity in valuation of Leased Companies.....	over	60,000,000

NET EARNINGS over 2¼ times fixed charges, including rentals.

SINKING FUND should retire over $28,000,000 of the Bonds of the Series due 1959, by maturity.

The consummation of the Plan is entirely dependent upon acceptance of the exchange offer by the General Mortgage bondholders with substantial unanimity. The holders of large amounts of these bonds have already expressed their desire to make the exchange. As time is an essential consideration it has been found necessary to require bondholders to express their decision before the close of business on July 1, 1924, and to that end General Mortgage bondholders who desire to make the exchange should deposit their bonds at either of our offices prior to that time.

Exhibit C 12.

Depositors will receive bearer certificates of deposit issued by the undersigned under the terms of a Deposit Agreement between the Public Service Corporation of New Jersey, the undersigned as depositaries, and the depositing bondholders, a copy of which agreement will be furnished on request. No expense of any kind is chargeable to depositors.

Yours very truly,

J. P. MORGAN & Co.
DREXEL & Co.

May 28, 1924

PUBLIC SERVICE CORPORATION OF NEW JERSEY

NEWARK, NEW JERSEY, May 27, 1924

MESSRS. J. P. MORGAN & Co.,
MESSRS. DREXEL & Co.

DEAR SIRS:

Referring to the proposed issue of First and Refunding Mortgage Bonds of Public Service Electric and Gas Company, of which $31,859,000 principal amount, bearing interest at the rate of 5½%, and due in 1959, are offered in exchange for a like amount of General Mortgage 5% Sinking Fund Bonds of Public Service Corporation of New Jersey, I beg to submit the following information with regard to the proposed bonds and the property upon which they will be secured:

The Public Service Electric and Gas Company will own or control substantially all of the proper-

ties now constituting the electric and gas systems of the Public Service Corporation of New Jersey. It will be one of the largest companies of its kind in the world, serving with electricity and gas a rapidly growing population in New Jersey estimated at over 2,600,000, or over 80% of the population of the State. The territory served includes the larger cities and more populous sections of the State and is noted for its great industrial activity and growth. In it is located more than 90% of the manufacturing of New Jersey, which is the sixth State in value of manufactured product and the first in diversity of manufacture. The territory extends from the Hudson River opposite New York City, southwest across the State to the Delaware River opposite Philadelphia, and includes Newark, Jersey City, Paterson, Trenton, Camden, Elizabeth, Bayonne, Hoboken, Passaic, the Oranges, Perth Amboy, West Hoboken and New Brunswick.

The Company's electric system will include 14 generating stations with an aggregate rated capacity of over 480,000 horse-power, 1,029 miles of transmission lines and 24,866 miles of distribution wire serving over 426,000 electric customers. Its gas system will include 10 generating plants with an aggregate capacity of 77,700,000 cubic feet daily and 3,467 miles of mains serving over 609,000 gas customers.

The property of the Company and its Leased Companies (not including any of that leased from the Public Service Electric Power Company or the electrical property leased from Public Service Railway Company) is valued by Day & Zimmermann, Inc., Engineers, as of January 1, 1924, at over $245,000,000. Against this valuation the total

funded indebtedness of the Company, including these bonds, plus such Leased Companies' stocks and bonds (closed issues) on which rentals must be paid to the public, aggregate $134,128,684, or less than 55% of the above valuation.

The First and Refunding Mortgage Gold Bonds will be secured by lien upon all the mortgageable property of the Company now owned or hereafter acquired:

(*a*) By first mortgage on a modern steam generating station near Newark with 250,000 horse-power installed capacity, and on other property, all valued by Day & Zimmermann at over $40,000,000 and by pledge with the Trustee of underlying bonds and stocks with a value of over $6,000,000 and of bonds of affiliated companies with a value of over $5,000,000, based on present market quotations. The total of these values is over $51,000,000 for the property on which these $31,859,000 bonds will be secured by first lien.

(*b*) By direct mortgage, subject to $21,718,825 underlying liens (closed issues) held by the public, on electric property of the Company serving without competition 65 municipalities with a total population of over 1,400,000, including Newark, Jersey City, Elizabeth and Hoboken, and on certain gas property, all valued by Day & Zimmermann at over $48,000,000.

(*c*) By mortgage on leasehold estates in electric and gas companies serving without competition 189 municipalities, including the

gas companies serving Newark, Jersey City and Hoboken, and the electric and gas companies serving Paterson, Trenton, Camden, Passaic and New Brunswick, all valued by Day & Zimmermann at over $152,000,000. These Leased Companies have outstanding in the hands of the public stocks and bonds (closed issues) aggregating $80,550,859, or less than 53% of the above valuation, leaving a balance of over $60,000,000 to indicate the value of the Company's equity in these leasehold estates. The net earnings of such Companies in 1923 (after deducting from gross revenue an amount for operating expenses, taxes and amortization based on the ratio which such items for the entire electric and gas systems bore to the gross revenue of the systems), were over twice rentals payable in the form of interest on such Companies' bonds and dividends on their stocks, leaving for the Public Service Electric and Gas Company's equity therein a return of approximately $5,780,000.

By mortgage on other valuable leasehold estates, including the lease of the Public Service Electric Power Company and the lease of certain electrical property of Public Service Railway Company. The leasehold estates extend in practically all cases approximately 900 years.

Exhibit C 12.

CAPITALIZATION

of Public Service Electric and Gas Company upon completion of Plan

CAPITAL STOCK:	
Common Stock, no par value (all to be owned by Public Service Corporation)	$64,250,000*
7% Preferred Stock, $100 par value	20,000,000†
	$84,250,000
FUNDED DEBT:	
First and Refunding Mortgage Gold Bonds, 5½% Series due 1959 (to be issued in exchange for an equal principal amount of General Mortgage 5% Bonds of Public Service Corporation)	$31,859,000
Divisional Underlying Bonds (closed mortgages) (of which $17,934,500 bear interest at 4%)	19,331,500
Other Miscellaneous Obligations	2,387,325
	$53,577,825

* 6,425,000 shares representing a cash investment at the rate of $10 per share, issued for the stock of Public Service Electric Company and Public Service Gas Company. Additional common stock will be issued for the stock of the several smaller companies to be merged, whose stock is now owned by Public Service Corporation of New Jersey.

† $19,736,800 to be deposited with Trustee as security for Perpetual Interest Bearing Certificates.

Exhibit C 12.

SINKING FUND

A Sinking Fund of $300,000 a year will be provided for the bonds of the 5½% Series due 1959, to be paid to the Trustee semi-annually and to be applied to the acquisition of bonds of this series by purchase or call, the bonds so acquired to be held alive in the Sinking Fund and the interest added to the amount of the fund. By operation of this Sinking Fund, over $28,000,000 of the $31,859,000 5½% Bonds of the Series due 1959 should be retired by maturity.

MORTGAGE PROVISIONS FOR ISSUANCE OF BONDS

Bonds of this Series will be authorized in the principal amount of $31,859,000 to be offered in exchange for an equal principal amount of the General Mortgage 5% Bonds of Public Service Corporation of New Jersey held by the public.

Provision will be made for the issuance of additional bonds of other series at such times, in such amounts and under such terms and conditions as may be prescribed by the Board of Directors of the Company, subject to the conservative limitations to be specified in the Indenture. Additional bonds may be issued on deposit with the Trustee of an equal principal amount of the bonds and stocks of the present Leased Companies, or of underlying bonds outstanding against properties now owned or hereafter acquired in fee, and may also be issued to refund at or before maturity an equal principal amount of underlying bonds, or of First and Refunding Mortgage Bonds. Bonds may also be issued for additions and improvements made after January 1, 1924, to the owned and present leased prop-

erties and for the acquisition subsequent to said date of properties in fee, but only to a principal amount not exceeding 75% of the cost or of the fair value, whichever is less, of the property so constructed or acquired, and only provided the net earnings of the Company, as defined in the Indenture, shall have been at least 1¾ times the combined rentals and annual interest charges on all underlying bonds and First and Refunding Mortgage Bonds.

For further details of the terms and conditions of the proposed First and Refunding Mortgage reference is made to the Agreement under which General Mortgage 5% Bonds are to be deposited for exchange.

Earnings

Earnings of the Company, if this reorganization had been in effect:

	1922		1923
Gross Revenue	$51,338,775		$56,513,089
Operating Expenses, Taxes and Amortization	36,385,847		39,306,384
Net Earnings	$14,952,928		$17,206,705
Fixed Charges:			
Rentals of Leased Companies and other charges		$4,822,551	
Annual Interest on Public Service Electric and Gas Company Bonded Debt including $31,859,000 First and Refunding Mortgage 5½% Bonds		2,615,085	7,437,636
Balance			$9,769,069

Net Earnings Over 2¼ Times Fixed Charges

Of the net operating revenue approximately 59% is derived from the electric business and 41% from the gas business.

Exhibit C 12.

FRANCHISES

With minor exceptions, the franchises under which the new Company will operate are, in the opinion of counsel for the Company, perpetual and contain no burdensome restrictions.

TERMS OF SERIES DUE 1959

Interest on the Bonds of the 5½% Series due 1959 will be payable April 1 and October 1 at the office of Fidelity Union Trust Company, Newark, N. J., Trustee, or at the office of J. P. Morgan & Co., the agency of the Company in New York, or at the office of Drexel & Co., the agency of the Company in Philadelphia. The Bonds will be redeemable as a whole or in part, and for the Sinking Fund, at 105% and accrued interest, on any interest date on not less than eight weeks' notice. They will be in the form of coupon bonds in denominations of $1,000 and $500 registerable as to principal, and fully registered bonds in denominations of $1,000 and authorized multiples. Coupon and registered bonds will be interchangeable. The Company will agree to pay interest without deduction for Federal Income Taxes not exceeding 2% per annum and, upon application made in accordance with the provisions of the indenture, to refund the Pennsylvania State Tax of four mills; the State Tax in Connecticut up to the rate of four mills annually; the Maryland Securities Tax not exceeding the rate of four and one-half mills per annum; and the Massachusetts Income Tax not exceeding 6% per annum on income derived from the bonds; but in no case more than one such State tax on the same bond for the same year.

Application will be made to list these bonds on the New York Stock Exchange.

Yours truly,

THOMAS N. McCARTER,
President.

Exhibit C 13.

NEW ISSUE

Proof Subject to Change and Correction

$15,000,000

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

FIRST AND REFUNDING MORTGAGE GOLD BONDS
5½% SERIES DUE 1964

Dated October 1, 1924 Due October 1, 1964

Interest payable April 1 and October 1. Redeemable as a whole or in part and for the sinking fund at any time on not less than eight weeks' notice at a premium of 5% if redeemed before October 1, 1952; said premium to be reduced by ½ of 1% commencing October 1, 1952, with a like additional reduction commencing October 1 of each year thereafter, the bonds being callable at par on and after October 1, 1961; in each case with accrued interest. Coupon bonds in denominations of $1,000 and $500 registerable as to principal, and fully registered bonds in denominations of $1,000 and authorized multiples. Coupon and registered bonds interchangeable.

FIDELITY UNION TRUST COMPANY, NEWARK, N. J., TRUSTEE

The Company will agree to pay interest without deduction for Federal Income taxes not exceeding 2%, and to refund the Pennsylvania

State tax not exceeding 4 mills on bonds held by residents of Pennsylvania; the State tax in Connecticut up to the rate of 4 mills annually; the Maryland Securities tax not exceeding the rate of 4½ mills per annum; and the Massachusetts Income tax not exceeding 6% per annum on income derived from the bonds; all as provided in the Mortgage; but will not refund more than one such State tax on the same bond for the same year.

SUBJECT TO APPROVAL BY THE BOARD OF PUBLIC UTILITY COMMISSIONERS OF THE STATE OF NEW JERSEY

Mr. Thomas N. McCarter, President of the Company, has summarized as follows his letter to us describing these bonds:

Public Service Electric and Gas Company, one of the largest companies of its kind in the world, owns or controls electric and gas systems serving a rapidly growing population in New Jersey estimated at over 2,600,000 or over 80% of the population of the State. The territory served extends from the Hudson River opposite New York City southwest across the State to the Delaware River opposite Philadelphia and includes Newark, Jersey City, Paterson, Trenton, Camden, Elizabeth, Bayonne, Hoboken, Passaic, the Oranges, Perth Amboy, West Hoboken and New Brunswick. All of the Company's Common Stock (except directors' shares) is owned by Public Service Corporation of New Jersey.

Exhibit C 13.

The $41,586,000 First and Refunding Mortgage Bonds, which will be outstanding upon completion of this financing, will be secured by lien upon all the mortgageable property of the Company, and all underlying bonds and bonds and stocks of Leased Companies, now owned or hereafter acquired. The property has been valued by Day & Zimmermann, Inc., Engineers, as of January 1, 1924, with additions and betterments to date at cost, as follows: first mortgage property, over $43,500,000; direct mortgage property, subject to $21,825,293 underlying liens, over $50,500,000; pledged securities, (market value) $12,000,000; and equity in valuation of Leased Companies, over $68,000,000.

The valuation thus placed on the entire property of the Company and its Leased Companies (not including that leased from the Public Service Electric Power Company or electrical property leased from Public Service Railway Company) is over $255,000,000. Against this valuation, the total funded debt of the Company *including this issue,* plus such Leased Companies' stocks and bonds (closed issues) on which rentals must be paid to the public, will aggregate $144,230,152, or less than 57% of the above valuation.

Of these $15,000,000 Bonds, $5,248,000 are to be issued on retirement of a like principal amount of First and Refunding Mortgage Bonds, 5½% Series due 1959. The proceeds of the remaining $9,752,000 Bonds will be used to reimburse the Company for additions and improvements to the mortgaged property made and to be made.

Exhibit C 13.

Earnings

(After giving effect to recent adjustment of securities)

	Years ended August 31, 1923		1924
Gross Revenue	$56,481,351		$59,856,979
Operating Expenses, Taxes and Depreciation	39,190,767		40,645,068
Net Earnings	$17,290,584		$19,211,911
Annual Fixed Charges			
Rentals of Leased Companies and other charges		$4,851,479	
Interest on Funded Debt (*upon completion of this financing*)		3,127,418	7,978,897
Balance			$11,233,014

Net Earnings over 2.4 Times the above Fixed Charges

Of the net operating revenue for the year ended August 31, 1924, approximately 62% was derived from the electric business and 38% from the gas business.

Provision will be made for semi-annual payments, beginning July 1, 1925, to a Sinking and Improvement Fund at the rate of ½ of 1% of the total amount of Bonds of this Series theretofore issued, the moneys to be used for additions or improvements or for the purchase or redemption and cancellation of Bonds of this Series.

The Sinking Fund applicable to the outstanding $26,586,000 Bonds of the 5½% Series due 1959 should retire all of said bonds before their maturity. With minor exceptions, the franchises under which the Company operates are, in the opinion of counsel for the Company, perpetual and contain no burdensome restrictions.

These bonds are offered subject to sale and when, as and if issued and received by us and subject to the approval of our counsel, Messrs. Stetson, Jennings & Russell, and Messrs. Dickson, Beitler & McCouch.

Exhibit C 13.

Application will be made to list these Bonds on the New York Stock Exchange.

Price 96½ and interest, to yield over 5.70%

DREXEL & Co. BONBRIGHT & Co., Inc.

September 19, 1924

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PUBLIC SERVICE ELECTRIC AND GAS COMPANY

NEWARK, N. J., September 18, 1924.

MESSRS. DREXEL & Co.
BONBRIGHT & Co., INC.

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GENTLEMEN:

In connection with the issue of $15,000,000 First and Refunding Mortgage Gold Bonds, 5½% Series due 1964, of Public Service Electric and Gas Company, I take pleasure in giving you the following information:

BUSINESS AND TERRITORY

The Public Service Electric and Gas Company, in respect of gross earnings and number of customers, is believed to be the largest operating public utility company of its kind in the world. It has been formed by a consolidation of Public Service Electric Company, Public Service Gas Company and United Electric Company of New Jersey and owns or controls electric and gas systems serving a rapidly growing population in New Jersey estimated at over 2,600,000, or over

30

40

80% of the population of the State. The territory served includes the larger cities and more populous sections of the State and is noted for its great industrial activity and growth. In it is located more than 90% of the manufacturing of New Jersey, which is the sixth State in value of manufactured products and the first in diversity of manufacture. The territory extends from the Hudson River opposite New York City, southwest across the State to the Delaware River opposite Philadelphia, and includes Newark, Jersey City, Paterson, Trenton, Camden, Elizabeth, Bayonne, Hoboken, Passaic, the Oranges, Perth Amboy, West Hoboken and New Brunswick. All of the Company's Common Stock (except directors' shares) is owned by Public Service Corporation of New Jersey.

The Company's electric system as of December 31, 1923, included 14 generating stations with an aggregate rated capacity of over 480,000 horsepower, 1,029 miles of transmission lines and 24,866 miles of distribution wire, serving over 426,000 electric customers. Its gas system included 10 generating plants with an aggregate capacity of 77,700,000 cubic feet daily and 3,467 miles of mains, serving over 609,000 gas customers. During the first eight months of 1924, the number of electric customers served increased to over 483,000 and the number of gas customers to over 628,000.

Valuation

The property of the Company and its Leased Companies (not including any of that leased from the Public Service Electric Power Company or the electrical property leased from Public Service Railway Company) is valued by Day & Zimmermann,

Inc., Engineers, as of January 1, 1924, at over $245,000,000. Expenditures for additions since that date aggregate approximately $10,000,000, making a total of over $255,000,000. Against this valuation, the total funded indebtedness of the Company including this issue, plus such Leased Companies' stocks and bonds (closed issues) on which rentals must be paid to the public, will aggregate $144,230, 152, or less than 57% of the above valuation.

SECURITY

The First and Refunding Mortgage Gold Bonds will be secured by lien upon all the mortgageable property of the Company and all underlying bonds and bonds and stocks of Leased Companies, now owned or hereafter acquired:

(*a*) By first mortgage on a modern steam generating station near Newark with 250,000 horsepower installed capacity, and on other property, all valued by Day & Zimmermann, with additions and betterments to date at cost, at over $43,500,000, and by pledge with the Trustee of underlying bonds and stocks with a value of over $6,000,000 and of bonds of affiliated companies with a value of over $6,000,000, based on present market quotations. The total of these values is over $55,500,000 for the property on which the First and Refunding Mortgage Bonds are secured by first lien.

(*b*) By direct mortgage, subject to $21,121,293 underlying liens (closed issues) held by the public and $704,000 pledged under

the Mortgage, on electric property of the Company serving without competition 65 municipalities with a total population of over 1,400,000, including Newark, Jersey City, Elizabeth and Hoboken, and on certain gas property, all valued by Day & Zimmermann, with additions and betterments to date at cost, at over $50,500,000.

(c) By mortgage on leasehold estates in electric and gas companies serving without competition 189 municipalities, including the gas companies serving Newark, Jersey City and Hoboken, and the electric and gas companies serving Paterson, Trenton, Camden, Passaic and New Brunswick, all valued by Day & Zimmermann, with additions and betterments to date at cost, at over $156,000,000. These Leased Companies have outstanding in the hands of the public stocks and bonds (closed issues) aggregating $81,522,859, or less than 53% of the above valuation, and $6,469,525 pledged under the Mortgage, leaving a balance of over $68,000,000 to indicate the value of the Company's equity in these leasehold estates. The net earnings of such Companies in 1923 (after deducting from gross revenue an amount for operating expenses, taxes and amortization based on the ratio which such items for the entire electric and gas systems bore to the gross revenue of the systems) were over twice rentals payable in the form of interest on such Companies' bonds and divi-

dends on their stocks, leaving for the Public Service Electric and Gas Company's equity therein a return of approximately $5,780,000.

By mortgage on other valuable leasehold estates, including the lease of the Public Service Electric Power Company and the lease of certain electrical property of Public Service Railway Company. The leasehold estates extend in practically all cases approximately 900 years.

PURPOSE OF ISSUE

Of these $15,000,000 Bonds, $5,248,000 are to be issued on retirement of a like principal amount of First and Refunding Mortgage Bonds, 5½% Series due 1959. The proceeds of the remaining $9,752,000 Bonds will be used to reimburse the Company for additions and improvements to the mortgaged property made and to be made.

CAPITALIZATION

(Outstanding after giving effect to this financing)

CAPITAL STOCK:

Common Stock, no par value (all owned by Public Service Corporation)	$64,250,000*
7% Preferred Stock, $100 par value	20,000,000
	$84,250,000

* Representing cash investment.

Exhibit C 13.

FUNDED DEBT:

First and Refunding Mortgage Gold Bonds:	
5½% Series due 1959 (closed series)	$26,586,000
5½% Series due 1964 (this issue)	15,000,000
Divisional Underlying Bonds (closed mortgages) (of which $17,934,500 bear interest at 4%)	19,331,500†
Other Miscellaneous Obligations...	1,789,793
	$62,707,293

BONDS AND STOCKS OF LEASED COMPANIES:

(Closed issues) (in hands of public) $81,522,859‡

EARNINGS

(After giving effect to recent readjustment of securities)

YEARS ENDED AUGUST 31, 1923			1924	
Gross Revenue		$56,481,351		$59,856,979
Operating Expenses and Taxes	$34,462,084		$35,638,672	
Depreciation	4,728,683	39,190,767	5,006,396	40,645,068
Net Earnings		$17,290,584		$19,211,911
Annual Fixed Charges:				
Rentals of Leased Companies and other charges..			$4,851,479	
Interest on Funded Debt (upon completion of this financing)			3,127,418	7,978,897
Balance				$11,233,014

NET EARNINGS OVER 2.4 TIMES THE ABOVE FIXED CHARGES

Of the net operating revenue for the year ended August 31, 1924, approximately 62% was derived from the electric business and 38% from the gas business.

† Includes $722,000 bonds of companies now leased and to be merged.

‡ Includes $972,000 stocks of companies now leased and to be merged.

Exhibit C 13.

MORTGAGE PROVISIONS

The First and Refunding Mortgage authorizes the issuance of bonds thereunder in an unlimited principal amount and provides for the issuance of additional bonds in one or more series, in such amounts and bearing such rates of interest and having maturity dates not later than October 1, 2124, and having such other terms and conditions as may be prescribed by the Board of Directors of the Company, subject to the conservative limitations specified in the Mortgage.

These $15,000,000 bonds are part of the 5½% Series due 1964, which is limited in principal amount to $30,000,000. Additional Bonds of this Series, as well as bonds of any other duly authorized series, may be issued only for the purposes and under the conservative restrictions provided in the Mortgage, which include the following:

(*a*) For additions and improvements made after January 1, 1924, to the owned and present Leased Properties, and for the acquisition, subsequent to said date, of properties in fee, but only to a principal amount not exceeding 75% of the cost or of the fair value, whichever is less, of the properties so constructed or acquired, provided that the net earnings of the Company, as defined in the Mortgage, shall have been at least 1¾ times the annual rental and interest charges payable by the Company, as defined in the Mortgage.

(*b*) Upon deposit with the Trustee of an equal principal amount of bonds and stocks of the present Leased Companies;

(*c*) Upon deposit with the Trustee of an equal principal amount of underlying bonds outstanding against properties now owned or hereafter acquired in fee;

(*d*) To refund an equal principal amount of underlying bonds or of First and Refunding Mortgage Bonds.

The Mortgage contains provisions permitting the modification or alteration thereof or of any Supplemental Indenture in any particular with the assent of the Company and the holders of not less than 85% of the aggregate principal amount of outstanding bonds (including, if such change affect the bonds of one or more series but less than all series then outstanding, the holders of a like percentage of the then outstanding bonds of each series affected by such change), not including any bonds owned by the Company, provided that any such modification or alteration shall not permit the alteration of the annual interest rate, redemption price, date of maturity, or the amount payable on maturity of any outstanding bond without the consent of the holder thereof.

SINKING AND IMPROVEMENT FUND

The Supplemental Indenture for the 5½% Series due 1964 will obligate the Company to either set aside or expend semi-annually on January 1 and July 1 beginning July 1, 1925, a sum equivalent to ½ of 1% of the total amount of Bonds of this Series theretofore issued. The moneys are to be applied on account of permanent additions or improvements to the properties (against which no Bonds may be issued) or to the purchase of Bonds

of this Series at or below the redemption price existing at the next ensuing interest date; if not so purchasable, Bonds may be called by lot at such redemption price on such interest date. All Bonds so purchased or redeemed are to be cancelled.

The Sinking Fund applicable to the $26,586,000 Bonds of the 5½% Series, due 1959 outstanding upon completion of this financing should retire all of said bonds before their maturity.

Growth of Business

Years Ended December 31,	1904	1913	1923
Gross earnings	$8,881,253	$18,768,513	$56,513,089
Kilowatt hours of electricity produced	155,558,493	400,835,989	1,053,906,000
Length of electric transmission lines (miles) December 31	47	576	1,029
Number of electric meters December 31	25,499	96,486	426,606
Gas sold—M cubic feet	5,120,814	10,221,097	19,558,279
Miles of gas mains in use December 31	1,584	2,844	3,467
Gas meters in service December 31	209,155	435,383	609,140

Franchises

With minor exceptions, the franchises under which the Company operates are, in the opinion of counsel for the Company, perpetual and contain no burdensome restrictions.

Terms of Series Due 1964

Interest on the Bonds of the 5½% Series due 1964 will be payable April 1 and October 1 at the office of Fidelity Union Trust Company, Newark, N. J., Trustee, or at the office of J. P. Morgan & Co., the agency of the Company in New York, or at the

office of Drexel & Co., the agency of the Company in Philadelphia. The Bonds are redeemable as a whole or in part, and for the Sinking Fund, at any time on not less than eight weeks' notice at a premium of 5% if redeemed before October 1, 1952, said premium to be reduced by ½ of 1% commencing October 1, 1952, with a like additional reduction commencing October 1 of each year thereafter, the bonds being callable at par on and after October 1, 1961; in each case with accrued interest. They are in the form of coupon bonds in denominations of $1,000 and $500 registerable as to principal, and fully registered bonds in denominations of $1,000 and authorized multiples. Coupon and registered bonds are interchangeable. The Company agrees to pay interest without deduction for Federal Income Taxes not exceeding 2% per annum and, upon application made in accordance with the provisions of the Indenture, to refund the Pennsylvania State Tax of four mills; the State Tax in Connecticut up to the rate of four mills annually; the Maryland Securities Tax not exceeding the rate of four and one-half mills per annum; and the Massachusetts Income Tax not exceeding 6% per annum on income derived from the bonds; but in no case more than one such State tax on the same bond for the same year.

Application will be made to list these Bonds on the New York Stock Exchange.

Your truly,

THOMAS N. McCARTER,
President.

Exhibit C 14.

New Series *Proof Subject to Change and Correction*

$45,000,000

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

FIRST AND REFUNDING MORTGAGE GOLD BONDS

4½% SERIES DUE 1967

Dated December 1, 1927 *Due December 1, 1967*

Interest payable June 1 and December 1 without deduction for Federal Income Taxes not exceeding 2% per annum. Pennsylvania, Maryland, Connecticut and Massachusetts taxes refundable to the extent and as provided in the Mortgage and a Supplemental Indenture. Redeemable as a whole or in part at any time on not less than sixty days' published notice at a premium of 5% on or before November 30, 1932; thereafter at a premium of 4½% on or before November 30, 1937; thereafter at a premium of 4% on or before November 30, 1949; thereafter at successively reduced premiums until November 30, 1964; thereafter at par; in each case with accrued interest. Coupon bonds in denominations of $1,000 and $500 registerable as to principal and fully registered bonds in denominations of $1,000 and authorized multiples. Coupon and registered bonds interchangeable.

Exhibit C 14.

FIDELITY UNION TRUST COMPANY, NEWARK, NEW JERSEY, TRUSTEE

Issuance subject to authorization by the Board of Public Utility Commissioners of the State of New Jersey

Mr. Thomas N. McCarter, President of the Company, has summarized as follows his letter to us describing these Bonds:

BUSINESS AND TERRITORY

Public Service Electric and Gas Company, one of the largest companies of its kind in the world, owns or controls electric and gas systems serving a rapidly growing population in New Jersey estimated at over 2,900,000, or over 80% of the population of the State. The territory served extends from the Hudson River opposite New York City southwest across the State to the Delaware River opposite Philadelphia and includes Newark, Jersey City, Paterson, Trenton, Camden, Elizabeth, Bayonne, Hoboken, Passaic, the Oranges, Perth Amboy, Union City and New Brunswick.

SECURITY

The First and Refunding Mortgage Bonds, of which $67,300,000 will be outstanding upon completion of this financing, are secured by mortgage on all of the Company's mortgageable property and by pledge of leasehold estates. The mortgaged and pledged property, as valued in 1924 by independent engineers plus net additions to date at cost, is over twice the Company's funded debt to be held by the

public upon completion of this financing plus the securities of leased companies in the hands of the public.

The property on which these Bonds are secured by first mortgage includes over two-thirds of the electric generating capacity of the system—the Kearny power plant of 215,588 kv.-a. installed capacity and the Essex power plant of 205,044 kv.-a. installed capacity—and is valued, as above, at substantially more than the principal amount of the First and Refunding Mortgage Bonds outstanding.

Equity

The Company's funded debt and the securities of leased companies held by the public, totaling $149,488,055 as of November 1, 1927, after giving effect to this financing, are followed by its outstanding $71,563,700 Preferred Stock and 11,475,000 shares of Common Stock, the latter representing a cash investment of $114,750,000. All of the Company's common stock, except directors' shares, is owned by Public Service Corporation of New Jersey.

Purpose of Issue

The proceeds of these $45,000,000 Bonds will provide for the retirement of all of the outstanding $40,601,000 First and Refunding Mortgage Gold Bonds, 5½% Series due 1959 and 5½% Series due 1964, (which will be called for payment at 105 and interest on April 1, 1928, and February 1, 1928, respectively), and for expenditures already made for additions and improvements to the properties.

Exhibit C 14.

EARNINGS

Years ended October 31,	1926		1927
Gross Revenue (including non-operating)	$73,302,111		$80,180,425
Operating Expenses, Depreciation and Taxes (except Federal Taxes)	46,090,918		50,550,102
Net Earnings	$27,211,193		$29,630,323
Annual Fixed Charges (upon completion of this financing):			
Charges on outstanding securities of Leased Companies		$3,388,441	
Interest on Funded Debt outstanding with the public		4,017,651	7,406,092
Balance			$22,224,231

NET EARNINGS 4 TIMES THE ABOVE FIXED CHARGES

The foregoing is subject to the more complete statements contained in the letter printed within.

Application will be made to list this additional Series on the New York Stock Exchange.

These bonds are offered subject to sale and when, as and if issued and received by us and subject to the approval of our counsel, Messrs. Davis, Polk, Wardwell, Gardiner and Reed and Messrs. Dickson, Beitler and McCouch, of the form and validity of the documents and proceedings. It is expected that interim receipts of Drexel & Co. will be ready for delivery on or about December 8, 1927.

We recommend these Bonds for investment

Price 98 and interest to yield over 4.60%

(*Public Service Electric and Gas Company First and Refunding Mortgage Gold Bonds 5½% Series due 1959 and 5½% Series due 1964, with all unmatured coupons attached, will be accepted in payment at 105 and accrued interest to date of redemption, less bank discount at the rate of 3½% per annum from date of payment to April 1, 1928, and February 1, 1928, respectively.*)

November 23, 1927.

Exhibit C 14.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

NEWARK, N. J., November 22, 1927.

MESSRS. DREXEL & CO.,
BONBRIGHT & CO., INC.

GENTLEMEN:

In connection with the issue of $45,000,000 First and Refunding Mortgage Gold Bonds, 4½% Series due 1967, of Public Service Electric and Gas Company, I take pleasure in giving you the following information:

BUSINESS AND TERRITORY

Public Service Electric and Gas Company, in respect of gross earnings and number of customers, is believed to be the largest operating public utility company of its kind in the world. It owns or controls electric and gas systems serving a rapidly growing population in New Jersey estimated at over 2,900,000, or over 80% of the population of the State. The territory served includes the larger cities and more populous sections of the State and is noted for its great industrial activity and growth. In it is located more than 90% of the manufacturing of New Jersey, which is the sixth State in value of manufactured products and the first in diversity of manufactures. The territory extends from the Hudson River opposite New York City, southwest across the State to the Delaware River opposite Philadelphia, and includes Newark, Jersey City, Paterson, Trenton, Camden, Elizabeth, Bayonne, Hoboken, Passaic, the Oranges, Perth Amboy, Union City and New Brunswick.

The Company's electric system includes 10 generating stations with an aggregate rated capacity of 624,432 kv.-a., approximately 1,320 miles of transmission lines and 35,000 miles of distribution wire, serving over 767,000 electric customers. Its gas system includes 12 generating plants with an aggregate capacity of 114,000,000 cu. ft. daily, and over 4,200 miles of mains, serving over 714,000 gas customers.

EQUITY

The Company's funded debt and securities of leased companies held by the public, totaling $149,488,055 as of November 1, 1927, after giving effect to this financing, are followed by its outstanding $71,563,700 Preferred Stock and 11,475,000 shares of Common Stock, the latter, representing a cash investment of $114,750,000. All of the Company's common stock, except directors' shares, is owned by Public Service Corporation of New Jersey.

SECURITY

The First and Refunding Mortgage Gold Bonds are secured by mortgage on all of the Company's mortgageable property and by pledge of leasehold estates. The mortgaged and pledged property, as valued in 1924 by independent engineers plus net additions to date at cost, is over twice the Company's funded debt to be held by the public upon completion of this financing plus the securities of leased companies in the hands of the public.

Briefly, the Bonds are secured:

(*a*) By first mortgage on the new Kearny power plant of 215,588 kv-a. installed capacity, the Essex power plant of 205,044 kv-a. in-

stalled capacity, (comprising over two-thirds of the electric generating capacity of the system), and other physical property, valued, as above, at substantially more than the principal amount of the First and Refunding Mortgage Bonds to be outstanding; also by pledge with the Trustee of underlying bonds and of stocks and bonds of affiliated companies, valued at over $16,000,000, on the basis of current market quotations.

(*b*) By direct mortgage, subject to $21,522,491 underlying liens (closed issues) (of which $704,000 are pledged under the Mortgage), on other electrical properties in Essex, Hudson and Union Counties.

(*c*) By mortgage on leasehold estates in electric and gas companies and on the lease of certain electrical property of Public Service Railway Company. The leasehold estates extend in practically all cases approximately 900 years.

The above figures are as of November 1, 1927.

PURPOSE OF ISSUE

The proceeds of these $45,000,000 Bonds will provide for the retirement of all of the outstanding $40,601,000 First and Refunding Mortgage Gold Bonds, 5½% Series due 1959 and 5½% Series due 1964, (which will be called for payment at 105 and interest on April 1, 1928, and February 1, 1928, respectively), and for expenditures already made for additions and improvements to the properties.

Exhibit C 14.

CAPITALIZATION

(Outstanding as of November 1, 1927, after giving effect to this financing)

Capital Stock:	
Common, no par value.....	$114,750,000*
7% Cumulative Preferred, $100 par value	20,000,000
6% Cumulative Preferred, 1925 Series, $100 par value.....	51,563,700
	$186,313,700
Funded Debt:	
First and Refunding Mortgage Gold Bonds:	
4½% Series due 1967 (this issue)	$45,000,000
5% Series due 1965.....	22,300,000
Divisional Underlying Bonds (closed mortgages) (in hands of public)	18,897,800
Other Miscellaneous Obligations.	1,920,691
	$88,118,491
Bonds and Stocks of Leased Companies:	
Closed Issues (in hands of public)	$61,369,564

* Representing cash investment, 11,475,000 shares. All owned by Public Service Corporation of New Jersey, excepting directors' shares.

Exhibit C 14.

Earnings

Years ended October 31,	1926		1927	
Gross Revenue (including non-operating)	$73,302,111		$80,180,425	
Operating Expenses and Taxes (except Federal Taxes)	$39,233,360	$43,288,491		
Depreciation	6,857,558	46,090,918	7,261,611	50,550,102
Net Earnings		$27,211,193		$29,630,323
Annual Fixed Charges (upon completion of this financing):				
Charges on outstanding securities of Leased Companies		$3,388,441		
Interest on Funded Debt outstanding with the public		4,017,651		7,406,092
Balance				$22,224,231

Net Earnings 4 times the above Fixed Charges

Mortgage Provisions

The First and Refunding Mortgage authorizes the issuance of bonds thereunder in an unlimited principal amount and provides for the issuance of additional bonds in one or more series, in such amounts and bearing such rates of interest and having such maturity dates (not later than October 1, 2124), and having such other terms and conditions as may be prescribed by the Board of Directors of the Company, subject to the conservative limitations specified in the Mortgage.

These $45,000,000 Bonds are part of the 4½% Series due 1967, issued in accordance with the provisions of an Indenture dated December 1, 1927, supplemental to the Mortgage dated August 1, 1924. This Series is limited in principal amount to $100,000,000. Additional Bonds of this Series, as well

as bonds of other duly authorized Series, may be issued only for the purposes and under the conservative restrictions provided in the Mortgage, which include the following:

(*a*) To a principal amount not exceeding 75% of the cost or fair value, whichever is less, of permanent additions and improvements made to the owned and present leased properties, and of the acquisition of properties in fee, provided that the net earnings of the Company, as defined in the Mortgage, shall have been at least 1¾ times the annual rental and interest charges payable by the Company, as defined in the Mortgage;

(*b*) Upon deposit with the Trustee of an equal principal amount of bonds and stocks of the present leased companies;

(*c*) Upon deposit with the Trustee of an equal principal amount of underlying bonds outstanding against properties now owned or hereafter acquired in fee;

(*d*) To refund an equal principal amount of underlying bonds or of First and Refunding Mortgage Bonds;

(*e*) To provide cash for any of the above purposes.

The Mortgage contains provisions permitting the modification or alteration thereof or of any Supplemental Indenture in any particular with the assent of the Company and the holders of not less than 85% of the aggregate principal amount of outstanding bonds (including, if such change affect the bonds of one or more series but less than all

series then outstanding, the holders of a like percentage of the then outstanding bonds of each series affected by such change), not including any bonds owned by the Company, provided that any such modification or alteration shall not permit the alteration of the annual interest rate, redemption price, date of maturity, or the amount payable on maturity of any outstanding bond without the consent of the holder thereof.

Growth of Business

Years ended December 31,	1906	1916	1926	October 31, 1927
Gross Earnings.....	$10,688,234	$24,809,691	$75,166,549	$80,180,425
Kilowatt hours of electricity produced ...	214,208,448	586,219,529	1,440,536,452	1,543,949,566
Length of electric transmission lines (miles) December 31	162	772	1,284	1,320
Number of electric meters December 31...	37,219	141,918	704,244	767,821
Gas sold—M cubic feet	6,473,835	12,399,852	22,165,087	22,460,310
Miles of gas mains in use December 31...	1,987	3,041	4,130	4,200
Gas meters in service December 31.....	269,881	496,885	705,550	714,355

Franchises

With minor exceptions, the franchises under which the Company operates are, in the opinion of its counsel, perpetual, and contain no burdensome restrictions.

Certain Terms of the 4½% Series due 1967

Interest on the Bonds of the 4½% Series due 1967 is payable June 1 and December 1 at the office of Fidelity Union Trust Company, Newark, N. J., Trustee, or at the office of J. P. Morgan & Co., the

agency of the Company in New York, or at the office of Drexel & Co., the agency of the Company in Philadelphia. The Bonds are redeemable as a whole or in part at any time on not less than sixty days' published notice at a premium of 5% on or before November 30, 1932; thereafter at a premium of 4½% on or before November 30, 1937; thereafter at a premium of 4% on or before November 30, 1949; said premium to be reduced by ¼ of 1% commencing December 1, 1949, with a like additional reduction commencing December 1 of each year thereafter; the Bonds being callable at par on and after December 1, 1964; in each case with accrued interest. The Bonds are issued in the form of coupon bonds in denominations of $1000 and $500 registerable as to principal and fully registered bonds in denominations of $1000 and authorized multiples. Coupon and registered bonds are interchangeable.

The Company agrees to pay interest without deduction for Federal Income Taxes not exceeding 2% per annum and, upon application made in accordance with the provisions of the Supplemental Indenture, to refund Pennsylvania, Maryland, Connecticut and Massachusetts Taxes not exceeding in each year $4.00, $4.50, $4.00 and $2.70 per $1000 bond, respectively, as provided in the Supplemental Indenture, but the Company will not refund more than one such State Tax on the same Bond for the same year.

The issuance of these Bonds is subject to authorization by the Board of Public Utility Commissioners of the State of New Jersey.

Application will be made in due course to list this additional Series of First and Refunding Mortgage Gold Bonds on the New York Stock Exchange.

Yours truly,

(Signed) THOMAS N. MCCARTER,
President.

Exhibit C 15.

PUBLIC SERVICE ELECTRIC COMPANY

Income Account

For the Twelve Months Ending December 31, 1923

Operating Revenue		$31,188,595.51
Operating Expenses and Taxes	$17,769,810.56	
Amortization Charges	3,662,021.74	
Operating Revenue Deductions		21,431,832.30
Operating Income		$9,756,763.21
Non-Operating Revenue	$149,815.15	
Non-Operating Revenue Deductions	20,122.59	
Non-Operating Income		129,692.56
Gross Income		$9,886,455.77
Income Deductions (Bond Interest, Rentals and Miscellaneous Interest Charges)		3,143,485.76
Net Income		$6,742,970.01
Appropriation Accounts—		
Adjustment of Surplus Account (exclusive of dividends) (credit)		54,049.80
		$6,797,019.81
Dividends on Outstanding Stocks—		
Paid to Public Service Corporation of New Jersey	$4,589,904.00	
Paid to Unaffiliated Interests (Directors)	96.00	
		4,590,000.00
Net Increase in Surplus		$2,207,019.81

Exhibit C 15.

PUBLIC SERVICE ELECTRIC COMPANY

Balance Sheet December 31, 1923

ASSETS

	Fixed Capital—		
10	Balance December 31, 1922	$47,586,293.55	
	Construction—Year Ending December 31, 1923	15,399,926.94	
	Total	$62,986,220.49	
	Less property written off during year	799,909.38	
	Balance December 31, 1923		$62,186,311.11
	Investments		854,775.33
	Sinking Funds and Other Special Funds		23,340.49
	Current Assets—		
20	Materials and supplies	$3,152,211.61	
	Cash	661,240.32	
	Accounts receivable	7,600,165.37	
	Other current assets	116,000.00	
			11,529,617.30
	Deferred Charges—		
	Prepayments	$496,974.80	
	Unamortized debt discount and expense	47,515.30	
	Other suspense	52,330.75	
			596,820.85
			$75,190,865.08
30			

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Exhibit C 15.

LIABILITIES, CAPITAL STOCK AND SURPLUS

FUNDED DEBT—		
Equipment obligations	$1,090,000.00	
Real estate mortgages	1,014,158.33	
Advances for construction	1,039,020.71	
		$3,143,179.04
BILLS PAYABLE		539,000.00
CURRENT LIABILITIES—		
Taxes accrued	$1,913,542.21	
Interest accrued	445,633.83	
Other accrued liabilities	246,220.24	
Consumers' deposits	1,516,901.58	
Other accounts payable	1,308,362.86	
Other unfunded debt	128,024.37	
		5,558,685.09
RESERVES—		
Permanent reserves	$1,202,218.11	
Accrued amortization of capital	15,161,137.30	
Unamortized premium on debt	21.35	
Casualty and insurance reserve	282,090.80	
Other optional reserves	373,322.05	
		17,018,789.61
CAPITAL STOCK		42,250,000.00
CORPORATE SURPLUS—		
Balance December 31, 1922	$4,474,191.53	
Net income year ending December 31, 1923	6,742,970.01	
Total	$11,217,161.54	
Additions to surplus	54,049.80	
	$11,271,211.34	
Less dividends paid during year	4,590,000.00	
Balance of surplus December 31, 1923		6,681,211.34
		$75,190,865.08

10 20 30 40

Exhibit C 15.

PUBLIC SERVICE GAS COMPANY

Income Account

For the Twelve Months Ending December 31, 1923

	Operating Revenue		$24,814,283.34
10	Operating Expenses and Taxes	$16,669,660.39	
	Amortization Charges	*1,204,891.61	
	Operating Revenue Deductions		17,874,552.00
	Operating Income		$6,939,731.34
	Non-Operating Revenue	$49,850.17	
	Non-Operating Revenue Deductions	7,385.44	
	Non-Operating Income		42,464.73
	Gross Income		$6,982,196.07
20	Income Deductions (Bond Interest, Rentals and Miscellaneous Interest Charges)		4,283,267.46
	Net Income		$2,698,928.61
	Appropriation Accounts—		
	Adjustments of Surplus Accounts (exclusive of dividends) (credit)		679.20
			$2,699,607.81
	Dividends on Outstanding Stocks—		
	Paid to Public Service Corporation of New		
30	Jersey	$1,905,930.00	
	Paid to Unaffiliated Interests (Directors)	70.00	
			1,906,000.00
	Net Increase in Surplus		$793,607.81

* Includes $226,977.65 Camden Coke Company Amortization.

Exhibit C 15.

PUBLIC SERVICE GAS COMPANY

AND

CAMDEN COKE COMPANY

CONSOLIDATED BALANCE SHEET DECEMBER 31, 1923

ASSETS

FIXED CAPITAL—		
Balance December 31, 1922	$22,895,211.64	
Construction—Year ending December 31, 1923	4,896,807.22	
Total	$27,792,018.86	
Less property written off during year	467,390.17	
Balance December 31, 1923		$27,324,628.69
INVESTMENTS		151,626.51
SINKING FUNDS AND OTHER SPECIAL FUNDS		574,210.61
CURRENT ASSETS—		
Materials and supplies	$2,086,963.00	
Cash	679,894.46	
Bills receivable	4,225.00	
Accounts receivable	3,133,121.01	
Interest and dividends receivable	3,339.72	
Other current assets	14,950.00	
		5,922,493.19
DEFERRED CHARGES—		
Prepayments	$30,951.09	
Unamortized debt discount and expense	93,756.15	
Other suspense	29,973.25	
		154,680.49
		$34,127,639.49

Exhibit C 15.

LIABILITIES, CAPITAL STOCK AND SURPLUS

FUNDED DEBT—		
Real estate mortgages	$283,166.67	
Public Service Gas Company's notes—		
8% notes	632,000.00	
6% notes	560,000.00	
Advances for construction	454,434.08	
		$1,929,600.75
BILLS PAYABLE		191,000.00
CURRENT LIABILITIES—		
Taxes accrued	$1,195,682.06	
Interest accrued	172,927.42	
Other accrued liabilities	468,938.09	
Consumers' deposits	1,565,227.30	
Other accounts payable	1,493,931.18	
Other unfunded debt	271,146.96	
		5,167,853.01
RESERVES—		
Permanent reserves	$890,848.27	
Accrued amortization of capital	2,931,735.81	
Unamortized premium on debt	27.45	
Casualty and insurance reserve	183,985.96	
Other optional reserves	109,026.45	
		4,115,623.94
CAPITAL STOCK—		
Public Service Gas Company	$20,660,000.00	
Camden Coke Company	100,000.00	
		20,760,000.00
CORPORATE SURPLUS—		
Balance December 31, 1922	$1,169,953.98	
Net income year ending December 31, 1923	2,698,928.61	
Total	$3,868,882.59	
Additions to surplus	679.20	
	$3,869,561.79	
Less dividends paid during year	1,906,000.00	
Balance of surplus December 31, 1923		1,963,561.79
		$34,127,639.49

Exhibit C 16.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY
PUBLIC SERVICE ELECTRIC COMPANY

AND

PUBLIC SERVICE GAS COMPANY

COMBINED INCOME ACCOUNT

FOR THE TWELVE MONTHS ENDING DECEMBER 31, 1924

Operating Revenues—			
Electric Department		$34,889,632.66	
Gas Department		24,542,643.63	$59,432,276.29
Operating Expenses—			
Electric Department	$12,874,781.83		
Gas Department	12,166,265.47	$25,041,047.30	
Maintenance—			
Electric Department	$3,143,198.26		
Gas Department	1,744,157.23	4,887,355.49	
Taxes—			
Electric Department	$3,255,835.68		
Gas Department	2,780,167.05	6,036,002.73	
Amortization Charges—			
Electric Department	$4,022,497.93		
Gas Department	§1,200,958.45	5,223,456.38	
Operating Revenue Deductions—			
Electric Department	$23,296,313.70		
Gas Department	17,891,548.20		41,187,861.90

§ Includes $208,076.83 Camden Coke Company amortization.

Exhibit C 16.

Operating Income—			
Electric Department	$11,593,318.96		
Gas Department	6,651,095.43		$18,244,414.39
Non-Operating Revenue	$870,207.27		
Non-Operating Revenue Deductions	29,960.19		
Non-Operating Income			840,247.08
Gross Income			$19,084,661.47
Income Deductions (Bond Interest, Rentals and Miscellaneous Interest Charges)			7,906,876.94
Net Income			$11,177,784.53
Appropriation Accounts—			
Adjustment of Surplus Account (exclusive of dividends) (Debit)			*1,567,379.78
			$9,610,404.75
Dividends on Outstanding Stocks—			
Paid to Public Service Corporation of New Jersey:			
Common Capital Stocks		$7,649,911.00	
7% Cumulative Preferred Capital Stock		698,986.75	
		$8,348,897.75	
Paid to Unaffiliated Interests:			
Common Capital Stocks		89.00	
7% Cumulative Preferred Capital Stock		1,013.25	8,350,000.00
Net Increase in Surplus			$1,260,404.75

* Includes charge to Surplus of $1,710,512.15 in connection with financial reorganization and credit to Surplus of $74,169.59 from intercompany sale of real estate.

Exhibit C 16.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

AND

CAMDEN COKE COMPANY

Consolidated Balance Sheet December 31, 1924

ASSETS

Fixed Capital—		
Balance December 31, 1923:		
Public Service Electric Company, Public Service Gas Company, and Camden Coke Company	$89,510,939.80	
Fixed Capital of Merged Lessor Companies	40,404,124.91	
	$129,915,064.71	
Net Additions to Fixed Capital, Year 1924	20,603,675.27	
Balance December 31, 1924		$150,518,739.98
Investments—		
5½% Instalment Note of Public Service Corporation of New Jersey	$20,633,771.39	
Securities of Affiliated Companies	10,863,318.61	
Other Investments	379,944.59	
		31,877,034.59
Reacquired Securities		2,787,910.00
Sinking Funds and Other Special Funds		186,132.46
Current Assets—		
Materials and supplies	$4,794,991.43	
Cash	1,338,112.76	
Bills receivable	3,624.91	
Accounts receivable	11,635,142.82	
Interest and dividends receivable	633,189.84	
Other current assets	157,710.00	
		18,562,771.76
Deferred Charges—		
Prepayments	$1,010,377.88	
Unamortized debt discount and expense	909,734.56	
Other suspense	60,034.99	
		1,980,147.43
		$205,912,736.22

Exhibit C 16.

LIABILITIES, CAPITAL STOCK AND SURPLUS

	FUNDED DEBT—		
	First and Refunding Mortgage Gold Bonds 5½% Series due 1959	$26,586,000.00	
	First and Refunding Mortgage Gold Bonds 5½% Series due 1964	15,000,000.00	
	Bonds of merged companies	21,845,500.00	
10	Real estate mortgages	1,469,792.50	
	Equipment obligations	870,000.00	
	Public Service Gas Company Notes	544,000.00	
	Advances for construction	1,088,767.32	
			$67,404,059.82
	BILLS PAYABLE		790,000.00
	ADVANCES FROM OTHER CORPORATIONS—		
	Public Service Corporation of New Jersey	$2,650,000.00	
	Public Service Electric Power Company	875,000.00	
			3,525,000.00
20	CURRENT LIABILITIES—		
	Taxes accrued	$1,334,759.74	
	Interest accrued	1,167,024.71	
	Other accrued liabilities	643,285.78	
	Consumers' deposits	3,199,294.04	
	Other accounts payable	3,004,564.13	
	Other unfunded debt	746,793.59	
			10,095,721.99
	RESERVES—		
	Permanent reserves	$1,922,574.96	
	Retirement reserves	21,453,515.21	
	Unamortized premium on debt	46.88	
30	Casualty and insurance reserve	649,338.69	
	Other optional reserves	562,982.29	
			24,588,458.03
	CAPITAL STOCK—		
	Public Service Electric and Gas Company	$89,250,000.00	
	Camden Coke Company	100,000.00	
			89,350,000.00
	CORPORATE SURPLUS—		
	Balance of Surplus December 31, 1924		*10,159,496.38
			$205,912,736.22

40 * Includes $254,318.50 surplus of lessor companies merged during 1924.

Exhibit C 17.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

Income Account

For the Twelve Months Ending December 31, 1925

Operating Revenues—			
Electric Department		$40,016,174.91	
Gas Department		24,181,431.50	$64,197,606.41
Operating Expenses—			
Electric Department	$14,158,655.53		
Gas Department	11,638,727.44	$25,797,382.97	
Maintenance—			
Electric Department	$3,378,066.10		
Gas Department	1,471,830.11	4,849,896.21	
Taxes—			
Electric Department	$4,068,991.54		
Gas Department	2,955,400.78	7,024,392.32	
Retirement Expenses—			
Electric Department	$4,779,633.31		
Gas Department	*1,225,516.13	6,005,149.44	
Operating Revenue Deductions—			
Electric Department	$26,385,346.48		
Gas Department	17,291,474.46		43,676,820.94
Operating Income—			
Electric Department	$13,630,828.43		
Gas Department	6,889,957.04		$20,520,785.47
Non-Operating Revenue	$1,938,018.06		
Non-Operating Revenue Deductions	25,253.75		
Non-Operating Income			1,912,764.31
Gross Income			$22,433,549.78

* Includes $210,798.08 Camden Coke Company Retirement Expenses.

Exhibit C 17.

Income Deductions (Bond Interest, Rentals and Miscellaneous Interest Charges)			8,772,766.61
Net Income			$13,660,783.17
Profit and Loss Accounts—			
Adjustment of Surplus Accounts (exclusive of dividends) (credit)			19,160.32
			$13,679,943.49
Dividends on Outstanding Stocks—			
Paid to Public Service Corporation of New Jersey:			
Common Capital Stock		$9,284,988.00	
7% Cumulative Preferred Capital Stock.		1,398,211.50	
		$10,683,199.50	
Paid to Unaffiliated Interests:			
Common Capital Stock		12.00	
7% Cumulative Preferred Capital Stock...		1,788.50	
6% Cumulative Preferred Capital Stock...		827,500.00	11,512,500.00
Net Increase in Surplus			$2,167,443.49

Exhibit C 17.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

AND

CAMDEN COKE COMPANY

Consolidated Balance Sheet December 31, 1925

ASSETS

Fixed Capital—		
Balance December 31, 1924	$150,518,739.98	
Construction year ending December 31, 1925	31,819,084.12	
Total	$182,337,824.10	
Less property written off during year	2,623,396.95	
Balance December 31, 1925		$179,714,427.15
Investments—		
5½% Installment Note of Public Service Corporation of New Jersey	$20,133,771.39	
Securities of Affiliated Companies	12,119,592.52	
Other Investments	16,756.16	32,270,120.07
Reacquired Securities		2,914,000.00
Sinking Funds and Miscellaneous Special Funds		563,700.96
Current Assets—		
Cash	$6,169,859.22	
Marketable securities	2,200,000.00	
Notes receivable	3,690.60	
Accounts receivable	11,574,691.67	
Interest and dividends receivable	643,585.34	
Materials and supplies	5,377,744.99	
Miscellaneous current assets	156,800.00	26,126,371.82
Deferred Charges—		
Prepayments	$1,333,681.58	
Unamortized debt discount and expense	1,065,804.18	
Miscellaneous suspense	638,873.44	3,038,359.20
		$244,626,979.20

Exhibit C 17.

LIABILITIES, CAPITAL STOCK AND SURPLUS

	LONG TERM DEBT—		
	First and Refunding Mortgage Gold Bonds 5½% Series due 1959	$26,586,000.00	
	First and Refunding Mortgage Gold Bonds 5½% Series due 1964	15,000,000.00	
	First and Refunding Mortgage Gold Bonds 5% Series due 1965	2,500,000.00	
10	Bonds of merged companies	21,835,100.00	
	Real estate mortgages	1,421,760.00	
	Equipment obligations	650,000.00	
	Public Service Gas Company's Notes	128,000.00	
	Advances for construction	638,382.92	
	Miscellaneous long term debt	35,071.36	$68,794,314.28
	ADVANCES FROM AFFILIATED COMPANIES—		
	Public Service Electric Power Company		1,250,000.00
	CURRENT LIABILITIES—		
	Accounts payable	$2,945,167.64	
20	Consumers' deposits	3,358,056.39	
	Miscellaneous current liabilities	5,465.99	
	Taxes accrued	1,604,932.49	
	Interest accrued	1,150,287.20	
	Miscellaneous accrued liabilities	673,053.72	9,736,963.43
	RESERVES—		
	Retirement reserve	$25,616,820.18	
	Unamortized premium on debt	44.96	
	Casualty and insurance reserve	840,639.49	
	Miscellaneous unadjusted credits	1,089,772.64	
	Miscellaneous reserves	3,121,484.35	30,668,761.62
30	CAPITAL STOCK—		
	Public Service Electric and Gas Company—		
	Common Stock	$86,750,000.00	
	7% Cumulative Preferred	20,000,000.00	
	6% Cumulative Preferred	15,000,000.00	
	Camden Coke Company—Common Stock	100,000.00	121,850,000.00
	PROFIT AND LOSS—SURPLUS—		
	Balance December 31, 1924	$10,159,496.38	
	Net Increase year ending December 31, 1925	2,167,443.49	12,326,939.87
			$244,626,979.20

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Exhibit C 18.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

INCOME ACCOUNT

FOR THE TWELVE MONTHS ENDING DECEMBER 31, 1926

Operating Revenues—			
Electric Department		$46,954,362.27	
Gas Department		26,286,246.50	$73,240,608.77
Operating Expenses—			
Electric Department	$15,808,099.33		
Gas Department	12,955,746.06	$28,763,845.39	
Maintenance—			
Electric Department	$3,857,210.68		
Gas Department	1,633,084.30	5,490,294.98	
Taxes—			
Electric Department	$5,060,730.26		
Gas Department	3,173,779.22	8,234,509.48	
Retirement Expenses—			
Electric Department	$5,724,943.34		
Gas Department	*1,310,445.10	7,035,388.44	
Operating Revenue Deductions—			
Electric Department	$30,450,983.61		
Gas Department	19,073,054.68		49,524,038.29
Operating Income—			
Electric Department	$16,503,378.66		
Gas Department	7,213,191.82		$23,716,570.48
Non-operating Revenue	$1,949,553.06		
Non-Operating Revenue Deductions	23,612.87		
Non-operating Income			1,925,940.19
Gross Income			$25,642,510.67
Income Deductions (Bond Interest, Rentals and Miscellaneous Interest Charges)			10,492,103.51
Net Income			$15,150,407.16

* Includes $202,190.76 Camden Coke Company Retirement Expense.

Exhibit C 18.

Profit and Loss Accounts—		
Adjustment of Surplus Accounts (exclusive of dividends) (credit)		41.42
		$15,150,448.58
Dividends on Outstanding Stocks—		
Paid to Public Service Corporation of New Jersey:		
Common Capital Stock	$12,052,489.20	
7% Cumulative Preferred Capital Stock.	1,398,250.00	
	$13,450,739.20	
Paid to Unaffiliated Interests:		
Common Capital Stock	10.80	
7% Cumulative Preferred Capital Stock.	1,750.00	
6% Cumulative Preferred Capital Stock.	977,500.00	14,430,000.00
Net Increase in Surplus		$720,448.58

Exhibit C 18.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

AND

CAMDEN COKE COMPANY

Consolidated Balance Sheet December 31, 1926

ASSETS

Fixed Capital—			10
Balance December 31, 1925	$179,714,427.15		
Construction year ending December 31, 1926	33,209,081.85		
Total	$212,923,509.00		
Less property written off during year	4,140,849.17		
Balance December 31, 1926		$208,782,659.83	
Investments—			
5½% Installment Note of Public Service Corporation of New Jersey	$19,633,771.39		
Securities of Affiliated Companies	12,163,002.78		20
Other Investments	12,453.47	31,809,227.64	
Reacquired Securities		2,914,000.00	
Miscellaneous Assets—			
Sinking Funds	$869,920.96		
Miscellaneous Special Funds	15,993.21		
Special Deposits	425.60	886,339.77	
Current Assets—			
Cash	$22,630,340.90		
Notes Receivable	3,600.00		30
Accounts receivable	11,314,272.80		
Interest and dividends receivable	622,831.89		
Materials and supplies	5,187,423.39		
Miscellaneous current assets	179,430.00	39,937,898.98	
Deferred Charges—			
Prepayments	$1,656,516.35		
Unamortized debt discount and expense	1,030,492.24		
Miscellaneous Suspense	1,076,944.35	3,763,952.94	
		$288,094,079.16	
			40

Exhibit C 18.

LIABILITIES, CAPITAL STOCK AND SURPLUS

	LONG TERM DEBT—		
	First and Refunding Mortgage Gold Bonds 5½% Series due 1959	$26,586,000.00	
	First and Refunding Mortgage Gold Bonds 5½% Series due 1964	15,000,000.00	
	First and Refunding Mortgage Gold Bonds 5% Series due 1965	2,500,000.00	
	Bonds of Merged companies	21,824,500.00	
	Real Estate mortgages	1,393,727.50	
10	Equipment obligations	520,000.00	
	Advances for construction	313,904.20	$68,138,131.70
	ADVANCES FROM AFFILIATED COMPANIES—		
	Public Service Electric Power Company		1,250,000.00
	CURRENT LIABILITIES—		
	Accounts Payable	$2,212,049.36	
	Consumers' Deposits	3,595,114.50	
	Miscellaneous current liabilities	4,883.38	
	Taxes Accrued	2,412,758.67	
20	Interest Accrued	1,189,320.13	
	Miscellaneous accrued liabilities	683,452.37	10,097,578.41
	RESERVES—		
	Premium on Capital Stock	$337,500.00	
	Retirement reserve	29,265,339.03	
	Unamortized premium on debt	43.04	
	Casualty and insurance reserve	1,063,744.86	
	Miscellaneous unadjusted credits	1,483,758.13	
	Miscellaneous reserves	3,310,595.54	35,460,980.60
	CAPITAL STOCK—		
30	Public Service Electric and Gas Company—		
	Common Stock	$110,000,000.00	
	7% Cumulative Preferred	20,000,000.00	
	6% Cumulative Preferred	30,000,000.00	
	Camden Coke Company—Common Stock	100,000.00	160,100,000.00
	PROFIT AND LOSS—SURPLUS—		
	Balance December 31, 1925	$12,326,939.87	
	Net increase year ending December 31, 1926	720,448.58	13,047,388.45
			$288,094,079.16
40			

Exhibit C 19.

SHARES OF STOCK OF LEASED COMPANIES OWNED BY PUBLIC SERVICE ELECTRIC AND GAS COMPANY SEPTEMBER 19, 1927

Essex and Hudson Gas Company.	48 287	Shares
Hudson County Gas Company....	80 416	Shares
New Brunswick Light, Heat and Power Company.....	2 597	Shares
The Paterson and Passaic Gas and Electric Company.....	41 230.2	Shares
Somerset, Union and Middlesex Lighting Company	7 907	Shares
Newark Consolidated Gas Company	2 330	Shares
The Gas and Electric Company of Bergen County.....	3 115	Shares
South Jersey Gas, Electric and Traction Company	1 595	Shares
Ridgewood Gas Company.....	33	Shares

SHARES OF STOCK OF LEASED COMPANIES OWNED BY PUBLIC SERVICE CORPORATION OF NEW JERSEY SEPTEMBER 19, 1927

Subject to agreement contained in the Deposit Agreement of December 28, 1927 that shares of leased companies will be exchanged for preferred stock of Public Service Electric and Gas Company

Essex and Hudson Gas Company.	0	Shares
Hudson County Gas Company...	60	Shares
New Brunswick Light, Heat and Power Company	132.80	Shares
The Paterson and Passaic Gas and Electric Company.....	.88	Shares
Somerset, Union and Middlesex Lighting Company	15.68	Shares

Newark Consolidated Gas Company	5 337	Shares
The Gas and Electric Company of Bergen County	1 533	Shares
South Jersey Gas, Electric and Traction Company	14 337	Shares
Ridgewood Gas Company	141	Shares

Exhibit C 20.

HOLDINGS OF DIRECTORS OF THE FIVE LEASED COMPANIES IN THE STOCK OF THE SAID LEASED COMPANIES AS OF APRIL 26, 1927

HUDSON COUNTY GAS COMPANY

Directors	Shares Held
Samuel T. Bodine	0
Thomas S. Gates	0
Anthony R. Kuser	0
Thomas N. McCarter	1
Uzal H. McCarter	1
Arthur W. Thompson	0
Edmund W. Wakelee	1
Charles M. Breder	1
Percy S. Young	1

ESSEX AND HUDSON GAS COMPANY

Directors	Shares Held
Samuel T. Bodine	0
Thomas S. Gates	0
Anthony R. Kuser	0
Thomas N. McCarter	1
Uzal H. McCarter	1
Arthur W. Thompson	0
Edmund W. Wakelee	1
Charles M. Breder	1
Percy S. Young	1

Exhibit C 20.

THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY

Directors	Shares Held
Samuel T. Bodine	0
Thomas S. Gates	0
Anthony R. Kuser	0
Thomas N. McCarter	1
Uzal H. McCarter	1
Arthur W. Thompson	0
Edmund W. Wakelee	1
Charles M. Breder	1
Percy S. Young	1

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY

Directors	Shares Held
Samuel T. Bodine	1
Thomas S. Gates	1
Anthony R. Kuser	0
Thomas N. McCarter	1
Uzal H. McCarter	1
Arthur W. Thompson	1
Edmund W. Wakelee	1
Percy S. Young	1

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY

Directors	Shares Held
Percy S. Young	1
Augustus J. Brunson	6
Harry B. MacDonald	5
William H. Pope	3
T. W. Van Middlesworth	1

Exhibit C 21.

PROXIES AND WRITTEN VOTES OF PROXIES FOR COMPLAINANTS AT MEETINGS FOR AMENDMENTS.

(Not printed by consent.)

Exhibit C 22.

CERTIFICATE OF INCORPORATION.

(10c Internal Revenue Stamp cancelled.)

This is to certify, that the undersigned do hereby associate themselves into a corporation under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An act concerning corporations," Revision of 1896, and the several supplements thereof, and the acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

Corporate name.

1. The name of the corporation is Essex and Hudson Gas Company.

Principal office.

2. The location of the principal office in this State is at No. 575 Broad Street, in the City of Newark and County of Essex. The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is James P. Dusenberry.

Objects.

3. The objects for which this corporation is formed are:

(*a*). To manufacture, sell and distribute illuminating and fuel gas throughout the counties of

Essex and Union, in the State of New Jersey, and the Town of Harrison, the Township of Kearny, and the Borough of East Newark, in the County of Hudson and State of New Jersey, and for such purposes to build and construct such gas works as may be necessary for the business of the company. The company, however, shall have no right to extend its business operations beyond the limits of the territory above described without the unanimous consent of the stockholders of said company.

(*b*). To manufacture, purchase or otherwise acquire, to hold, own, mortgage, pledge, sell, assign and transfer, or otherwise dispose of goods, wares and merchandise necessary to the carrying on of the business aforesaid.

(*c*). To enter into, make, perform, and carry out contracts of every kind necessary for the business aforesaid, with any person, firm, association or corporation.

(*d*). To have one or more offices, and without restriction to hold, purchase, mortgage, lease, make leases of, and convey real and personal property of every kind, including gas properties and gas franchises in the territory above described, and to contract for the operation of the same, to acquire, use, grant and sell letters patent and licenses therein for processes, apparatus and machinery for the production, manufacture and use of gas for all purposes.

(*e*). To construct machinery and apparatus necessary for the operation of gas companies in the territory above described.

(*f*). To lease the plants and property of other gas companies, to make contracts with other com-

panies for the operation, management and control of gas plants and works, and to acquire and hold the stock of other companies doing a public or private lighting business; provided said companies be within the limits of the territory above described.

4. The total authorized capital stock of this corporation is six million five hundred thousand dollars, divided into sixty-five thousand shares at the par value of one hundred dollars a share.

5. The names of the incorporators, their post office addresses, and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which this company shall commence business, are as follows:

Name.	Post Office Address.	No. of Shares.
Thomas N. McCarter, Jr.	765 Broad St., Newark, N. J.	5
George S. Philler	Drexel Bldg., Philadelphia, Pa.	5
Elmer Smalling	Drexel Bldg., Philadelphia, Pa.	5

6. The amount of capital with which the company will commence business is fifteen hundred dollars.

7. The Board of Directors shall have power, without the assent or vote of the stockholders, to make, alter, amend, or rescind by-laws for this corporation, to fix the amount to be reserved as a working capital, to authorize and cause to be executed mortgages and liens upon the real and personal property of this corporation. The Directors shall, from time to time, determine whether and to what extent and at what times and places, and under

what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right of inspecting any book or account or document of the corporation, except as conferred by statute or authorized by the directors by resolution of the stockholders. The directors shall have power to hold their meetings, to have one or more offices, and to keep the books of the corporation, except the stock and transfer books, outside of this State, at such places as may from time to time be designated by them.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the twenty-ninth day of November, one thousand eight hundred and ninety-eight.

THOMAS N. McCARTER, JR. (L. S.)
GEORGE S. PHILLER, (L. S.)
ELMER SMALLING, (L. S.)

Signed, sealed and delivered
in the presence of
EDWIN B. WILLIAMSON.

Exhibit C 22.

Certificate of Amendment of Certificate of Incorporation of Essex and Hudson Gas Company.

Essex and Hudson Gas Company, a corporation of the State of New Jersey, by its President and Secretary, does hereby certify:

I. The location of the principal office in this State is at No. 575 Broad Street, Newark, Essex County, New Jersey.

The name of the agent therein, and in charge thereof, upon whom process against this corporation may be served, is James P. Dusenberry.

II. That the Board of Directors of said corporation at a meeting duly convened and held on the 20th day of May, 1903, passed a resolution declaring that a change and amendment in the Certificate of Incorporation hereinafter set forth is advisable, and calling a meeting of the stockholders to take action thereon.

III. That a copy of said resolution of the Board of Directors is hereto appended.

IV. That thereafter, on June 1, 1903, pursuant to such call of the Board of Directors, and upon notice given to each stockholder, as provided in the By-laws, a special meeting of the stockholders was held, at which meeting more than two-thirds in interest of the stockholders having voting powers were present in person or represented by proxy, and that more than two-thirds in interest of the stockholders having voting powers, voted in favor of

such change and amendment, such change and amendment being as follows:

The amendment of Article 3 of said Certificate of Incorporation being the addition thereto of the following, viz.:

(*g*) To lease for such term or terms, and upon such conditions and covenants as may be deemed advisable, all the property, real and personal, and franchises, of the company (except its franchise to be a corporation), to any corporation of this State having authority to take the same.

So that said Article will then read as follows:

3. The objects for which this corporation is formed are:

(*a*) To manufacture, sell, and distribute illuminating and fuel gas throughout the counties of Essex and Union, in the State of New Jersey, and the town of Harrison, the Township of Kearny, and the borough of East Newark, in the county of Hudson and State of New Jersey, and for such purposes to build and construct such gas works as may be necessary for the business of the company; the company, however, shall have no right to extend its business operations beyond the limits of the territory above described without the unanimous consent of the stockholders of said company.

(*b*) To manufacture, purchase, or otherwise acquire, to hold, own, mortgage, pledge, sell, assign, and transfer, or otherwise dispose of goods, wares, and merchandise necessary to the carrying on of the business aforesaid.

(*c*) To enter into, make, perform, and carry out contracts of every kind necessary for the business

aforesaid, with any person, firm, association, or corporation.

(*d*) To have one or more offices, and without restriction to hold, purchase, mortgage, lease, make leases of, and convey real and personal property of every kind, including gas properties and gas franchises in the territory above described, and to contract for the operation of the same, to acquire, use, grant, and sell letters patent and licenses therein for processes, apparatus, and machinery for the production, manufacture, and use of gas for all purposes.

(*e*) To construct machinery and apparatus necessary for the operation of gas companies in the territory above described.

(*f*) To lease the plants and property of other gas companies, to make contracts with other companies for the operation, management, and control of gas plants, and works, and to acquire and hold the stock of other companies doing a public or private lighting business; provided said companies be within the limits of the territory above described.

(*g*) To lease for such term or terms, and upon such conditions and covenants as may be deemed advisable, all the property, real and personal, and franchises, of the company (except its franchise to be a corporation), to any corporation of this State having authority to take the same.

V. That at said meeting of the stockholders the foregoing amendment was assented to in writing by more than two-thirds in interest of the stockholders having voting powers, which said written assent is hereto appended.

VI. That sixty-five thousand shares of stock of said corporation are issued and outstanding.

IN WITNESS WHEREOF, the said Essex and Hudson Gas Company has caused this certificate to be signed by its President and Secretary, and its corporate seal to be hereto affixed, this 1st day of June, 1903.

ESSEX AND HUDSON GAS COMPANY,
By
JOHN F. SHANLEY,
President.

(SEAL)

JAMES P. DUSENBERRY,
Secretary.

Exhibit C 23.

P. L. 1868, Chap. 384, page 867.

AN ACT TO INCORPORATE THE PEOPLE'S GAS LIGHT COMPANY OF THE CITIES OF HUDSON AND BERGEN, AND PLACES ADJACENT. Title.

1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That John R. McPherson, John R. Mullaney, Joseph W. Gilmore and William H. Bumstedt and every person or persons who may become subscribers according to the mode hereinafter prescribed, and their successors, are hereby created a body politic and corporate in fact by the name of "The People's Gas Light Company of the City of Hudson," and by the said name the said corporation shall have corporate power in all courts of law and equity, and shall have power and authority to manufacture, make Corporators. Name.

and sell gas, to be made of coals or other materials, for the purpose of lighting the streets, buildings, manufactories and other places in the cities of Hudson and Bergen and places adjacent in Hudson county, and to enter into and execute all contracts, agreements or covenants in relation to the objects of this corporation, and to enforce the same, and be capable of purchasing, taking, holding and disposing of such property, real and personal, as is necessary to give effect to the purposes of this corporation, and for the accommodation of their business and concerns, or which it may be necessary for the said corporation to acquire and hold, and dispose of for the purpose of securing debts which have become due to them in the course of the business of the said corporation; PROVIDED, that the said real estate shall not exceed what may be necessary for the purpose mentioned, and no private lands shall be in any way injured or defaced without permission being first obtained in writing from the owner or owners thereof.

Proviso.

Power to lay gas pipes, etc.

2. AND BE IT ENACTED, That the said corporation shall be empowered to lay down their gas pipes and to erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues or public grounds of the said cities of Hudson and Bergen and places adjacent, and to do all things necessary to light the said cities and places or any part thereof; PROVIDED, that the public travel shall at no time be unnecessarily affected or impeded by the laying of said pipes, or the erection of said posts, and the streets, side and crosswalks, public grounds, lanes, avenues and squares shall not be injured, but all be left in as good and perfect condition as before the laying of said pipes or the erection of said posts.

Proviso.

Exhibit C 23.

3. AND BE IT ENACTED, That John R. McPherson, John R. Mullaney, Jeremiah B. Cleveland, are hereby appointed commissioners for receiving subscriptions for the sum of one hundred thousand dollars, to constitute the capital stock of said corporation, in shares of fifty dollars each, and the said commissioners, or a majority of them, shall open books for that purpose, at such time and in such place or places within said cities of Hudson and Bergen, as they shall designate by a public advertisement, to be previously inserted for at least one week, in the newspapers printed in the county of Hudson, and shall continue the same open until the said one hundred thousand dollars shall be subscribed, or at their discretion close the same after they shall have remained open two days, and again open the same at some other time or times, place or places, giving public notice thereof as aforesaid; and the sum of ten per centum upon each share so subscribed, shall be paid by each subscriber, at the time of subscription to the said commissioners, or a majority of them; and each subscriber shall be entitled to receive a receipt for the instalments paid by him on account of such stock from said commissioners, and as soon as the said one hundred thousand dollars shall have been subscribed, the amount so received by the said commissioners, at the time of subscription shall by them, or a majority of them, be paid over to the directors of the said company, to be elected as hereinafter directed, and all the power of said commissioners shall then cease and determine; and the said board of directors when so elected, shall have power, and they hereby are authorized to open the books for the further subscription of stock hereinafter provided, until the whole amount of said stock is sub-

Commissioners to open books of subscription.

scribed, and are also authorized to call upon the said subscribers for the payment of further installments, in such sum or sums, at such time or times, and under such forfeiture or forfeitures, as they may deem expedient, until the whole amount due on said shares so subscribed shall have been fully paid; PROVIDED, that no such installment shall exceed ten per centum upon each share, and that no installment shall be required to be paid by any subscriber, without public notice of said installment being due and payable, to be previously inserted for twenty days in the newspapers printed in the county of Hudson.

Proviso.

Election of directors.

4. AND BE IT ENACTED, That the management of the concerns of said company shall be vested in five directors, to be selected from the stockholders, and the said directors shall choose by a plurality of votes a president from among themselves; and when twenty-five thousand dollars of said capital stock shall have been subscribed as aforesaid, the before named commissioners, or a majority of them, shall convene the said stockholders, by public notice to be given as first aforesaid, and at such time and place as they shall designate in said notice, to choose the first board of directors, who shall hold their offices until the second Monday in January next succeeding their selection, and until others are chosen in their stead; and on the second Monday of January in each year, at such time and place as a majority of the directors may appoint, the said stockholders shall meet for the purpose of electing a board of directors for the ensuing year, and public notice shall be given of the time and place of holding such election by advertisement, for ten days in the newspapers printed in the county

of Hudson, and any vacancy in the said board of directors may be supplied by the board of directors until the next election, and all elections shall be by ballot of the stockholders or their proxies, allowing one vote for each share of stock held upon the books of the company.

Failure to elect directors, not to work a dissolution.

5. And be it enacted, That if at any time an election is not held on the day herein appointed, the corporation shall not be dissolved for that cause, but an election shall be held in such manner as is directed by the by-laws at any time within one year.

Power of directors.

6. And be it enacted, That the directors for the time being shall form a board and they or a majority of them, shall be a quorum for transacting business, and have power to make by-laws, rules and regulations not repugnant to the constitution or laws of the United States or of this State, or the provisions of this act, for the government of the said corporation, the management and disposition of the stock and the property thereof, and the duty of the officers, clerks and persons employed therein, the election of directors and all other matters appertaining to their business or concerns, and may appoint as many officers, clerks and servants, and with such salaries and allowances as shall to them seem necessary; and the said board of directors shall have power to make and declare from the profits and earnings of the company such dividend and dividends among the stockholders from time to time, and make the same payable in such manner as to them may seem expedient.

Capital stock may be increased.

7. And be it enacted, that the capital stock of the said corporation may be increased upon the

consent of the stockholders representing a majority of the stock to any amount not exceeding five hundred thousand dollars; and all the stock of said corporation shall be transferable according to the by-laws and regulations of the company, and shall be considered personal property, and the stock and transfer books shall be open at all times to the inspection of the stockholders.

May erect gas posts and burners.

8. AND BE IT ENACTED, That the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners and reflectors in the streets, alleys, lanes, roads, avenues or public grounds of any of the townships of the county of Hudson, adjoining the said cities of Hudson and Bergen, and with the same privileges and upon the same conditions, and with the same limitations, as by the provisions of this act they can lay them in the said cities; PROVIDED, that the said company shall not establish their works or lay any of their pipes within the corporate limits of Jersey City.

Proviso.

Penalty for injury to works.

9. AND BE IT ENACTED, That if any person or persons shall wilfully do or cause to be done any act or acts whatsoever, thereby to injure any conduit, pipe, cock, metre, machine or structure whatsoever, or anything appertaining to the works of the said corporation, or whereby the same may be stopped, obstructed or injured, the person or persons so offending shall be considered guilty of a misdemeanor, and being thereof convicted, shall be punished by fine not exceeding three hundred dollars and imprisonment at hard labor not exceeding two years, or both; PROVIDED, that such criminal prosecution shall not in anywise impair the right of action for damages by a civil suit hereby authorized

Proviso.

to be brought for any injury as aforesaid, by and in the name of the said corporation in any court of this state having cognizance of the same.

Books of account shall be kept.

10. And be it enacted, That the said company shall cause to be kept at their office proper books of accounts, in which shall be fairly and truly entered all the transactions of the company, which books shall be at all times open for the inspection of the stockholders.

Restrictions and privileges.

11. And be it enacted, That any portion of the profits of this company may be divided to the consumers of gas supplied by this company at any time upon the written consent or vote of those persons holding two-thirds of the stock of said company, in such manner as may be provided in the by-laws, and in such case said company shall thereafter be known as "The People's Mutual Gas Light Company," and under such name be entitled to all the privileges and subject to all the restrictions of this act.

12. And be it enacted, That this act shall take effect immediately.

Approved April 8, 1868.

Exhibit C 24.

P. L. 1871, Chap. 34, page 207.

Title.

A SUPPLEMENT TO AN ACT ENTITLED "AN ACT TO INCORPORATE THE PEOPLE'S GAS LIGHT COMPANY, OF THE CITIES OF HUDSON AND BERGEN, AND PLACES ADJACENT," APPROVED APRIL EIGHTH, ONE THOUSAND EIGHT HUNDRED AND SIXTY-EIGHT.

Preamble.

WHEREAS, the cities of Hudson, Bergen and Jersey City have become consolidated, and are now called Jersey City; therefore,

Name changed.

1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That "The People's Gas Light Company of the city of Hudson," shall hereafter be called and known as "The People's Gas Light Company of Jersey City," and may change their corporate seal to conform to this new title.

Privileges.

2. AND BE IT ENACTED, That the rights, privileges, contracts, franchises and proceedings of the said "The People's Gas Light Company of the city of Hudson," be and the same are hereby continued and declared valid and effectual in law and equity, in the name of "The People's Gas Light Company of Jersey City."

Capital stock may be increased.

3. AND BE IT ENACTED, That the capital stock of the said company, the name whereof is hereby changed to "The People's Gas Light Company of Jersey City," may be increased, upon the consent of the stockholders representing a majority of the stock, to any amount not exceeding one million of dollars.

4. And be it enacted, That this act shall take effect immediately.

Approved February 14, 1871.

P. L. 1873, Chap. 416, page 1328.

A Supplement to the Act entitled An Act to Incorporate the "People's Gas Light Company," of Jersey City, Approved April Eighth, One Thousand Eight Hundred and Sixty-eight. Title.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the fourth section of the act to which this is a supplement shall be so amended as to read "That the management of the concerns of said company shall be vested in not more than nine directors instead of five as therein provided. Amendment.

2. And be it enacted, That this act shall take effect immediately.

Approved April 2, 1873.

Exhibit C 25.

P. L. 1849, page 279.

Title.

AN ACT TO INCORPORATE THE JERSEY CITY GAS LIGHT COMPANY.

Names of corporators.

1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That Peter McMartin, Benjamin O. Edge, Andrew Clark, Peter Bentley and Erastus Randall, and all and every person or persons who may become subscribers, according to the mode hereinafter prescribed, and their successors are hereby created a body politic and corporate in fact, by the name of "The Jersey City Gas Light Company"; and by the said name, the said corporation shall have power and authority to manufacture, make and sell gas, to be made of bituminous coal or other materials, for the purpose of lighting the streets, buildings, manufactories, and other places, situated in Jersey City and vicinity.

Style of incorporation and general powers.

Company authorized to lay pipes.

2. AND BE IT ENACTED, That the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners, and reflectors in the streets, alleys, lanes, avenues, and public grounds of Jersey City and vicinity, and to do all things necessary to light the said Jersey City and vicinity, and the dwellings, stores, and other places situated therein, with gas; PROVIDED, that the public travel shall at no time be affected or impeded by the laying of said pipes or the erection of the said posts; and the streets, side and crosswalks, public grounds, lanes, and avenues shall not be injured, but shall be left in as good and perfect condition as before the laying of the said pipes or the erection of the said posts.

3. And be it enacted, That Erastus Randall, Peter Bentley, and Andrew Clark are hereby appointed commissioners for receiving subscriptions for the sum of sixty thousand dollars, to constitute the capital stock of the said corporation, in shares of twenty dollars each; and the said commissioners, or a majority of them, shall open books for that purpose, at such time and in such place or places, within this state, as they shall designate by a public advertisement, to be previously inserted, for at least three weeks, in a newspaper printed in Jersey City, and shall continue the same open until the said capital stock shall be subscribed, or, at their discretion, close the same after they shall have remained open two days, and again open the same at some other time or times, place or places, giving public notice thereof, as aforesaid; and the sum of five per centum upon each shares so subscribed shall be paid in specie, or in the bills of banks which redeem their bills with specie, by each subscriber, at the time of subscription, to the said commissioners, or a majority of them; and each subscriber shall be entitled to receive a certificate for such stock from said commissioners; and the amount to received by the said commissioners, at the time of subscription, shall by them, or a majority of them, be paid over to the directors of the said company, to be appointed as hereinafter directed; and all the powers of the said commissioners shall cease and determine on the appointment of such board of directors; and the said board, when so appointed, shall have power, and they are hereby authorized from time to time, under the foregoing regulations, to open the books for the further subscription of stock, until the whole stock subscribed amounts to the sum of sixty

Commissioners to open books of subscription.

thousand dollars; and are also authorized to call upon the said subscribers for the payment of further installments, in such sum or sums, at such time or times, and under such forfeiture or forfeitures, as they may deem expedient, until the whole amount of said shares, so subscribed, shall have been fully paid.

Annual election of directors.

4. AND BE IT ENACTED, That the management of the concerns of the said company shall be vested in five directors, to be selected from the stockholders, three of whom shall be residents of Hudson County, and the said directors shall choose, by plurality of votes, a president from among themselves; and, as soon as conveniently may be after thirty thousand dollars shall have been subscribed, the before named commissioners, or a majority of them, shall convene the said stockholders, by public notice to be given as aforesaid, and at such time and place as they shall designate in said notice, to choose the first board of directors, who shall hold their offices until the third Monday in May, eighteen hundred and fifty; and the said directors and president shall hold their offices, from the third Monday of May in every year, for one year, and shall be elected on the third Monday of May in each year, at such time and place as a majority of the directors shall appoint; and public notice shall be given of the time and place of holding such election, for ten days, in a newspaper published in Jersey City; and any vacancy in the said board of directors may be supplied by appointments, to be made by the board of directors, until the next election; and all elections shall be by ballot of the stockholders, or their proxies, allowing one vote for each share which they shall hold, or shall have held, in his, her or

their name or names, at least fourteen days before the time of voting.

Charter not forfeited for failure to elect on day prescribed.

5. AND BE IT ENACTED, That if, at any time, an election is not held on the day herein appointed, the corporation shall not be dissolved for that cause, but an election shall be held, in such manner as is directed by the by-laws, at any time within one year.

Quorum.

6. AND BE IT ENACTED, That the directors for the time being shall form a board, and they, or the majority of them, shall be a quorum for transacting business.

Stock transferable.

7. AND BE IT ENACTED, That the stock of the corporation shall be transferable according to the by-laws and regulations of the corporation, and shall be considered personal property, and the stock and transfer books shall be opened at all times to the inspection of the stockholders.

Penalty for injuring works.

8. AND BE IT ENACTED, That if any person or persons shall wilfully do, or cause to be done, any act or acts whatsoever, with intent thereby to injure any conduit, pipe, cock, machine, or structure whatsoever, or anything appertaining to the works of the said corporation, or whereby the same may be stopped, obstructed, or injured, the person or persons so offending shall be considered guilty of a misdemeanor, and being thereof convicted, shall be punished by fine, not exceeding three hundred dollars, or imprisonment at hard labor, not exceeding two years, or both; PROVIDED, such criminal prosecution shall not in anywise impair the right of action for damages by a civil suit, hereby author-

ized to be brought for any such injury as aforesaid, by and in the name of the said corporation, in any court of this state having cognizance of the same.

Books of accounts to be kept.

9. And be it enacted, That the said company shall cause to be kept at their office proper books of accounts, in which shall be fairly and truly entered all the transactions of the company, which books shall be at all times open for the inspection of the stockholders.

Powers and restrictions.

10. And be it enacted, That the said corporation shall possess the general powers, and be subject to the restrictions and liabilities, contained in the act entitled, "An act concerning corporations," approved the fourteenth day of February, eighteen hundred and forty-six, so far as the same are applicable; and shall continue in force for thirty years.

Approved March 1, 1849.

P. L. 1852, Page 294, Chap. 134.

A Supplement to the Act Entitled, "An Act to Incorporate the Jersey City Gas Light Company."

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the Jersey City Gas Light Company shall be empowered to lay down their gas pipes, and to erect gas posts, burners, and reflectors in the streets, alleys, lanes, avenues, and public grounds of Hoboken and vicinity, and to do all things necessary to light the same, and the dwellings, stores, and other places

Power to lay gas pipes, etc.

therein; PROVIDED, that the public travel shall at no time be affected or impeded by the laying of the said pipes or the erection of the said posts; and the streets, side and crosswalks, public grounds, lanes, and avenues shall not be injured, but shall be left in as good and perfect condition as before the laying of the said pipes or the erection of the said posts.

2. AND BE IT ENACTED, That the directors of said company shall have power to increase the capital stock thereof to the amount of one hundred and fifty thousand dollars. Increase of capital stock.

3. AND BE IT ENACTED, That the number of directors of the said company shall be increased to nine, five of whom shall form a quorum; and that the first election for directors shall be on the last Monday in March, eighteen hundred and fifty-two. Increase of number of directors.

Approved March 24, 1852.

Exhibit C 26.

CERTIFICATE OF INCORPORATION.

The subscribers do hereby certify pursuant to the Act entitled "An Act to authorize the formation of Gaslight Corporations and regulate the same, approved April 21st, 1876":

That we have associated as a Company for the purpose of constructing, maintaining and operating gas works under the provisions of the said act. Purposes.

That we have assumed, as the name to designate such company and to be used in the business and

Corporate name.

dealings, "The Consumers Gas Company of Jersey City."

That the term for which said company shall continue is fifty years.

That the place in which it is proposed to supply and distribute illuminating gas and construct, maintain and operate the works is the City of Jersey City.

Capital stock.

That the amount of the capital stock of said company shall be six hundred thousand dollars divided into six thousand shares each of the par value of One Hundred dollars.

Names and addresses of directors.

The names and places of residence of the thirteen directors of said company who shall manage its affairs for the first year and until others are chosen, are as follows:

Charles Siedler.....Jersey City
Henry M. Traphagen.....Jersey City
Orestes Cleveland.....Jersey City
William F. Taylor.....Jersey City
Thomas W. Ball.....Jersey City
John Linn.....Jersey City
Jeremiah Sweeney.....Jersey City
Patrick Laverty.....Jersey City
Richard C. Washburn.....Jersey City
Julius N. Pratt.....Montclair
George S. Dwight.....Montclair
Mason Loomis.....Montclair
Louis H. Holmes.....Newark

In witness whereof we have hereto set our hands this thirty-first day of July, eighteen hundred and seventy-seven.

Charles Siedler, 84 Crescent Ave., Jersey City, (100) One Hundred shares.

H. M. Traphagen, No. 160 Pavonia Ave., one hundred.

Jeremiah Sweeney, No. 209 7th St., Jersey City, Fifty shares.

P. H. Laverty, 147 Pavonia Ave., (100) One hundred shares.

Thos. N. Ball, 101 Wayne St., Jersey City, (100) One hundred shares.

Julius H. Pratt, Montclair, N. J., One hundred shares (100).

Louis H. Holmes, Newark, N. J., One hundred shares (100).

Mason Loomis, Montclair, N. J., One hundred shares (100).

W. F. Taylor, Jersey City, N. J., Fifty shares (50).

Orestes Cleveland, 204 Wayne Street, Jersey City, One hundred shares.

R. C. Washburn, 102 Mercer Street, Jersey City, Fifty shares.

Jno. Linn, 212 Warren Street, Jersey City, One share.

Geo. S. Dwight, Montclair, N. J., Two thousand and forty-nine shares (2,049).

Articles of Association of the Consumers Gas Company of Jersey City.

This is to certify that we, Franklin W. Potter, Stephen P. Yoe, William McAvoy, Charles W. Allen, George H. White, Orestes Cleveland, William W. Farrier, William H. Hoag, Orestes Cleveland, Junior, Peter Bentley, Charles B. Converse, Thomas Potter and John Edelstein, do hereby associate ourselves into a company under and by virtue of the

Incorporators.

provisions of an act of the Legislature of New Jersey, entitled "An act to authorize the formation of gas-light corporations and regulate the same," approved April 21, 1876, and the several supplements thereto for the purpose of constructing, maintaining and operating gas works and supplying and distributing illuminating gas and to that end we do by these articles of association set forth:

Corporate name.

FIRST: The name which we have assumed to designate such company and to be used in its business and dealings is The Consumers Gas Company of Jersey City.

Term of existence.

SECOND: The time at which said company shall commence is the Twenty-seventh day of November, eighteen hundred and eighty-three, and that it shall continue for the period of fifty years, and shall terminate on the twenty-seventh day of November, nineteen hundred and thirty-three.

THIRD: That the city in which it is proposed to supply and distribute illuminating gas, construct, maintain and operate gas works is the city of Jersey City in the county of Hudson, and the State of New Jersey.

Capital stock.

FOURTH: That the total amount of the capital stock of the said company is six hundred and five thousand dollars, the number of shares of which said capital stock consists is six thousand and fifty of one hundred dollars each.

FIFTH: That the names and residences of the directors of the said company are as follows:

Names and addresses of directors.

Franklin W. Potter, Metuchen, New Jersey.
Stephen P. Yoe, Palisade Avenue, Jersey City, N. J.

William McAvoy, 100 Palisade Avenue, Jersey City, N. J.
Charles W. Allen, 38 Chestnut Avenue, Jersey City, N. J.
George H. White, 190 Newark Avenue, Jersey City, N. J.
Orestes Cleveland, 118 Wayne Street, Jersey City, N. J.
William W. Farrier, 239 Montgomery Street, Jersey City, N. J.
William H. Hoag, 284 Barrow Street, Jersey City, N. J.
Orestes Cleveland, Jr., 118 Wayne Street, Jersey City, N. J.
Peter Bentley, Harrison, cor. West Side Avenues, Jersey City, N. J.
Charles B. Converse, 272 Montgomery Street, Jersey City, N. J.
Thomas Potter, Jersey City, New Jersey.
John Edelstein, Jersey City, New Jersey.

In Witness Whereof each of us has hereto set his seal and subscribed his name, place of residence and the number of shares of said stock he agrees to take in said company on this twentieth day of November, eighteen hundred and eighty-three.

F. W. Potter, Metuchen, N. J., One share (L. S.)
Stephen P. Yoe, Palisade Ave., J. C., One share, (L. S.)
Wm. McAvoy, One share, 100 Palisade Ave., Jersey City, (L. S.)
Chas. W. Allen, One share, 38 Chestnut Ave., J. City, (L. S.)
George H. White, 190 Newark Ave., J. C., (L. S.)
Orestes Cleveland, 118 Wayne St., J. City, One share, (L. S.)

William W. Farrier, 239 Montgomery St., J. City, One share, (L. S.)

Wm. H. Hoag, 284 Barrow street, J. C., One share, (L. S.)

Orestes Cleveland, Jr., 118 Wayne St., J. C., One share, (L. S.)

Peter Bentley, Harrison and Westside Aves., One share, Jersey City, N. J., (L. S.)

Charles Place, Three thousand and twenty-five shares, New York City, (L. S.)

C. B. Converse, 272 Montgomery St., One share, Jersey City, N. J., (L. S.)

Thomas Potter, 546 Bramhall Ave., One share, (L. S.)

John Edelstein, 180 Summit Ave., One share (L. S.)

Exhibit C 27.

P. L. 1863, Chap. 97, page 187.

Title. AN ACT TO INCORPORATE THE HUDSON COUNTY GAS LIGHT COMPANY.

Names of corporators. 1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That Edwin A. Stevens, George W. Morton, Josiah H. Gautier, William W. Shippen, John H. Suckley, John R. Halladay, John M. Francis, Horace H. Driggs and Charles Roome, and all and every person or persons who may become subscribers, according to the mode hereinafter provided, and their successors, are hereby created a body politic and corporate, in fact, by the name of "The Hudson County Gas Light Company;" and the said corporation are hereby invested with full power and authority to

manufacture, make and sell gas, to be made of bituminous coal or other materials, for the purpose of lighting the streets, buildings, and other places in the city of Hoboken and the township of Weehawken and their vicinity, and to purchase, hold and convey all real and personal estate required for the purposes of the corporation.

2. AND BE IT ENACTED, That the corporation shall have full power and authority to lay down their gas pipes and to erect gas posts, burners and reflectors in the streets, avenues, highways and public grounds, alleys and lanes, in the city of Hoboken and the township of Weehawken and their vicinity, and to adopt all proper and necessary means to light all dwellings, stores, and all other places situated therein, with gas; PROVIDED, that the public travel shall at no time be unnecessarily impeded thereby; and the side and crosswalks, streets, avenues and highways shall be left in as good condition as before the laying of the said pipes or the erection of the said posts, and that the corporate authorities in the several cities and townships, by whatever name the same are known, in which said pipes are laid, may prescribe the manner of laying said pipes, so far as relates to the interference with public travel.

May lay down pipes.

Proviso.

3. AND BE IT ENACTED, That the capital stock of the corporation shall not exceed one hundred thousand dollars, in shares of fifty dollars each, and the persons named in the first section of this act are hereby appointed commissioners to receive subscriptions to the capital stock, and the said commissioners, or a majority of them, shall open books for that purpose, at such time and in such place as

Capital stock.

they shall designate by advertisement, previously at least three weeks, in a public newspaper printed in Hoboken, and shall keep the same open as long as they may deem proper, and may close the same at their own pleasure, and open the same from time to time upon like notice, and may require each subscriber to pay to them at the time of subscribing not exceeding twenty per cent. of his subscription, which shall be paid over to the directors of the corporation, to be appointed as hereinafter prescribed, and all the powers of said commissioners shall cease upon the appointment of the directors; and the board of directors, when appointed, shall have full power and authority, from time to time, to open the books for further subscriptions until the whole capital stock is taken, and said directors may call on the subscribers for the payment of installments, in such sums, and at such times, and under such forfeitures as they may deem expedient.

Election of directors.

4. AND BE IT ENACTED, That the management of the concerns of the said company shall be vested in seven directors, to be selected from the stockholders, a majority of said directors to be citizens of the State of New Jersey, and said directors shall choose, by a plurality of votes, from among themselves, a president; and, as soon as may be after six thousand dollars shall have been subscribed, the said commissioners, or a majority of them, shall convene the said stockholders, by public notice published in a newspaper at Hoboken, at such time and place in the city of Hoboken as they may designate in such notice, to choose the first board of directors, who shall hold their offices from the first Monday in May next ensuing, and until others are elected

in their stead; and the election for directors shall be held annually on the first Monday in May, in the city of Hoboken, and public notice of such election shall be given at least ten days previously, by publication in a newspaper at Hoboken; all vacancies in the board of directors may be filled for the unexpired term by appointments to be made by the remaining directors, and all elections for directors shall be by ballot of the stockholders, or their proxies, allowing one vote for each share which they shall have held in their name at the time of voting.

Corporation not dissolved for failure to elect.

5. And be it enacted, That if at any time an election is not held on the day herein appointed, the corporation shall not for that cause, nor for any non user, be dissolved, but such election shall be held in the manner prescribed by the by-laws at any time within one year.

Quorum.

6. And be it enacted, That the directors for the time being shall form a board, and a majority of them shall be a quorum for transacting business.

Stock personal property.

7. And be it enacted, That the stock of the corporation shall be transferred according to its by-laws and regulations, and shall be considered personal property, and the stock and transfer books shall be opened at all times to the inspection of the stockholders, and the books of account in which shall be fairly and truly entered all the transactions of the company, shall be open at all reasonable times to their inspection.

Penalty for injuring works.

8. And be it enacted, That if any person shall wilfully injure any conduit, pipe, gasometer or

other thing appertaining to the works of the company, or obstruct the same, the person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding three hundred dollars, or imprisonment not exceeding two years, or both; PROVIDED, no such criminal prosecution shall impair the right of the company to an action for damages by a civil suit.

Proviso.

Limitation.

9. AND BE IT ENACTED, That the corporation established by this act shall continue in force for fifty years, and shall possess the general powers and be subject to the restrictions and liabilities imposed by "An act concerning corporations," approved February fourteenth, eighteen hundred and forty-six, so far as applicable.

May borrow money.

10. AND BE IT ENACTED, That the said company shall have power to borrow money to an amount not exceeding one-half its capital stock paid in, and to mortgage their works, property and franchises, and to execute all necessary assurances for securing the money so borrowed, with interest not exceeding seven per cent. per annum, and may receive property suitable for its purposes at a valuation to be agreed upon, in lieu of cash subscriptions.

Public act.

11. AN BE IT ENACTED, That this act shall be deemed a public act; but the corporation shall not be exempt from the sum or sums of money required to be paid to the State treasurer by an act entitled "An act to increase the revenue of the State of New Jersey," approved March sixth, eighteen hundred and fifty-eight, and it shall take effect immediately.

Approved March 6, 1863.

Exhibit C 27.

P. L. 1864, Chap. 21, page 32.

A SUPPLEMENT TO AN ACT ENTITLED "AN ACT TO INCORPORATE THE HUDSON COUNTY GAS LIGHT COMPANY." Title.

1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That the directors of the said company shall have power to increase the capital stock thereof to the amount of three hundred thousand dollars, divided in shares of fifty dollars each, as in the said act to which this is a supplement is provided. Capital stock increased.

2. AND BE IT ENACTED, That the said company shall have power to borrow money from time to time to any amount which they may deem proper, not exceeding one-half its capital stock actually paid in, and to mortgage their works, property and franchises, and to make, execute and deliver all proper and necessary bonds, obligations and assurances for securing the payment of the money so borrowed, with interest not exceeding seven per cent. per annum, and it shall be lawful for the said company and they are hereby authorized to sell and dispose of such bonds, obligations and assurances, also the bonds issued according to section ten of the act to which this is a supplement, to any person or persons or corporation, at any rate or price they may be able to realize or obtain for the same at the time of such sale, without the same being invalidated thereby or any person or persons or corporation being liable to any penalty or forfeiture therefor. May borrow money and issue bonds.

3. AND BE IT ENACTED, That the bonds issued and sold in accordance with section ten of the act to Bonds not invalidated.

which this is a supplement are not and shall not be invalidated by reason of their having been sold at a less rate than par.

4. And be it enacted, That this act shall take effect immediately.

Approved February 13, 1864.

P. L. 1870, Chap. 11, page 112.

Title. Supplement to "An Act to Incorporate The Hudson County Gas Light Company," Approved March Sixth, Eighteen Hundred and Sixty-three.

Increase of capital stock.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the directors of the said company be and they are hereby authorized and empowered to increase the capital stock of said company to any amount not exceeding six hundred thousand dollars, divided in shares of fifty dollars each, as in the act to which this is a supplement is provided.

2. And be it enacted, That this act shall take effect immediately.

Approved February 3, 1870.

Exhibit C 28.

P. L. 1872, Chap. 234, page 584.

A Further Supplement to an Act entitled "An Act to Incorporate The Hudson County Gas Light Company," Approved March Sixth, Eighteen Hundred and Sixty-three. Title.

1. Be it Enacted by the Senate and General Assembly of the State of New Jersey, That the directors of the said company shall have power to increase the capital stock thereof to any sum not exceeding the sum of four hundred thousand dollars more than they are now authorized to issue, the same to be divided into shares of fifty dollars each, as in the said act to which this is a supplement is provided. Capital stock may be increased.

Approved March 19, 1872.

Exhibit C 28.

P. L. 1864, Chap. 24, page 42.

An Act to Incorporate The Bergen Point Gas Light Company. Title.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That John H. Watson, Andrew D. Melick, Solon Humphreys, Abram B. Warner and Walter B. Palmer, and all and every person or persons who may become subscribers according to the mode hereinafter prescribed, and their successors, be and the same are hereby created a body politic and corporate in fact, by the name of "The Bergen Point Gas Light Company"; and by the said name the said corporation shall have power to sue and be sued, plead and be Names of corporators.

impleaded, contract and be contracted with, and to make, manufacture and sell illuminating gas, to be made from coal or other proper materials, for the purpose of lighting the streets, buildings, manufactories and public grounds, situated in the township of Bayonne and vicinity, and under and by the aforesaid corporate name and style, the said corporation shall have power and authority to enter into and execute any and all proper contracts, agreements, understandings, undertakings, and covenants for the furtherance of the objects for which the said corporation is created, with power and right to enforce the same, in all proper way and manner under the laws of this State; and shall be capable of purchasing, taking and holding any estate, real or personal, necessary to give effect to the specified purpose of this corporation, for the accommodation of their business and concerns, or which it may be necessary for the said corporation to acquire and hold for the purpose of securing debts, which have become due to them in the regular business of the said corporation; PROVIDED, that the real estate shall not exceed what may be necessary for the purpose mentioned; and also to purchase and hold any and all patents and patent rights necessary and proper for the purpose of carrying out the object and intent for which such corporation is created, and for the accommodation of its business and concerns.

Proviso.

Powers.

2. AND BE IT ENACTED, That the said corporation shall be and is hereby empowered and authorized to enter upon and make any and all necessary and proper excavations for the purpose of laying down, and to lay down, all necessary and proper gas pipes and conductors, and to erect all necessary and

proper posts, burners, lights and reflectors, in any and all of the streets, lanes, alleys, avenues, roads, highways and public grounds within the said township of Bayonne and vicinity, and to do all things necessary and proper to be done for the purpose of lighting the same, and the dwellings, stores, and other buildings and places in said township of Bayonne and vicinity; PROVIDED, that the public travel shall at no time be unreasonably and unnecessarily obstructed or impeded thereby, nor shall the said streets, lanes, alleys, avenues, roads, highways and public grounds be permanently injured by the same, but the said corporation shall put and leave such streets, lanes, alleys, avenues, roads, highways and public grounds in as good, perfect and permanent condition as the same were in before the laying of said pipes, and the erection of said posts. Restrictions.

3. AND BE IT ENACTED, That the capital stock of the corporation shall not exceed one hundred thousand dollars, in shares of twenty-five dollars each; and the persons named in the first section of this act are hereby appointed to receive subscriptions to the capital stock; and the said commissioners, or a majority of them, shall open books for that purpose, at such time or times, and in such place or places, within this state as they or a majority of them, shall designate by public advertisement to be previously inserted at least three weeks in a public newspaper printed in the county of Hudson, and shall continue the same until the said capital stock shall be subscribed, or at their discretion close the same after they have remained open two days, and again open the same at some other time or times, place or places, giving public notice thereof as aforesaid, Capital stock.

and may require each subscriber to pay to them at the time of subscribing, not exceeding twenty per centum of his subscription, which shall be paid over to the directors of the corporation, to be appointed as hereinafter prescribed; and all the powers of said commissioners shall cease upon the appointment of the directors; and the board of directors, when appointed, shall have full power and authority, from time to time, to open the books for further subscription until the whole capital stock is taken; and said directors may call on the subscribers for the payment of installments in such sums and at such times and under such forfeitures as they may deem expedient.

Election of directors.

4. AND BE IT ENACTED, That the management of the concerns of the said company shall be vested in five directors, to be selected from the stockholders, a majority of said directors to be citizens of the state of New Jersey; and said directors shall choose, by a plurality of votes, from among themselves, a president, and as soon as may be after eight thousand dollars shall have been subscribed, the said commissioners, or a majority of them, shall convene the said stockholders, by public notice in a newspaper published in the county of Hudson, at such time and place in the township of Bayonne as they may designate, to choose the first board of directors, who shall hold their offices from the first Monday in April next ensuing, and until others are elected in their stead; and the election for directors shall be held annually on the first Monday in April in the township of Bayonne, and public notice of such election shall be given at least ten days previously, by publication in a newspaper published in the county of Hudson; all vacancies in the board

of directors may be filled for the unexpired term by appointment, to be made by the remaining directors, and all elections for directors shall be by ballot of the stockholders, or their proxies, allowing one vote for each share which they shall hold in their name at the time of voting.

Corporation not dissolved for failure to elect.

5. AND BE IT ENACTED, That if at any time an election is not held on the day herein appointed, the corporation shall not for that cause, nor for any non-user, be dissolved, but, such election shall be held in the manner prescribed by the by-laws at any time within one year.

Quorum.

6. AND BE IT ENACTED, That the directors for the time being shall form a board, and a majority be a quorum, for the transaction of business.

Stock personal property.

7. AND BE IT ENACTED, That the stock of the corporation shall be transferred according to its by-laws and regulations, and shall be considered personal property, and the stock and transfer books shall be open at all times to the inspection of the stockholders; and the books of account in which shall be fairly and truly entered all the transactions of the company, shall be open at all reasonable times to their inspection.

Penalty for injuring works.

8. AND BE IT ENACTED, That if any person shall wilfully injure any conduit, pipe, gasometer or other thing appertaining to the works of the company, or obstruct the same, the person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding three hundred dollars, or imprisonment not exceeding two years, or both; PROVIDED, no such

Proviso.

criminal prosecution shall impair the right of the company to an action for damages by a civil suit.

Limitation.

9. And be it enacted, That the corporation established by this act, shall continue in force fifty years, and shall possess the general powers, and be subject to the restrictions and liabilities imposed by "An act concerning corporations," approved February fourteenth, eighteen hundred and forty-six, so far as applicable.

May borrow money.

10. And be it enacted, That the said company shall have power to borrow money to an amount not exceeding one-half its capital stock paid in, and to mortgage their works, property and franchises, and to execute all necessary assurances for securing the money so borrowed, with interest not exceeding seven per centum per annum, and may receive property suitable for its purposes, at a valuation to be agreed upon, in lieu of cash subscriptions.

Public act.

11. And be it enacted, That this act shall be deemed a public act, but the corporation shall not be exempt from the sum or sums of money required to be paid to the state treasurer, by an act entitled "An act to increase the revenue of the State of New Jersey," approved March the sixth, eighteen hundred and fifty-eight, and it shall take effect immediately.

Approved February 17, 1864.

Exhibit C 28.

P. L. 1869, chap. 338, page 918.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT TO INCORPORATE THE BERGEN POINT GAS LIGHT COMPANY," PASSED FEBRUARY SEVENTEENTH, ONE THOUSAND EIGHT HUNDRED AND SIXTY-FOUR. Title.

WHEREAS, said company was incorporated for the purpose of supplying gas to the inhabitants of Bayonne township, in the county of Hudson; and, whereas, the incorporators named in said bill have not made any arrangements since the passage of said bill to introduce gas into the district, therefore, Preamble.

1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That William C. Hamilton, Erastus Randall, Henry C. Smith, Solon Humphreys, Rufus Story, Edmund C. Bramhall, Abram B. Warner, Henry Meigs, Jr., Hiram Van Buskirk, Charles C. Hough, Michael Coogan, William B. Rankin, John H. Midner, Michael C. Smith and J. Otto Seymour be inserted in said bill as corporators thereof in lieu of the names originally in said bill. Corporators.

2. AND BE IT ENACTED, That the conditions of said bill shall be extended to the township of Greenville, county of Hudson, and that this act shall take effect immediately. Conditions extended.

Approved March 30, 1869.

Exhibit C 28.

P. L. 1871, chap. 209, page 522.

Title.

A SUPPLEMENT TO AN ACT ENTITLED "AN ACT TO INCORPORATE THE BERGEN POINT GAS LIGHT COMPANY," APPROVED FEBRUARY SEVENTEENTH, ONE THOUSAND EIGHT HUNDRED AND SIXTY-FOUR.

Name changed.

1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That the name of the company, named in the act to which this is a supplement, be changed, and called "The Bayonne and Greenville Gas Light Company."

Capital increased.

2. AND BE IT ENACTED, That the capital stock of said company be increased to five hundred thousand dollars.

Directors increased.

3. AND BE IT ENACTED, That the number of directors of said company be increased to nine.

4. AND BE IT ENACTED, That this act take effect immediately.

Approved March 14, 1871.

Exhibit C 29.

JOINT AGREEMENT FOR MERGER AND CONSOLIDATION OF THE PEOPLE'S GAS LIGHT COMPANY OF JERSEY CITY, THE JERSEY CITY GAS LIGHT COMPANY, THE CONSUMERS' GAS COMPANY OF JERSEY CITY, THE HUDSON COUNTY GAS LIGHT COMPANY, THE BAYONNE AND GREENVILLE GAS LIGHT COMPANY.

(10c. I. R. Stamp Cancelled.)

AGREEMENT made and entered into this Fifth day of October, eighteen hundred and ninety-nine, between the People's Gas Light Company of Jersey City, The Jersey City Gas Light Company, The Consumers' Gas Company of Jersey City, The Hudson County Gas Light Company, and The Bayonne and Greenville Gas Light Company, corporations of the State of New Jersey, by the directors of said corporations, pursuant to the provisions of an act of the legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)," approved April 21, 1896, and the several supplements thereto and amendments thereof, and under the corporate seals of the respective corporations named, for the merger and consolidation of said corporations into a new corporation.

WHEREAS, the above named corporations have been organized and are now existing pursuant to the laws of the State of New Jersey, for the purpose of carrying on business of a similar nature, to-wit, the manufacture, distribution and sale of gas for the purpose of illumination, heating and power;

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AND WHEREAS, it is the purpose and intent of said corporations to merge and consolidate into a single corporation which shall be a new corporation to be formed by means of such merger and consolidation;

NOW, THEREFORE, for the purpose of effecting such merger and consolidation, it is hereby agreed by and between the several corporations, by their directors, as follows:

ARTICLE I. That the name of the new corporation shall be "Hudson County Gas Company."

ARTICLE II. The number, names and places of residence of the first Directors and officers of such new corporation shall be as follows:

The number of directors shall be fifteen (15).

The names and places of residence of the first directors shall be:

Edward F. C. Young, 86 Glenwood Avenue, Jersey City, N. J.

Robert W. Elliott, 36 Glenwood Avenue, Jersey City, N. J.

B. M. Shanley, corner Central Avenue and Washington Street, Newark, N. J.

Cornelius Zabriskie, Brooklyn, N. Y.

Hamilton Wallis, Prospect Street, East Orange, N. J.

J. Edwin Hulshizer, Jr., 16 Gifford Place, Jersey City, N. J.

Thomas H. Williams, 300 Bergen Avenue, Jersey City, N. J.

Myles Tierney, 317 Riverside Drive, New York City.

Joseph D. Bedle, 96 Glenwood Avenue, Jersey City, N. J.

Randal Morgan, Chestnut Hill, Philadelphia, Pa.

Percy S. Young, 10 Monticello Avenue, Jersey City, N. J.

Joseph V. Clark, 333 Garden Street, Hoboken, N. J.

Robert D. Miller, 275 Summit Avenue, Jersey City, N. J.

Edward L. Young, 67 Glenwood Avenue, Jersey City, N. J.

Daniel E. Evarts, 6 Emery Street, Jersey City, N. J.

who shall hold office until the first Wednesday in March, 1901, and thereafter until their successors shall be duly elected and qualified, and vacancies in that Board shall be filled for the unexpired term of the Board. At and after said date, the Board of said new corporation shall be chosen by a vote of the majority in interest of the stock represented at the annual meetings of the new corporation, the first of which annual meetings shall be held on the first Wednesday in March, 1901, and subsequent meetings on the first Wednesday in March annually thereafter, or at such other times as may, from time to time, be fixed by the by-laws of the new corporation. Vacancies in the Board of Directors may be filled for the unexpired term of the Board.

The officers of said new corporation shall be a President, one or more Vice-Presidents, a Treasurer, an Assistant Treasurer and a Secretary, and such subordinate officers as the Board of Directors may from time to time create. The office of Secretary and Treasurer or Assistant Treasurer may

be held by the same person, at the discretion of the Board.

The first officers shall be

Edward F. C. Young, President, who resides at 86 Glenwood Avenue, Jersey City, N. J.

Robert W. Elliott, Vice-President, who resides at 36 Glenwood Avenue, Jersey City, N. J.

Edward C. Lee, Treasurer, who resides at Haverford, Pennsylvania.

Percy S. Young, Assistant Treasurer, who resides at 10 Monticello Avenue, Jersey City, N. J.

Robert W. Elliot, Secretary, who resides at 36 Glenwood Avenue, Jersey City, N. J.

all of whom shall hold office at the pleasure of the Board of Directors. Their successors shall be chosen by the Board of Directors at such times, in such manner and for such terms as may be prescribed by the by-laws of the company.

The location of the principal office in the State of New Jersey shall be at No. 109 Montgomery street, in the City of Jersey City, County of Hudson, and the name of the agent therein and in charge thereof, upon whom process against the corporation may be served, is Robert W. Elliott; and the Board of Directors may, from time to time change such office and agent and establish such other offices in the State of New Jersey, or elsewhere, as may be deemed necessary or convenient by said Board. The new corporation may have offices out of this State, and may hold, purchase, mortgage and convey real and personal property out of this State.

ARTICLE III. By-laws of the new corporation may be hereafter adopted, amended and repealed by the directors.

Exhibit C 29.

ARTICLE IV. The existence of the said Hudson County Gas Company shall be perpetual.

ARTICLE V. Upon the consummation of this agreement of merger and consolidation, according to law, all the properties, real, personal, and mixed, rights, powers, privileges and franchises of the respective corporations above named shall belong to and be the property, rights, powers, privileges and franchises of the said new corporation, except the shares of the capital stock of The Hudson County Gas Light Company now owned by The Jersey City Gas Light Company, as to which shares The Jersey City Gas Light Company shall be treated as a stockholder of the said The Hudson County Gas Light Company, and the number of bonds and shares of stock of the new company to be delivered to the stockholders of The Jersey City Gas Light Company shall be increased by that amount.

The new corporation shall bear and pay all the expenses of the consolidation and organization.

ARTICLE VI. The number of shares of the capital stock of the new corporation shall be one hundred and five thousand (105,000), of the par value of One Hundred Dollars ($100) each share. Nothing in this agreement shall be construed to prevent the new corporation from increasing or decreasing the amount of the capital stock.

ARTICLE VII. The capital stock of each of said merging and consolidating corporations shall be converted, and this agreement carried into effect, in the manner following:

The new corporation shall issue Ten Million Five Hundred Thousand Dollars ($10,500,000) of its

bonds in denominations of One Thousand Dollars ($1,000), Five Hundred Dollars ($500), and One Hundred Dollars ($100), bearing date the first day of November, 1899, numbered consecutively from one (1) to eleven thousand and fifty (11,050), payable fifty (50) years thereafter, and bearing interest at the rate of five (5) per cent. per annum, payable semi-annually, such interest to be payable upon the presentation and surrender of interest coupons to be attached to said bonds for each of such installments of interest as it shall become due, and said coupons to bear the engraved fac-simile of the signature of the Treasurer of said company. Said bonds shall be payable, principal and interest, in gold coin of the United States, of the present standard of weight and fineness, or its equivalent, and be made payable to bearer, but shall provide for the registration thereof at the option of the holder, so that when so registered and such registration is endorsed upon said bonds, the bonds so registered shall not pass by delivery until they shall again be registered to "bearer." Said bonds shall be secured by a mortgage to be executed by said new company, to The New Jersey Title Guarantee and Trust Company, as Trustee, upon all its franchises, property, income and rights. Said bonds and mortgage shall be in such form as shall be approved by the Board of Directors of said new company.

The capital stock of the said Hudson County Gas Company to the extent of eighty thousand (80,000) shares, together with Seven Million Eight Hundred and Nine Thousand Six Hundred and eighty-seven dollars and fifty cents ($7,809,687.50) of the bonds hereinbefore mentioned, after the same have been certified by and received from the Trustee under

the mortgage, shall be delivered to The New Jersey Title Guarantee and Trust Company, for distribution to and among the stockholders of the constituent companies in exchange for and in place of their stock in said corporations, as follows:

To the stockholders of The Jersey City Gas Light Company at the rate of Five Thousand Dollars ($5,000) of said bonds and Five Thousand Nine Hundred and Twenty-five Dollars and Ninety-two Cents ($5,925.92) par value of said stock for each one hundred (100) shares of the capital stock of said The Jersey City Gas Light Company, and in that proportion for lesser amounts.

To the stockholders of The Hudson County Gas Light Company at the rate of Eighteen Thousand Seven Hundred and Fifty Dollars ($18,750) of said bonds and Twenty Thousand Three Hundred and Seventy Dollars and Thirty-nine and Nine-tenths cents ($20,370.399) par value of said stock for each one hundred (100) shares of the capital stock of said The Hudson County Gas Light Company, and in that proportion for lesser amounts.

To the stockholders of The People's Gas Light Company of Jersey City at the rate of Twelve Thousand Five Hundred Dollars ($12,500) of said bonds and Nineteen Thousand Ninety-two Dollars and Seventy-six cents ($19,092.76) par value of said stock for each one hundred (100) shares of the capital stock of said The People's Gas Light Company of Jersey City, and in that proportion for lesser amounts.

To the stockholders of The Consumers' Gas Company of Jersey City at the rate of Ten Thousand Dollars ($10,000) of said bonds and Three Thousand One Hundred and Eleven Dollars and Eleven Cents ($3,111.11) par value of said stock for each

one hundred (100) shares of the capital stock of said The Consumers' Gas Company of Jersey City, and in that proportion for lesser amounts.

To the stockholders of The Bayonne and Greenville Gas Light Company at the rate of Three Thousand One Hundred and Twenty-five Dollars ($3,125) of said bonds and Five Thousand Eight Hundred and One Dollars and Seventy-one cents ($5,801.71) par value of said stock for each one hundred (100) shares of the capital stock of said The Bayonne and Greenville Gas Light Company, and in that proportion for lesser amounts.

Two hundred and Twenty-five Thousand Dollars ($225,000), at par, of said bonds shall be issued and delivered in exchange for debentures of The Consumers' Gas Company of Jersey City, dated October 1, 1896, and maturing October 1, 1906, amounting to Two Hundred and Twenty-five Thousand Dollars ($225,000). All of said debentures of The Consumers' Gas Company of Jersey City when received in exchange as aforesaid shall be cancelled and surrendered to said new corporation.

Six Hundred Thousand Dollars ($600,000), at par, of said bonds shall be retained by The New Jersey Title Guarantee and Trust Company, Trustee, under the mortgage, and shall not be certified until required to purchase or pay for, take up, or replace, as and when the same shall be presented therefor, Six Hundred Thousand Dollars ($600,000), at par, of bonds of the Consumers' Gas Works Company, dated May 1, 1884, and maturing May 1, 1904, which bonds are secured by mortgage upon property of The Consumers' Gas Company of Jersey City, the payment of said bonds having been assumed by The Consumers' Gas Company of Jersey City, upon the conveyance by said

Consumers' Gas Works Company, Limited, of all its property to The Consumers' Gas Company of Jersey City; and upon the maturing of said bonds of the Consumers' Gas Works Company, Limited, the said Trustee shall sell such bonds as shall remain undisposed of, as aforesaid, of the Six Hundred Thousand Dollars ($600,000), in bonds reserved, as aforesaid, at public or private sale, at its option, and out of the proceeds shall pay off and discharge, so far as the same are sufficient, the then unexchanged bonds of said Consumers' Gas Works Company, Limited, and pay the balance, if any, to said new company, and if the proceeds of said bonds shall not be sufficient to pay in full said Six Hundred Thousand Dollars ($600,000) of bonds of the Consumers' Gas Works Company, Limited, then said new company shall pay to said Trustee in cash the amount of any such deficiency, for application by said Trustee to the payment of said bonds. All of said bonds of the Consumers' Gas Works Company, Limited, when received in exchange as aforesaid or when paid, shall be cancelled and surrendered to the said new company.

One Million seven hundred and fifty thousand dollars ($1,750,000), at par, of said bonds shall be retained by the Trustee, and shall be used only for the purposes of making additions to or extensions or betterments of its plant, or acquiring new property, real or personal, provided that the said Trustee shall not deliver any of the last mentioned One Million Seven Hundred and Fifty Thousand Dollars ($1,750,000), at par, of said bonds except upon resolution of the Board of Directors of the said new company, calling for such delivery; and a copy of any such resolution, duly certified by the Secretary of the said new company, shall, in case of every such

call, be presented to the said Trustee, and shall be evidence to the Trustee of the said call and of the purposes for which the said bonds are to be used, and thereupon, in every case, the said Trustee shall be authorized to certify and deliver the number of bonds stated in said resolution, in accordance with the terms thereof.

The mortgage so to be made and executed by the new company shall contain a clause in which the new company shall agree to take up the said Six Hundred Thousand Dollars ($600,000), at par, of said bonds of the Consumers' Gas Works Company, Limited, at their maturity, and not to extend the time of payment thereof.

WHEREAS, The United Gas Improvement Company, a corporation of Pennsylvania, is now in possession of the entire plants of The Jersey City Gas Light Company, The People's Gas Light Company of Jersey City, and The Bayonne and Greenville Gas Light Company, and is operating the same under the provisions of certain agreements between the companies, dated as follows: That with the Jersey City Gas Light Company, December 17, 1884, that with The People's Gas Light Company of Jersey City, September 10, 1886, and with The Bayonne and Greenville Gas Light Company, September 23, 1886, and under the provisions of said agreements will be entitled at the termination thereof to receive from the said The Jersey City Gas Light Company the appraised value of certain of the improvements and additions and extensions made to its plants by the said The United Gas Improvement Company, and to receive from The Bayonne and Greenville Gas Light Company the appraised value of the additions and extensions

which may have been made or introduced by the said The United Gas Improvement Company to that portion of its mains and appurtenances in that part of its territory known as the Greenville District;

And whereas, the said The United Gas Improvement Company is also now in possession of the entire plant of The Consumers' Gas Company of Jersey City, and is operating the same under an agreement with that company, dated July 20, 1886, under and by virtue of which agreement The Consumers' Gas Company of Jersey City is interested with The United Gas Improvement Company in the agreement heretofore mentioned with the other three companies above named, and under which the United Gas Improvement Company is entitled to receive certain sums of money during the continuance of the contract;

And whereas, the said contract with The Jersey City Gas Light Company does not expire until the first day of January, nineteen hundred and five, the contract with The People's Gas Light Company of Jersey City does not expire until the first day of September, nineteen hundred and six, the contract with The Bayonne and Greenville Gas Light Company does not expire until the first day of October, nineteen hundred and eleven; and the contract with the Consumers' Gas Company of Jersey City does not expire until the first day of January, nineteen hundred and five, which unexpired terms have a value to the said The United Gas Improvement Company;

And whereas, The said The United Gas Improvement Company also holds certain patent rights re-

lating to the manufacture and sale of gas in use in the operation of the plants of said companies, and of value to the new corporation, and it is desired that the new corporation shall hold and enjoy the possession of said plants free from said agreements, and that The United Gas Improvement Company shall cancel and surrender the said agreements and release to the new corporation all liabilities of said several companies, and give to the said new corporation a license to use in the county of Hudson, New Jersey, all of said patent rights:

IT IS, THEREFORE, AGREED That there may be issued and delivered by the new corporation to said The United Gas Improvement Company Twenty-five thousand (25,000) shares of the capital stock of the new company, and One Hundred and Fifteen Thousand Three Hundred and Twelve Dollars and Fifty Cents ($115,312.50), at par, of the said bonds of the new company, as consideration for all its claims and demands against the said several constituent companies, for a surrender for all said agreements and leases, and for the execution of a license to the new company to use the said patents in the County of Hudson, New Jersey, provided the said The United Gas Improvement Company shall pay the sum of Four Hundred Thousand Dollars ($400,000) in cash to the new corporation. If said new corporation shall so agree with said The United Gas Improvement Company then upon such surrender and cancellation, and upon delivery of said license and payment of said four hundred thousand dollars ($400,000) in cash, said Hudson County Gas Company shall forthwith deliver to said The New Jersey Title Guarantee and Trust Company, Twenty-five thousand (25,000) shares of its capital stock,

and One Hundred and Fifteen Thousand Three Hundred and Twelve Dollars and Fifty Cents ($115,312.50), at par, of its said bonds after proper certification of the latter, whereupon said The New Jersey Title Guarantee and Trust Company shall, upon the request of the officers of said Hudson County Gas Company deliver to said The United Gas Improvement Company said shares of stocks and bonds, and thereupon all liability of the new company and of the several constituent companies to the said The United Gas Improvement Company shall cease and determine.

In case The United Gas Improvement Company shall refuse to surrender said agreements and leases and to execute a license to the new company to use said patents and to release all claims and demands against the said several constituent companies, and to pay said cash, as above provided, then the bonds and stock hereinabove provided to be delivered to it shall be redelivered to the new corporation by the said The New Jersey Title Guarantee and Trust Company, to be used by the new corporation for any lawful purpose.

Upon the execution of this agreement and its filing in the office of the Secretary of State of New Jersey, as provided by law, notice shall be given to each stockholder in the constituent companies, either personally or by mail, addressed to him at his last known place of residence, requiring him to surrender his said stock for cancellation and receive said bonds and stock on or before a date to be inserted in such notice, not less than ten (10) nor more than twenty (20) days after the filing of this agreement, and all stock not surrendered within the time so limited may be acquired by said new company in the manner provided by law. When the

amount of stock held by any stockholder in either of the constituent companies is insufficient to entitle him to one of said bonds or to an entire share of stock of said new company, he shall be entitled to receive scrip for the amount of such bond or stock respectively, to which he may be entitled, which shall bear no interest, shall have not voting power, but shall be convertible into bonds or stock as the case may be when tendered to The New Jersey Title Guarantee and Trust Company in amounts equal to the par value of a bond or share of stock respectively.

In case the holders of stock in any of the constituent corporations shall neglect or refuse to make the change of their stock as hereinbefore provided, then and in every such case the stock in the new corporation and the bonds thereof to which such dissenting stockholder would be entitled in exchange as aforesaid shall remain in the hands of The New Jersey Title Guarantee and Trust Company undelivered until the rights of such dissenting stockholders shall have been determined in accordance with law, whereupon the Trustee shall return said stock and bonds to the Hudson County Gas Company, to be sold or otherwise used by the said company for its protection against liability to such dissenting stockholders; provided, nevertheless, that the officers of the new corporation shall have the power to agree with every such dissenting stockholder as to the amount and value of his stock and the amount and character of the consideration to be paid to him therefor, and when so fixed to pay such consideration to such dissenting stockholder.

IN WITNESS WHEREOF the said constituent corporations by their respective directors have hereto

set their respective corporate seals and have caused these presents to be signed by their respective Presidents and attested by their respective Secretaries, pursuant to resolutions duly passed by the respective Directors of said respective corporations the day and year first above written.

Exhibit C 30.

CERTIFICATE OF INCORPORATION OF NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY

THIS IS TO CERTIFY that the undersigned do hereby associate themselves into a corporation under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations," revision of 1896, and the several supplements thereof, and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

1. The name of the corporation is "NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY".

2. The location of the principal office in this State is at number 356 George Street in the City of New Brunswick and County of Middlesex. The name of the agent therein and in charge thereof upon whom process against this corporation may be served, is J. Bayard Kirkpatrick. The place or places in this State where the business of the corporation is to be conducted are, the City of New Brunswick in the County of Middlesex, and also such other cities, towns and villages in the State of

New Jersey in which said Company may hereafter deem it expedient and advisable to conduct its business.

3. The objects for which this corporation is formed are:

To manufacture, purchase and sell machinery, apparatus, devices and materials required to be used for making and using gas and electricity for light, heat, power, fuel and all other purposes;

To manufacture, produce and distribute gas and electricity, and to sell same to corporations and individuals with which it is or may be authorized to contract, to purchase and sell the by-products of the manufacture of gas;

To manufacture, purchase or otherwise acquire, to hold, own, mortgage or sell, assign and transfer, or otherwise dispose of goods, wares and merchandise necessary to the carrying out of the business aforesaid; to enter into, make, perform and carry out contracts of every kind necessary for the business aforesaid, with any person, firm, association or corporation, to have one or more offices, and without restriction to hold, purchase, mortgage, lease, make leases of and convey real and personal property of every kind including gas and electric properties and franchises, and to contract for the operation of the same; to acquire, use, grant and sell letters patent and licenses therein for processes, apparatus and machinery for the production, manufacture and use of gas and electricity for all purposes; to lease the plants and property of other gas and electric companies; to make contracts with other companies for the operation, management and control of gas and electric plants and works, and to acquire and hold the stock of other companies doing a public or private business in supply-

ing gas and electricity or either gas or electricity for light, heat, power, fuel or other purposes.

4. The total authorized capital stock of this corporation is Five Hundred Thousand Dollars divided into five thousand shares at the par value of One Hundred Dollars a share.

5. The names and residences of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which this company shall commence business, are as follows:

Name	Residence	No. of Shares
Bernard Katz.....	Paterson, N. J...	6 shares
Adolph A. Eisele.....	Newark, N. J....	2 "
William O. Kuebler...	Newark, N. J....	2 "

6. The date on which the existence of this corporation shall begin is the Fifth day of December, eighteen hundred and ninety-nine, and its continuance shall be for an unlimited period.

7. The amount of capital stock with which the company shall commence business is One Thousand Dollars.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, the Fifth day of December, One Thousand Eight Hundred and ninety-nine.

BERNARD KATZ (L. S.)
A. A. EISELE (L. S.)
WILLIAM O. KUEBLER (L. S.)

Signed, sealed and delivered in the presence of
HALSEY M. BARRETT.

New Jersey State Library

Exhibit C 30.

STATE OF NEW JERSEY }
County of Essex } ss

BE IT REMEMBERED that on this fifth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, before me the subscriber, a Master in Chancery of New Jersey, personally appeared BERNARD KATZ, ADOLPH A. EISELE and WILLIAM O. KUEBLER, who I am satisfied are the persons mentioned in and who executed the foreging certificate of Incorporation of NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

HALSEY M. BARRETT
a Master in Chancery of New Jersey.

Endorsed—"Received in the Clerk's Office of the County of Middlesex, on the 5th day of December, A. D. 1899, at ..... o'clock in the .....noon and recorded in Book D of Incorporations for said County on pages 397.

JOHN H. CONGER,
Clerk."

"FILED Dec. 6, 1899,
GEORGE WURTS,
Secretary of State."

New Jersey State Library

Exhibit C 31.

AN ACT TO INCORPORATE THE PEOPLES' GAS LIGHT COMPANY OF THE CITY OF PATERSON. P. L. 1874. PAGE 1191.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That John P. Zeluff, Joseph C. Todd, David Henry, James Bell, Albert A. Hopper and Samuel Pope, and every person or persons who may become subscribers according to the mode hereinafter prescribed, and their successors, are hereby created a body politic and corporate in fact, by the name of "The Peoples' Gas Light Company of the City of Paterson," and by the said name the said corporation shall have corporate power in all courts of law and equity, and shall have power and authority to manufacture, make and sell gas, to be made of coals, or other materials, for the purpose of lighting the streets, buildings, manufactories and other places in the city of Paterson, in Passaic County, and to enter into and to execute all contracts, agreements or covenants, in relation to the objects of this corporation, and to enforce the same, and be capable of purchasing, taking, holding and disposing of such property, real and personal, as is necessary to give effect to the purposes of this corporation, and for the accommodation of their business and concerns, or which it may be necessary for the said corporation to acquire and hold and dispose of, for the purpose of securing debts which have become due to them in the course of the business of the said corporation; PROVIDED, that the said real estate shall not exceed what may be necessary for the purpose mentioned, and no private lands shall be in any way injured or

Names of corporators.

Corporate name.

Proviso.

defaced, without permission being first obtained in writing from the owner or owners thereof.

Empowered to lay pipes.

2. AND BE IT ENACTED, That the said corporation shall be empowered to lay down their gas pipes and to erect gas posts, burners and reflectors in the streets, alleys, lanes, avenues or public grounds of the said city of Paterson, and to do all things necessary to light the said city or any part thereof; PROVIDED, that the public travel shall at no time be unnecessarily affected or impeded by the laying of said pipes, or the erection of said posts, and the streets, side and cross-walks, public grounds, lanes, avenues, and squares shall not be injured, but all be left in as good and perfect condition as before the laying of said pipes or the erection of said posts.

Proviso.

Names of commissioners to open books.

3. AND BE IT ENACTED, That John P. Zeluff, Joseph C. Todd, David Henry, Alfred A. Hopper, James Bell, and Samuel Pope are hereby appointed commissioners for receiving subscriptions for the sum of two hundred thousand dollars to constitute the capital stock of said corporation, in shares of one hundred dollars each, and the said commissioners, or a majority of them, shall open books for that purpose at such time and in such place or places within said city of Paterson as they shall designate by a public advertisement, to be previously inserted for at least one week in a public newspaper printed in the said city of Paterson, and shall continue the same open until the said two hundred thousand dollars shall be subscribed, or at their discretion close the same after they shall have remained open two days, and again open the same at some other time or times, place or places, giving public notice thereof as aforesaid and the sum of ten per centum

upon each share so subscribed, shall be paid by each subscriber at the time of subscription to the said commissioners or a majority of them; and each subscriber shall be entitled to receive a receipt for the installments paid by him on account of such stock for said commissioners, and as soon as one hundred thousand dollars shall have been subscribed, the amount so received by the said commissioners at the time of subscription shall by them, or a majority of them, be paid over to the directors of the said company, to be selected as hereinafter directed, and all the power of said commissioners shall then cease and determine; and the said board of directors when so elected shall have power, and they hereby are authorized to open the books for the further subscription of stock hereinafter provided, until the whole amount of said stock is subscribed; and are also authorized to call upon the said subscribers for payment of further installments in such sum or sums, and at such time or times, and under such forfeiture or forfeitures of installment or installments already paid in as they may deem expedient, until the whole amount due on said shares so subscribed shall have been fully paid; PROVIDED, that no such installment shall exceed ten per centum upon each share, and that no installment shall be required to be paid by any subscriber without public notice of said installment being due and payable, to be previously inserted for twenty days in a public newspaper printed in the said city of Paterson.

Proviso.

4. AND BE IT ENACTED, That the management of the concerns of said company shall be vested in nine directors, to be selected from the stockholders, and the said directors shall choose, by a plurality

Management of company to whom vested.

of votes, a president from among themselves, and when one hundred thousand dollars of said capital stock shall have been subscribed as aforesaid, the before named commissioners, or a majority of them, shall convene the said stockholders by a public notice to be given as first aforesaid, and at such time and place as they shall designate in said notice, to choose the first board of directors, who shall hold their offices until the second Monday in January next succeeding their selection, and until others are chosen in their stead; and on the second Monday of January of each year, and at such time and place as a majority of the directors may appoint, the said stockholders shall meet for the purpose of electing a board of directors for the ensuing year, and a public notice shall be given of the time and place of holding such election, by advertisement for ten days in a newspaper published in the city of Paterson; and any vacancy in the said board of directors, may be supplied by the board of directors until the next election, and all elections shall be by ballot of the stockholders or their proxies, allowing one vote for each share of stock held upon the books of the company.

Vacancy, how filled.

5. AND BE IT ENACTED, That if at any time an election is not held on the day herein appointed, the corporation shall not be dissolved for that cause, but an election shall be held in such manner as is directed by the by-laws, at any time within one year.

Corporation not dissolved if election not held.

6. AND BE IT ENACTED, That the directors for the time being shall form a board, and they or a majority of them shall be a quorum for transacting business, and have power to make by-laws and regulations not repugnant to the Constitution or laws

May make by-laws.

of the United States or of this State, or the provisions of the act, for the government of the said corporation, the management and disposition of the stock and the property thereof, and the duty of the officers, clerks and persons employed therein, the election of directors and all other matters appertaining to their business or concerns, and may appoint as many officers, clerks and servants, and with such salaries and allowances as shall to them seem necessary; and the said board of directors shall have power to make and declare from the profits and earnings of the company such dividend and dividends among the stockholders, from time to time, and make the same payable in such manner as to them may seem expedient.

Capital stock may be increased.

7. And be it enacted, That the capital stock of said corporation may be increased upon the consent of the stockholders, representing a majority of the stock, to any amount not exceeding five hundred thousand dollars, and all the stock of said corporation shall be transferable according to the by-laws and regulations of the company, and shall be considered personal property, and the stock and transfer books shall be open at all times to the inspection of the stockholders.

Empowered to lay pipes, etc., in any townships in county of Passaic.

8. And be it enacted, That the said corporation shall be empowered to lay down their gas pipes and to erect gas posts, burners and reflectors in the streets, alleys, lanes, roads, avenues, or public grounds of any of the townships of the county of Passaic, adjoining the said city of Paterson, and with the same privileges and upon the same conditions, and with the same limitations as by the provisions of this act they can lay them, in the said city of Paterson.

Penalty for injuring company property.

9. AND BE IT ENACTED, That if any person or persons shall wilfully do or cause to be done any act or acts whatsoever, thereby to injure any conduit, pipe, cock, metre, machine or structure whatsoever, or anything appertaining to the works of the said corporation, or whereby the same may be stopped, obstructed or injured, the persons so offending shall be considered guilty of a misdemeanor, and being thereof convicted, shall be punished by a fine not exceeding three hundred dollars and imprisonment at hard labor not exceeding two years, or both; PROVIDED, that such criminal prosecution shall not in anywise impair the right of action for damages by a civil suit hereby authorized to be brought for any such injury as aforesaid by and in the name of the said corporation, in any court of this state having cognizance of the same.

Proviso.

Company to keep proper books of account.

10. AND BE IT ENACTED, That the said company shall cause to be kept at their office proper books of accounts in which shall be fairly and truly entered all the transactions of the company, which books shall be kept at all times open for the inspection of the stockholders.

11. AND BE IT ENACTED, That this act shall take effect immediately.

Approved March 24, 1874.

Exhibit C 32.

AN ACT TO INCORPORATE THE PATERSON GAS LIGHT COMPANY.—P. L. 1825, PAGE 102.

1. BE IT ENACTED by the Council and General Assembly of this State and it is hereby enacted by the authority of the same, That John Colt, John Kear and Andrew Parsons, and their present and future associates, shall be, and they are hereby created a body politic and corporate, in fact, by the name of the "Paterson Gas Light Company," and by that name they and their successors may have perpetual succession, and shall, in law, be capable of suing and being sued in any courts and places whatsoever, and may have a common seal, with power to alter the same, and, by the said name, the said corporation shall have power and authority to manufacture, make, and sell gas, to be made of coal, oil, or other materials, for the purpose of lighting the streets, buildings, manufactures, and other places situate in the said town of Paterson, and to enter into and execute contracts, agreements, or covenants in relation to the objects of this incorporation, and of enforcing the same, and be capable of purchasing, taking, and holding, any estate, real or personal, necessary to give effect to the specified purpose of this corporation, and for the accommodation of their business and concerns; PROVIDED, that the said real estate shall not exceed what may be absolutely necessary to effect the purposes of said company, and that no public nor private land shall be dug into or any way injured or defaced, without permission being first obtained in writing from the owner or owners thereof.

Style of incorporation.

Their powers, privileges, etc.

Capital stock.

2. AND BE IT ENACTED, That the capital stock of said corporation shall not exceed the sum of seventy-five thousand dollars; and that a share in the same shall be five dollars; and the subscriptions to the same, or to such part thereof as from time to time may, by the directors for the time being be deemed proper and necessary, be opened by the appointment, and under the direction of the directors hereinafter named, or a majority of them, subject to such rules, limitations, and conditions as they, or the future directors of the said company shall prescribe.

Directors—a majority to be residents of Paterson, etc.

3. AND BE IT ENACTED, That the stock, property, and concerns of the said corporation shall be ordered and managed under the direction of eleven directors, being stockholders, and six of them residents in the town of Paterson; that they shall hold their offices from the third Monday of January, inclusive, in every year, for one year, and shall be elected on the second Monday of January, in each year, at such time and place in the said town of Paterson as a majority of the directors for the time being may appoint, and that public notice shall be given, in a newspaper printed at Paterson, and one printed in the city of New York, of the time and place of holding such election; and such election shall be by ballot of the stockholders, or their proxies, allowing one vote for each share which they shall have held in his, her, or their name or names, at least fourteen days before the time of voting; and the persons having the greatest number of votes shall be directors; and if two or more persons have an equal number, the directors for the time being shall, by a plurality of votes, by ballot, decide which of them shall be directors so as to com-

plete the number, and the directors so chosen at such election shall choose one of their own number, by ballot, for their president; and if any director shall remove out of the town of Paterson, resign, or cease to be a stockholder, his office shall be vacant, and all vacancies shall be filled by the directors, by a majority of votes until the next election; and Andrew Parsons, John Colt, John Rutan, Mark W. Collet, Daniel Holsman, John Kear, Abraham Godwin, Junior, Robert King, Robert Oliver Robertson, James Moore, James Van Blarcom, and Horatio Moses, shall be the present directors, and shall hold their offices until the third Monday of January, in the year one thousand eight hundred and twenty-seven, and until others are chosen in their places; and may choose a president as soon as a majority of them shall so determine.

Vacancies, how to be filled.

4. And be it enacted, That if at any time an election is not held on the day herein appointed, the corporation shall not be dissolved for that cause, but an election shall be held in such manner as is directed by the by-laws, at any time within one year.

Elections, etc.

5. And be it enacted, That the directors for the time being shall form a board, and they, or a majority of them, shall be a quorum for transacting business, and have power to make by-laws, rules, and regulations, not repugnant to the constitution or laws of the United States or of this state, or the provisions of this act, for the government of the said corporation, the management and disposition of the stock, and the property thereof, and the duty of the officers, clerks, and persons employed therein, the election of directors, and all other matters ap-

Quorum.

By-laws, etc.

pertaining to their business or concerns; and may appoint as many officers, clerks, and servants, and with such salaries and allowances as shall to them seem necessary.

Payments, etc.

6. AND BE IT ENACTED, That a majority of the directors may require payment of the sum subscribed, at such times, and in such proportions as they shall deem fit, under the penalty of the forfeiture of all previous payments, after giving at least fourteen days' notice, in a newspaper published at Paterson, and one newspaper in the city of New York; PROVIDED, that nothing contained in this act shall authorize the said company to use any part of their capital stock for banking purposes.

Stock personal property.

7. AND BE IT ENACTED, That the stock of the corporation shall be transferable, according to the by-laws and regulations of the corporation, and shall be considered personal property, and the stock and transfer books shall be opened at all times to the inspection of the stockholders.

Penalties for injuries.

8. AND BE IT ENACTED, That if any person or persons shall wilfully do, or cause to be done, any act or acts whatsoever, thereby to injure any conduit, pipe, cock, machine, or structure whatsoever, or any thing appertaining to the works of the said corporation, or whereby the same may be stopped, obstructed, or injured, the person or persons so offending shall forfeit and pay to the said corporation double the amount of the damage sustained by means of such offense or injury, and the same may be recovered in the name of the said corporation, with costs of suit, by action of debt, brought in any court of this state having cognizance of the same.

9. And be it enacted, That the said company shall cause to be kept at their office proper books of accounts, in which shall be fairly and truly entered all the transactions of the company, which books shall be at all times open for the inspection of the stockholders. Books to be accessible at all times to stockholders.

10. And be it enacted, That this act shall continue in force until the first day of January, in the year of our Lord one thousand nine hundred, and no longer, when the rights, powers, and privileges, by this act granted, shall cease and determine. Limitation of charter.

C. Passed December 9, 1825.

A Supplement to the Act entitled "An Act to Incorporate the Paterson Gas Light Company," Passed the Ninth Day of December, Eighteen Hundred and Twenty-five, P. L. 1847, Page 5.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the capital stock of said corporation be increased twenty-five thousand dollars, and that each share in the same shall be five dollars, and the subscriptions to the same be opened by the appointment, and under the direction of Andrew Parsons, John Colt, James Van Blarcom, Abraham Godwin, and Robert King, the surviving directors of said company, or a majority of them, subject to such rules, limitations, and conditions as they, or the future directors of the said company, shall prescribe; that the additional capital stock, hereby authorized, shall be entitled Capital increased.

to the same privileges, and be subject to the same conditions, limitations, and prohibitions, as are contained and prescribed in the act to which this is a supplement.

Time of annual election of directors.

2. AND BE IT ENACTED, That the stock, property, and concerns of the said corporation shall be ordered and managed under the direction of seven directors, being stockholders; and a majority of them shall be residents of the town of Paterson, and shall hold their offices for one year, and shall be elected on the second Monday of March in each year, at such time and place in the said town of Paterson as a majority of the directors for the time being may appoint.

Part of former act repealed.

3. AND BE IT ENACTED, That so much of the third section of the act to which this is a supplement, as prescribed the number of directors, the time from which they hold their offices, and the time of the annual election, be, and the same is hereby repealed.

Approved February 2, 1847.

Exhibit C 33.

CERTIFICATE OF THE ORGANIZATION OF "THE EDISON ELECTRIC ILLUMINATING COMPANY OF PATERSON."

Filed November 23, 1887.

Corporators.

THIS IS TO CERTIFY, that we, William T. Ryle, Arthur Ryle, Charles Vermorel, Edward B. Haines, Charles Hewitt, Jacob Weidmann, Charles Danforth, Mary E. Ryle, Jacob Walder, William Strange, B. Newman, Samuel K. Wilson, Ferdi-

nand W. Roebling, do hereby associate ourselves into a Company under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7, 1875, and the several supplements thereto, for the purposes hereinafter mentioned, and to that end we do by this, our certificate, set forth:

Corporate name.

FIRST. That the name which we have assumed to designate such company, and to be used in its business and dealings, is The Edison Electric Illuminating Company of Paterson.

Principal place of business.

SECOND. That the place in this State where the business of such Company is to be conducted is the City of Paterson in the County of Passaic, and State of New Jersey.

The principal part of the business of said company within this State is to be transacted in the City of Paterson in the County of Passaic, which is to be the principal place of business of the said Company, and the place where its principal office is to be located.

Principal office.

Objects.

And that the objects for which the Company is formed are to generate electricity for the purpose of creating light, heat and power; to sell and supply light, heat and power generated by electricity to customers, private and public houses, dwellings, manufactures, and other buildings and places, streets and highways, public parks and other public places, within the City of Paterson and adjacent townships in the County of Passaic; to buy or lease land and to erect thereon buildings and machinery for the purpose of such manufacture or generation; to erect and maintain poles and wires above or beneath the ground of public streets and elsewhere

for the purpose of supplying and distributing such electricity, heat, light and power.

Capital stock.

THIRD. That the total amount of the capital stock of said Company is One hundred and fifty thousand dollars; the number of shares into which the same is divided is fifteen hundred, and the par value of each share is one hundred dollars. The amount with which the said Company will commence business is fifty thousand dollars, which is divided into five hundred shares of a par value of One hundred dollars each.

Names and residences of stockholders.

FOURTH. The names and residences of the stockholders and the number of shares held by each are as follows, to wit:

William T. Ryle, Paterson, N. J., Fifty (50) shares.

Arthur Ryle, Paterson, N. J., Fifty (50) shares.

Charles Vermorel, Paterson, N. J., Ten (10) shares.

Charles Hewitt, Trenton, N. J., Fifty (50) shares.

Edward B. Haines, Paterson, N. J., Twenty (20) shares.

Charles Danforth, Paterson, N. J., Fifty (50) shares.

Mary E. Ryle, Paterson, N. J., Fifty (50) shares.

Samuel K. Wilson, Trenton, N. J., One hundred (100) shares.

William Strange, Paterson, N. J., Twenty-five (25) shares.

Jacob Weidmann, Paterson, N. J., Twenty (20) shares.

Jacob Walder, Paterson, N. J., Fifty (50) shares.

Ferdinand W. Roebling, Trenton, N. J., Twenty (20) shares.

B. Newman, Paterson, N. J., Ten (10) shares.

FIFTH. The period at which said Company shall commence is the Seventh day of November, A. D., one thousand eight hundred and eighty-seven, and the period at which it shall terminate is the seventh day of November, A. D. one thousand nine hundred and thirty-seven. Term of existence.

Exhibit C 34.

P. L. 1857, Chap. 117, page 351.

AN ACT TO INCORPORATE THE PASSAIC GAS LIGHT COMPANY. Title.

1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That Samuel Smith, Joseph C. Todd, Edgar Hudler, E. Boudinot Colt, and Phillip Rafferty, and all and every person or persons who may become subscribers according to the mode hereinafter prescribed, and their successors, are hereby created a body politic and corporate in fact, by the name of "The Passaic Gas Light Company." Names of corporators.

2. AND BE IT ENACTED, That the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners and reflectors, in the streets, alleys, lanes, avenues and public grounds of the city of Paterson, and its vicinity, and the dwellings, stores, and other places situated Company authorized to lay down pipes, etc.

Proviso.

therein; PROVIDED, that the public travel shall at no time be affected or impeded by the laying of the said pipes, or the erection of the said posts, and the streets, side and crosswalks, public grounds, lanes and avenues, shall not be injured, but all be left in as good and perfect condition as before the laying of the said pipes, or the erection of the said posts.

Commissioners to receive subscriptions.

3. AND BE IT ENACTED, That Samuel Smith, Joseph C. Todd and Edgar Hudler are hereby appointed commissioners for receiving subscriptions for the sum of one hundred thousand dollars, to constitute the capital stock of the said corporation, in shares of twenty-five dollars each; and the said commissioners, or a majority of them, shall open books for that purpose, at such times, and in such place or places, within the state, as they shall designate by a public advertisement, to be previously inserted, for at least three weeks, in two public newspapers printed in Paterson, and shall continue the same open until the said capital stock shall be subscribed, or at their discretion close the same after they have remained open two days, and again open the same, at some other time or times, place or places, giving public notice thereof as aforesaid; the sum of ten per centum on each share so subscribed shall be paid in specie, or in the bills of banks which redeem their bills with specie, by each subscriber, at the time of subscription, to the said commissioners, or a majority of them; and each subscriber shall be entitled to receive a certificate for such stock, from said commissioners; and the amount so received by said commissioners at the time of subscription shall by them, or a majority of them, be paid over to the directors of the said company, to be appointed as hereinafter directed;

and all the powers of the said commissioners shall cease and determine on the appointment of such board of directors; and the said board, when so appointed, shall have power, and they are hereby authorized, from time to time, under the foregoing regulations, to open the books for the further subscription of stock, until the whole stock subscribed amounts to the sum of one hundred thousand dollars; and are also authorized to call upon the said subscribers for the payment of further installments, in such sum or sums, at such time or times, and under such forfeiture or forfeitures as they may deem expedient, until the whole amount of said shares so subscribed shall have been fully paid.

Annual election of directors.

4. And be it enacted, That the management of the concerns of the said company shall be vested in seven directors, to be selected from the stockholders, a majority of whom shall be residents of the county of Passaic; and the said directors shall choose, by a plurality of votes, a president from among themselves; and as soon as conveniently may be after twenty thousand dollars shall have been subscribed, the before named commissioners, or a majority of them, shall convene the said stockholders, by public notice to be given as aforesaid, and at such time and place as they shall designate in such notice, to choose the first board of directors, who shall hold their offices until the first Monday in May, eighteen hundred and fifty-eight; and the said directors and president shall hold their offices from the first Monday of May in every year, for one year, and shall be elected on the first Monday of May in each year, at such time and place as a majority of the directors shall appoint, and public notice shall be given of the time and place of hold-

ing such election, for ten days, in a newspaper published in Paterson; and any vacancy in the said board of directors may be supplied by appointment to be made by the board of directors, until the next election; and all elections shall be by ballot of the stockholders, or their proxies, allowing one vote for each share which they shall have held in his, her, or their name or names, at least fourteen days before the time of voting.

Corporation not dissolved for failure to elect on day prescribed.

5. AND BE IT ENACTED, That if at any time an election is not held on the day herein appointed, the corporation shall not be dissolved for that cause, but an election shall be held in such manner as is directed by the by-laws at any time within one year.

Quorum.

6. AND BE IT ENACTED, That the directors for the time being shall form a board, and they, or a majority of them, shall be a quorum for transacting business.

Stock transferable.

7. AND BE IT ENACTED, That the stock of the corporation shall be transferable according to the by-laws and regulations of the corporation, and shall be considered personal property; and the stock and transfer books shall be opened at all times to the inspection of the stockholders.

Penalty for injuring works.

8. AND BE IT ENACTED, That if any person or persons shall wilfully do, or cause to be done, any act or acts whatsoever, thereby to injure any conduit, pipe, cocks, machine or structure whatsoever, or anything appertaining to the works of the said corporation, or whereby the same may be stopped, obstructed or injured, the person or persons so

offending shall be considered guilty of a misdemeanor, and being thereof convicted shall be punished by fine not exceeding three hundred dollars, or imprisonment at hard labor not exceeding two years, or both; PROVIDED, such criminal prosecution shall not in anywise impair the right of action for damages by a civil suit, hereby authorized to be brought for any such injury as aforesaid, by and in the name of the said corporation, in any court of this state having cognizance of the same. Proviso.

9. AND BE IT ENACTED, That the said company shall cause to be kept at their office proper books of account, in which shall be fairly and truly entered all the transactions of the company, which books shall be open at all times for the inspection of the stockholders. Books of account to be kept.

10. AND BE IT ENACTED, That it shall not be lawful for the said corporation to charge any person or persons whatsoever, a sum above three dollars per thousand for each and every thousand feet of gas sold by said company. Rates for gas.

11. AND BE IT ENACTED, That the said corporation shall possess the general powers, and be subject to the restrictions and liabilities contained in the act entitled "An act concerning corporations," approved the fourteenth day of February, one thousand eight hundred and forty-six, so far as the same are applicable. Restrictions and liabilities.

Approved March 20, 1857.

Exhibit C 34.

AN ACT TO INCORPORATE THE PASSAIC GAS LIGHT COMPANY. P. L. 1864, PAGE 520.

Corporators.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That Aaron Kinter, Edward J. C. Atterbury, Charles L. Pearson, Charles H. Higginson, Israel D. Condit, and all and every person or persons who may become subscribers, according to the mode hereinafter provided, and their successors are hereby created a body politic and corporate, in fact, by the name of the "Passaic Gas Light Company," and the said corporation are hereby invested with full power and authority to manufacture, make and sell gas, to be made of bituminous coal, or other materials, for the purpose of lighting the streets, buildings and other places in the township of Acquackanonk, and its vicinity, and to purchase, hold and convey, all real and personal estate required for the purposes of the corporation.

May lay down gas pipes, etc.

2. AND BE IT ENACTED, That the corporation shall have full power and authority to lay down their gas pipes and to erect gas posts, burners and reflectors in the streets, avenues, highways and public grounds, alleys and lanes, in the township of Acquackanonk, and its vicinity, and to adopt all proper and necessary means to light all dwellings, stores and all other places situated therein with gas; PROVIDED, that the public travel shall at no time be unnecessarily impeded thereby; and the side and crosswalks, streets, avenues and highways shall be left in as good condition as before the laying of the said pipes or the erection of the said posts, and that the corporate authorities in said township and its vicinity, by whatever name the

Proviso.

same are known, in which said pipes are laid, may prescribe the manner of laying said pipes so far as relates to the interference with public travel.

3. AND BE IT ENACTED, That the capital stock of the corporation shall not exceed one hundred thousand dollars, in shares of twenty-five dollars each, and the persons named in the first section of this act, are hereby appointed commissioners to receive subscriptions to the capital stock, and the said commissioners or a majority of them, shall open books for that purpose, at such time and in such place as they shall designate by advertisement previously, at least three weeks in a public newspaper, printed in the county of Passaic, and shall keep the same open as long as they may deem proper, and may close the same at their own pleasure, and open the same from time to time upon like notice, and may apportion the stock subscribed for among the subscribers, and may require each subscriber to pay to them at the time of subscribing not exceeding twenty per centum of his subscription, which shall be paid over to the directors of the corporation to be appointed as hereinafter prescribed, and all the powers of said commissioners shall cease upon the appointment of the directors, and the board of directors when appointed, shall have full power and authority, from time to time, to open the books for further subscriptions until the whole capital stock is taken, and said directors may call on the subscribers for the payment of installments, in such sums and at such times and under each forfeitures as they may deem expedient. Capital stock

4. AND BE IT ENACTED, That the management of the affairs of the said company shall be vested in Election of directors.

five directors to be elected from the stockholders, a majority of said directors to be citizens of the State of New Jersey, and said directors shall choose by a plurality of votes, from among themselves, a president, and as soon as may be after three thousand dollars shall have been subscribed, the said commissioners, or a majority of them, shall convene the said stockholders by public notice published in a newspaper in Passaic county, at such time and place as they may designate in such notice, to choose the first board of directors, who shall hold their office one year from the first Tuesday in March next ensuing, and until others are elected in their stead, and the elections for directors shall be held annually, in Passaic county, and public notice of such elections shall be given at least ten days previously by publication in a newspaper printed in Passaic County; all vacancies in the board of directors may be filled for any unexpired term by the remaining directors, and all elections for directors shall be by ballot of the stockholders or their proxies, allowing one vote for each share which they shall hold in their own name at the time of voting.

Not dissolved for failure to elect.

5. AND BE IT ENACTED, That if at any time an election is not held on the day herein appointed the corporation shall not for that cause be dissolved, but such election shall be held in the manner prescribed by the by-laws at any time within one year.

Quorum.

6. AND BE IT ENACTED, That the directors for the time being shall form a board, and a majority of them shall be a quorum for transacting business.

Stock personal property.

7. AND BE IT ENACTED, That the stock of the said corporation shall be transferred according to its by-laws and regulations, and shall be considered personal property, and the stock and transfer books

shall be opened at all reasonable times to the inspection of the stockholders, and the books of account, in which shall be fairly and truly entered all the transactions of the company, shall be opened at all reasonable times to their inspection.

Penalty for injuring works.

8. And be it enacted, That if any person shall wilfully injure any conduit, pipe, gas meter or other thing appertaining to the works of the company, or obstruct the same, the person or persons so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not exceeding three hundred dollars, or imprisonment not exceeding two years or both; provided, no such criminal prosecution shall impair the right of the company to an action for damages by a civil suit.

Proviso.

Limitation.

9. And be it enacted, That the corporation established by this act shall continue in force for twenty years, and shall possess the general powers and be subject to the restrictions and liabilities imposed by "An act concerning corporations," approved February fourteenth, eighteen hundred and forty-six, so far as applicable.

Powers and privileges.

10. And be it enacted, That the said company shall have power to receive property suitable for its purposes at a valuation to be agreed upon, in lieu of cash subscriptions, and may borrow money to an amount not exceeding one-half its capital stock paid in and to mortgage their works, property and franchises, and to execute all necessary assurances for securing the money so borrowed with interest not exceeding seven per centum per annum.

11. And be it enacted, That this act shall take effect immediately.

Approved March 29, 1864.

Exhibit C 34.

CERTIFICATE OF EXTENSION.

The corporate existence of the Passaic Gas Light Company, was on April 19th, 1887, extended for fifty years from March 29th, 1884; by the filing of the following certificate:

Certificate of extension of corporate existence.

THE PASSAIC GAS LIGHT COMPANY, incorporated by an act of the Legislature of New Jersey, approved March 29, 1864, desiring to revive and extend its corporate existence and having failed, during the period of twenty years, for its continuance named in its charter, to file with the Secretary of State, a certificate for that purpose, does now certify as follows:

1st. That it has continued since the expiration of said twenty years, and still continues its organization and the transaction of business.

2nd. That it desires that the period of its existence as such corporation shall be revived and extended for a period of fifty years from the twenty-ninth day of March, eighteen hundred and eighty-four, the date when said twenty years expired.

Witness the seal of said Corporation attested by the signature of its President this nineteenth day of April, eighteen hundred and eighty-seven.

JOHN A. WILLETT,
President.

(SEAL)

Exhibit C 35.

CERTFICATE OF INCORPORATION OF THE PASSAIC ELECTRIC LIGHT, HEAT AND POWER COMPANY.

Filed January 18, 1888.

THIS IS TO CERTIFY, that we, JOHN JELLEME, CHARLES A. STELLING, ARTHUR H. HAYES, FREDERIC W. WARD and HENRY HAYES, do hereby associate ourselves into a company under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations," and the several acts supplementary thereto and amendatory thereof, for the purposes hereinafter mentioned, and to that end we do, by this our certificate, set forth: Incorporators.

FIRST. That the name which we have assumed to designate such company is "THE PASSAIC ELECTRIC LIGHT, HEAT AND POWER COMPANY." Corporate name.

SECOND. That the places where the business of said company is to be conducted in the State of New Jersey are the City of Passaic in the County of Passaic, and the City of Newark, in the County of Essex. That the places outside of the State of New Jersey where the business of the said Company is to be conducted are the City, County and State of New York, and all other places in, and parts of, said State of New York. Principal place of business.

THIRD. That the objects for which said Company is formed, are as follows: Objects.

The manufacturing and generating, storing, dealing in, furnishing and supplying of electricity, light, heat and power.

Exhibit C 35.

And also the manufacturing, generating and storing of electricity, fuel gas and steam, and the supply of the same, through appropriate conductors.

And also the carrying on of any and all business in anywise appertaining to, or connected with, the manufacturing and generating, storing, distributing, and furnishing of electricity, steam and fuel-gas, for heat, power and light purposes, including the transaction of any and all business in which electricity, gas, artificial or natural, or steam, is now or hereafter may be utilized, and all matters incidental or necessary to the distribution of light, heat and power, or the cause or manner of or means by which light, heat and power are or may hereafter be produced, stored, conducted or utilized. And also the production, storing, sale and supply of all and every kind of light, heat and power, in every way, manner, and by every means not prohibited by the laws of the State of New Jersey to corporations formed under this act.

And also the manufacturing, selling, dealing in any and all the necessary appliances used in, or which may be required or deemed advisable for or in connection with the utilization of any and all of the foregoing, or in anywise appertaining thereto or connected therewith;

Excepting always and excluding from the foregoing provisions, and each and every one thereof, such matters as are prohibited by law to corporations formed under this act;

And also the manufacture and sale of any and all products arising from the aforesaid operations, and the carrying on of a general mercantile business if required or desired in connection with the said business;

Including the purchase, sale and exchange of real and personal property of every kind, the leasing, purchasing, holding, selling, assigning, conveying, mortgaging and exchanging, real or personal property or contracts, of every name and nature, and the doing of any and all other things, and the carrying on of any and all other business operations which may be necesasry and advisable in connection therewith, and which are or may be authorized by the Laws of the State of New Jersey, under which this Company is formed.

FOURTH. That this Company will, as occasion may arise, carry on within the State of New Jersey any of its business and that portion of its financial and executive administration which is by law required to be carried on within the said State of New Jersey.

That portion of the business of the said Company which is to be carried on outside of the State of New Jersey is a part or all of the business of the financial and executive administration as may be designated or desired by the said corporation, and which is not specifically required by law to be performed within the State of New Jersey.

FIFTH. That the total amount of the capital stock of the said corporation is Fifty Thousand Dollars. The number of shares into which the same is divided is Five thousand, and the par value of each share is Ten Dollars. The amount with which said Company will commence business is One thousand Dollars, which is divided into One hundred shares of the par value of Ten Dollars each.

Capital stock.

Exhibit C 35.

Names and residence of stockholders.

SIXTH. That the names and residences of the stockholders and the number of shares held by each are as follows, to wit:

Name.	Residence.	Number of shares.
Charles A. Stelling	Passaic	Ten shares.
John Jelleme	Passaic	Five shares.
Frederic W. Ward	Newark	Five shares.
Arthur H. Hayes	Newark	Thirty shares.
Henry Hayes	Morristown	Fifty shares.

Time of existence.

SEVENTH. That the period at which the said company will commence business is the thirty-first day of December, A. D. eighteen hundred and eighty-seven, and the period at which it shall terminate is the thirty-first day of December, A. D. nineteen hundred and thirty-seven.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, this fourteenth day of December, A. D. eighteen hundred and eighty-seven.

CHARLES STELLING, (L. S.)
JOHN JELLEME, (L. S.)
ARTHUR H. HAYES, (L. S.)
FREDERIC W. WARD, (L. S.)
HENRY HAYES. (L. S.)

Witness.

Edward C. Moore as to Charles A. Stelling and John Jelleme.

As to Arthur H. Hayes, Frederic W. Ward and Henry Hayes:

Adrian Riker.

Exhibit C 36.

CONSOLIDATION AGREEMENT OF "PASSAIC LIGHTING COMPANY."

THIS AGREEMENT, made this fifth day of March, one thousand eight hundred and ninety-five, BETWEEN The Passaic Gas Light Company, by its President and Board of Directors and The Passaic Electric Light, Heat and Power Company, by its President and Board of Directors, each of which Corporations is duly organized and is now existing under the laws of the State of New Jersey, and herein styled the "CONSOLIDATING COMPANIES," which agreement is entered into pursuant to and in conformity with the provisions of Chapter 67 of the laws of 1893 of the State of New Jersey, entitled "An Act to authorize corporations incorporated under the laws of this State to merge and consolidate their corporate franchises and other property," approved March 8th, 1893.

WITNESSETH: That We, the undersigned, Directors of the above named Corporations, and representing said corporations respectively, have jointly covenanted and agreed and hereby do jointly covenant and agree to consolidate the said corporations into one corporation and for that purpose we do hereby certify and declare as follows:

FIRST: The name which we have assumed to designate such new and consolidated corporation, and to be used in its business and dealings is the Passaic Lighting Company.

SECOND: The number of the first directors of such consolidated corporation shall be seven.

Exhibit C 36.

THIRD: The names and places of residence of said directors for the first year are as follows:

Lewis B. Gawtry, New York City, New York.
Herbert P. Brown, New York City, New York.
Garret A. Hobart, Paterson, New Jersey.
Richard Morrell, Passaic, New Jersey.
Edmund LeB. Gardiner, Ridgewood, New Jersey.
Wolstan R. Brown, Passaic, New Jersey.
Bird W. Spencer, Passaic, New Jersey.

FOURTH: The Officers of such new consolidated corporation for the first year shall be said,

Wolstan R. Brown, President.
Bird W. Spencer, Vice-President and Treasurer.
Edmund LeB. Gardiner, Secretary.

Said Directors shall hold their offices until their successors shall be chosen or appointed at the annual meeting of said corporation to be held on the first Wednesday in March, 1896, at such hour and place as a majority of the Directors shall appoint, and public notice shall be given of the time and place of holding such election for at least ten days in a newspaper published in the City of Passaic; and any vacancy in said Board of Directors or among said Officers may be supplied by appointment to be made by the Board of Directors until such election.

And in the event that such election is not held on the day herein appointed, an election shall be held at such time, place and manner as may be directed by the Board of Directors, and the above named Directors shall hold their office until their successors shall be appointed.

Said above named officers shall hold their offices until their successors shall be appointed by the Board of Directors chosen at such election.

Exhibit C 36.

FIFTH: The amount of the capital stock shall be four hundred and fifty thousand ($450,000) dollars.

Said capital stock shall be divided into four thousand five hundred (4,500) shares of general or common stock and the par value of each share shall be one hundred ($100) dollars.

SIXTH: Said capital stock of four hundred and fifty thousand (450,000) dollars shall be and is hereby apportioned among the stockholders of the said consolidating companies, and the capital stock of each of said consolidating companies shall be converted into stock of said new corporation, in the manner following:

To the Shareholders of the Passaic Gas Light Company.....	$310,000
To the Shareholders of the Passaic Electric Light, Heat and Power Company	140,000

The said amount of capital stock of the new corporation to be received by the stockholders of each of the said consolidating Companies according to the provisions of this paragraph shall be divided among the said stockholders, pro rata in proportion to the holdings of each stockholder in the stock of said Company at the time of the closing of the books of such Company previous to consolidation; that is to say, each stockholder of the Passaic Gas Light Company shall be entitled to receive for each dollar of the stock of said Company owned by him, stock in said new consolidated Company to the amount of three dollars and ten cents ($3.10) and also bonds of the new consolidated Company as hereinafter mentioned, and each stockholder of The Passaic Electric Light, Heat and Power Company

shall be entitled to receive for each dollar of the stock of said last named Company owned by him, stock in said new consolidated Company to the amount of Two ($2) Dollars. Such division and distribution shall be made by the new corporation immediately after consolidation is perfected; provided that each stockholder upon and before receiving his or her proportion of stock and bonds aforesaid, shall assign and deliver to said new corporation, to be cancelled, his or her certificate or certificates of stock in said Company so consolidated.

Should any such stockholder, on such division of stock, be entitled to a fraction of a share, a certificate of the ownership of such fractional share shall be issued to him. Said certificate shall provide that when certificates of fractional shares, equal to one or more shares, shall be presented to said new corporation, a full share or shares of stock equal in amount to such fractional shares shall be issued in place thereof.

Each consolidating Company shall at the time the consolidation takes effect furnish the new corporation with a list of its shareholders and the number of shares of stock of its company to which each is entitled.

SEVENTH: The new consolidated company shall issue bonds to be denominated First Consolidated Mortgage Five Per Cent. Gold Bonds to the amount of four hundred and fifty thousand ($450,000) dollars of the denomination of one thousand ($1,000) dollars, each maturing in thirty years from the first day of May, eighteen hundred and ninety-five (1895), and drawing interest at the rate of five per cent. per annum, payable semi-annually, and

secured by mortgage or trust deed upon its property and franchises which bonds shall be apportioned and applied as follows: One hundred and sixty thousand ($160,000) dollars to the shareholders of The Passaic Gas Light Company to be divided pro rata among them as part of the consideration for the exchange of their stock as hereinbefore mentioned, to wit: for each one dollar of stock of the Passaic Gas Light Company one dollar and sixty cents in said bonds.

One hundred and forty-three thousand ($143,000) dollars to be applied to the redemption and cancellation of the present mortgage bonds of the Passaic Electric Light, Heat and Power Company, namely, one hundred thousand ($100,000) dollars to pay and cancel the first mortgage bonds and twenty-five thousand ($25,000) dollars to pay and cancel the second mortgage bonds and eighteen thousand ($18,000) dollars to pay and cancel the funded coupon bonds of said Passaic Electric Light, Heat and Power Company; twenty-five thousand ($25,000) dollars of said consolidated mortgage bonds to be applied to the payments of debts of The Passaic Gas Light Company. Seven thousand ($7,000) dollars to the payment of debts of The Passaic Electric Light, Heat and Power Company, fifteen thousand ($15,000) dollars to be applied to the payment of services, expenses and disbursements made or incurred in connection with the promotion and organization of the new company. Fifty thousand ($50,000) dollars to be applied as the Board of Directors may hereafter determine for the improvements and betterments of the plants of the new consolidated company. And the remaining fifty thousand ($50,000) dollars to be reserved and applied to the redemption of fifty thousand

dollars of the bonds of the Passaic Gas Light Company now outstanding.

EIGHTH: Upon the consummation of the consolidation of said consolidating companies as provided in Chapter 67 of the Laws of 1893, approved March 8th, 1893, and all and singular the rights, privileges and interests of the consolidating companies, including all the real estate belonging to such companies situate in Passaic and elsewhere, with all appurtenances belonging thereto, all lands and rights in lands under water, all leasehold property, all mains, poles, wires, lines, lamps, transformers, cut-offs, service pipes and meters, and other articles necessary to conducting a Gas and Electric Light business; all cash, moneys, books of account, patents, licenses or rights to use patents, all machinery, plants, tools, horses, wagons, carts, and all other property used by said companies in their respective businesses, all office furniture and stationery, maps, drawings of property, and apparatus owned by each of said Companies at the present time, together with their and each of their corporate rights, franchises, licenses to lay mains and pipes, erect poles and string wires, contracts and privileges of every kind whatever shall be vested in and be the property of the new corporation.

If there shall be any outstanding lien or encumbrance by way of mortgage or otherwise, upon any of the lands of either of said consolidating companies, or any outstanding certificates of credit, bonds, or other indebtedness or obligation of either corporation at the time of the consolidation, as herein provided, then the said new corporation shall assume the payment of such liens, bonds or indebtedness; and said new consolidated company

does hereby assume the payment of bonds to the amount of fifty thousand ($50,000) dollars secured by mortgage upon the property of said Passaic Gas Light Company and of bonds hereinbefore mentioned to the amount of one hundred and forty-three thousand ($143,000) dollars secured by mortgage upon the property of the said The Passaic Electric Light, Heat and Power Company and to be exchanged for bonds of the new company as hereinbefore provided. The said new consolidated company assumes also the payment of three thousand dollars dividend scrip of said Passaic Gas Light Company issued June 1, 1892, and payable in five years thereafter.

NINTH: Such new or consolidated Company may prosecute and carry on a general lighting business for public and municipal as well as private purposes and all and any kinds of business which either or both the Passaic Gas Light Company or The Passaic Electric Light, Heat and Power Company is authorized by law to conduct.

TENTH: The said parties hereof in consideration of the premises and for other good and valuable consideration them thereunto severally moving, do hereby severally and respectively grant, convey, assign and set over and invest in the said Consolidated Company for the purposes of such consolidation all their several and respective lands, real estate, property, moneys and effects, rights of action and things of every name and nature now held or owned by the said parties severally and respectively or in any way to which they severally and respectively have any right, title, interest, or claim, either at law or in equity.

Each consolidating company sanctioning this agreement shall, as soon as this agreement has been sanctioned, and approved, convey to said new corporation by deed duly executed and acknowledged so as to entitle the same to be recorded all its real property, and shall furnish a map or maps with a description of all real estate and a particular schedule of all the other property and rights of property described in paragraph eight hereof.

ELEVENTH: Each consolidating company shall furnish to the new corporation, attested by the signature of the President of such company, a full and complete statement of all liens or encumbrances upon the real estate of said company and a particular list of all outstanding indebtedness and obligations of said Company, with a statement of any unsettled claims or pending law suits against said company.

TWELFTH: The Directors of the new corporation shall meet on the twenty-seventh day of March, 1895, for the purpose of organizing the business of the same and adopting a seal for said corporation, and transacting all other business that may properly and legally come before them.

A majority of said Directors shall constitute a quorum for the transaction of business. In case of failure of the Directors to meet on the said twenty-seventh day of March, 1895, a meeting of the same may be called by any three of said Directors by a notice in writing addressed to each of said Directors and left at his usual place of business or given to him personally.

Said Board of Directors shall adopt By-Laws which shall be in accordance with the Laws of this

State for the government of the business and affairs of said corporation, and of the Board of Directors, and such By-Laws shall, among other things, fix the time for the annual meeting of the stockholders for an election of Directors, subsequent to the meeting provided for in paragraph fourth of this agreement, and the number and the duties of the officers of the corporation and the method of amending said By-Laws.

THIRTEENTH: All obligations and contracts of the consolidating companies shall be assumed by the new corporation.

FOURTEENTH: Said new or consolidated corporation shall have power and authority to issue in addition to the bonds hereinbefore mentioned, bonds or other obligations negotiable or otherwise, and with or without coupons or interest certificates thereto attached to such an amount as the Board of Directors may from time to time prescribe and as now is or may be authorized by law, to secure the payment of which bonds or obligations it shall be lawful to mortgage its corporate franchises, rights, privileges, and property, real, personal and mixed.

FIFTEENTH: The duration of the said new corporation shall be fifty years from the commencement of its existence.

SIXTEENTH: The operations of the said consolidated corporation shall be carried on in the City of Passaic, and its vicinity, in the counties of Passaic, Bergen and Essex in the State of New Jersey.

Exhibit C 36.

SEVENTEENTH: In the event that this agreement is not sanctioned and ratified by a vote of the holders of two-thirds of the stock of each of said consolidating companies in conformity with the provisions of said act, within sixty days from date hereof, then this agreement shall be null and void, otherwise to be in full force and effect.

IN WITNESS WHEREOF, the said parties have caused their several and respective corporate seals to be hereunto affixed and attested by their respective Secretaries, and these presents to be signed by their respective Presidents, and by the Directors of each of said corporations the day and year first above written.

JNO. J. SLATER,
President Passaic Gas Light Co.

JNO. SLATER,
EDMUND LEB. GARDINER,
THOS. M. MOORE,
GARRET A. HOBART,
WINTHROP GOWDIN,
W. R. BROWN,
WM. BARBOUR,
(SEAL) Directors Passaic Gas Light Co.

Attest:
E. LEB. GARDINER,
Sec.

W. R. BROWN,
President Passaic Electric Light, Heat and Power Co.

Exhibit C 37.

CERTIFICATE OF INCORPORATION OF THE LODI LIGHT, HEAT AND POWER COMPANY.

THIS IS TO CERTIFY THAT WE, FRANK T. TERNES, PHILLIP S. HOFFMAN and CHARLES I. TERNES, do hereby associate ourselves into a corporation under and by virtue of the provisions of an Act of the Legislature of New Jersey, entitled "An Act concerning corporations, revision of 1896," for the purposes hereinafter mentioned, and to that end we do by this our Certificate, set forth: Incorporators.

I. The name which we have assumed to designate such corporation, and to be used in its business and dealings, is "The Lodi Light, Heat and Power Company." Corporate name.

II. The place in this State where the principal office is to be situated is the Borough of Lodi, in the County of Bergen, and the place in this State where the business of the corporation is to be conducted is the said Borough of Lodi, in the County of Bergen, and the name of the agent or person in charge thereof and on whom process may be served is Frank T. Ternes. Principal office.

III. The objects for which the corporation is formed are the manufacturing and supplying gas and electricity for heating and power purposes, and also for lighting the streets and public and private buildings of the Borough of Lodi, in the County of Bergen and State of New Jersey. Purposes.

IV. The total amount of the capital stock of the corporation is one hundred thousand ($100,000) Capital stock.

dollars; the amount with which it will commence business is one thousand ($1,000) dollars; the capital is divided into one thousand (1,000) shares of a par value of one hundred ($100.00) dollars each.

V. The names and residences of the incorporators, and the number of shares subscribed for by each, are as follows:

Frank T. Ternes, New York City, N. Y., four shares.

Phillip S. Hoffman, New York City, N. Y., four shares.

Charles I. Ternes, New York City, N. Y., four shares.

VI. The existence of the corporation shall begin on the 23rd day of May, 1898, and shall continue for the period of eighty years.

IN WITNESS HEREOF, we have hereunto set our hands and seals the 23rd day of May, eighteen hundred and ninety-eight.

FRANK T. TERNES, L. S.
PHILLIP S. HOFFMAN, L. S.
CHARLES I. TERNES, L. S.

Signed, sealed and delivered in presence of }
MICHAEL J. SULLIVAN.

Exhibit C 38.

CERTIFICATE OF INCORPORATION OF THE PASSAIC AND BERGEN GAS COMPANY.

THIS IS TO CERTIFY, That we, Hobart Tuttle, George S. Philler and Elmer Smalling do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An act concerning corporations (Revision of 1896)," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names. Incorporators.

FIRST: The name of the corporation is The Passaic and Bergen Gas Company. Corporate name.

SECOND: The location of the principal office in this State is at Paterson Savings Institution Building, in the City of Paterson, County of Passaic. Principal office.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is Hobart Tuttle.

THIRD: The objects for which this corporation is formed are to manufacture and sell gas throughout the counties of Passaic and Bergen, in the State of New Jersey, and for such purpose to hold, purchase, mortgage, lease, make leases of and convey real and personal property of every kind, including gas properties and gas franchises, and to enter into contracts for the operation of the same. Purposes.

FOURTH: The total authorized capital stock of this corporation is one hundred thousand dollars, Capital stock.

divided into one thousand shares of a par value of one hundred dollars each.

FIFTH: The names and post office address of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which this company will commence business, are as follows:

Name.	Post Office Address.	No. of Shares
Hobart Tuttle.....	Paterson Savings Institution Building, Paterson, N. J....	Four (4)
George S. Philler...	1811 Delaney Place, Philadelphia, Pa.....	Three (3)
Elmer Smalling....	2939 N. Camac Street, Philadelphia, Pa.....	Three (3)

IN WITNESS HEREOF, we have hereunto set our hands and seals the 25th day of January, A. D. eighteen hundred and ninety-nine.

HOBART TUTTLE, (L. S.)
GEORGE S. PHILLER, (L. S.)
ELMER SMALLING, (L. S.)

10c I. R. stamp cancelled.

Signed, Sealed and Delivered in the presence of
EUGENE THOMPSON.

Exhibit C 39.

AGREEMENT FOR MERGER AND CONSOLIDATION.

THIS AGREEMENT, Made this sixth day of February, in the year one thousand eight hundred and ninety-nine, between THE PEOPLE'S GAS LIGHT COMPANY OF THE CITY OF PATERSON, a corporation of the State of New Jersey, by the Directors thereof; PATERSON GAS LIGHT COMPANY, a corporation of the State of New Jersey, by the Directors thereof; THE EDISON ELECTRIC ILLUMINATING COMPANY OF PATERSON, a corporation of the State of New Jersey, by the Directors thereof; PASSAIC LIGHTING COMPANY, a corporation of the State of New Jersey, by the Directors thereof, THE LODI LIGHT, HEAT AND POWER COMPANY, a corporation of the State of New Jersey, by the Directors thereof, and THE PASSAIC AND BERGEN GAS COMPANY, a corporation of the State of New Jersey, by the Directors thereof, WITNESSETH:

WHEREAS, The said companies are now, pursuant to the provisions of their respective charters or certificates of incorporation, organized for the purpose of carrying on kinds of business of a similar nature, in certain localities in the counties of Passaic and Bergen, in said State of New Jersey, and it has been deemed advisable to merge and consolidate them under and pursuant to the provisions of an Act entitled "An Act Concerning Corporations (Revision of 1896)";

AND WHEREAS, The parties hereto have agreed upon the provisions, conditions, and restrictions hereinafter set forth:

Exhibit C 39.

NOW, THEREFORE, In consideration of the mutual agreements, covenants, provisions, and grants herein contained, the said parties do by these presents merge, combine, and consolidate their respective capital stocks, franchises, grants, immunities, privileges, capacities, properties, and rights of every name and nature into a single and new corporation, to be called and known by the corporate name and style of "The Paterson and Passaic Gas and Electric Company."

And the said parties hereto have agreed upon, and by these presents do agree upon and prescribe, the following as the terms and conditions of such consolidation; which terms and conditions the said parties hereto mutually and severally covenant, promise, and agree to observe, keep and perform, viz:

ARTICLE I.

The name of the Consolidated Corporation shall be "The Paterson and Passaic Gas and Electric Company."

ARTICLE II.

The management of the affairs of the said Consolidated Corporation shall be vested in nine (9) Directors.

The Directors shall choose, by a majority vote, a President and one or more Vice-Presidents, and a Secretary and Treasurer, all of whom shall be chosen annually, and shall hold office for one year, or until their successors are chosen and qualified.

All of the provisions of this Article (II.) are subject to alteration, from time to time, by the By-Laws.

Exhibit C 39.

ARTICLE III.

The Directors (other than the first Directors) shall be chosen at an annual meeting of the stockholders, to be held at such time and place as shall be provided by the By-Laws, and, unless otherwise fixed by said By-Laws, the said annual meeting shall take place at the principal office of the company in the city of Paterson on the first Wednesday in March of each year, beginning with the year 1900, at ten o'clock in the forenoon, until the By-Laws shall otherwise order.

ARTICLE IV.

The number of the first Directors of said Consolidated Corporation is nine (9) and their names and places of residence are as follows:

Names.	Places of Residence.
William Barbour,	Paterson, N. J.
Edward T. Bell,	Paterson, N. J.
Bird W. Spencer,	Passaic, N. J.
B. M. Shanley,	Newark, N. J.
John R. Lee,	Paterson, N. J.
William B. Gourley,	Paterson, N. J.
Randal Morgan,	Philadelphia, Pa.
Hobart Tuttle,	Paterson, N. J.
John W. Ferguson,	Paterson, N. J.

ARTICLE V.

The names and places of residence of the President, Vice-President, Secretary and Treasurer of said Consolidated Corporation are as follows:

Names.	Places of Residence.
President, William Barbour,	Paterson, N. J.
Vice-President, Edward T. Bell,	Paterson, N. J.
Secretary, Hobart Tuttle,	Paterson, N. J.
Treasurer, Edward T. Bell,	Paterson, N. J.

Exhibit C 39.

ARTICLE VI.

By-Laws of the Consolidated Corporation may be hereafter adopted, amended, repealed by the Directors.

ARTICLE VII.

The amount of the capital stock of said Consolidated Corporation shall be five million dollars ($5,000,000), and the number of shares into which it shall be divided shall be 50,000, and the par value of each share of stock shall be one hundred dollars ($100).

Nothing in this agreement shall be construed to prevent the Consolidated Corporation from increasing or decreasing the amount of its capital stock.

ARTICLE VIII.

The manner of converting the capital stock of each of said consolidating corporations into the stock and obligations of the said Consolidated Corporation shall be as follows:

The said capital stock of each of the following consolidating corporations, viz., The People's Gas Light Company of the City of Paterson, Paterson Gas Light Company, The Edison Electric Illuminating Company of Paterson, and Passaic Lighting Company, shall be exchangeable for the said capital stock of the said Consolidated Corporation and bonds of said Consolidated Corporation, secured by mortgage hereinafter provided, in the following manner and in the following proportions, that is to say:

The said stock of The People's Gas Light Company of the City of Paterson, which amounts to

2,000 shares, shall be exchanged, as aforesaid, for 8,000 shares of stock and $400,000, par value of mortgage bonds of said Consolidated Corporation, each stockholder of said The People's Gas Light Company of the City of Paterson receiving his PRO RATA share of said stock and bonds of said Consolidated Corporation in proportion to the amount of stock of the said The People's Gas Light Company of the City of Paterson held by him.

The said stock of the Paterson Gas Light Company, which amounts to 10,989 shares, shall be exchanged, as aforesaid, for 10,479 shares of stock and $521,000 par value, of mortgage bonds of said Consolidated Corporation, each stockholder of said Paterson Gas Light Company receiving his PRO RATA share of said stock and bonds of said Consolidated Corporation in proportion to the amount of stock of the said Paterson Gas Light Company held by him.

The said stock of the Edison Electric Illuminating Company of Paterson, which amounts to 8,000 shares, shall be exchanged, as aforesaid, for 16,000 shares of stock and $800,000, par value, of mortgage bonds of said Consolidated Corporation, each stockholder of said The Edison Electric Illuminating Company of Paterson receiving his PRO RATA share of said stock and bonds of said Consolidated Corporation in proportion to the amount of stock of the said The Edison Electric Illuminating Company of Paterson held by him.

The said stock of the Passaic Lighting Company, which amounts to 4,500 shares, shall be exchanged, as aforesaid, for 900 shares of stock and $360,000, par value, of mortgage bonds of said Consolidated Corporation, each stockholder of said Passaic Lighting Company receiving his PRO RATA share of said stock and bonds of said Consolidated Corporation

in proportion to the amount of stock of the said Passaic Lighting Company held by him.

The said capital stock of each of the following consolidating companies, viz., The Lodi Light, Heat and Power Company and The Passaic and Bergen Gas Company, shall be exchangeable for the said capital stock of the said Consolidated Corporation, in the following manner and in the following proportions, that is to say:

The said stock of The Lodi Light, Heat and Power Company, which amounts to 10 shares, shall be exchanged, as aforesaid, for 10 shares of stock of said Consolidated Corporation, each stockholder of the said The Lodi Light, Heat and Power Company receiving his PRO RATA share of said stock of said Consolidated Corporation in proportion to the amount of stock of said The Lodi Light, Heat and Power Company held by him.

The said stock of the Passaic and Bergen Gas Company, which amounts to 10 shares, shall be exchanged, as aforesaid, for 10 shares of stock of said Consolidated Corporation, each stockholder of the said The Passaic and Bergen Gas Company receiving his PRO RATA share of said stock of said Consolidated Corporation in proportion to the amount of stock of said The Passaic and Bergen Gas Company held by him.

Persons entitled to fractional parts of one thousand dollars ($1,000) in bonds, or of one hundred dollars ($100) in stock of said Consolidated Corporation, under the above plan of distribution, shall receive scrip certificates for the same, which certificates shall be exchangeable for bonds or stock respectively when presented in sums of one thousand dollars ($1,000) for bonds and one hundred

dollars ($100) for stock. These certificates until so exchanged shall not bear interest.

In case the holders of any stock in any of the consolidating corporations shall not adopt this agreement or consent otherwise thereto, and shall refuse to make the exchange of their original stock as hereinbefore provided, then, and in every such case, the stock in the Consolidated Corporation to which such dissenting stockholder would be entitled in exchange as aforesaid, shall remain unissued and the bond or bonds to which such dissenting stockholder would have been entitled in exchange as aforesaid, shall be issued and used, negotiated or pledged as the Consolidated Corporation may direct, for the purpose of raising the necessary funds to be used in rendering the lawful and constitutional compensation to which such dissenting stockholder or stockholders will be entitled for the surrender and cancellation of their stock by agreement or upon condemnation proceedings or otherwise.

ARTICLE IX.

WHEREAS, the United Gas Improvement Company, of the City of Philadelphia, is now in possession of the entire plant of said The People's Gas Light Company of the City of Paterson, and is operating the same for its benefit under the provisions of a certain agreement between the two companies dated August 30, 1882, and under the provisions of said agreement will be entitled at the termination thereof to receive from said The People's Gas Light Company of the City of Paterson the appraised value of all improvements made and placed by the said the United Gas Improvement Company upon the said plant; and is also in posses-

sion of the entire plant of said Paterson Gas Light Company, and is operating the same for its benefit under the provisions of a certain agreement between the two companies dated September 20, 1882, and under the provisions of said agreement will be entitled at the termination thereof to receive from said Paterson Gas Light Company the appraised value of all improvements made and placed by the said the United Gas Improvement Company upon the said plant, and the said the United Gas Improvement Company also holds certain franchises in relation to the manufacture and sale of gas in Passaic County, and also holds certain patent rights relating to the manufacture and distribution of illuminating gas, which will be of great value to said Consolidated Corporation, some of which patents are now applied and used in the manufacture and sale of gas in connection with said plants in the city of Paterson, and it is desired that the Consolidated Corporation shall eventually hold and enjoy the possession of said plants free from the said agreements, and that the said the United Gas Improvement Company shall eventually cancel and surrender said agreements and release to the Consolidated Corporation all liabilities of the said The People's Gas Light Company of the City of Paterson, and of said Paterson Gas Light Company, under the provisions thereof, and shall also assign to the Consolidated Corporation all its rights in respect of the franchises in relation to the manufacture and sale of gas in Passaic County, and shall also give the said Consolidated Corporation a license to use and enjoy all of the said patent rights in the counties of Passaic and Bergen in the State of New Jersey.

Exhibit C 39.

IT IS, THEREFORE, AGREED that $764,000, at par, of the said bonds, and 14,601 shares of the said stock of the Consolidated Corporation shall be retained by the Consolidated Corporation until the said agreements dated August 30, 1882, and September 20, 1882, and all claims of said the United Gas Improvement Company, under said agreements, shall have been surrendered and cancelled, and all the said rights of the said the United Gas Improvement Company to or in respect of the franchises in relation to the manufacture and sale of gas in Passaic County shall have been assigned to or for the benefit of the said Consolidated Corporation, and until the said the United Gas Improvement Company shall have executed and delivered to the said Consolidated Corporation the license to use said patent rights above mentioned, and upon such surrender, cancellation, assignment and delivery, in consideration thereof, the said $764,000 of bonds and 14,601 shares of stock, so to be retained as aforesaid, shall be delivered to the said the United Gas Improvement Company, or upon its order;

PROVIDED, HOWEVER, That the said $764,000 of bonds above provided to be retained, as aforesaid, shall be forthwith delivered to the Trustee for sale, pursuant to Article XI., hereinafter contained, and shall be subject to all the terms and conditions of said article, except that the said Trustee shall not pay over or deliver any proceeds of sale of any bonds to the said the United Gas Improvement Company until said agreements shall have expired or shall have been cancelled and surrendered, as aforesaid, and all claims thereunder shall have been also cancelled or surrendered, and said assignment

and license shall have been delivered by it, as aforesaid, to the Consolidated Corporation.

And it is further agreed, that the bonds to be delivered in pursuance of this Article to said the United Gas Improvement Company shall draw interest only from the date of such delivery, and the stock, in like manner to be delivered to said the United Gas Improvement Company, shall not be entitled to any dividends which shall be declared prior to the delivery of such stock to said company, and in case of the sale of any of the said bonds by said Trustee prior to the time when the said the United Gas Improvement Company shall be entitled to receive said bonds the proceeds of such sale shall be kept invested by the said Trustee, and the interest thereon shall be paid by the said Trustee, to the said Consolidated Corporation up to the date when the said the United Gas Improvement Company shall be entitled to receive the said bonds or the proceeds thereof as herein provided.

ARTICLE X.

The bonds hereinbefore mentioned are part of an issue of five million dollars ($5,000,000), at par, of bonds of the Consolidated Corporation, which shall contain the provisions and be substantially in the form contained in Schedule I, hereto appended, and shall be secured by a mortgage to be made by said Consolidated Corporation to The Paterson Safe Deposit and Trust Company, a corporation of the State of New Jersey, as Trustee, upon the property and franchises of the Consolidated Corporation.

ARTICLE XI.

All the provisions hereinbefore contained for the delivery of bonds to the stockholders assenting to

this agreement in exchange for their original stock are subject to the following agreement, to wit:

All of the bonds deliverable as aforesaid to said assenting stockholders shall, in fact, immediately upon their issue be delivered to the said Trustee, The Paterson Safe Deposit and Trust Company, and the said Trustee shall deliver to each stockholder a receipt or certificate entitling him to his proportionate share of said bonds and any fractional part of a bond for which scrip is herein provided, and the said bonds shall be sold by the said Trustee at ninety-five (95) per cent. of their par value, or in case the said Trustee shall not be able to obtain such price, then for the best price that such Trustee shall be able to get, not less than eighty (80) per cent. of the par value, and after all of said bonds shall have been sold, as aforesaid, by said Trustee, the said stockholders may surrender their said receipts or certificates to said Trustee, and upon such surrender, shall receive the amount in cash due to them respectively for their bonds, and fractional parts of a bond, at the rate of ninety-five (95) per cent. of their par value, or at any less rate, within the limits aforesaid, at which the said Trustee shall have sold the same; PROVIDED, HOWEVER, That there shall be no discrimination between said stockholders in respect of the price of their bonds, and that all shall be dealt with equally and ratably by said Trustee, and in case said Trustee shall sell the said bonds at different prices, the aggregate amount received by said Trustee for all of the bonds in its hands for sale as aforesaid, shall be ratably and proportionately distributed among said stockholders to secure equality as aforesaid:

AND PROVIDED, FURTHER, That in case the said bonds shall not be sold by the said Trustee within

one year from the time of delivery thereof to it, then, and in such case, the said stockholders shall be entitled to receive, upon surrender of their said receipts or certificates, the said bonds and scrip for fractional parts thereof, as hereinbefore provided; AND PROVIDED FURTHER, That in case a part only of the said bonds shall have within the said one year been sold by said Trustee, then the said stockholders shall receive equally and ratably proportionate shares of the proceeds of the bonds sold, and of the remaining unsold bonds and scrip for fractional parts thereof.

ARTICLE XII.

It is agreed, subject to the provisions of Article XIV, hereinafter contained, that all the assets of the said companies as they stand at the date of this agreement shall pass to and become vested in the said Consolidated Corporation, together with all profits thereon or increase thereof, which shall accrue or be secured after the date and that the said Companies shall severally after the date hereof refrain from paying out or transferring any of such assets, income or increase; PROVIDED, HOWEVER, That the ordinary business of each of said companies shall continue to be carried on in the usual way for the benefit of the Consolidated Corporation until the Consolidated Corporation shall assume control thereof; AND PROVIDED, FURTHER, That the companies shall also have the right to meet their obligations as they mature.

ARTICLE XIII.

The Consolidated Corporation shall pay all the expenses of the consolidation and organization.

Exhibit C 39.

ARTICLE XIV.

In case every stockholder of each of the companies hereby consolidated shall not vote for the adoption of this agreement, and the consolidation thereby effected, or otherwise assent and agree thereto, then the Consolidated Corporation shall forthwith proceed according to law to secure the appraisal of the full market value of every share of stock held by a dissenting stockholder, and the value ascertained according to law of every dissenting share shall promptly, upon ascertainment of such value, be paid in cash to the holder thereof, or be paid into court or otherwise, as any court of competent jurisdiction may direct.

The Consolidated Corporation shall also have the power to fix by agreement with every such dissenting stockholder the value of his stock, and the amount and character of the consideration to be paid to such dissenting stockholder therefor, and to pay such consideration, when so fixed, to such dissenting stockholder.

Nothing in this agreement contained shall operate to divest the lien, interest or right of any dissenting stockholder in the assets of his company, but such assets shall pass to and be vested in the Consolidated Corporation subject to such lien, interest or right; and any mortgage, or other conveyance of such assets, or any part thereof, which the Consolidated Corporation may make, shall transfer such assets, subject to such lien, right or interest, until the lawful and constitutional compensation to which such dissenting stockholder or stockholders may be entitled shall have been paid according to law either to such dissenting stockholder or into court, or otherwise, as any court of

competent jurisdiction may direct, as provided above.

For the purpose of more completely securing the interest and all the constitutional rights of dissenting stockholders, it is agreed further, for the benefit of each dissenting stockholder of any of the said companies, that each of the said companies hereby consolidated shall be deemed to continue in existence in order to preserve all such interest and rights of any dissenting stockholder thereof, and as long as there shall be a dissenting stockholder, or until his stock shall have been appraised, condemned, and paid for according to law and the constitution of this State, all the assets and business of this company shall be maintained separate from the assets and business of the other consolidating companies.

And it is further agreed generally, and in respect of all matters, and proceedings herein provided for, that the property of every dissenting stockholder which he shall hold as a stockholder in his company in any way shall not be in any way taken under or by virtue of this agreement, or the consolidation hereby made until full compensation shall have first been paid to him according to law and the constitution of this State and of the United States.

And it is further agreed that in addition to the rights and remedies preserved and maintained aforesaid for the benefit of every dissenting stockholder in respect of the assets and business of his company, the Consolidated Corporation shall immediately upon its creation according to the provisions of this agreement, and of the laws of New Jersey, become liable to each dissenting stockholder for the value of his stock and the compensation due him according to the constitution and laws of New

Jersey, and such liability of the said Consolidated Corporation shall be charged upon all its property and assets as a lien prior to the mortgage hereinbefore provided to be made by the said Consolidated Corporation, or any other mortgage, incumbrance, or lien which may be made by it.

IN WITNESS WHEREOF, the said parties have hereto set their respective corporate seals, and have caused these presents to be signed by their respective Presidents, and attested by their Secretaries, and also to be signed by their respective Directors, the day and year first above written.

Certificate to extend corporate existence.

THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, a corporation created under the laws of the State of New Jersey, being the successor of the following corporations and of each of them, to wit: Paterson Gas Light Company, The People's Gas Light Company of the City of Paterson, The Edison Electric Illuminating Company of Paterson, The Passaic and Bergen Gas Company, The Lodi Light, Heat and Power Company, and also the Passaic Lighting Company which was the successor of Passaic Gas Light Company, and The Passaic Electric Light, Heat and Power Company, does hereby certify:

That at a meeting of the stockholders of The Paterson and Passaic Gas and Electric Company, called for the purpose of voting upon the extension, renewal and continuation of the corporate existence of the said The Paterson and Passaic Gas and Electric Company, as the successor of the companies above mentioned, held at the company's office in Paterson on the twenty-ninth day of December, 1902, at least two-thirds in interest of all

of the Stockholders of the said The Paterson and Passaic Gas and Electric Company having voting powers, to wit, forty-two thousand, nine hundred six and 7315-10000 votes, representing forty-two thousand, nine hundred six and 7315-10000 shares of the par value of one hundred dollars ($100) each, of the total outstanding capital stock of forty-nine thousand nine hundred and ninety-five and sixteen hundredths (49,995 16-100) shares of the par value of one hundred dollars ($100) each, voted in favor of the extension, renewal and continuation of the corporate existence of the said The Paterson and Passaic Gas and Electric Company, as successor of said above mentioned corporations, and declared that such extension, renewal and continuation of the corporate existence of the said corporation, created as aforesaid, as shall be perpetual.

That the written assent of two-thirds in interest of all of the stockholders of The Paterson and Passaic Gas and Electric Company to such extension, renewal and continuation is hereto appended, together with the affidavit of the presiding officer and the Secretary of the said stockholders' meeting;

That the said The Paterson and Passaic Gas and Electric Company is at this time actually engaged in and has provided for the conduct of the business for which it and the corporations of which it is the successor were incorporated;

That said meeting of the stockholders was called by a notice, a copy whereof is hereunto annexed, which notice was signed by the holders of at least one-third in value of the outstanding capital stock of The Paterson and Passaic Gas and Electric Company, notice of which was general, personally or by

mail to each stockholder at least ten days before the date of the said meeting, as will more fully appear by the affidavit hereto annexed.

The location of the principal office of the corporation in this state is at corner of Van Houten and Prospect Streets, Paterson, New Jersey, and the name of the agent therein and in charge thereof, upon whom process against the corporation may be served is William H. Rogers.

IN WITNESS WHEREOF the Presiding Officer and Secretary of said meeting have signed this certificate this 29th day of December, 1902.

THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY,
BIRD W. SPENCER, (SEAL)
Presiding Officer.
W. H. ROGERS, (SEAL)
Secretary of Stockholders' Meeting.
THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY,
By BIRD W. SPENCER,
(SEAL) 2d Vice-President

Attest:
W. H. ROGERS,
Secretary.

Exhibit C 40.

CERTIFICATE OF INCORPORATION OF THE PLAINFIELD GAS AND ELECTRIC LIGHT COMPANY.

Filed December 8, 1890.

Incorporators.

This is to Certify, That we, Elias R. Pope, William Runkle and Harry G. Runkle, do hereby associate ourselves into a Company under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations," approved April seventh, Eighteen Hundred and Seventy-five, and the several acts supplementary thereto and amendatory thereof, for the purposes hereinafter mentioned, and to that end we do by this, our Certificate set forth:

Corporate name.

FIRST. That the name which we have assumed to designate such Company, and to be used in its business and dealings, is "Plainfield Gas and Electric Light Company."

Principal place of business.

SECOND. That the places in the State of New Jersey where the business of said Company is to be carried on are the City of Plainfield, in the County of Union; the Borough of North Plainfield, in the County of Somerset and other place or places in the Counties of Union and Somerset. The principal part of the business of said Company within this State is to be transacted in the City of Plainfield, in the County of Union; and the place out of this State where the same is to be conducted and where the Company proposes to carry on a portion of its business is the City of New York, in the County and State of New York.

Objects.

THIRD. That the objects for which said Company is formed, are as follows:

Exhibit C 40.

The manufacturing and generating, dealing in, furnishing and supplying Gas, Electricity, Heat and Power.

And also the manufacturing and generating Gas and Electricity for illuminating, fuel and other purposes, and steam and the supplying of the same through appropriate conductors;

And also the carrying on of any and all business in anywise appertaining to, or connected with, the manufacturing and generating, distributing and furnishing of gas, electricity and steam for the purpose of light, heat and power, including the transaction of any and all business in which gas, artificial or natural, electricity, or steam is now or hereafter may be utilized and all matters incidental or necessary to the distribution of light, heat and power, or the cause or manner of, or means by which light, heat and power are or may hereafter be produced, conducted or utilized;

Also the production, sale and supply of all and every kind of light, heat and power, in every way, and manner and by every means not prohibited by the laws of the State of New Jersey to Corporations formed under this Act.

And also the manufacturing, selling and dealing in any and all the necessary appliances used in or which may be required or deemed advisable for or in connection with the utilization of any and all the foregoing, or in anywise appertaining thereto or connected therewith.

And also the manufacture and sale of any and all products arising from the aforesaid operations, and the carrying on of a general mercantile business if required or desired in connection with the said business.

Exhibit C 40.

Including the purchase, sale and exchange of real and personal property of every kind, the leasing, purchasing, holding, selling, assigning, conveying, mortgaging and exchanging real or personal property or contracts of every name and nature, and the doing of any and all other things, and the carrying on of any and all other business operations which may be necessary and advisable in connection therewith, and which are or may be authorized by the Laws of the State of New Jersey.

Excepting always and excluding from the foregoing provisions and each and every one thereof, such matters as are prohibited by law to corporations formed under this act.

FOURTH. The portion of the business of said Company which is to be carried on out of this State in the said City of New York, is the business of the financial and executive administration, or such part thereof, as may be designated or desired by the said Corporation and which is not specifically required by law to be performed within the State of New Jersey. The principal office or place of business of said Company out of this State, is the City of New York, in the County and State of New York.

Principal office.

Capital stock.

FIFTH. That the total amount of the Capital Stock of said Company is One Hundred and Seventy-five Thousand Dollars. The number of shares into which the same is divided, is Seventeen Hundred and Fifty, and the par value of each share is One Hundred Dollars.

Amended February 28, 1900.

The amount with which said Company will commence business is One Thousand Dollars, which is divided into Ten Shares of the par value of One Hundred Dollars each.

Exhibit C 41.

SIXTH. That the names and residences of the Stockholders and the number of shares held by each, are as follows, to wit: Names and residences of stockholders.

Elias R. Pope, Plainfield, New Jersey, four shares.

William Runkle, Orange, New Jersey, three shares.

Harry G. Runkle, Plainfield, New Jersey, three shares.

SEVENTH. That the period at which said Company shall commence is the Sixth day of December, A. D. 1890, and the period at which it shall terminate is the Sixth day of December, A. D. 1940. Term of existence.

In Witness Whereof, we have hereunto set our hands and seals the First day of December, A. D. 1890.

ELIAS R. POPE, [L. S.]
H. G. RUNKLE, [L. S.]
WM. RUNKLE, [L. S.]

Exhibit C 41.

CERTIFICATE OF ORGANIZATION OF THE SOMERSET LIGHTING COMPANY.

Filed March 1, 1893.

This is to certify that we, Franklin Everhart, David K. Craig, Frank H. Cole and James L. Griggs, do hereby associate ourselves into a company under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations," approved April 7, Incorporators.

1875, and the several supplements thereto for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

Corporate name.

FIRST. That the name which we have assumed to designate such company and to be used in its business and dealings is, The Somerset Lighting Company.

Principal place of business.

SECOND. That the places in this State where the business of such company is to be conducted are the counties of Somerset and Middlesex in the State of New Jersey. The principal part of the business of said company within this State is to be transacted in the Town of Somerville, in the County of Somerset, which is to be the principal place of business of the said company and the place where its principal office is to be located. And that the objects for which said company is formed are to manufacture and generate gas and electric currents and transmit the same by means of pipes, wires and other conduits through and over public streets, highways and private property and to sell or lease the same for the purposes of light, heat and power.

Principal office.

Objects.

Capital stock.

THIRD. That the total amount of the capital stock of said company is one hundred thousand dollars, the number of shares into which the same is divided is one thousand and the par value of each share is one hundred dollars. The amount with which said company will commence business is two thousand dollars, which is divided into twenty shares of a par value of one hundred dollars each.

One half only of said capital stock may be issued in the form of a six per cent. cumulative preferred stock.

FOURTH. The names and residences of the stockholders and the number of shares held by each are as follows, to wit: Names and residences of stockholders.

Franklin Everhart, New York City....Five Shares
David K. Craig, Somerville, N. J.....Five Shares
Frank H. Cole, Somerville, N. J.....Five Shares
James L. Griggs, Somerville, N. J.....Five Shares

FIFTH. The period at which said company will commence is the first day of March, A. D. one thousand, eight hundred and ninety three, and the period at which it shall terminate is the first day of March, A. D. one thousand, nine hundred and forty-three. Term of existence.

Exhibit C 42.

CERTIFICATE OF INCORPORATION.

(Ten-cent Internal Revenue Stamp cancelled.)

THIS IS TO CERTIFY, that the undersigned do hereby associate themselves into a corporation under the provisions of an act of the Legislature of the State of New Jersey, entitled "An act to authorize the formation of gas-light corporations and to regulate the same," approved April, A. D. 1876, and the several supplements thereto, and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names.

The name of the corporation is "THE SOMERSET GASLIGHT COMPANY." Corporate name.

The period of existence of this Company is fifty years. Corporate existence.

New Jersey State Library

Exhibit C 42.

Purposes.

The objects for which this company is formed are to construct, maintain and operate gas works, and to manufacture, sell, furnish, supply and distribute illuminating gas.

The name of the town in which it is proposed to construct, maintain and operate the gas works, and to manufacture, sell furnish, supply and distribute illuminating gas, is Somerville, in the County of Somerset, and State of New Jersey.

Capital stock.

The total authorized amount of the capital stock of the corporation is twenty-five thousand dollars, to be divided into Two Hundred and fifty shares of the par value of One Hundred Dollars each.

The names and places of residence of the thirteen directors are as follows:

James L. Griggs, residence, Somerville, New Jersey.

Charles R. Knapp, residence, Somerville, New Jersey.

John Rem. Garretson, residence, Somerville, New Jersey.

Charles J. Smith, residence, Somerville, New Jersey.

Alexander G. Anderson, residence, Somerville, New Jersey.

Charles H. Baleman, residence, Somerville, New Jersey.

Peter Struve, residence, Somerville, New Jersey.

Calvin D. McMurtry, residence, Somerville, New Jersey.

James P. Brown, Jr., residence, Somerville, New Jersey.

Mathew P. Lane, residence, Somerville, New Jersey.

George A. Dilts, residence, Somerville, New Jersey.

New Jersey State Library

Exhibit C 42.

Lewis A. Thompson, residence, Somerville, New Jersey.

James J. Bergen, residence, Somerville, New Jersey.

The location of the principal office in this State is at Number 32 Division street, Somerville, New Jersey, in the County of Somerset. Principal office.

The name of the person or agent in charge thereof upon whom process against this corporation may be served is Charles R. Knapp.

IN WITNESS WHEREOF, we have hereunto set our hands this fifteenth day of September, eighteen hundred and ninety-eight.

Name	Residence.	No. of Shares
James L. Griggs	Somerville, N. J.	One share
Chas. R. Knapp	Somerville, N. J.	One share
Jno. Rem. Garretson	Somerville, N. J.	One share
Chas. J. Smith	Somerville, N. J.	One share
A. G. Anderson	Somerville, N. J.	One share
C. H. Bateman	Somerville, N. J.	One share
Peter Struve	Somerville, N. J.	One share
C. D. McMurtry	Somerville, N. J.	One share
Jas. Brown, Jr	Somerville, N. J.	One share
M. P. Lane	Somerville, N. J.	One share
George A. Dilts	Somerville, N. J.	One share
L. A. Thompson	Somerville, N. J.	One share
J. J. Bergen	Somerville, N. J.	One share
A. M. Young	New York	237

Exhibit C 43.

AGREEMENT FOR THE CONSOLIDATION OR MERGER OF THE SOMERSET LIGHTING COMPANY AND THE SOMERSET GASLIGHT COMPANY.

November 15, 1898.

Agreement.

This agreement made this fifteenth day of November, eighteen hundred and ninety-eight, between The Somerset Gaslight Company, a corporation of the State of New Jersey, by the Directors thereof, and The Somerset Lighting Company, another corporation of said State, by the Directors thereof, Witnesseth;

Preamble.

That Whereas, the said two companies are now pursuant to the provisions of their respective charters or certificates of incorporation, separately doing business of a similar nature in the town of Somerville, New Jersey, and elsewhere in the United States, and for the purpose of greater efficiency and economy of management as well as for the general welfare of the said two companies, it has been deemed advisable to merge and consolidate them under and pursuant to the provisions of an act entitled, "An Act Concerning Corporations (Revision of 1896)," approved April 21, 1896, and the supplements thereto.

And Whereas, the parties hereto have agreed upon the provisions, conditions and restrictions hereinafter set forth.

Agreement of consolidation.

Now, Therefore, in consideration of the mutual agreements, covenants, provisions and grants herein contained, the said parties do by these presents merge, combine and consolidate their respective capital stocks, franchises, grants, immunities, privileges, capacities, properties and rights of every

name and nature into a single corporation to be called and known by the corporate name and style The Somerset Lighting Company, being one of said consolidating corporations which said consolidated corporation shall henceforth have and possess all and singular, the rights, franchises, powers, immunities, privileges and capacities which are or have been granted to, or conferred upon, or possessed or enjoyed by either of the said parties hereto by virtue of their charter, certificates of incorporation and under all the laws of the State of New Jersey.

And the said parties hereto have agreed upon and by these presents of merger and consolidation, do agree upon the following as the terms and conditions, which terms and conditions the said parties hereto do mutually covenant, promise and agree to observe, keep and perform, viz:

ARTICLE I.

Corporate name.

The name of the corporation shall be "The Somerset Lighting Company." The corporate seal of the said corporation shall be the corporate seal of The Somerset Lighting Company, and shall have inscribed thereon, the name of the company, the words Somerville, New Jersey, and in the center, the words and figures, "Seal, 1893." The principal office of the said corporation shall be at 32 Division street, in the Town of Somerville, County of Somerset, New Jersey.

ARTICLE II.

Management to be vested in seven directors.

The management of the affairs of the said corporation shall be vested in seven directors to be chosen from the stockholders; each stockholder

may vote in person or by proxy, subject nevertheless to such regulations as may be prescribed by the by-laws, and the laws of the State of New Jersey. The directors shall choose, by a majority vote, a President, Secretary and Treasurer, which said Secretary or Treasurer, or either of them need not be chosen from the Board of Directors, all of said officers shall be chosen or appointed annually, and shall hold office for one year, and until their successors are chosen or appointed and qualified; the term of the officers herein named, shall expire on the first business day of November, eighteen hundred and ninety-nine, provided others are elected to take their places; the directors shall have power at any time to remove for cause, and the best interests of the company, such officers as they shall think proper to so remove, and appoint others to take the places of those so removed for the unexpired term.

ARTICLE III.

Directors, how chosen.

The directors, other than the first Board of Directors, shall be chosen annually on the first business day of the month of November, at the office of the company, in the Town of Somerville.

ARTICLE IV.

Number of directors.

The number of directors is seven, and name and post office addresses of the first Board of Directors who shall manage the affairs of the company until their successors shall be chosen, are the following:

Name.	Residence.	Post Office Address.
Charles Cooper.....	Waterbury, Conn...	Waterbury, Conn.
Henry Hayes.....	Newark, N. J.....	Newark, N. J.
L. A. Thompson.....	Somerville, N. J...	Somerville, N. J.
James Brown, Jr....	Somerville, N. J...	Somerville, N. J.
James L. Griggs.....	Somerville, N. J...	Somerville, N. J.
Charles R. Knapp....	Somerville, N. J...	Somerville, N. J.
James J. Bergen.....	Somerville, N. J...	Somerville, N. J.

Exhibit C 43.

ARTICLE V.

Names and residences of officers.

The names and places of residence of the President, Secretary and Treasurer and Vice-President of said company, who shall hold office until their successors are chosen are:

President, James J. Bergen, residence and post office address, Somerville, N. J.

Secretary, Charles R. Knapp, residence and post office address, Somerville, N. J.

Treasurer, James L. Griggs, residence and post office address, Somerville, N. J.

Principal office.

The location of the principal office in the State of New Jersey is, as hereinbefore stated, at number 32 Division street, in the Town of Somerville, County of Somerset, State of New Jersey, and the name of the agent therein and in charge thereof, and upon whom process against the said corporation may be served, is Charles R. Knapp.

ARTICLE VI.

By-laws, how adopted.

The by-laws of the said new company may be hereafter adopted by the directors of said company, and when so adopted shall take the place of those heretofore used, and until new by-laws are adopted as aforesaid, those heretofore adopted by The Somerset Lighting Company shall govern the new company, so far as the same are not inconsistent with this agreement.

ARTICLE VII.

Capital stock.

The amount of the capital stock of the consolidated company shall be one hundred and fifty thousand dollars ($150,000), and the number of shares into which it shall be divided shall be fifteen hundred (1500) shares, and the par value of each share shall be one hundred dollars ($100). Nothing in

this agreement shall be construed to prevent the company from increasing or decreasing its capital stock.

ARTICLE VIII.

Indebtedness, etc.

The said companies are merged and consolidated upon the understanding and agreement that the present indebtedness of either or both the old companies shall be assumed as soon as the consolidation is completed by The Somerset Lighting Company, and that seven hundred and fifty (750) shares of said stock shall be apportioned among, and issued to the members and stockholders of the said old companies according to the shares held by the respective stockholders of said old companies, as the same appears on the books of the old companies, that is to say, one share of stock of the new companies shall be issued to the members of the old companies for each share of stock held by them respectively in the said old companies, or either of them, in payment for their respective properties, which stock shall be full paid and non-assessable. The remaining seven hundred and fifty (750) shares of said stock shall be held and issued to provide for the improvement and betterments of the consolidated properties.

ARTICLE IX.

Surrender of certificates.

Any stockholder either of the old corporation or companies, upon producing to the Treasurer of the consolidating corporations, his certificate of stock, and surrendering the same to be cancelled, shall receive from the Treasurer of the new corporation a certificate for the proper number of shares of the capital stock thereof pursuant to Article number eight of this agreement.

Exhibit C 43.

ARTICLE X.

All property, real, personal or mixed, of each of the corporations, parties hereto, shall vest in the consolidated corporations, to wit: Property, etc.

The Somerset Lighting Company immediately upon the adoption of this agreement by the stockholders of said old companies.

ARTICLE XI.

The consolidated corporation shall pay all expenses of consolidation and organization, and all preliminary expenses, including legal expenses. Expenses.

IN WITNESS WHEREOF, the said parties to this agreement have in pursuance of a resolution passed by the Board of Directors of each of the said old companies, at a regular meeting of the Board of Directors of each company, caused the respective corporate seals of each of said companies to be affixed to these presents, and signed by their respective Presidents and attested by their respective Secretaries, all duly authorized the day and year first above written.

FOR THE SOMERSET LIGHTING CO.
JAMES L. GRIGGS,
President.

(SEAL)

Attest:
CHARLES R. KNAPP,
Secretary.

FOR THE SOMERSET GASLIGHT CO.
JAMES J. BERGEN,
President.

(SEAL)

Attest:
CHARLES R. KNAPP,
Secretary.

Exhibit C 44.

CERTIFICATE OF INCORPORATION OF CITIZENS' ELECTRIC COMPANY.

Filed, July 18, 1895.

Incorporators.

THIS IS TO CERTIFY, That we, Harry G. Runkle, Elias R. Pope and James C. Pope, do hereby associate ourselves into a company, under and by virtue of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations," approved April seventh, eighteen hundred and seventy-five, and the several supplements thereto and acts amendatory thereof, for the objects and purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

Corporate name.

FIRST. That the name which we have assumed, and do hereby assume, to designate such company, and to be used in its business and dealings, is "CITIZENS' ELECTRIC COMPANY."

Principal place of business.

SECOND. That the place in this State where the business of said company is to be conducted, and which is to be deemed its principal place of business in this State, is the City of Plainfield in the County of Union. The places out of this State where the same is to be conducted, and where said company proposes to carry on operations, are the City of New York in the State of New York, the City of Philadelphia in the State of Pennsylvania, and elsewhere, and that the objects for which said company is formed are to carry on within the said City of Plainfield and the Borough of North Plainfield and elsewhere in the counties of Union and Somerset in the State of New Jersey, and else-

Objects.

where, the business of building, constructing, maintaining, extending, acquiring, by purchase, lease or otherwise, and operating electric machinery, implements, appurtenances and plants of all kinds, for the purpose of generating, conveying and distributing light, heat and power, and to sell, convey, mortgage, pledge and lease such machinery, implements, appurtenances and plants of all kinds, and to acquire contracts, franchises and concessions authorizing the construction, maintenance and operation of such machinery, implements, appurtenances and plants of all kinds, and to issue bonds, secured by mortgage or otherwise, and debentures, promissory notes and other securities and evidences of indebtedness in payment for such machinery, implements, appurtenances and plants of all kinds, and for such contracts, franchises and concessions, and to pledge and negotiate such bonds, debentures, promissory notes and evidences of indebtedness for the purpose of raising or obtaining capital or money for any of the purposes aforesaid, and to furnish light, heat and power to persons and corporations, and to buy, sell, pledge and deal in the stock, bonds and securities issued and to be issued by any electric light, heat or power company or other corporation, and to exercise all the rights of owners and stockholders as to such securities and stock.

The portion of the business of said company which is to be carried on out of this State in the said cities of New York and Philadelphia and elsewhere, is such of the business or operations of the company as shall arise in or appertain to or be necessary for the purpose of carrying out the particular business of said company to be carried on

in the said counties of Union and Somerset and elsewhere, as the same shall, from time to time, be determined by the Board of Directors of said company.

Principal office.

The principal office or place of business of said company out of this State is in the City of New York in the State of New York.

Capital stock.

THIRD. The total amount of the capital stock of said company is fifty thousand dollars, divided into five hundred shares of the par value of one hundred dollars each, and the amount with which said company will commence business is one thousand dollars, divided into ten shares of one hundred dollars each.

Names and residences of stockholders.

FOURTH. The names and residences of the stockholders of said company, and the number of shares held by each, are as follows, to wit:

	Shares.
Harry G. Runkle, Plainfield, N. J.	Four.
Elias R. Pope, Plainfield, N. J.	Four.
James C. Pope, Plainfield, N. J.	Two.

FIFTH. The period at which said company shall commence is the sixteenth day of July, eighteen hundred and ninety-five, and the period at which it shall terminate is the fifteenth day of July, nineteen hundred and forty-five.

IN WITNESS WHEREOF, We have hereto set our hands and seals this sixteenth day of July, eighteen hundred and ninety-five.

HARRY G. RUNKLE, (L. S.)
ELIAS R. POPE, (L. S.)
JAMES C. POPE, (L. S.)

Exhibit C 45.

AGREEMENT OF CONSOLIDATION AND MERGER.

THIS AGREEMENT, Made and entered into this Eleventh day of November, in the year one thousand nine hundred and three, between PLAINFIELD GAS AND ELECTRIC LIGHT COMPANY, a corporation of the State of New Jersey, by the Directors thereof, SOMERSET LIGHTING COMPANY, a corporation of the State of New Jersey, by the Directors thereof, and CITIZENS' ELECTRIC COMPANY, a corporation of the State of New Jersey, by the Directors thereof, Witnesseth:

WHEREAS, the said companies are now, pursuant to the provisions of their respective charters or certificates of incorporation, organized for the purpose of carrying on kinds of business of a similar nature, and it has been deemed advisable to merge and consolidate them under and pursuant to the provisions of an act entitled "An Act Concerning Corporations (Revision of 1896)";

AND WHEREAS, the parties hereto have agreed upon the provisions, conditions and restrictions hereinafter set forth:

NOW THEREFORE, in consideration of the mutual agreements, covenants, provisions and grants herein contained, the said parties do by these presents merge, combine and consolidate their respective capital stocks, franchises, grants, immunities, privileges, capacities, properties and rights of

every name and nature, into a single and new corporation, to be called and known by the corporate name and style of SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY; and the said parties hereto have agreed upon and by these presents do agree upon and prescribe the following as the terms and conditions of such consolidation, which terms and conditions the said parties hereto mutually and severally covenant, promise and agree to keep and perform, viz:

ARTICLE I.

The name of the consolidated corporation shall be SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY.

ARTICLE II.

The management of the affairs of the said consolidated corporation shall be vested in five (5) directors, to be chosen by and from the stockholders.

The directors shall choose, by a majority vote, a President and one or more Vice-Presidents and a Secretary and Treasurer, all of whom shall be chosen annually, and shall hold office for one year and until their successors are chosen and qualified. The directors shall also appoint and remove, from time to time, such other officers and agents as they shall think proper.

All of the provisions of this Article II are subject to alteration from time to time by the by-laws.

ARTICLE III.

The directors (other than the first directors) shall be chosen at an annual meeting of the stock-

holders, to be held at such time and place as shall be provided by the by-laws of said company, and shall hold their office for one year and until others are chosen and qualified in their stead; and unless otherwise fixed by said by-laws, the said annual meeting shall take place at the principal office of the company in the City of Plainfield, on the first Monday in December of each year, beginning with the year 1904, at 12 o'clock noon. If any of the said directors shall die or resign, the remaining directors may choose others in his or their place, who shall hold office for the unexpired term.

ARTICLE IV.

The number of the first directors of said consolidated corporation is five (5), and the names and places of residence of the first directors, who shall hold their office and manage the affairs of the company until the first annual election and until their successors shall be chosen, are as follows:

Names.	Places of Residence.
James C. Pope	Plainfield, New Jersey.
Augustus J. Brunson	Plainfield, New Jersey.
H. G. Runkle	Plainfield, New Jersey.
William Runkle	Orange, New Jersey.
A. M. Young	Branford, Connecticut.

ARTICLE V.

The names and places of residence of the President, Vice-President, Secretary and Treasurer of

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said company, who shall hold their offices until their successors shall be chosen, are as follows:

Names.	Places of Residence.
President, H. G. Runkle,	Plainfield, New Jersey.
Vice-President, A. M. Young,	Branford, Connecticut.
Secretary, James C. Pope,	Plainfield, New Jersey.
Treasurer, James C. Pope,	Plainfield, New Jersey.

ARTICLE VI.

By-laws of the consolidated corporation may be hereafter adopted, amended and repealed by the Directors.

ARTICLE VII.

The amount of the capital stock of said consolidated corporation shall be one million fifty thousand dollars ($1,050,000), and the number of shares into which it shall be divided shall be ten thousand five hundred (10,500), and the par value of each share of stock shall be one hundred dollars ($100).

Nothing in this agreement shall be construed to prevent the consolidated corporation from increasing or decreasing the amount of its capital stock.

ARTICLE VIII.

The manner of converting the capital stock of each of said consolidating corporations into the stock and obligations of the said consolidated corporation shall be as follows:

The capital stock of the Plainfield Gas and Electric Light Company, amounting to three hundred

New Jersey State Library

and fifty thousand dollars ($350,000), at par, shall be converted into bonds of the consolidated corporation to the amount of seven hundred thousand dollars ($700,000), at par, secured by a mortgage upon the property of the consolidated corporation, as hereinafter mentioned, and into stock of the consolidated corporation to the amount of three hundred and fifty thousand dollars ($350,000), at par.

The capital stock of the Somerset Lighting Company, amounting to one hundred and fifty thousand dollars ($150,000), at par, shall be converted into stock of the consolidated corporation to the amount of eighty-six thousand dollars ($86,000), at par.

Inasmuch as the said Plainfield Gas and Electric Light Company owns or controls all the shares of the capital stock of the Citizens' Electric Company, no shares of stock and no bonds of the consolidated corporation shall be issued and delivered therefor as the value of this stock was considered in fixing the amount of the securities of the consolidated corporation to be issued and delivered to the stockholders of the Plainfield Gas and Electric Light Company.

ARTICLE IX.

Upon the consummation of this consolidation the consolidated corporation shall forthwith acquire by purchase six thousand five hundred (6,500) shares of the capital stock of the Central Electric Company, and shall pay therefor in stock of the consolidated corporation to the amount of five hundred and seventy-one thousand dollars ($571,000), at par, and three hundred thousand dollars

($300,000), at par, of the said bonds of the consolidated corporation.

ARTICLE X.

The principal office of the company shall be No. 110 East Front Street, in the City of Plainfield, New Jersey, and the name of the agent in charge thereof, and upon whom process against this corporation may be served is James C. Pope.

ARTICLE XI.

Immediately upon the consummation of the consolidation herein provided for the consolidated corporation shall issue two million seven hundred and fifty thousand dollars ($2,750,000), at par, of its bonds, in the denomination of one thousand dollars ($1,000) each, dated December 1, 1903, payable forty (40) years thereafter and bearing interest at the rate of four per cent. per annum, both principal and interest payable in gold coin of the United States of America, of or equal to the present standard of weight and fineness, and secured by a mortgage to Fidelity Trust Company, a corporation of the State of New Jersey, having its principal office in the City of Newark in said State, as Trustee, upon all the property, including franchises, of said consolidated corporation. Said bonds and mortgage shall be in such form as shall be approved by the Board of Directors of said consolidated company.

Upon the execution and recording of said mortgage, all of the bonds thereby secured shall be executed by the consolidated corporation and shall

be delivered to said Fidelity Trust Company, Trustee, to be certified and delivered by it only for the following purposes respectively:

1. Seven hundred thousand dollars ($700,000), at par, of said bonds shall be at once certified by the said Trustee and be delivered to or upon the order of the President or Vice-President of said consolidated corporation to be used as part consideration for the delivery to the consolidated corporation of the capital stock of the Plainfield Gas and Electric Light Company, as hereinbefore set forth.

2. Six hundred and twenty-five thousand dollars (625,000), at par, of said bonds shall be certified and delivered by said Trustee, from time to time as the same may be required, to or upon the order of the President or Vice-President of the said consolidated corporation, for the purpose of purchasing, paying, taking up or replacing so many of the underlying bonds of the Plainfield Gas and Electric Light Company, the Plainfield Gas Light Company and the Citizens' Electric Company as shall from time to time be outstanding; the total amount of which outstanding underlying bonds so to be purchased, paid, taken up or replaced shall not exceed five hundred thousand dollars ($500,000), at par. For the purpose of purchasing, paying, taking up or replacing any less amount than the total of said outstanding underlying bonds, a pro rata amount of said six hundred and twenty-five thousand dollars ($625,000), at par, of said bonds of the said consolidated corporation shall be so certified and delivered by the Trustee, from time to time, as the same may be required, to or upon the order of the President or Vice-President of the

said consolidated corporation. In case the said total amount of five hundred thousand dollars ($500,000), at par, of said outstanding underlying bonds shall be so purchased, paid, taken up or replaced, without requiring the issue and delivery of said total amount of six hundred and twenty-five thousand dollars ($625,000), at par, of the bonds of said consolidated corporation, then the balance of said six hundred and twenty-five thousand dollars ($625,000), at par, of said last mentioned bonds, shall be included in the balance authorized to be issued by subdivision 6 herein, to be certified and delivered as therein prescribed.

The said outstanding and underlying bonds are described as follows:

(*a*) Bonds of the Plainfield Gas and Electric Light Company, secured by mortgage made to the Morton Trust Company, Trustee, dated April 1, 1900, the total authorized amount of which is five hundred thousand dollars ($500,000), at par, of which total authorized amount two hundred and ten thousand dollars ($210,000), at par, are reserved to take up the bonds described in the following paragraphs (*b*), (*c*) and (*d*).

(*b*) Bonds of Plainfield Gas and Electric Light Company, secured by its first mortgage to Central Trust Company, of New York, Trustee, dated December 27, 1890, of which total amount outstanding is one hundred and ten thousand dollars ($110,000), at par.

(*c*) Bonds of Plainfield Gas Light Company, secured by its mortgage to Peter Brunson, Trustee, dated October 1, 1890, the total amount of which

outstanding is sixty thousand dollars ($60,000), at par.

(*d*) Bonds of Citizens' Electric Company, secured by its mortgage to Knickerbocker Trust Company, Trustee, dated November 1, 1895, the total amount of which outstanding is forty thousand dollars ($40,000), at par.

3. One hundred and fifty thousand dollars ($150,000), at par, of said bonds shall be certified and delivered by said Trustee, as the same may be required, to or upon the order of the President or Vice-President of the said consolidated corporation, for the purpose of purchasing, paying, taking up or replacing one hundred and fifty thousand dollars ($150,000), at par, of the outstanding bonds of Somerset Lighting Company, secured by its mortgage to Fidelity Trust Company, Trustee, dated February 1, 1899.

4. One hundred and seven thousand dollars ($107,000), at par, of bonds of the consolidated corporation shall be at once certified by the said Trustee, and be delivered to or upon the order of the President or Vice-President of the consolidated corporation, to be used by it in the payment of the floating indebtedness of the Somerset Lighting Company; it being the intention of this agreement that said consolidated corporation shall, as of the time of the consummation of this agreement, be practically free from indebtedness of every kind except the bonded indebtedness herein provided for.

5. Three hundred thousand dollars ($300,000), at par, of said bonds of the consolidated corpora-

tion shall be certified and delivered by said Trustee to or upon the order of the President or Vice-President of the consolidated corporation when the same shall be required to be used as part consideration for the acquisition by the consolidated corporation of six thousand five hundred (6,500) shares of the capital stock of the Central Electric Company, of the par value of one hundred dollars ($100) each, as hereinbefore set forth.

6. The balance, being eight hundred and sixty-eight thousand dollars ($868,000), at par, of said bonds, (together with such bonds, if any, as shall not be used for the purpose set out in subdivision 2 hereof) shall be retained by the Trustee, and shall be used by the company only for the purpose of making additions to or extensions or betterments of its plants, or of the plants controlled by it, or acquiring new plants or property, real or personal, or purchasing capital stock of other companies engaged in business of a similar nature.

7. The Morton Trust Company of New York, Trustee under a certain mortgage made by the Plainfield Gas and Electric Light Company, dated April 1, 1900, as well as any other trustees under any mortgages which may heretofore have been executed by the Plainfield Gas and Electric Light Company, or any companies controlled by it, and under any of which mortgages any bonds may be held by the Trustees thereunder uncertified, be and they are hereby authorized to certify and deliver to the Treasurer of Somerset, Union and Middlesex Lighting Company, or any other company which by consolidation or otherwise may hereafter become

the successors of this company, any bonds heretofore authorized to be issued under any such mortgage, upon request of Somerset, Union and Middlesex Lighting Company, or such successor corporation, expressed by a resolution of its Board of Directors.

ARTICLE XII.

Immediately upon the filing of this agreement in the office of the Secretary of State, as provided by law, the said stocks of Plainfield Gas and Electric Light Company, Somerset Lighting Company and Citizens' Electric Company, or so much thereof as shall be held by or in trust for assenting stockholders, shall be delivered to the consolidated corporation. As often as any of said stock shall be so delivered, the consolidated corporation shall issue to the stockholder or stockholders delivering the same, at the time of his or their delivery, the said mortgage bonds and stock of the consolidated corporation, as follows:

To the stockholder or stockholders of the Plainfield Gas and Electric Light Company, bonds and stock in the ratio of two hundred dollars ($200), at par, in bonds and one hundred dollars ($100), at par, in stock of the consolidated corporation to one hundred dollars ($100), at par, in stock of the Plainfield Gas and Electric Light Company.

To the stockholder or stockholders of the Somerset Lighting Company, stock in the ratio of fifty-seven dollars and thirty-three and one-third cents ($57.33⅓), at par, in stock of the consolidated corporation to one hundred dollars ($100), at par, in stock of the Somerset Lighting Company.

Persons entitled to less than one thousand dollars ($1,000), in bonds or less than one hundred dollars ($100) in stock on the above plan of distribution shall receive scrip certificates for the same, which certificates shall be exchangeable for bonds or stock respectively when presented in sums of one thousand dollars ($1,000) for bonds and one hundred dollars ($100) for stock. These certificates, until so exchanged, shall not bear interest or be entitled to dividends.

ARTICLE XIII.

It is understood and agreed that one hundred and seven thousand dollars ($107,000), at par, of said bonds and forty-three thousand dollars ($43,000), at par of the capital stock of said consolidated corporation shall be issued and delivered by said company as soon as possible after the filing of this agreement in the office of the Secretary of State, as provided by law, to pay for, satisfy and discharge, as far as may be, the obligations and indebtedness of Somerset Lighting Company, with the exception of the outstanding bonds of said company secured by mortgage and the obligations of said company hereinafter referred to in Article XIV.

ARTICLE XIV.

It is understood and agreed that all the assets of the said companies, as they stand at the date of this agreement, shall pass to and become vested in the said consolidated corporation, together with all profits thereon or increase thereof which shall accrue or be secured from the date hereof, and that the said companies shall severally, after the date hereof, refrain from paying out or transferring any

of such assets, incomes or increase; provided, however, that the ordinary business of each of said companies shall continue to be carried on in the usual way for the benefit of the consolidated corporation until the consolidated corporation shall assume control thereof; and provided further, that the companies shall also have the right to meet their obligations as they mature and that each of said companies will cancel all of its floating indebtedness except the current bills for operating, materials and wages before the first day of December, 1903. It is also understood and agreed that the stockholders of the Plainfield Gas and Electric Light Company shall receive a dividend upon the par value of their respective holdings of stock in said Plainfield Gas and Electric Light Company at the rate of eight per cent. per annum for the period from which the last dividend was declared to the date of the consummation of the consolidation herein provided for.

ARTICLE XV.

The consolidated corporation shall pay all the expenses of the consolidation and organization.

ARTICLE XVI.

In case every share of stock of all the companies that are parties to this agreement shall not be secured in favor of said consolidation or shall not assent to the plan thereof, then and in that case the consolidated corporation shall proceed according to law with reference thereto.

In Witness Whereof, the said parties have hereto set their corporate seals and have caused

these presents to be signed by their respective Presidents and attested by their respective Secretaries, and also to be signed by their respective Directors the day and year first above written.

PLAINFIELD GAS AND ELECTRIC LIGHT COMPANY,

By H. G. RUNKLE,
President.

(SEAL)

Attest:

J. C. POPE,
Secretary.

Directors:

H. G. RUNKLE,
J. C. POPE,
A. J. BRUNSON,
R. A. C. SMITH,
WM. RUNKLE.

Signed, sealed and delivered as to officers and Directors of Plainfield Gas and Electric Light Company:

As to all directors but Wm. Runkle and R. A. C. Smith:

FRANK BERGEN.

As to R. A. C. Smith and Wm. Runkle:

CHAS. M. HEMINWAY.

SOMERSET LIGHTING COMPANY,

By L. A. THOMPSON,
President.

(SEAL)

Attest:

CHAS. M. HEMINWAY,
Secretary.

Exhibit C 46.

THIS IS TO CERTIFY, That we, Philip N. Jackson, Dudley Farrand, Uzal H. McCarter, Adrian Riker, and L. D. Howard Gilmour do hereby associate ourselves into a corporation, by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations" (revision of 1896) approved April twenty-first, Eighteen hundred and ninety-six, and the several supplements thereto for the purposes hereinafter mentioned, and to that end we do, by this our certificate set forth:

FIRST: The name of the corporation is CENTRAL ELECTRIC COMPANY.

SECOND: The location of the principal office in this State is at Number One hundred and six-four Market Street in the City of Newark and County of Essex.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is L. D. Howard Gilmour.

THIRD: The objects for which the said corporation is formed are to manufacture, buy, sell and furnish electric current for light, heat and power.

To manufacture, buy, sell, lease, let or operate any or all machinery for the manufacture or distribution of any or all types of Electrical Energy; and any or all manner of electric machinery, apparatus or supplies of any nature or kind whatsoever;

To erect, buy, sell, lease or let power plants or stations for the manufacture and distribution of electric current, and any or all machinery used therein or in connection therewith;

Exhibit C 46.

To manufacture, buy, sell, lease or let electric, gas or combination fixtures, chandeliers, brackets, lamps, globes or other supplies and appurtenances used for or in connection with the manufacture, distribution or use of electric current for light, heat or power; and to carry on a general business of installing and erecting wires and fixtures, either interior or exterior for the transmission and use of electric current for light, heat or power;

To buy, sell or lease pole lines, to erect poles and string electric wires thereon or on the poles of other individuals or corporations, and to sell or lease to other individuals or corporations the right to string electric wires on or attach electric wires to any or all poles so erected, owned or leased; to build and construct underground subways or conduits in public streets, avenues or highways within this State, and string electric wires or conductors therein, and to buy or lease from, to sell or let to any other individual, or corporation, the right to string electric wires or conductors in any such subway.

The Corporation shall also have power to conduct its business in all its branches, have one or more offices, and to hold, purchase, mortgage and convey real and personal property either within or without the state of New Jersey, and in all other states, and in all foreign countries.

FOURTH: The total amount of capital stock is One hundred thousand dollars, the number of shares into which the same is divided is One thousand, and the par value of each share is One hundred dollars.

The amount with which this company will commence business is one thousand dollars, which is

divided into ten shares at the par value of One hundred dollars per share.

FIFTH: The names and post office address of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock which this company will commence business, are as follows:

Names	Post Office Address	Number of Shares
Philip N. Jackson	Newark, New Jersey	Two shares
Dudley Farrand	Newark, New Jersey	Two shares
Uzal H. McCarter	Newark, New Jersey	Two shares
Adrian Riker	Newark, New Jersey	Two shares
L. D. Howard Gilmour	Newark, New Jersey	Two shares

SIXTH: The Board of Directors shall have power without the assent or vote of the stockholders to make, alter, amend and rescind the by-laws of this corporation, to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens upon the real and personal property of this corporation.

With the consent in writing and pursuant to the vote of the holders of a majority of the stock issued and outstanding, the directors shall have power to sell, assign, transfer or otherwise dispose of the whole property of this corporation or any part thereof.

The directors shall from time to time determine whether and to what extent, and at what times and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation except as conferred by statute or

authorized by the directors, or by resolution of at least one-third of the outstanding stock.

That the Company may use and apply its surplus earnings or accumulated profits, authorized by law to be reserved to the purchase and acquisition of property, and to the purchase and acquisition of its own capital stock from time to time and to such extent and in such manner and upon such terms as its Board of Directors shall determine, and neither the property, nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt to the company, shall be regarded as profits for the purpose of the declaration or payment of dividends, unless a majority of the Board of Directors or a majority of the stockholders shall otherwise determine.

The Board of Directors shall have power to hold its meetings; to have one or more offices, and keep the books of the corporation (except the stock and transfer books) outside of this State, at such places as may be from time to time designated by it.

SEVENTH: The period of existence of this company shall be perpetual.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the eleventh day of June, Nineteen hundred.

PHILIP N. JACKSON [L. S.]
DUDLEY FARRAND [L. S.]
U. H. MCCARTER [L. S.]
ADRIAN RIKER [L. S.]
L. D. HOWARD GILMOUR [L. S.]

Signed, Sealed and Delivered in the presence of

HENRY C. KEES.

Exhibit C 47.

CERTIFICATE OF THE ORGANIZATION OF THE RARITAN ELECTRIC LIGHT AND POWER COMPANY.

Filed, April 3, 1890.

THIS IS TO CERTIFY, That we, Willis C. Bryant, Willis P. Ayer and John B. Simonson, do hereby associate ourselves into a company under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations," approved April 7, 1875, and the several supplements thereto, for the purposes hereinafter mentioned and to that end we do by this our certificate, set forth: Incorporators.

FIRST. That the name which we have assumed to designate such company, and to be used in its business and dealings is THE RARITAN ELECTRIC LIGHT AND POWER COMPANY. Corporate name.

SECOND. That the place in this State where the business of such company is to be conducted is the City of Perth Amboy, in the County of Middlesex. Principal place of business.

The principal part of the business of said company within this State is to be transacted in the said City of Perth Amboy, in the County of Middlesex, which is to be the principal place of business of the said company, and the place where its principal office is to be located, and the place out of this State the same is to be conducted is the City of New York, in the State of New York.

And that the objects for which the company is formed are to apply electrical currents in an electric circuit for producing light, heat and power, for lighting streets and public and private places, and to furnish light, heat and power, or any of them, for sale in the City of Perth Amboy and extend the same to adjacent places in or over, under or through the streets or highways.

The portion of the business of said company which is to be carried on out of this State is the branch office of said company in the City of New York in the State of New York.

Capital stock.

THIRD. That the total amount of the capital stock of said company is seventy-five thousand dollars; the number of shares into which the same is divided is fifteen hundred, and the par value of each share is fifty dollars. The amount with which the said company will commence business is five thousand dollars, which is divided into one hundred shares of a par value of fifty dollars each.

Names and residences of stockholders.

FOURTH. The names and residences of the stockholders and the number of shares held by each are as follows, to wit:

Willis P. Ayer, Boston, Mass.....Forty Shares
Willis C. Bryant, Newark, N. J.....Thirty Shares
John B. Simonson, New York City..Thirty Shares

Term of existence.

FIFTH. The period at which said company shall commence is the 22nd day of April, A. D. one thousand eight hundred and ninety, and the period at which it shall terminate, is the twenty-second day of April, A. D. one thousand nine hundred and thirty.

Amended Dec. 20, 1900.

IN WITNESS WHEREOF, We have hereunto set our hands and seals the twenty-ninth day of March, A. D. one thousand eight hundred and ninety.

Signed, Sealed and Delivered in the presence of:

EDWARD S. SAVAGE.

WILLIS P. AYER, (L. S.)
JOHN B. SIMONSON, (L. S.)
WILLIS C. BRYANT. (L. S.)

Exhibit C 48.

CERTIFICATE OF INCORPORATION OF THE BOUND BROOK ELECTRIC LIGHT, HEAT AND POWER COMPANY.

Filed January 30, 1893.

Incorporators.

THIS IS TO CERTIFY, That we, Charles P. Sebring, Louis J. Auerbacher, and Frederick H. Cook do hereby associate ourselves into a company, under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7th, 1875, and the several supplements thereto, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

Corporate name.

FIRST. That the name we have assumed to designate such company, and to be used in its business and dealings is "The Bound Brook Electric Light, Heat and Power Company."

Principal place of business.

SECOND. That the place in this State where the business of such company is to be conducted is the Borough of Bound Brook, in the County of Somerset and the village of South Bound Brook in the County of Somerset and the Township of Piscataway, in the County of Middlesex, New Jersey, and that the objects for which the said company is formed are the generation of electricity for light, heat and power, and the furnishing of the same to consumers.

Capital stock.

THIRD. That the total amount of the capital stock of said company is Five thousand dollars; the number of shares into which the same is divided

is five hundred and the par value of each share is ten ($10.00/100) dollars. The amount with which said company will commence business is Five thousaid dollars, which is divided into five hundred shares of the par value of ten ($10) dollars each.

Names and residences of stockholders.

FOURTH. The names and residences of the stockholders, and the number of shares held by each are as follows, to wit:

Charles P. Sebring, North Plainfield, N. J., 390 shares.

Louis J. Auerbacher, Newark, N. J., 100 shares.

Frederick H. Cook, Bound Brook, N. J., 10 shares.

Total, 500 shares.

Term of existence.

FIFTH. The period at which said company shall commence is the 28th day of January, Eighteen Hundred and Ninety-three, and the period at which it shall terminate is the twenty-eighth day of January, Nineteen hundred and forty-three.

Amended Dec. 20, 1900.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the 28th day of January, Eighteen hundred and ninety-three.

CHARLES P. SEBRING, (L. S.)

LOUIS J. AUERBACHER, (L. S.)

FREDERICK H. COOK. (L. S.)

Exhibit C 49.

CERTIFICATE OF THE ORGANIZATION OF THE DUNELLEN ELECTRIC LIGHT COMPANY.

Filed May 20, 1891.

THIS IS TO CERTIFY, that we, William H. Sebring, Henry N. Spencer, Charles P. Sebring, and William R. Codington, do hereby associate ourselves into a Company, under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An Act concerning corporations," approved April 7, 1875, and the several supplements thereto, for the purposes hereinafter mentioned, and to that end we do by this, our certificate set forth: Incorporators.

FIRST. That the name which we have assumed to designate such Company, and to be used in its business and dealings, is THE DUNELLEN ELECTRIC LIGHT COMPANY. Corporate name.

SECOND. That the places in this State where the business of such Company is to be conducted are the Borough of Dunellen, in the County of Middlesex, and the township of North Plainfield, in the County of Somerset, the Borough of Bound Brook in the County of Somerset and the City of Plainfield, in the County of Union, and Piscataway Township in Middlesex County. Principal place of business.

The principal part of the business of said company within this State is to be transacted in the said Borough of Dunellen, in the County of Middlesex, which is to be the principal place of business of the said Company, and the place where its principal office is to be located. And the place out of this State where the same is to be conducted

the of the State of

Objects.

And that the objects for which the Company is formed are for the manufacture and sale of electricity to be used for light, heat and power.

The portion of the business of said Company which is to be carried on out of this State is the

Capital stock.

THIRD. That the total amount of the capital stock of said Company is five thousand dollars; the number of shares into which the same is divided is fifty; and the par value of each share is one hundred dollars. The amount with which the said Company will commence business is five thousand dollars, which is divided into fifty shares of a par value of one hundred dollars each.

Names and residences of stockholders.

FOURTH. The names and residences of the stockholders, and the number of shares held by each are as follows, to wit:

William H. Sebring, Plainfield, Union County, New Jersey, five shares.

Henry N. Spencer, North Plainfield, Somerset County, New Jersey, five shares.

Charles P. Sebring, North Plainfield, Somerset County, New Jersey, thirty-five shares.

William R. Codington, Plainfield, Union County, New Jersey, five shares.

Term of existence.

FIFTH. The period at which said Company shall commence is the fifteenth day of May, A. D. one thousand eight hundred and ninety-one, and the period at which it shall terminate is the fifteenth day of May, A. D. one thousand nine hundred and forty-one.

Amended Dec. 20, 1900.

In witness whereof, we have hereunto set our hands and seals the fourteenth day of May, A. D. one thousand eight hundred and ninety-one.

William H. Sebring, (L. S.)
Henry N. Spencer, (L. S.)
Charles P. Sebring, (L. S.)
William R. Codington, (L. S.)

Signed, Sealed and Delivered in the presence of
John H. Jackson.

Exhibit C 50.

Certificate of Incorporation of The Edison Electric Illuminating Company of New Brunswick.

Filed, March 31, 1885.

Incorporators.

Know all men by these presents that we, Jacob J. Janeway, Charles J. Carpender, Stephen Howell, Van Marter W. Suydam, John Woodbridge, Wilson S. Howell, Charles S. Beldon of the City of New Brunswick, in the County of Middlesex and State of New Jersey, having formed ourselves into a company for the purpose of constructing, maintaining and operating works for the manufacture of supplies and distribution of electricity, for electric lights, heat and power; for selling such electricity to consumers, corporations and individuals residing and being in the City of New Brunswick and in the operating adjacent and adjoining thereto

for buying lights and erecting thereon buildings and machinery and for erecting posts and poles and the necessary wires and fixtures for the distribution of such electricity to said consumers and being desirous of becoming incorporated "having formed said company for such purposes" under the act of the legislature of the State of New Jersey, entitled "An Act Concerning Corporations," approved the seventh day of April, eighteen hundred and seventy-five, of the several supplements to and acts amendatory said act do make, sign and acknowledge this certificate in writing and we do hereby certify.

Corporate name.

FIRST. That the name to assume business of such company and to be used in its business and buildings in the Edison Electric Illuminating Company of New Brunswick.

Principal place of business.

SECOND. That the place in this city where the business of the said company is to be conducted is the City of New Brunswick, in the County of Middlesex, and State of New Jersey and the objects for which the said company is formed are for constructing, maintaining and operating works for the manufacture, supply and distribution of electricity for electric lights, heat and power, for selling such electricity to consumers and individuals residing and being in the City of New Brunswick and territory adjoining and adjacent thereto, for buying lights and erecting thereon buildings and machinery and for erecting posts and poles and laying and placing conductors and conduits in the streets and highways of said city and territory, to sustain the poles and necessary wires and fixtures for the distribution of such electricity to said consumers and for all other such purposes as shall be necessary to fully carry on the business aforesaid.

Objects.

Exhibit C 50.

THIRD. That the total amount of the capital stock of said company shall be fifty thousand dollars, divided into five hundred shares of the par value of one hundred dollars each and that the amount with which the said company shall commence business is the said sum of fifty thousand dollars, divided into five hundred shares of the par value of one hundred dollars. Capital stock.

FOURTH. That the names and residences of the stockholders and the par shares held by each are as follows: Names and residences of stockholders.

		Shares.
Jacob J. Janeway	New Brunswick, New Jersey.	72
Charles J. Carpender	New Brunswick, New Jersey.	72
Stephen Howell	New Brunswick, New Jersey.	72
Van Marter W. Suydam	New Brunswick, New Jersey.	71
John Woodbridge	New Brunswick, New Jersey.	71
Wilson S. Howell	New Brunswick, New Jersey.	71
Charles D. Belden	New Brunswick, New Jersey.	71

FIFTH. That the period at which such company shall commence business is the second day of April, in the year of eighteen hundred and eighty-five and the period at which it shall terminate is the first day in April, in the year of eighteen hundred and thirty-five. Term of existence. Amended December 20, 1900.

Exhibit C 51.

CERTIFICATE OF INCORPORATION OF THE "RAHWAY ELECTRIC COMPANY."

Incorporators.

This is to certify, that we, Cassimer W. Boynton, Henry Maurer, and Robert W. DeForest, do hereby associate ourselves into a company under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations," approved April seventh, eighteen hundred and seventy-five, and the several supplements thereto and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do, by this our Certificate set forth:

Corporate name.

FIRST. That the name which we have assumed to designate such company, and to be used in its business and dealings is the "Rahway Electric Company."

Principal office.

SECOND. That the place or places in this State, or elsewhere, where the business of such company is to be conducted is Rahway, Union County, New Jersey, at which its principal office is located, and the County of Middlesex and Counties adjacent to the Counties of Union and Middlesex in the State of New Jersey.

THIRD. The objects for which the company is formed are the constructing, maintaining and operating of works for the supply and distribution of electricity for electric lights, heat and power, and any lawful business connected therewith or relating thereto.

Capital stock.

FOURTH. The total amount of the Capital Stock of said Company is one hundred and fifty thousand

dollars, the number of shares into which the same is divided is fifteen hundred, and the par value of each share is one hundred dollars.

The amount with which said Company will commence business is one thousand dollars, which is divided into ten shares at a par value of one hundred dollars each.

FIFTH. The names and residences of the stockholders, and the number of shares held by each, are as follows: Names and residences of stockholders.

Names.	Residences.	No. of Shares.
Cassimer W. Boynton....	Woodbridge, N. J.....	4
Henry Maurer.....	New York City, N. Y.....	3
Robert W. DeForest.....	New York City, N. Y.....	3

SIXTH. The period at which said company shall commence is the first day of June, 1896, and the period at which it shall terminate is the first day of June, 1946. Term of existence. Amended Dec. 20, 1900.

IN WITNESS WHEREOF, we have hereunto set our hands and seals, the first day of June, eighteen hundred and ninety-six.

CASSIMER W. BOYNTON, (SEAL)
HENRY MAURER, (SEAL)
ROBERT W. DEFOREST, (SEAL)

Exhibit C 52.

CERTIFICATE OF INCORPORATION OF THE MIDDLESEX ELECTRIC COMPANY.

January 26, 1899.

Incorporators.

THIS IS TO CERTIFY, That we, Manning Freeman, John M. Connor and Herbert C. Richardson, all of Metuchen, in the County of Middlesex and State of New Jersey, and Willard S. Muchmore and Frederick G. Agens, Junior, of the City of Newark, County of Essex and State of New Jersey, do hereby associate ourselves into a company, under and by virtue of the provisions of an act of the Legislature of New Jersey, entitled: "An Act Concerning Corporations, Revision of 1896," and the supplements thereto, and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

Corporate name.

FIRST. That the name of such Corporation is Middlesex Electric Company.

Principal office.

SECOND. That the location in this State of the principal office of such Corporation is No. 781 Broad Street, in the City of Newark, County of Essex, and the name of the agent therein and in charge thereof, upon whom process against said corporation may be served is Willard S. Muchmore.

Objects.

THIRD. That the objects for which the said corporation is formed are: To manufacture, buy, sell and furnish electric current for light, heat and power;

To manufacture, buy, sell, lease, let, or operate any or all machinery for the manufacture or dis-

tribution of any or all types of Electric current; and any or all manner of Electric machinery, apparatus or supplies of any nature or kind whatsoever;

To erect, buy, sell, lease or let power plants or stations for the manufacture and distribution of electric current, and any or all machinery used therein or in connection therewith;

To manufacture, buy, sell, lease or let electric, gas or combination fixtures, chandeliers, brackets, lamps, globes, or other supplies and appurtenances used for or in connection with the manufacture, distribution or use of electric current for light, heat or power; and to carry on a general business of installing and erecting wires and fixtures, either interior or exterior for the transmission and use of electric current for light, heat or power;

To buy, sell, or lease pole lines; to erect poles and string electric wires thereon or on the poles of other individuals or corporations, and to sell or lease to other individuals or corporations the right to string electric wires on or attach electric wires to any or all poles so erected, owned or leased; to build and construct underground subways or conduits in public streets, avenues or highways within this State, and string electric wires or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation, the right to string electric wires or conductors in any such subways.

The Corporation shall also have power to conduct its business in all its branches, have one or more offices, and to hold, purchase, mortgage and convey real and personal property outside of the State of New Jersey, and in all other states, and in all foreign countries.

Capital stock.

FOURTH. That the amount of the total authorized capital stock of the corporation is one hundred thousand dollars; the capital is divided into ten thousand shares of the par value of ten dollars each. The amount of capital stock with which the corporation will commence business is one thousand dollars.

Names and residences of incorporators.

FIFTH. The names and post office address of the incorporators, and the number of shares subscribed for by each, are as follows, to wit:

Manning Freeman, Metuchen, N. J., twenty shares.

John M. Connor, Metuchen, N. J., twenty shares.

Herbert C. Richardson, Metuchen, N. J., twenty shares.

Willard S. Muchmore, Newark, N. J., twenty shares.

Frederick G. Agens, Jr., Newark, N. J., twenty shares.

SIXTH. The existence of said corporation shall continue perpetually.

Exhibit C 53.

AGREEMENT OF MERGER AND CONSOLIDATION.
November 29, 1900.

Agreement.

THIS AGREEMENT made this twenty-ninth day of November, in the year Nineteen hundred, between Central Electric Company, a corporation of the State of New Jersey, by the Directors thereof; Raritan Electric Light and Power Company, a corporation of the State of New Jersey, by the Direc-

tors thereof; Bound Brook Electric Light, Heat and Power Company, a corporation of the State of New Jersey, by the Directors thereof; The Dunellen Electric Light Company, a corporation of the State of New Jersey, by the Directors thereof; The Edison Electric Illuminating Company of New Brunswick, a corporation of the State of New Jersey, by the Directors thereof; Rahway Electric Company, a corporation of the State of New Jersey, by the Directors thereof, and Middlesex Electric Company, a corporation of the State of New Jersey, by the Directors thereof; Witnesseth:

Preamble.

WHEREAS, All of said companies were organized under the general laws of this State for the purpose of doing business of a similar nature in the Counties of Union and Middlesex, and other places in the State of New Jersey, and for the purposes of greater efficiency and economy of management, it has been deemed advisable to merge and consolidate them under and pursuant to the provisions of an act entitled "An Act Concerning Corporations" (Revision 1896) and the Supplements thereto.

AND WHEREAS, the parties hereto have agreed upon the provisions, conditions, and restrictions hereinafter set forth.

Merger Agreement.

NOW, THEREFORE, In consideration of the mutual agreements, covenants, provisions, and grants herein contained, the said Raritan Electric Light and Power Company; Bound Brook Electric Light, Heat and Power Company; The Dunellen Electric Light Company; The Edison Electric Illuminating Company of New Brunswick; Rahway Electric Company, and Middlesex Electric Company, by

these presents merge, combine, and consolidate their respective capital stocks, franchises, grants, immunities, privileges, capacities, properties and rights of every name and nature, into "Central Electric Company," which said Central Electric Company shall henceforth have, possess and enjoy all and singular the rights, franchises, privileges, powers, immunities and capacities, which are or have been granted to, or conferred upon, or possessed or enjoyed by any and all of said parties hereto, by virtue of their respective charters and supplements or amendments thereto, and by virtue of any law or laws of the State of New Jersey, and the said parties hereto have agreed upon and by these presents do agree upon and prescribe the following as the terms and conditions of such Merger and Consolidation, which terms and conditions the said parties hereto do mutually and severally covenant, promise and agree to observe, keep and perform, viz:

ARTICLE I.

Corporate name.

The name of the Absorbing and Consolidated Corporation into which said other corporations shall be merged is "Central Electric Company"; the

Corporate seal.

corporate seal of the said Company shall have inscribed the name of the company, the year of its incorporation, and such other device, if desired as may be prescribed by the by-laws. The principal office of said company is at Number One Hundred and Sixty-four Market Street, Newark, New Jersey, and the agent of the Company in charge thereof, upon whom process against the Company may be served is L. D. Howard Gilmour, the Secretary of the Company.

Exhibit C 53.

ARTICLE II.

Management to be vested in nine directors.

The management of the business of the said company shall be vested until otherwise provided by the by-laws in nine directors to be chosen by and from the stockholders, each stockholder may vote in person or by proxy, subject, however, to such rules and regulations as may be prescribed by the by-laws, and shall be entitled to one vote for each share of stock; the Directors shall choose, by majority vote, a President and Vice-President from among themselves, and shall appoint a Secretary and Treasurer, all of whom shall be chosen or appointed annually and who shall hold office for one year and until their successors are chosen or appointed and qualified, and the directors shall also appoint and remove from time to time such other officers and agents as they shall think proper.

ARTICLE III.

Directors, when chosen.

The Directors (other than those created by this agreement) shall be chosen on the First Tuesday of March, of each and every year, beginning with the year Nineteen hundred and one, at such time and place as shall be provided by the by-laws of said company, and shall hold their office for one year, and until others are chosen and qualified in their stead and until otherwise fixed by said by-laws; the election shall take place at the principal office of the Company in the City of Newark, between the hours of Twelve o'clock noon and three o'clock in the afternoon. If any vacancy shall occur in the number of said directors either by reason of death, resignation or lack of qualification, the remaining directors shall fill such vacancy, but a director so chosen shall hold office for the unexpired term.

Exhibit C 53.

ARTICLE IV.

Number of directors.

The number of Directors of said Central Electric Company until otherwise provided by the by-laws, shall be nine and the names and places of residence of the Directors who shall hold their office and manage the affairs of the company until the next annual election and until their successors shall be chosen, are the following:

Names and residences of directors.

Names.	Places of Residence
Adrian Riker	Newark, New Jersey.
Uzal H. McCarter	Newark, New Jersey.
Philip N. Jackson	Newark, New Jersey.
Dudley Farrand	Newark, New Jersey.
L. D. Howard Gilmour	Newark, New Jersey.
Chandler W. Riker	Newark, New Jersey.
Thomas N. McCarter, Junior	Newark, New Jersey.
William W. Smalley	Bound Brook, New Jersey.
Herbert C. Richardson	Metuchen, New Jersey.

ARTICLE V.

Names and residences of officers.

The names and places of residence of the President, Vice-President, Secretary and Treasurer of said Company, who shall hold their offices until their successors shall be chosen are the following:

President, Philip N. Jackson, Newark, New Jersey.

Vice-President, Adrian Riker, Newark, New Jersey.

Secretary, L. D. Howard Gilmour, Newark, New Jersey.

Treasurer, Uzal H. McCarter, Newark, New Jersey.

Vacancy in any of the offices provided for in Article V shall be filled by the Directors for the time being.

Exhibit C 53.

ARTICLE VI.

Powers of officers and directors.

The Officers and Directors of the Consolidated Company shall have and exercise all the powers and privileges exercised or vested in any of the officers or directors of any of the companies to this agreement, until the same shall be changed by the by-laws.

ARTICLE VII.

Term of existence.

The corporate existence of Central Electric Company shall be perpetual.

ARTICLE VIII.

Annual meeting.

The annual meeting of the stockholders of Central Electric Company shall be held on the first Tuesday in March of each year at the principal office of the company in Newark, unless the by-laws of the company shall otherwise provide.

ARTICLE IX.

Capital stock.

The amount of the capital stock of the Central Electric Company shall be Seven hundred and fifty thousand dollars ($750,000) and the number of shares into which it shall be divided shall be Seven thousand five hundred (7,500) and the par value of each share of stock shall be One hundred dollars ($100).

ARTICLE X.

Stock, how converted.

The capital stock of the Raritan Electric Light and Power Company issued and outstanding, amounting to Seventy-five thousand dollars ($75,000) at par, shall be converted into bonds of Central Electric Company to the amount of One hun-

dred and five thousand dollars ($105,000) secured by a consolidated mortgage upon the property of Central Electric Company, as hereinafter mentioned, and into stock of Central Electric Company to the amount of One hundred and eighty-five thousand dollars ($185,000).

ARTICLE XI.

The capital stock of the Bound Brook Electric Light, Heat and Power Company, amounting to Fifty-five thousand dollars ($55,000) at par, shall be converted into bonds of Central Electric Company to the amount of Forty-six thousand two hundred and fifty dollars ($46,250) secured by a consolidated mortgage upon the property of Central Electric Company, as is hereinafter mentioned, and into the stock of Central Electric Company to the amount of Ninety-three thousand dollars ($93,000).

ARTICLE XII.

The capital stock of the Dunellen Electric Light Company amounting to Ten thousand dollars ($10,000) at par, shall be converted into bonds of Central Electric Company to the amount of Ten thousand dollars ($10,000) secured by a consolidated mortgage upon the property of Central Electric Company, as is hereinafter mentioned.

ARTICLE XIII.

The capital stock of the Edison Electric Illuminating Company of New Brunswick issued and outstanding amounting to Fifty Thousand dollars ($50,000), at par, shall be converted into bonds of

Central Electric Company to the amount of Eighty-seven thousand dollars ($87,000) secured by a consolidated mortgage upon the property of Central Electric Company as is hereinafter mentioned, and into stock of Central Electric Company to the amount of Two hundred and thirty-nine thousand ($239,000) dollars.

ARTICLE XIV.

The capital stock of the Rahway Electric Company amounting to One hundred and one thousand one hundred and fifteen dollars and thirty-six cents ($101,115.36), at par, shall be converted into bonds of the Central Electric Company to the amount of One hundred and twenty-one thousand seven hundred and fifty dollars ($121,750) secured by a consolidated mortgage upon the property of Central Electric Company, as is hereinafter mentioned, and into the stock of Central Electric Company to the amount of Two hundred and three thousand dollars ($203,000).

ARTICLE XV.

The capital stock of the Middlesex Electric Company issued and outstanding, amounting to Thirty thousand dollars ($30,000) at par, shall be converted into bonds of Central Electric Company to the amount of Thirty thousand dollars ($30,000) secured by a consolidated mortgage upon the property of Central Electric Company, as is hereinafter mentioned and into the stock of Central Electric Company to the amount of Thirty thousand dollars ($30,000).

Exhibit C 53.

ARTICLE XVI.

Immediately upon the filing of this agreement in the Office of the Secretary of State, as provided by law, the said stocks of the Raritan Electric Light and Power Company; Bound Brook Electric Light, Heat and Power Company; The Dunellen Electric Light Company; The Edison Electric Illuminating Company of New Brunswick; Rahway Electric Company and Middlesex Electric Company, or so much thereof as shall be held by, or in trust for, assenting stockholders, shall be delivered to Central Electric Company to be cancelled; as often as any of said stock shall be so delivered said Central Electric Company shall issue to the stockholders delivering the same at the time of such delivery, consolidated mortgage bonds of said Central Electric Company, as follows, that is to say: to the stockholders of Raritan Electric Light and Power Company, bonds and stock in the ratio of One hundred and forty dollars ($140) in bonds and Two hundred and forty-six dollars and sixty-six and two-thirds cents ($246.66 2/3) in stock of Central Electric Company to each One hundred dollars in stock of Raritan Electric Light and Power Company; to the stockholders of Bound Brook Electric Light, Heat and Power Company, bonds and stock in the ratio of Eighty-four dollars nine and one-eleventh cents ($84.09 1/11) in bonds and One hundred and sixty-nine dollars and nine and one-eleventh cents ($169.09 1/11) in stock of Central Electric Company, to each One hundred dollars in stock of Bound Brook Electric Light, Heat and Power Company; to the stockholders of The Dunellen Electric Light Company, bonds in the ratio of One hundred dollars in bonds of Central Electric Company to each

Exhibit C 53.

One hundred dollars in stock of The Dunellen Electric Light Company; to the stockholders of the Edison Electric Illuminating Company of New Brunswick, bonds and stock in the ratio of One hundred and seventy-four dollars ($174) in bonds and Four hundred and seventy-eight dollars ($478) in stock of Central Electric Company to each One hundred dollars in stock of The Edison Electric Illuminating Company of New Brunswick; to the stockholders of Rahway Electric Company, bonds and stock in the ratio of One hundred and twenty dollars and forty cents ($120.40) in bonds and Two hundred dollars and seventy-six cents ($200.76) in stock of Central Electric Company to each One hundred dollars ($100) in stock of Rahway Electric Company; to the stockholders of Middlesex Electric Company, bonds and stock in the ratio of One hundred dollars ($100) in bonds, and One hundred dollars ($100) in stock of Central Electric Company to each one hundred dollars ($100) in stock of Middlesex Electric Company.

Persons entitled to less than Five hundred dollars ($500) in bonds or less than One hundred dollars ($100) in stock under the above plan of distribution, shall receive script certificates for the same, which certificates shall be exchangeable for bonds or stock respectively when presented in sums of Five hundred dollars ($500) for bonds, and One hundred dollars ($100) for stock. The script certificates for stock shall not be entitled to vote at stockholders' meetings; any dividends declared on the stock shall attach to the script, but shall not be paid until said script is converted into stock. The script certificates for bonds bear interest at the same rate as the bonds, but such interest shall not be payable until such script is exchanged for bonds.

Exhibit C 53.

ARTICLE XVII.

Bonds.

The bonds hereinbefore mentioned amounting to Four hundred thousand dollars ($400,000) are part of an issue of Seven hundred and fifty thousand dollars ($750,000) of bonds by Central Electric Company dated July Second, Nineteen hundred, payable in forty years therefrom with interest at the rate of Five per cent. per annum, payable semi-annually, both principal and interest to be payable in gold coin of not less than the present standard of weight and fineness redeemable after July first, Nineteen hundred and five, at One hundred and ten per cent. of par; they may be registered at the election of the holder, and shall contain the provisions and be in the form contained in Schedule "A" hereto appended. Of said Seven hundred and fifty thousand dollars ($750,000) in bonds to be issued as aforesaid, Fifty thousand dollars ($50,000) are to remain in the possession of the Trustee to be used to take up and replace at maturity, or before Fifty thousand dollars ($50,000) of outstanding bonds of The Edison Electric Illuminating Company of New Brunswick.

The remainder of said issue of Three hundred thousand dollars ($300,000) of said bonds are to remain uncertified in the hands of the Trustee, to be issued from time to time for the acquisition of new property, or for the construction, extensions, alterations or improvements in the plant of Central Electric Company, according to the terms and conditions of the mortgage issued by said Central Electric Company to Fidelity Trust Company, a corporation of the State of New Jersey, upon all the property of said Central Electric Company in trust for the security of said bonds.

Exhibit C 53.

ARTICLE XVIII.

Transfers when made.

The transfer of the properties of the respective companies named in this agreement shall be made as of the second day of July, Nineteen hundred, but all the shares of the capital stock of the Rahway Electric Street Railway Company and the Woodbridge and Sewaren Electric Street Railway Company and all the rolling stock of said street railway companies and other personal property used exclusively for street railroad purposes, and also the car barn in the City of Rahway and the land upon which it stands, being part of the properties of the Rahway Electric Company, shall for the purpose of this merger agreement be considered as no part of the property of the Rahway Electric Company, all of said securities and property having been transferred by said Rahway Electric Company before the execution of this agreement, and the said Central Electric Company is to have no interest in said stock and property, real and personal above mentioned or the proceeds thereof.

ARTICLE XIX.

Expenses.

The Central Electric Company shall pay all expenses of the Merger and Consolidation.

ARTICLE XX.

In case every share of stock of all the companies that are parties to this agreement shall not be secured in favor of said consolidation or shall not assent to the plan thereof, then, and in that case, the said Central Electric Company shall proceed, according to law, with reference thereto.

IN WITNESS WHEREOF, The said parties have hereto set their corporate seals and have caused these presents to be signed by their respective Presidents, and attested by their respective Secretaries; and also to be signed by their respective Directors, the day and year first hereinabove written.

CENTRAL ELECTRIC COMPANY,
By PHILIP N. JACKSON,
President.

(SEAL)

Attest:

(Sgd.) L. D. HOWARD GILMOUR,
Secretary.

Directors:

(Signed)

ADRIAN RIKER, (L. S.)
T. N. MCCARTER, (L. S.)
PHLIP N. JACKSON, (L. S.)
DUDLEY FARRAND, (L. S.)
L. D. HOWARD GILMOUR, (L. S.)

Witness as to Directors
HENRY C. KEES (Sgd.)

MORTGAGE JULY 2, 1900.

Mortgage.

THIS INDENTURE, made this second day of July, in the year nineteen hundred, between Central Electric Company, a corporation of the State of New Jersey, of the first part, and Fidelity Trust Company, a corporation of the State of New Jersey, as Trustee, of the second part, and hereinafter called the Trustee; WITNESSETH:

Whereas, The Edison Electric Illuminating Company of New Brunswick; The Dunellen Electric

Light Company; Bound Brook Electric Light, Heat and Power Company; Rahway Electric Company; Raritan Electric Light and Power Company; Middlesex Electric Company, and Central Electric Company (all being organized under the laws of the State of New Jersey), under and by virtue of an agreement between the said companies filed in the office of the Secretary of State pursuant to an Act of the Legislature of New Jersey entitled "An Act concerning corporations" (Rev. 1896), and the various amendments thereof and supplements thereto, have been merged with and consolidated into "Central Electric Company";

And Whereas, under said agreement of consolidation and in order to provide for a portion of the payments or obligations which it was required to assume in order to effect such merger or consolidation, to provide for the conversion of the stocks of the merged companies, and for certain other purposes hereinafter set forth, Central Electric Company was required and authorized to issue its consolidated gold mortgage bonds to the amount of seven hundred and fifty thousand dollars ($750,000), one hundred and fifty thousand ($150,000), at par, of said bonds, being of the denomination of five hundred dollars ($500) each, and six hundred thousand dollars ($600,000) of said bonds being of the denomination of one thousand dollars ($1,000) each, payable with interest as hereinafter mentioned, said five hundred dollar bonds being numbered consecutively from one to three hundred inclusive and said one thousand dollar bonds being numbered consecutively from three hundred and one to nine hundred inclusive of which bonds four hundred thousand dollars, at par, are to be imme-

diately certified by said Trustee and delivered in part payment of the stocks and bonds of the said merged companies, pursuant to the terms and provisions of said agreement; three hundred and fifty thousand dollars at par of said bonds are to be issued and delivered to the Trustee herein, but for the present to remain uncertified; of which bonds fifty thousand dollars at par are to be hereafter certified by said Trustee and used only to purchase and pay for, or to take up and replace from time to time an outstanding issue of fifty thousand dollars at par of bonds of the Edison Electric Illuminating Company of New Brunswick, dated the first day of June, 1888, which will be due and payable on the first day of June, 1918, and which are secured by a mortgage upon all the property, real and personal, of the said Edison Electric Illuminating Company of New Brunswick, all of which is fully set out and is to be done in accordance with the provisions of the agreement of merger of said merged companies. The balance of said issue amounting to three hundred thousand dollars at par of said bonds, to be issued and delivered to the Trustee, to be retained by it, to be certified and delivered by said Trustee, and to be used, from time to time, as hereinafter set forth, for the erection, maintenance, enlargement, extension, addition, improvement, replacement and alteration of the plants, buildings, mains, poles, lines, pipes, conduits, meters, services, machinery, apparatus and other appurtenances, or for the acquisition of new property, real and personal, according to the terms of said agreement of merger or consolidation, and hereafter expressly set forth;

And Whereas, the Directors of the Central Electric Company have, by resolution duly passed, au-

thorized the execution and the delivery of this mortgage and of the bonds herein above referred to, and in pursuance of said agreement and resolutions, the said Central Electric Company proposes to issue nine hundred bonds to the amount of seven hundred and fifty thousand dollars, of the denominations above mentioned, which said bonds, with the coupons and certificates of the Trustee attached, are all substantially in the following form:

FIVE PER CENT. CONSOLIDATED MORTGAGE GOLD BOND.

No.

CENTRAL ELECTRIC COMPANY, INCORPORATED.

Under the Laws of the State of New Jersey.

TOTAL AUTHORIZED ISSUE $750,000.

Central Electric Company, a corporation of the State of New Jersey, acknowledges itself to be indebted unto bearer, or, if registered, to the registered holder hereof, in the sum of One thousand dollars, which sum it promises to pay to bearer, or if registered, to the registered holder hereof in gold coin of the United States of America of the present standard of weight and fineness, at the office of Fidelity Trust Company in the City of Newark, in the State of New Jersey, on the first day of July, which will be in the year Nineteen hundred and forty (1940) and to pay interest thereon in like gold coin at the rate of five per centum per annum, on the first days of January and July in each year at the said office of Fidelity Trust Company, on the presentation and surrender of the annexed coupons as they severally become due until said principal sum shall be paid without any deduc-

tion whatsoever from the said principal or interest on account of any National, State, County or Municipal taxes. In case of default in the payment of any semi-annual installment of interest, which shall have become payable and which shall have been demanded by presentation of said coupon at said office, the principal of this bond shall become due, in the manner and with the effect, and subject to the conditions provided in the mortgage securing the payment of the same hereinafter mentioned.

This bond is one of a series of bonds of like date, tenor, effect, aggregating $750,000 and numbered consecutively from one (1) to nine hundred (900) inclusive, all of which have been issued and delivered to the Trustee named below by Central Electric Company.

The said bonds numbers one (1) to three hundred (300) are of the denomination of $500 each and numbers three hundred and one (301) to nine hundred (900) are of the denomination of $1,000 each.

Note—Words interlined come in after "Company" and before "Four."

Four hundred and fifty thousand dollars at par, of said bonds shall be at once certified by the said Trustee and delivered to the Treasurer of Central Electric Company, to be used in part payment for the properties, rights and franchises acquired by Central Electric Company. The balance of said bonds amounting to Three hundred thousand dollars at par, shall be retained by said Trustee, and shall only be certified and delivered by said Trustee as required for expenditure upon the plants or the acquisition of new property, real and personal, as

is more specifically provided in the mortgage securing this bond.

The payment of each and all of said bonds so issued and to be issued, with the interest coupons attached thereto, according to their tenor and effect is equally secured without preference, priority or distinction as to the lien or otherwise of one bond over another by a mortgage bearing date the second day of July, in the year One thousand nine hundred, executed and delivered by Central Electric Company to Fidelity Trust Company, a corporation of the State of New Jersey, as Trustee, and conveying to it as Trustee, all the property, rights, and franchises of said Central Electric Company, owned or possessed by it at the date of said mortgage, and more particularly described and set forth in said mortgage, together with all properties, rights and franchises which it may thereafter acquire.

The right is reserved to redeem this bond at the option of the Company after five years from date hereof by paying therefor the sum of Eleven hundred dollars and accrued interest in the manner specified in the mortgage herein referred to.

This bond, until registered, shall pass by delivery. The bond may, as to principal, be registered in books to be kept for that purpose, at the office of Fidelity Trust Company and if so registered, will thereafter be transferable only upon the said books at the office of Fidelity Trust Company by the owner in person, or by attorney, unless the last preceding transfer shall have been to bearer, and the transfer by delivery thereby restored, and it shall continue to be susceptible of successive registrations and transfers to bearer, at the option of the holder, but such registration shall not effect the negotiability of the annexed coupons.

Exhibit C 53.

This bond shall not be valid until the certificate hereon shall have been signed by said Trustee.

IN WITNESS WHEREOF, the said Central Electric Company has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and Secretary at the City of Newark, in the County of Essex and State of New Jersey, this second day of July, A. D. Nineteen hundred.

CENTRAL ELECTRIC COMPANY,
By

President.

Attest:

Secretary.

COUPON.

Central Electric Company will pay to bearer on the day of , A. D. Twenty-five dollars in gold coin of the United States of America of the present standard of weight and fineness at the office of Fidelity Trust Company at the City of Newark, in the County of Essex and State of New Jersey, being six months' interest then due on its bond Number , secured by its mortgage to said Fidelity Trust Company, Trustee, dated July second, Nineteen hundred.

No.

Treasurer.

Exhibit C 53.

TRUSTEE'S CERTIFICATE.

This is to certify that this bond is one of the issue of bonds within mentioned and also described in and secured by the mortgage or trust deed, dated the second day of July, Nineteen hundred, executed by Central Electric Company to the undersigned.

FIDELITY TRUST COMPANY,
Trustee.

By

President.

Now, Therefore, this Indenture Witnesseth, that the said party of the first part, for the better securing the payment of the principal and interest of said bonds according to the true intent and meaning thereof, and for and in consideration of the premises and of the sum of one dollar to it in hand paid by the said Trustee, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, enfeoff, convey and confirm unto the said party of the second part, as Trustee aforesaid, its successors and assigns all the following described property, viz:

All that certain tract of land with the building thereon erected, lying and being in the City of Rahway in the County of Union and State of New Jersey, described as follows: BEGINNING at a stake planted on the northerly side of Irving (formerly Second) Street, the same being a corner of lot of land conveyed by Rahway Electric Company to Elizabeth, Plainfield and Central Jersey Railway Company by deed dated the 12th day of December, 1900, said point being thirty-five feet and twenty-

four hundredths of a foot distant northwardly measured along Irving street from the corner of a lot of land now or formerly belonging to Nathan Thorpe and from said point extending as follows:

FIRST. North twelve degrees twenty-two minutes West thirty-six feet and ninety hundredths of a foot to a stake, corner of land formerly belonging to Boyne.

SECOND. Thereby south eighty-seven degrees forty and one-half minutes West one hundred and ninety-four feet and sixty-six hundredths of a foot to a stake.

THIRD. South twenty-three and one-half minutes East thirty-six feet and twenty-six hundredths of a foot to a corner of land conveyed by Rahway Electric Company to Elizabeth, Plainfield and Central Jersey Railway Company as aforesaid, and

FOURTH. Thereby north eighty-seven degrees forty-two minutes East passing through the middle of the partition wall between the power house and the car barn heretofore belonging to Rahway Electric Company two hundred and two feet and twenty-nine hundredths of a foot to place of Beginning.

Also all that certain tract situate, lying and being in the city of Perth Amboy, in the County of Middlesex and State of New Jersey, BEGINNING at a point in the east side of Davidson avenue distant three hundred and twenty-five feet northerly from the northwesterly corner of said Davidson Avenue and Market Street, thence running northerly along said easterly side of Davidson avenue seventy-five feet, thence westerly at right angles with said Davidson avenue ninety-nine feet more or less to lands of McCormack; thence southerly along said

McCormack's land seventy-five feet more or less to lands of Palmer; thence along said Palmer's land ninety-nine feet more or less to the point or place of beginning.

Also, another certain tract, situate, lying and being in the City of Perth Amboy in the County of Middlesex and State of New Jersey, BEGINNING at a point in the westerly side of Davidson Avenue distant three hundred (300) feet northerly from the northwesterly corner of said Davidson avenue and Market Street, running thence northerly along said westerly side of Davidson Avenue twenty-five feet (25′) to lands of the Raritan Electric Light and Power Company, thence westerly at right angles with said Davidson avenue one hundred (100) feet more or less to lands of Catherine M. Bertrand, late of Patrick McCormack; thence southerly along said Bertrand's land twenty-five feet to lands of Palmer; thence easterly along said Palmer's land one hundred (100) feet more or less to the point or place of beginning.

Also that certain tract situate, lying and being in the Borough of Metuchen in the County of Middlesex and State of New Jersey, described as follows:

BEGINNING at a point on the northerly side of the road leading from Metuchen to New Durham, said point being distant three hundred and fifty feet northeasterly from the center line of the Easton and Amboy Railroad measured at right angles thereto, and extending thence as follows:

FIRST. North thirty-three degrees twenty-three minutes west parallel with said center line and distant three hundred and fifty feet southwesterly therefrom about nineteen hundred and eighty feet

to the most northerly line of property conveyed by William T. McAdams and wife to Herbert C. Richardson.

SECOND. South eighty-four degrees thirty-five minutes east one hundred and sixty feet more or less to a stake.

THIRD. South six degrees twenty-seven minutes west one hundred and sixty-one feet and seventy-five one-hundredths of a foot to a stone.

FOURTH. South thirty-three degrees forty-eight and one-half minutes east eighty hundred and eighty-six feet and eighty-one one-hundredths of a foot to a stone.

FIFTH. South eighty-three degrees thirty-six and one-half minutes east three hundred and fifty feet and nineteen one-hundredths of a foot to a stone.

SIXTH. South thirty-three degrees and twenty-five minutes east along land belonging to the Easton and Amboy Railroad Company three hundred and eighty-two feet and seventy-seven one-hundredths of a foot to a stake.

SEVENTH. Still by said land south eight degrees twenty-three minutes west one hundred and twenty-six feet and ninety-eight one-hundredths of a foot to a stone.

EIGHTH. South seventy-three degrees forty minutes east fifty-five feet and thirty-one one-hundredths of a foot to a stake.

NINTH: South fifty degrees two minutes east one hundred and fifty-eight feet to a stake.

TENTH. Still by said lands south thirty-three degrees and twenty-three minutes east one hundred and twenty-seven feet and thirty-one one-hundredths of a foot to a post in the side of said road from Metuchen to New Durham.

ELEVENTH. Thereby south fifty-one degrees fifty-eight minutes west one hundred and twenty-five feet and sixty-eight one-hundredths of a foot to a spike at an angle in said road.

TWELFTH: North eighty-six degrees forty minutes west two hundred and twenty-five feet more or less to place of beginning, being the same property conveyed by Herbert C. Richardson and wife to Central Electric Company by deed not yet recorded.

And all other real estate now owned or which may be hereafter acquired by or belong to Central Electric Company.

All the buildings and works now or hereafter thereon erected and the machinery now or hereafter thereon placed, together with all the poles, lines, services, meters, transformers, lamps, brackets, appliances and appurtenances of every kind connected with the plants of the party of the first part and used in connection therewith for the purposes of manufacturing, distributing or supplying and selling electrical current, including all coal, oil, waste, with other supplies, also all horses, wagons, carts, harness, tools and implements of every kind used in said business, and office furniture, fixtures and all its machinery and appliances of whatever nature which it now owns or may here-

after acquire, for lighting, heating, power or other purposes however same may be produced.

And all and singular the entire property, privileges, and franchises of said Central Electric Company, including all patents and patent rights and processes. All buildings, equipment, machinery, tools, fuel and supplies for constructing or operating, maintaining or replacing any of the property of said Central Electric Company acquired or to be acquired, or any part thereof, and also all other property of said Central Electric Company, or property rights of whatever character or nature, real, personal and mixed which the said party of the first part, or its successors may hereafter acquire or become vested with by purchase, gift, consolidation with other company or companies or otherwise howsoever.

All rents, tolls, earnings, profits, revenues or income arising or to arise from the property owned or to be acquired by said Central Electric Company or any part thereof.

All corporate or other franchises, rights, easements, contracts, agreements, privileges, immunities, now owned or hereafter to be owned, held or enjoyed, by or in any manner conferred upon said Central Electric Company.

It is the intention to include herein all the property of Central Electric Company, real, personal and mixed in possession or expectancy, now owned or hereafter to be acquired, together with all and singular the tenements, hereditaments, rights, franchises, privileges, and easements, and that all property of every kind now owned or hereafter acquired shall be embraced within the provisions hereof and subject to the lien created for securing or payment of said bonds.

Exhibit C 53.

TO HAVE AND TO HOLD all and singular the above granted and described premises and property, real and personal, with the appurtenances thereto belonging, unto the said party of the second part, its successors and assigns forever; in trust, however, for the security of the person or persons, firm or firms, and bodies politic and corporate who shall at any time be and become the purchasers, holders or owners of the said bonds or any part thereof; provided, however, if said party of the first part, its successors or assigns, shall well and truly pay or cause to be paid the several sums of money in the several bonds hereinbefore mentioned, with the interest, according to the true intent and meaning of the said bonds and each of them or if the said bonds and the interest thereon shall become in any way paid or satisfied, and if the party of the first part, its successors and assigns, shall well and truly perform and observe all and singular the covenants, promises and conditions in the said bonds and coupons and in this indenture expressed to be kept and performed and observed by or on the part of the said party of the first part then these presents and the estate and rights hereby granted shall cease, determine, and be void, and the said Trustee, its successors and assigns shall on demand, reassign and deliver to the said Central Electric Company, its successors and assigns, all and singular the property hereby granted, sold and assigned, but not previously disposed of as herein provided, otherwise these presents shall be and remain in full force.

It is further expressly understood, covenanted and agreed, that the further trusts, uses, purposes, conditions and covenants, aforesaid, for and upon which the property, real and personal, rights, privileges and franchises hereinabove described, are con-

veyed to and are to be held by the Trustee, are as follows:

The issue of bonds to be secured by the lien of these presents is three hundred bonds of the par value of five hundred dollars each, and six hundred bonds of the par value of one thousand dollars each, aggregating seven hundred and fifty thousand dollars, par value, dated July second, nineteen hundred, all of which shall be issued by Central Electric Company and delivered to the Trustee; four hundred thousand dollars at par of said bonds shall be immediately certified by said Trustee and delivered to the Treasurer of the Central Electric Company to be delivered by him in accordance with the agreement of consolidation to the proper persons in part payment for the stocks and bonds of the merged companies as hereinabove set forth; fifty thousand dollars at par of said bonds shall be retained by said Trustee without certification for the present, and be certified and delivered to or upon the order of Central Electric Company, expressed by resolution of its Board of Directors only for the purpose of purchasing or paying for, taking up or replacing fifty thousand dollars at par of outstanding bonds of Edison Electric Illuminating Company of New Brunswick as hereinabove set forth, which said bonds of the Edison Electric Illuminating Company of New Brunswick have become obligations of Central Electric Company.

The balance of said issue of bonds by said Central Electric Company, or three hundred thousand dollars at par of said bonds, shall be delivered to the Trustee, but shall remain uncertified for the present, and shall be certified and delivered only as follows: As from time to time funds shall be required for

the erection, maintenance, enlargement, extension, addition, improvement, replacement and alteration of plants, buildings, mains, poles, lines, meters, pipes, conduits, services, machinery, apparatus and other appurtenances of the electric or other works, at the time owned or operated or controlled or managed by or for Central Electric Company, either directly or under contracts for operation, or under leases, whether such contracts or leases be retained by Central Electric Company or be assigned by it for operation for its benefit in whole or in part, or for the acquisition of other property, real or personal, Central Electric Company, or the company that may be operating the property of Central Electric Company, shall notify the Trustee herein of the amount of money required for such purposes. Such notice shall be in writing, signed by the President or Vice-President of the corporation, demanding the same, attested by its Secretary and sworn to as a proper and necessary expenditure by the President or Vice-President of said corporation making said demand, and shall state the amount of money required at the time and purpose for which it is required, thereupon such Trustee within ten days from the service of such notice, shall certify sufficient of said bonds to provide the amount of money so required, and shall sell the same at the then market price, either on the market or at private sale for cash, at or not less than such market price, and shall pay the cash proceeds of such sale to the company making such demand or request as aforesaid, provided, however, that if such company so elects and notifies the Trustee in writing, said Trustee instead of selling the bonds, shall deliver the same to the said Company, which shall in such event, receive and pay for the same,

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not at their face value, but at their market price at the time. It is distinctly agreed, however, that no portion of such three hundred thousand dollars of bonds shall be sold in any one year to raise money for any repairs to the plant or plants at the time owned or operated or controlled or managed by or for the electrical company, either directly or under leases as above set forth, until a sum equal to at least ten per cent. of the gross income of said company from operation shall have been expended in that year for repairs to said plant or plants, which fact shall be set out in the requisition made by said company upon said Trustee, and shall be sworn to by the said President or Vice-President of said Company making such demand.

2. So long as no default shall be made in the payment of the principal or interest, or any part thereof, payable upon the bonds, hereby secured, as the same shall respectively become due and payable, or in performance of the covenants herein contained to be performed by the electrical company, the electrical company shall be suffered and permitted by the Trustee to remain in full possession, enjoyment, and control of all the franchises, privileges, and property, real and personal, herein expressed to be hereby mortgaged, and shall be permitted to manage the same and to receive, receipt for, take, use, enjoy and dispose of the rents, tolls, earnings, revenues and income thereof, in the same manner and with the same effect as if this indenture had not been made, with the right at all times, as the proper management of the business of the electrical company may require to alter, change, add to, repair, remove and replace the machinery, engines, boilers, pipes, mains, poles,

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lines, conductors, conduits, meters, services, fixtures and other appurtenances to the works and plants constructed or owned or which shall be constructed or owned by the electrical company and conveyed, or intended to be conveyed hereby to the Trustee, provided that the security of said bonds shall not thereby be in any wise deducted or impaired. The electrical company shall have the further right at all times, to convey or exchange, freed from the encumbrances and trusts hereof, all or any of the real estate now held, or which shall hereafter be acquired by it, which shall no longer be either useful or necessary to the proper and judicious management, and maintenance of its business, or of the property hereby conveyed; but in no case shall any such sale or other disposition of such real estate be made without the express assent in writing of the Trustee; and said Trustee is hereby expressly authorized to release under its seal from the operation and effect of this mortgage any property so sold or exchanged, whether the consideration of such sale be wholly cash or partly cash, and partly secured by a mortgage on the premises sold; but any property so taken and exchanged, is such thereby, shall forthwith become and be liable under this mortgage as if the same had been originally included herein, and the net proceeds of the real estate so released (if sold) shall be applied by or for the electrical company in good faith to the betterment or extension of the plants owned or controlled by it, or shall be paid over and assigned by the electrical company to the Trustee, to be applied by it with all convenient speed towards the purchase in the open market, from time to time, and at such prices as the Trustee shall deem proper, of one or more of said mortgage bonds hereby

secured, and all bonds so purchased shall be immediately cancelled and shall cease to be entitled to the benefit of the security hereby provided.

3. The electrical company, its successors and assigns, shall and will on demand in writing of the Trustee, at any time, make, execute, acknowledge and deliver all such further acts, deeds and assurances in the law as may be reasonably advised or required of them, or either of them, for effectuating the intention of these presents, and for the better assuring and confirming unto the Trustee, its successors and assigns, in the trusts hereby created upon the trusts for the purposes herein expressed, all and singular the property, appurtenances, rights, and franchises hereby mortgaged, whether now owned or possessed or hereafter acquired by said electrical company, its successors or assigns.

4. The electrical company will not apply for or claim any deduction by reason of its mortgage from the taxable value of the lands and premises or personal property embraced in this mortgage, and will not suffer any judgment, lien, or execution to remain outstanding upon or to be levied upon any of its property, whereby the lien hereof might or could be impaired or in any manner render itself liable to any suit or proceedings for dissolution or proceedings in bankruptcy or insolvency. The electrical company shall and will also, and at all times, so long as any of the bonds hereby secured are outstanding and unpaid, cause its buildings, machinery, and other property provided for use in connection with its plants and business, of the character usually insured by electric lighting companies, to be insured to the

extent such property of electrical lighting companies is usually insured.

5. The electrical company shall and will maintain or cause to be maintained all its plants, buildings, machinery and apparatus of every description, and all equipment of every kind necessary for operating its business, in good repair and in an efficient condition to meet the demands of business at any and at all times of the year. The said real estate, buildings, electrical works and plants shall be opened at all reasonable times for the inspection of the Trustee and the electrical company will supply the Trustee with such reasonable and proper information as it may from time to time apply for in the interest of protecting the security of the bondholders. In addition to other remedies on the covenants contained in this section, the Trustee shall be entitled to a specific performance thereof on bill filed by it for that purpose, but as to the maintenance and repair of the property such bill shall not be filed until after one month's notice to the electrical company.

6. If the electrical company, its successors or assigns, shall at any time hereafter make default or refuse or neglect or omit for three months after the same shall fall due and be demanded, to pay any semi-annual installment of interest payable upon the bonds, or any of them, intended to be hereby secured, or shall make default or refuse, neglect or omit for three months after the same shall fall due and be demanded to pay the principal sum of each and all of said bonds, or shall omit or neglect, for one month after notice from the Trustee, to make the repairs required by the last preced-

ing paragraph hereof, then, and in either such case, the Trustee by its attorney or attorneys, agent or agents, may forthwith enter into and upon and take possession and control of all and singular the properties, rights, privileges, franchises and premises herein expressed to be hereby mortgaged, with all the records, books, papers, and accounts of the electrical company, and each and every part thereof, and exclude the electrical company and its agents wholly therefrom, and have, hold and use the same, operating by its superintendents, managers, agents, receivers, servants, or attorneys, the said electrical works and business, and exercising the franchises appertaining thereto, and making from time to time, all repairs and replacements and such useful additions, alterations and improvements thereto and thereof as to the Trustee may seem judicious, and collect and receive all rents, tolls, earnings, profits, revenues and income of the same and every part thereof, and after deducting the expense of operating the said works and conducting said business and of all the said repairs and replacements, additions, alterations and improvements, and all payments which may be made for taxes and assessments, charges and other liens prior to the lien of these presents upon the said lands, property or premises or any part thereof, as well as a just compensation to the Trustee, its agents, attorney and counsel, shall apply the remainder of the money so received by it, as follows:

In case the principal of said bonds secured by this mortgage shall not have become due, to the payment of the interest remaining in default in the order of maturity of the installments of such interest; in the case the principal of said bonds shall have become due, to the payment of the principal

and accrued interest upon bonds pro rata without any preference or priority whatsoever.

7. In case default shall be made in the payment of any installment of interest upon the bonds secured hereby or any of them, either by the electrical company or by the Trustee in possession under the provisions of the last preceding paragraph, or in case the electrical company shall make default in the performance of any of the other provisions of these presents, then, and in either such case, if the holders of a majority in value of the outstanding bonds hereby secured shall so elect in writing and notify the electrical company and said Trustee, the whole principal of all the bonds hereby secured shall thereupon be declared by the Trustee to be and shall immediately become due and payable, and it shall be the duty of the Trustee, upon request in writing, signed by the holders of a majority in value of said bonds then outstanding and upon being indemnified to its satisfaction, to institute proper proceedings at law or in equity, to enforce the lien hereby created, and cause the said property to be taken in execution and sold under proper process for the payment of the debt, principal and interest, hereby secured, or the Trustee may upon the like request and indemnity, enter upon and take possession of all of said property, real and personal, rights, privileges and franchises herein expressed to be hereby mortgaged, and proceed to sell the same or so much thereof as may be necessary, to the highest and best bidder at public sale at the court house in the city of New Brunswick, first having given at least four weeks' notice of the time, place and terms of such intended sale by publication of such notice once a week during

said four weeks in at least one newspaper of general circulation, published in each of the following cities: Newark, Rahway, New Brunswick, Perth Amboy, Plainfield, and upon such sale shall by proper assurances in law convey, transfer and deliver possession of the property, real and personal, rights, privileges, and franchises so sold, to the purchaser or purchasers freed and discharged from the trusts hereby created, which sale or sales shall be a perpetual bar both in law and in equity against Central Electric Company, and its successors and all persons and corporations lawfully claiming or to claim by, through, or under it, and upon the making of any such sale the Trustee shall apply the proceeds of such sale or sales as follows, to wit:

FIRST. To the payment of the costs and expense of such sale or sales, including a reasonable compensation to the trustee, its agents, attorneys, and counsel, and all expense, liabilities and advances made and incurred by the Trustee in managing and maintaining the works, equipment and other property herein expressed to be hereby mortgaged, and all taxes, assessments and liens prior to the lien of these presents.

SECOND. To the payment of the whole amount of principal and interest, which shall then be owing or unpaid upon the said bonds, or any of them, whether the said principal by the tenor of said bonds be then due or yet to become due, and in case of the insufficiency of such proceeds to pay in full the whole amount of principal and interest owing or unpaid upon the said bonds, they shall be paid ratably in proportion to the amounts owing and

unpaid upon them, respectively, without preference of one bond over any of the others.

THIRD. To pay over the surplus, if any, on demand, to whomsoever may be lawfully entitled to receive the same by the judgment of some court of competent jurisdiction.

It is hereby declared and agreed by and between the parties hereto that it shall be the duty of the Trustee, and it is hereby made obligatory upon the Trustee, upon being requested so to do, in the manner as hereinafter provided, by the holder or holders of a majority of the bonds at the time outstanding, and on being indemnified to its satisfaction, to take all needful steps which may be requisite to protect the rights of the holders of the bond secured thereby. The requests hereby provided for, shall be by an instrument or concurrent instrument in writing, signed by such bondholder or bondholders, or by his or their attorney or attorneys in fact, duly authorized for that purpose, and upon such request, accompanied by indemnity to its satisfaction as aforesaid, the Trustee shall proceed forthwith to enforce the rights of the Trustee and of the bondholder or bondholders under these presents by sale or entry, or both, or by judicial proceedings, according to such requisition or requisitions.

PROVIDED, that in the meantime and until such requisition or requisitions by a majority of the bondholders shall have been made as above provided, the Trustee shall have full power and authority to commence and prosecute such proceedings at law or in equity from time to time, as it may deem necessary or proper for the due protec-

tion or enforcement of the rights of the bondholders or any of them under these presents.

9. Upon the filing of a bill in equity or commencement of judicial proceedings to enforce the rights of the Trustee and the bondholders under these presents, the Trustee shall be entitled to the appointment of a receiver or receivers of the property hereby mortgaged, and of the earnings, income, rents, issues and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

10. The Trustee may, and upon the request of the electrical company, shall cancel and discharge the lien of these presents and execute and deliver to Central Electric Company such deeds or discharges as shall be requisite to discharge the lien hereof and to reconvey to or invest in Central Electric Company the estate and title hereby conveyed or intended to be, whenever all bonds and coupons secured hereby which shall have been duly issued, shall be paid, cancelled, or destroyed, whether before or after maturity, which cancellation or destruction shall take place, in the presence of representatives duly appointed on behalf of the electric company and of the Trustee, and upon receiving their certificates of the fact, it will be the duty of the Trustee to discharge said lien of record and reconvey to the Central Electric Company the estate and title hereby conveyed or intended to be.

And if at any time the electrical company shall become the owner and holder of all said bonds and unpaid coupons and shall present the same to the Trustee and request their cancellation and dis-

charge from the lien of these presents, whether before or after maturity, the Trustee shall cancel or destroy the same in the manner above provided in this article, and shall upon receiving such certificate as above provided for, discharge said lien of record and convey to the electrical company the estate and title hereby conveyed or intended to be.

11. In case of the refusal, failure, neglect or other incapacity of the Trustee to execute this Trust, a successor may be appointed by the Court of Chancery of the State of New Jersey, upon application of the electrical company or of the Trustee, or of a majority of the outstanding bondholders, and in every and any such case the present Trustee shall make and execute, upon request, any such deeds, conveyances, and assurances as may be legally necessary for more fully vesting in and confirming to such new Trustee such estate, rights, powers and duties.

12. The word "Trustee" when used in these presents, shall for all purposes be taken, held and construed to mean, include and describe the person or persons or corporations, who or which shall for the time being, and from time to time, be charged with the trusts hereby created and herein expressed.

13. If any bond issued hereunder shall be mutilated, lost or destroyed, the electrical company may, upon terms and conditions prescribed by its Board of Directors, issue in lieu thereof a new bond of like tenor, amount, and date, and bearing the same serial number, which bond, when so issued, shall be certified by the Trustee upon due proof of such mutilation, loss, or destruction, and upon receiving indemnity satisfactory to the Trustee.

14. All reasonable costs, expenses, counsel and attorney fees, necessary for the proper discharge and execution of the trust herein set forth, or for the protection or due enforcement of the lien hereby created or intended so to be, and for the recovery of the moneys hereby secured, shall be borne and paid by the electrical company; and in the event of the sale of said franchises, privileges or property under this mortgage, either by legal proceedings or by public sale by the Trustee, or its successors in the trust, the said cost, expenses and fees shall be deducted from the amount so realized before payment of any part thereof on account of the principal or interest for the recovery of which such sale shall be made.

15. It is hereby agreed that this trust is accepted upon the express condition that the Trustee shall not, nor shall any future Trustee, incur any liability or responsibility whatever in consequence permitting or suffering the electrical company to retain or be in possession of the estate and the premises hereby mortgaged or agreed or intended so to be, or any part thereof, and to use and enjoy the same, nor shall it be responsible in any way for the consequence of any breach on part of the electrical company of any of the covenants herein contained or of any act of said company, its agents or servants, nor shall the said Trustee, present or future, be or become liable or responsible for any cause, matter or thing, except its own gross negligence or wilful default in the trust herein expressed and contained. The Trustee shall be under no obligation or duty to perform any act hereunder, or to defend any suit in respect hereof, unless indemnified to its satisfaction, nor shall the Trustee be bound to recog-

nize any person as a bondholder until his bonds are submitted to the Trustee for inspection, if required, and his title satisfactorily established, if disputed.

IN WITNESS WHEREOF, the party of the first part has caused these presents to be executed by its President, and its corporate seal hereunto affixed, duly attested by its Secretary; and the party of the second part has caused these presents to be executed by its President and its corporate seal hereunto affixed, duly attested by its Secretary, the day and year first above written.

CENTRAL ELECTRIC COMPANY,
By
(Sgd.) PHILIP N. JACKSON,
President.

(SEAL)

Attest:
(Sgd.) L. D. HOWARD GILMOUR,
Secretary.

FIDELITY TRUST COMPANY,
By
(Sgd.) UZAL H. MCCARTER,
President.

(SEAL)

Attest:
(Sgd.) F. W. EGNER,
Secretary.

Stamps $325.00.

Exhibit C 54.

JOINT AGREEMENT OF MERGER OR CONSOLIDATION.

THIS AGREEMENT, Made this first day of December, nineteen hundred and three, between SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY and CENTRAL ELECTRIC COMPANY, both corporations of the State of New Jersey, and their respective Directors, Witnesseth:

WHEREAS, the parties hereto are organized under the laws of the State of New Jersey for the purpose of carrying on business of the same or a similar nature, and it is deemed by them advisable to merge or consolidate the Central Electric Company into Somerset, Union and Middlesex Lighting Company, under and pursuant to an act of the Legislature of New Jersey, entitled "An Act Concerning Corporations" (Revision of 1896), and the several supplements thereto and amendments thereof; and

WHEREAS, the parties hereto have agreed upon the provisions, conditions and restrictions hereinafter set forth:

NOW THEREFORE, in consideration of the mutual agreements, covenants, provisions and grants herein contained, the parties hereto do by these presents merge or consolidate Central Electric Company into the said Somerset, Union and Middlesex Lighting Company, being one of the parties hereto, which shall be forthwith possessed of all and singular the rights, privileges, powers and franchises, as well of a public as of private nature, of said Central Electric Company, and all property, real, personal and mixed, and all debts due

on whatever account, or belonging to said Central Electric Company shall be vested in said Somerset, Union and Middlesex Lighting Company; and all other property, rights, privileges, powers and franchises, and all and every other interest of said Central Electric Company, shall be hereafter as effectually the property of said Somerset, Union and Middlesex Lighting Company as they were of said Central Electric Company.

The parties hereto have agreed upon, and by these presents do agree upon the terms and conditions of the merger or consolidation (which terms and conditions the parties hereto do mutually and severally covenant, promise and agree to keep and perform), as follows:

ARTICLE I.

No new corporation being created hereby, and said Central Electric Company being merged into or consolidated with said Somerset, Union and Middlesex Lighting Company, the latter Company shall continue to exist under the same name.

ARTICLE II.

The present Directors (being five in number) and officers of said Somerset, Union and Middlesex Lighting Company shall, subject to the by-laws of said company, remain and continue in office. Said Directors and officers are as follows:

DIRECTORS.

Names.	Places of Residence.
James C. Pope	Plainfield, New Jersey.
Augustus J. Brunson	Plainfield, New Jersey.
H. G. Runkle	Plainfield, New Jersey.
William Runkle	Orange, New Jersey.
A. M. Young	Branford, Connecticut.

Exhibit C 54.

OFFICERS.

Names.	Places of Residence.
President, H. G. Runkle	Plainfield, New Jersey.
Vice-President, A. M. Young	Branford, Connecticut.
Secretary, James C. Pope	Plainfield, New Jersey.
Treasurer, James C. Pope	Plainfield, New Jersey.

ARTICLE III.

The capital stock of said Somerset, Union and Middlesex Lighting Company shall remain as at present, to wit: One million and fifty thousand dollars ($1,050,000), and the number of shares into which it is divided at ten thousand five hundred (10,500), of the par value of one hundred dollars ($100) each, and the certificates representing said shares may be exchanged for certificates of stock of the consolidated corporation share for share upon the request of the holders thereof and the surrender of such certificates.

Nothing in this agreement shall be construed to prevent said Somerset, Union and Middlesex Lighting Company from increasing or decreasing the amount of its capital stock, in accordance with law.

ARTICLE IV.

The capital stock of the Central Electric Company shall be converted into obligations of the Somerset, Union and Middlesex Lighting Company in the following manner:

The total authorized issued and outstanding capital stock of said Central Electric Company is seven hundred and fifty thousand dollars ($750,000) consisting of seven thousand five hundred (7,500) shares, of the par value of one hundred dollars ($100) each, of which six thousand five hundred

(6,500) shares are owned by the Somerset, Union and Middlesex Lighting Company, and on account of said six thousand five hundred (6,500) shares being owned by the Somerset, Union and Middlesex Lighting Company, no obligations of said last named company shall be issued for the same, but the same shall, upon the final consummation of the merger or consolidation, be cancelled.

The remaining one thousand (1,000) shares of capital stock of said Central Electric Company shall be converted into bonds of the Somerset, Union and Middlesex Lighting Company, of the issue authorized by said last named company, under its mortgage dated December 1, 1903, to Fidelity Trust Company, Trustee, at the rate of, and the holders of said one thousand (1,000) shares of the Central Electric Company's stock, shall be entitled to receive, twenty-one dollars and eighty-seven and one-half cents ($21.87½), at par, in said bonds for each one hundred dollars ($100), at par, of said stock.

ARTICLE V.

The location of the principal office of the Somerset, Union and Middlesex Lighting Company is at No. 110 East Front Street, in the City of Plainfield, New Jersey, and the name of the Agent in charge thereof, and upon whom process against this corporation may be served is James C. Pope.

ARTICLE VI.

The Morton Trust Company of New York, Trustee under a certain mortgage made by the Plainfield Gas and Electric Light Company, dated April 1,

1900, as well as any other trustee under any mortgage which may heretofore have been executed by the Plainfield Gas and Electric Light Company, or by said Central Electric Company, one of the parties hereto, or by any companies controlled by said corporations, or by any of them, and under any of which mortgages any bonds may be held by the trustees thereunder uncertified, be and they are hereby authorized to certify and deliver to the Treasurer of Somerset, Union and Middlesex Lighting Company, or any other company which by consolidation or otherwise may hereafter become the successor of said company, any bonds heretofore authorized to be issued under any such mortgage, upon request of the Somerset, Union and Middlesex Lighting Company, or such successor corporation, expressed by a resolution of its Board of Directors.

ARTICLE VII.

As often as any of said one thousand (1,000) shares of stock of Central Electric Company not held by Somerset, Union and Middlesex Lighting Company shall be delivered to the Somerset, Union and Middlesex Lighting Company, said last named company shall issue to the stockholder or stockholders delivering the same at the time of his or their delivery, the said mortgage bonds of the Somerset, Union and Middlesex Lighting Company.

Persons entitled to less than one thousand dollars ($1,000) in bonds, according to the plan of distribution or conversion herein provided, shall receive scrip certificates for the same, which certificates shall be exchangeable for bonds when presented in sums of one thousand dollars ($1,000). Such certificates until so exchanged shall not bear interest.

In Witness Whereof, the said parties have hereto set their corporate seals and have caused these presents to be signed by their respective Presidents and attested by their respective Secretaries, and also to be signed by their respective Directors the day and year first above written.

SOMERSET, UNION AND MIDDLESEX
LIGHTING COMPANY,
By H. G. RUNKLE,
President.

(SEAL)

Exhibit C 55.

P. L. 1873, chap. 543, page 1442.

AN ACT TO INCORPORATE THE OXY-HYDROGEN COMPANY OF THE UNITED STATES.

1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That Theodore Westen, Lemuel H. Davis, Benjamin G. Clark, John S. Irick, Samuel H. Grey, William J. Sewell, Daniel Dodd and John C. Bullitt, and all and every person and persons who may become stockholders in the capital stock hereinafter mentioned, their successors and assigns, are hereby constituted and made a body politic and corporate, in fact and in law, by the name of the Oxy-Hydrogen Company of the United States; and by that name shall have power to sue and to be sued, to plead and to be impleaded, to contract and to be contracted with, and to purchase, hold, lease, receive licenses, sell and dispose of any patent or patents for the manufacture of oxygen and hydro-

Names of corporators.

Corporate name and powers.

gen gas, or either of them, and their combinations with other gases, for illuminating, heating and all purposes, and to issue its stock at par in payment for such purchase, lease or license, and to grant licenses, under and dispose of said patents or rights under said patents within this state or elsewhere, and to make, manufacture, use, and sell such gas, for the purpose of illuminating and heating, or for any other purpose or purposes, within the state of New Jersey, or elsewhere, and, for the purposes aforesaid, to purchase, hold, sell, convey, mortgage, lease and otherwise dispose of personal or real estate; and that the said corporation is hereby empowered to lay pipes and conductors with all appurtenances thereto, and erect the necessary posts and lights in any and all the roads, streets, highways, and public grounds in the state of New Jersey, and do all things necessary for the purpose of lighting the same, and all dwellings, stores, mines, tunnels, and other places; PROVIDED, that public travel shall not be unreasonably and unnecessarily obstructed thereby, and that the said corporation shall put such streets, roads, highways and public grounds in as good condition as the same were before laying said pipes and erecting said posts.

Proviso.

Capital stock.

2. AND BE IT ENACTED, That the capital stock of said company shall be fifty thousand dollars, with power to increase the same as a majority of stockholders may from time to time determine, divided into shares of one hundred dollars each, which shares shall be deemed personal property, and to be transferable in such manner as shall be prescribed from time to time by the by-laws of the company.

Election of directors.

3. AND BE IT ENACTED, That the property and affairs of said company shall be managed by a

board of directors, not less than three nor more than seven in number, to be chosen annually, at the time and place appointed by the stockholders or such stockholders as shall attend for that purpose, in person or by proxy, each share of the capital stock entitling the holder thereof to one vote; that said board shall organize by appointing one of their number to be president, and a suitable person to be secretary, and may appoint such officers and agents as they may deem necessary, and may fix their duties, powers and compensations; and that the persons named in the first section of this act, or a majority of them, may open books of subscription to the capital stock of said corporation at such time and place, in the state of New Jersey, as a majority of them may think proper; and whenever fifty thousand dollars of the stock shall have been subscribed, and ten per centum thereof paid in, it shall be lawful for the said corporation to commence business, and the above named persons, or a majority of them, may give notice of a meeting of stockholders to elect directors of said company, who shall continue in office from the date of said election, and until others are elected in their stead.

May make by-laws, rules, etc.

4. And be it enacted, That the directors from time to time make such by-laws, rules and regulations as they may deem expedient for the government, management and disposition of the stock, effects, property, lands, profits and concerns of said company, not contrary to the constitution of this state, or of the United States.

5. And be it enacted, That this act take effect immediately.

Approved April 4, 1873.

Exhibit C 55.

CERTIFICATE OF ISSUE OF STOCK BY THE OXY-HYDROGEN COMPANY OF THE UNITED STATES.

The location of the principal office of said company is No. 763 Broad street, in the City of Newark, County of Essex.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is JAMES P. DUSENBERRY.

In accordance with the provisions of an act entitled "An Act relating to the issuance, sale and delivery of stock and securities by corporations of this State which have acquired or may hereafter acquire authority, permission or a franchise from the State or any municipality thereof, to use or occupy any street, highway, road, lane or public place within this State," approved August 14, 1906, the Oxy-Hydrogen Company of the United States, hereby certifies that it has just issued, sold and delivered shares of capital stock to the amount of fifty thousand dollars ($50,000); that the amount of cash received in payment for said stock is fifty thousand dollars ($50,000), five thousand dollars ($5,000), or ten per cent. (10%) thereof having been paid in the year 1873, at the time when the original subscriptions for five hundred shares were made, and the balance, namely forty-five thousand dollars ($45,000), or ninety per cent. (90%) was received on the twenty-sixth day of August, 1909.

WITNESS the corporate seal of the Oxy-Hydrogen Company of the United States duly attested this twenty-sixth day of August, 1909.

THE OXY-HYDROGEN COMPANY OF THE UNITED STATES,

GEORGE S. PHILLER,
President.

[SEAL]

Attest:

EDWIN W. HINE,
Secretary.

Exhibit C 55.

Certificate of amendments to charter.

The Oxy-Hydrogen Company of the United States, a corporation of the State of New Jersey, by its president and secretary, does hereby certify:

1. That the principal office of the Company is at No. 763 Broad street, in the City of Newark, N. J., and that the agent therein, in charge thereof and upon whom process against this corporation may be served is James P. Dusenberry.

2. That the Board of Directors of said corporation duly convened and held on the twenty-sixth day of August, nineteen hundred and nine, passed a resolution declaring that the changes and amendments of the charter of said corporation hereinafter set forth are advisable and calling a meeting of the stockholders to take action thereon.

3. That a copy of said resolutions of the Board of Directors is hereto appended.

4. That thereafter on the twenty-sixth day of August, nineteen hundred and nine, pursuant to such call of the Board of Directors and by unanimous consent of all the stockholders of the Company a special meeting of the stockholders of the Company was held, at which meeting all of the stockholders of the corporation having voting powers were present in person or represented by proxy, and that all of the stockholders having voting powers voted in favor of such changes and amendments, such changes and amendments being as follows:

(*a*) Changing the name of the Oxy-Hydrogen Company of the United States to Public Service Gas Company;

(*b*) Increasing the capital stock of said corporation from fifty thousand to ten million dollars.

5. That at said meeting of the stockholders the foregoing amendments were assented to in writing by all of the stockholders having voting powers, which said written assent is hereto appended.

6. That five hundred shares of common stock and no shares of preferred stock of said corporation are issued and outstanding.

IN WITNESS WHEREOF said the Oxy-Hydrogen Company of the United States has caused these presents to be signed by its president and its secretary and its corporate seal to be hereto affixed this twenty-sixth day of August, nineteen hundred and nine.

THE OXY-HYDROGEN COMPANY OF THE UNITED STATES,

By

GEORGE S. PHILLER,

President.

[CORPORATE SEAL]

Exhibit C 56.

CERTIFICATE OF INCORPORATION OF PUBLIC SERVICE ELECTRIC COMPANY.

Filed June 14, 1910.

THIS IS TO CERTIFY, That we, the undersigned, do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act concerning corporations" (revision of 1896), approved April 21, 1896, and the several supplements thereto and amendments thereof, and do hereby subscribe for and agree to take and pay for the number of shares of capital stock set opposite our respective names. Incorporators.

FIRST. The name of the corporation is PUBLIC SERVICE ELECTRIC COMPANY. Corporate name.

SECOND. The location of the principal office of said corporation in this State is No. 763 Broad street, in the City of Newark, County of Essex. Location of principal office.

The name of the agent therein and in charge thereof upon whom process against this corporation may be served is James P. Dusenberry. Name of agent.

THIRD. The objects for which the said corporation is formed are: Objects.

To manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power.

To manufacture, buy, sell, lease, let or operate any or all machinery or appliances for the manufacture, generation, accumulation, storage, transmission, furnishing, supplying or distribution of

any or all types or varieties of electrical energy and any or all manner of electrical machinery, apparatus or supplies of every nature or kind whatsoever.

To erect, buy, sell, hold, operate, lease and let power plants and generating stations for the manufacture, generation, accumulation, storage, transmission, furnishing, supplying or distribution of electrical energy and any or all machinery used therein or in connection therewith, and to take, hold, acquire by assignment or otherwise leases of all such plants and machinery, and to operate the same under and in pursuance of such leases, and to assign and transfer the same.

To manufacture, buy, sell, lease and let fixtures, chandeliers, electroliers, brackets, lamps, globes and other supplies and appurtenances used for and in connection with the manufacture, generation, accumulation, storage, transmission, furnishing, supplying or distribution or use of electrical energy for light, heat or power or otherwise, and to carry on a general business of electricians, mechanical engineers, suppliers of electrical energy for the purpose of light, heat or power or otherwise, and to install, erect and operate, sell or lease wires, cables and fixtures, both interior and exterior, for the transmission and use of electrical energy, and to manufacture and deal in all supplies, apparatus and things required for or capable of being used in connection with the generation, accumulation, storage, transmission, furnishing, supplying or distribution of electrical energy.

To use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place wires therein beneath the

public roads, highways, streets, avenues and alleys of this State as may be deemed necessary.

To buy, sell, operate or lease pole lines, erect poles, string wires thereon, or on poles of other corporations or individuals, in, on and along any and all streets, avenues, highways and roads of counties, cities, towns, townships, boroughs, villages and other municipalities in this State, and over or under any and all canals and other waterways, and across any and all bridges, and to use the same for the transmission of electrical energy, either for delivery to consumers on such lines, or for transmission to other corporations or individuals to be distributed by them to other consumers, and to sell or lease to other corporations or to individuals the right to string electric wires on, or attach electric wires to, any or all poles so erected, owned or leased, and to use such lines both as through lines and for local delivery.

To build, construct and use, for any of the purposes stated above, underground subways or conduits in all the streets, avenues, highways and roads of the State of New Jersey, and under canals and other waterways, and upon and across bridges spanning the same, and to string or place electric wires or conductors therein, and to buy or lease from, or sell or let to any other corporation or individual, the right to string and to use as aforesaid electric wires or conductors in any such subways or conduits.

To buy, own, sell, mortgage and otherwise dispose of the stocks, bonds, securities and evidences of indebtedness of other corporations, and to acquire the rights, privileges and franchises of other corporations either by purchase, lease or agree-

ment, and to operate, sell, assign and transfer the same.

To apply for, register, purchase, lease or otherwise acquire, and to hold, use, rent, operate, introduce and sell or otherwise dispose of, all trade marks, inventions, improvements or processes used in connection with the aforesaid business or any part thereof, including such as may be secured under letters patent of the United States or of other countries, and such as are not so secured, and to grant licenses in respect thereto, and otherwise generally to turn the same to account.

To erect and construct for other corporations and for municipalities and individuals, works, plants and extensions of plants, and equip the same for the production, use, sale, supply and delivery of electrical energy for the foregoing purposes, or for any or either of them or any part thereof, and to lease or operate the same, and to lease to or operate for others, works and plants already constructed, in whole or in part, either in the name of such corporations, municipalities or individuals, or in the name of this company or otherwise, as may be deemed most advantageous by the contracting parties.

To purchase, or otherwise acquire, sell, hold, assign, transfer, mortgage, pledge, guarantee, exchange, or otherwise dispose of all or any part, whether less or more than a majority, of the shares of the capital stock, all or any bonds and other securities or evidences of indebtedness, good will, rights, assets, property of any and every kind, or any part thereof, of other corporations of this or other States; and while owners of such stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon;

with power to designate some person for that purpose from time to time to the same extent that natural persons might or could do.

In general, to do all or anything not prohibited by law in connection with the foregoing objects and incidental thereto that an individual might or could do.

The corporation may, upon the authority of its board of directors, for any and all lawful purposes in the course of the transaction of the business and affairs of the corporation, execute and issue bonds and debentures, and issue or cause to be issued certificates or other negotiable or transferable instruments, and pledge any and all of the assets of the corporation for the performance of the covenants of such bonds, indentures, certificates and other instruments, upon such terms and conditions as may be set out in the instrument pledging the same, or in any contract, deed or instrument relating thereto.

To procure the corporation to be registered or recognized in any state, county, city or other municipality of the United States, the territories thereof, the District of Columbia, colonial possessions or territorial acquisitions of the United States, and in any foreign country, or any city, town or municipality thereof.

To conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage and convey real and personal property, in or out of this State, in such places in the several states and territories of the United States, District of Columbia, colonial possessions and territorial acquisitions of the United States, and in foreign countries, as shall

from time to time be found necessary or convenient for the purposes of the business of the company.

Capital stock.

FOURTH. The total authorized capital of this corporation is Fifteen Million Dollars ($15,000,000), divided into one hundred and fifty thousand shares of the par value of one hundred dollars each.

Names and residences of incorporators.

FIFTH. The names and post office addresses of the incorporators and the number of shares subscribed for by each, the aggregate thereof being the amount of the capital stock with which the company will commence business, are as follows:

Name.	Post Office Address.	No. of Shares.
Thomas N. McCarter....	Rumson, New Jersey.....	40
Edwin W. Hine.....	Orange, New Jersey.....	30
Dudley Farrand.....	Newark, New Jersey.....	30

Term of existence.

SIXTH. The period or duration of the corporation shall be unlimited.

May purchase property, etc.

SEVENTH. The corporation may use and apply its surplus earnings or accumulated profits, including the amount authorized by law to be reserved, as well as its other assets, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock, bonds, debentures or other obligations from time to time, to such extent and in such manner and upon such terms as its board of directors shall determine, and neither the property nor the capital stock, bonds, debentures or other obligations so purchased or acquired, nor any of them taken in payment or satisfaction of any debt due to the corporation shall be regarded as profits for the purpose of declaration or payment of dividends unless so determined by a majority of

the board of directors, or a majority in interest of the stockholders.

The board of directors shall have full power to make, alter or amend the by-laws from time to time as in their judgment may be necessary for the promotion of the interests or affairs of the corporation, and may in their discretion increase the membership of the board and elect members thereto.

Directors may amend by-laws.

The board of directors shall also have power to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens and other pledges of and upon the real and personal property of the corporation, and from time to time to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation.

Powers of directors.

The board of directors, by resolution passed by a majority of the whole board, may designate three or more directors to constitute an executive committee, which committee, to the extent provided in said resolution or in the by-laws of the corporation, shall have and may exercise such of the powers of the board of directors in the management of the business and affairs of the corporation as may lawfully be delegated to said committee, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The board of directors from time to time shall determine whether and to what extent, and at what time and places, and under what conditions and regulations, the accounts and books of the corporation or any of them shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the corporation except as conferred by

statute or authorized by the board of directors, or by resolution of the stockholders.

The board of directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except its stock and transfer books) outside of this State, at such places as may be from time to time designated.

It is the intention that the objects above specified in article Third, except where otherwise expressed in said article, shall be in no wise limited or restricted by reference to or inference from the terms of any other article, clause or paragraph in this certificate.

IN WITNESS WHEREOF we have hereunto set our hands and seals this thirteenth day of June, nineteen hundred and ten.

THOS. N. MCCARTER, (L. S.)
EDWIN W. HINE, (L. S.)
DUDLEY FARRAND. (L. S.)

Signed, sealed and delivered in the presence of

FRANK BERGEN.

Exhibit C 57.

CERTIFICATE OF AMENDMENT.

PUBLIC SERVICE ELECTRIC COMPANY.

BE IT KNOWN that Public Service Electric Company, a corporation of the State of New Jersey, doth hereby certify:

1. The principal office of the company is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the company may be served is Charles M. Breder.

2. The Board of Directors of the said company, at a meeting duly convened and held on the eighteenth day of March, in the year of our Lord one thousand, nine hundred and twenty-four, a quorum being present, by the unanimous vote of the directors present, duly passed and adopted a resolution that the amendment to and change and alteration in said certificate of incorporation, which is hereinafter set forth, is advisable, and called a meeting of the stockholders of the said company, to be held at its principal office on the twenty-fifth day of March, in the year of our Lord one thousand, nine hundred and twenty-four, to take action thereon.

3. The following is a copy of the said resolution:

> "RESOLVED, that in the judgment of the board of directors of Public Service Electric Company it is advisable to amend the certificate of incorporation in relation to the object of said company as now fixed therein, and to

that end and for that purpose Article Third thereof shall be changed so as to read as follows:

"*Third.* The object for which said company is formed is to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object;

"(*c*) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles in the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place wires therein beneath the public roads, highways, streets, avenues and alleys, of this State as may be deemed necessary."

Exhibit C 57.

4. Thereafter on the twenty-fifth day of March, in the year of our Lord one thousand, nine hundred and twenty-four, pursuant to such call of said directors, of which meeting notice has been given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning four hundred and thirty-two thousand, five hundred (432,500) shares of the stock of the said company, being all of the stock issued and outstanding, and at such meeting all of the said stockholders, who were so present in person or by proxy, voted in favor of such change, alteration and amendment as proposed in the resolution of the Board of Directors above recited, and none against the same.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing, which is appended hereto, by the owners in person or by proxy of all of the stock of the company, that is to say, four hundred and thirty-two thousand five hundred (432,500) shares.

6. That the total number of shares of stock of said company issued and outstanding is four hundred and thirty-two thousand five hundred (432,500).

IN WITNESS WHEREOF, the said Public Service Electric Company hath caused this certificate to be made and signed by its Vice-President and Secretary and its corporate seal to be hereunto affixed,

New Jersey State Library

this twenty-fifth day of March, in the year of our Lord one thousand, nine hundred and twenty-four.

PUBLIC SERVICE ELECTRIC COMPANY,
By
P. S. YOUNG,
Vice-President.

(SEAL)

Attest:
CHARLES M. BREDER,
Secretary.

Exhibit C 58.

CERTIFICATE OF INCORPORATION OF UNITED ELECTRIC COMPANY OF NEW JERSEY

THIS IS TO CERTIFY, that we, the undersigned, do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the legislature of the state of New Jersey, entitled "An act concerning corporations" (revision of 1896), approved April 21, 1896, and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

FIRST. The name of the corporation is

UNITED ELECTRIC COMPANY OF NEW JERSEY.

SECOND. The location of the principal office in this state is at No. 83 Montgomery street in the city of Jersey City, county of Hudson.

The name of the agent therein and in charge thereof, upon whom process against this corpora-

New Jersey State Library

tion may be served until otherwise changed is J. E. Hulshizer, Jr.

THIRD. The objects for which the said corporation is formed are:

To manufacture, generate, buy, sell, accumulate, store, transmit, furnish and distribute electric current for light, heat and power;

To manufacture, buy, sell, lease, let, or operate any or all machinery or appliances for the manufacture, generation, storage, accumulation, transmission or distribution of any or all types of electric current, and any or all manner of electric machinery, apparatus or supplies of any nature or kind whatsoever;

To erect, buy, sell, operate, lease and let power plants and generating stations for the manufacture, generation, accumulation, storage, transmission and distribution of electric current and any or all machinery used therein or in connection therewith;

To manufacture, buy, sell, lease and let fixtures, chandeliers, electroliers, brackets, lamps, globes and other supplies and appurtenances used for or in connection with the manufacture, generation, accumulation, storage, transmission, distribution or use of electric current for light, heat or power or otherwise, and to carry on a general business of electricians, mechanical engineers, suppliers of electricity for the purpose of light, heat or power or otherwise, and install, erect and operate, sell or lease wires, cables and fixtures, both interior and exterior, for the transmission and use of electric current, and manufacture and deal in all apparatus and things required for or capable of being used in

connection with the generation, distribution, supply, accumulation and employment of electricity;

To buy, sell, operate or lease pole lines, erect poles, string electric wires thereon, or on poles of other individuals or corporations, on any and all streets, avenues, highways and roads of counties, townships, towns, villages, and cities, and over or under any and all canals and other waterways, and across any and all bridges, and to use the same for the transmission of electric current either for delivery to consumers on such lines or for transmission of current to vendors to consumers, and to sell or lease to other individuals or corporations the right to string electric wires on or attach electric wires to any or all poles so erected, owned or leased, and to use such lines both as through lines and for local delivery;

To build and construct and use, for any of the purposes stated above, underground subways or conduits in such streets, avenues, highways and roads and under such canals and other waterways, and string electric wires or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation the right to string and to use as aforesaid electric wires or conductors in any such subways;

To buy, own, sell, mortgage and otherwise dispose of the stock, bonds, securities and evidences of indebtedness of other corporations, and to acquire the rights, privileges and franchises of other existing corporations, either by purchase, leases, or agreements, and to operate the same;

To apply for, register, purchase, lease or otherwise acquire, and to hold, use, rent, operate, intro-

duce and sell or otherwise dispose of all trademarks, inventions, improvements or processes used in connection with the aforesaid business or any part thereof, including such as may be secured under letters patent of the United States or other countries, and such as are not secured, and to grant licenses in respect thereto, and otherwise generally to turn the same to account;

To erect and construct for other corporations and for municipalities and individuals, works, plants and extensions of plants, and equip the same, for the production, use, sale, supply and delivery of the foregoing or any or either of them, or any part thereof, and to lease or operate the same, and to lease to or operate for others, works and plants already constructed, in whole or in part, either in the name of such other corporations, municipalities, or individuals or in the name of this company or otherwise, as may be deemed most advantageous by the contracting parties;

To purchase, or otherwise acquire, hold, sell, assign, transfer, mortgage, pledge, guarantee, exchange, or otherwise dispose of all or any part, whether less or more than a majority, of the shares of the capital stock, of, or any bonds and other securities, or evidences of indebtedness, good will, rights, assets, property of any and every kind, or any part thereof, of other corporations of this or any other state; and while owners of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon; with power to designate some person for that purpose, from time to time, to the same extent that natural persons might or could do;

In general to do all or anything in connection with the foregoing objects and incidental thereto as

an individual owner might or could do, not prohibited by law.

The corporation may, upon the authority of the board of directors for any and all lawful purposes, in the course of the transaction of the business and affairs of the corporation, execute and issue bonds and debentures and issue or cause to be issued certificates or other negotiable or transferable instruments, and pledge any and all of the assets of the corporation for the performance of the covenants of such bonds, debentures, certificates and other instruments, upon such terms and conditions as may be set out in the instrument pledging the same, or in any contract, deed, or instrument relating thereto.

To procure the company to be registered or recognized in any state, county, city or other municipality of the United States, the territories thereof, the District of Columbia, colonial possessions, or territorial acquisitions, and in any foreign country or any city, town or municipality thereof.

To conduct its business and have one or more offices, and unlimitedly and without restriction to hold, purchase, lease, mortgage, and convey real and personal property in or out of the state, in such places in the several states and territories of the United States, the District of Columbia, colonial possessions or territorial acquisitions, and in foreign countries as shall from time to time be found necessary or convenient for the purposes of the company's business.

FOURTH. The total authorized capital stock of this corporation is twenty million dollars ($20,000,000), divided into two hundred thousand shares of the par value of one hundred dollars each.

Exhibit C 58.

FIFTH. The names and post office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such being the amount of capital stock with which the company will commence business, are as follows:

Name.	Post Office Address.	No. of Shares.
Frank M. Stillman	Rahway, N. J.	15 shares
Thos. J. George	Newark, N. J.	15 shares
William J. Davis	Harrison, N. J.	15 shares

SIXTH. The duration of the corporation shall be unlimited.

SEVENTH. The corporation may use and apply its surplus earnings, or accumulated profits, including the amount authorized by law to be reserved, as well as its other assets, to the purchase or acquisition of property, and to the purchase and acquisition of its own capital stock, bonds, debentures, or other obligations from time to time, to such extent and in such manner and upon such terms as its board of directors shall determine, and neither the property nor the capital stock, bonds, debentures, or other obligations so purchased or acquired, nor any of the same, taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payment of dividends, unless so determined by a majority of the board of directors, or a majority of the stockholders.

The board of directors shall have full power to make or alter the by-laws from time to time as in their judgment may be necessary for the promotion of the interest of the affairs of the corporation, and may in their discretion increase the membership of the board and elect members thereto.

The board of directors shall also have the power to fix the amount to be reserved as working capital; to authorize and cause to be executed mortgages and liens and other pledges of and upon the real and personal property of the corporation; and from time to time to sell, assign, transfer or otherwise dispose of any of the property of the corporation.

The board of directors by resolution passed by a majority of the whole board, may designate three or more directors to constitute an executive committee, which committee, to the extent provided in said resolution or in the by-laws of the corporation, shall have, and may exercise such of the powers of the board of directors in the management of the business and affairs of the corporation, as may lawfully be delegated to said committee, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The board of directors from time to time shall determine whether and to what extent, and at what time and places, and under what conditions and regulations, the accounts and books of the corporation or any of them shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of the corporation except as conferred by statute or authorized by the board of directors, or by resolution of the stockholders.

The board of directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of this state, at such places as may be from time to time designated by them.

It is the intention that the objects above specified in article third, except where otherwise expressed in

said article, shall be in nowise limited or restricted by reference to or inference from the terms of any other article, clause or paragraph in this certificate.

In WITNESS WHEREOF, we have hereunto set our hands and seals this fourth day of March, 1899.

FRANK M. STILLMAN (SEAL)
THOS. J. GEORGE (SEAL)
WILLIAM J. DAVIS (SEAL)

Signed, sealed and delivered in the presence of
L. D. HOWARD GILMOUR.

Exhibit C 59.

CERTIFICATE OF AMENDMENT

UNITED ELECTRIC COMPANY OF NEW JERSEY.

BE IT KNOWN that United Electric Company of New Jersey, a corporation of the State of New Jersey, doth hereby certify:

1. The principal office of the company is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the company may be served is Charles M. Breder.

2. The Board of Directors of the said company, at a meeting duly convened and held on the eighteenth day of March, in the year of our Lord one thousand nine hundred and twenty-four, a

quorum being present, by the unanimous vote of the Directors present, duly passed and adopted a resolution that the amendment to and change and alteration in said certificate of incorporation which is hereinafter set forth, is advisable, and called a meeting of the stockholders of said company, to be held at its principal office on the twenty-fifth day of March, in the year of our Lord one thousand and nine hundred and twenty-four, to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED, that in the judgment of the board of directors of United Electric Company of New Jersey it is advisable to amend the certificate of incorporation in relation to the object of said company as now fixed therein, and to that end and for that purpose Article Third thereof shall be changed so as to read as follows:

"*Third.* The object for which said company is formed is to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store,

transmit, furnish, supply and distribute electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be deemed necessary."

4. Thereafter on the twenty-fifth day of March, in the year of our Lord one thousand nine hundred and twenty-four, pursuant to such call of said Directors, on notice given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning one hundred and ninety-nine thousand six hundred and fifty-two (199,652) shares of the stock, being more than two-thirds of the owners in interest of all the stock of said company, and at such meeting all of the said stockholders, who were present in person or by proxy, voted in favor of such change, alteration and amendment as proposed in the reso-

lution of the Board of Directors above recited, and none against the same.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing, which is appended hereto, by more than two-thirds in interest of all of the stock of the company, that is to say, one hundred and ninety-nine thousand six hundred and fifty-two (199,652) shares.

6. That the total number of shares of stock of said company issued and outstanding is two hundred thousand (200,000).

IN WITNESS WHEREOF, the said United Electric Company of New Jersey hath caused this certificate to be made and signed by its Vice-President and Secretary, and its corporate seal to be hereunto affixed, this twenty-fifth day of March, in the year of our Lord one thousand nine hundred and twenty-four.

UNITED ELECTRIC COMPANY OF NEW JERSEY,
By
P. S. YOUNG
Vice-President.

(SEAL)

Attest:
CHARLES M. BREDER
Secretary.

Exhibit C 60.

CERTIFICATE OF INCORPORATION OF THE "BURLINGTON ELECTRIC LIGHT AND POWER COMPANY" OF THE CITY OF BURLINGTON, NEW JERSEY.

Filed October 6, 1888.

THIS IS TO CERTIFY, That we, Robert Frank Wood, James O. Glasgow, George A. Allinson, Griffeth W. Lewis, J. Frank Budd, Thomas Daniels and Howard Flanders, do hereby associate ourselves into a company under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations," approved April 7, 1875, and the several supplements thereto, for the purposes hereinafter mentioned, and to that end we do by this, our certificate set forth: Incorporators.

FIRST. That the name which we have assumed to designate such company, and to be used in its business and dealings, is "Burlington Electric Light and Power Company." Corporate name.

SECOND. The place in this State where the business of such company is to be conducted is the City of Burlington in the County of Burlington, as well as the City of Beverly in the said county. Principal place of business.

The objects for which the said company is formed are, to erect poles, wires and other appliances for street and domestic lighting by the use and means of electricity; to convey electric power for the operation of engines or other motors; to erect buildings and machinery for generating electricity for said lighting and other purposes; to sell the light and Objects.

power so generated; to buy lands and erect machinery for the purposes of the said business; to issue bonds secured by mortgage or mortgages on the property and franchise of said company, and to sell the same for the purpose of raising money with which to build machinery and buildings and keeping up and maintaining said electric lighting system, and in general to do and perform all acts and things and possess and enjoy all powers, rights and privileges for the successful management of an electric lighting and electric power company.

Capital Stock.

THIRD. The total amount of the capital stock of the said company is twenty-five thousand dollars; the number of shares into which the same is divided is five hundred, and the par value of each share is fifty dollars.

The amount with which the said company will commence business is one thousand dollars, which is divided into twenty shares of a par value of fifty dollars each.

Names and residences of stockholders.

FOURTH. The names and residences of the stockholders and the number of shares held by each is as follows:

Robert Frank Wood, Burlington, New Jersey, Four shares.

J. Frank Budd, Burlington, New Jersey, Three shares.

Howard Flanders, Burlington, New Jersey, Two shares.

James O. Glasgow, Burlington, New Jersey, Three shares.

George A. Allinson, Burlington, New Jersey, Three shares.

Griffeth W. Lewis, Burlington, New Jersey, Three shares.

Thomas W. Daniels, Burlington, New Jersey, Two shares.

FIFTH. The period at which said company shall commence business is the sixth day of October, A. D. 1888, and the period at which it shall terminate is the fifth day of October, A. D. 1938. Term of existence.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the third day of October, A. D. eighteen hundred and eighty-eight.

(Signed)

R. FRANK WOOD,	(L. S.)
J. FRANK BUDD,	(L. S.)
J. O. GLASGOW,	(L. S.)
HOWARD FLANDERS,	(L. S.)
GEORGE A. ALLINSON,	(L. S.)
GRIFFETH W. LEWIS,	(L. S.)
THOS. DANIELS.	(L. S.)

Exhibit C 61.

THE CERTIFICATE OF INCORPORATION OF CITIZENS ELECTRIC LIGHT, HEAT AND POWER COMPANY.

Filed March 1, 1905.

THIS IS TO CERTIFY, That the undersigned do hereby associate themselves into a corporation under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)" and the several supplements thereto and

acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names.

Corporate Name.

FIRST. The name of the corporation is CITIZENS ELECTRIC LIGHT, HEAT AND POWER COMPANY.

Location of principal office.

SECOND. The location of the principal office in this State is at No. 87 Smith Street, in the City of Perth Amboy, County of Middlesex.

Agent.

The name of the statutory agent therein and in charge thereof upon whom process against this corporation may be served is Clancey D. Boynton.

Objects.

THIRD. The objects for which this corporation is formed are:

1. To construct, maintain, operate, purchase and sell works, machinery, apparatus and equipment of all kinds, for generating, producing, supplying and transmitting electricity and adopting and applying the same for the purpose of furnishing light, heat and power.

2. To manufacture, generate and sell electricity for lighting, fuel and other purposes and to transmit and supply the same through appropriate conductors.

3. To furnish electrical power and equipment of all kinds for the purpose of locomotion and to transmit passengers, freight and merchandise and to operate machinery of all kinds.

4. To form, promote and aid in the construction of and to control and manage, under lease or other-

wise, plants, works, implements, machinery and apparatus for generating, utilizing and transmitting light, heat and power by electricity, and of applying the same to practical uses and purposes.

5. To transmit and carry on any and all kinds of business in any way appertaining to or connected with the manufacture, generating, distribution and supplying of electricity for the purpose of furnishing light, heat and power both according to methods now in use and in all other ways that may hereafter be discerned or devised.

6. To acquire, hold, sell and transfer stocks, bonds, securities, obligations, contracts, concessions and franchises of every kind and goods, wares and merchandise and real and personal property and to lease, mortgage or pledge both real estate and personal property.

7. To buy, sell, operate or lease pole lines, erect poles, string wires thereon or on poles of other individuals or corporations on any and all streets, avenues, highways and roads of counties, townships, towns, villages, boroughs and cities, and over and under all canals and other waterways, and across any and all bridges, and to use the same either for the transmission of electric current for delivery to consumers on such lines or for transmission of current to independent vendors thereof, and to sell or lease to other individuals or corporations the right to string electric wires on or attach electric wires to any or all poles so erected, owned or leased, and to use such, both as through lines and for local delivery.

8. To build and construct and use for any of the purposes stated above underground subways or conduits in such streets, avenues, highways and roads and under such canals and other waterways, and string electric wires or conductors therein, and to buy or lease from, or sell or let to any other individual or corporation the right to string and to use as aforesaid electric wires or conductors in any such subways.

9. To purchase, hold and reissue the shares of its capital stock.

10. To the extent and in the manner permitted by local laws, to conduct business in any of the States, territories, colonies, or dependencies of the United States, in the District of Columbia and in any and all foreign countries, to have one or more offices therein, and therein to hold, purchase and convey real and personal property. The foregoing clauses shall be construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the corporation.

Capital stock.

FOURTH. The total authorized capital stock of this corporation is one hundred and twenty five thousand dollars, divided into five thousand shares of the par value of twenty-five dollars each.

Names and residences of incorporators.

FIFTH. The names and post office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscription being the amount of capital stock with which the company will commence business are as follows:

Exhibit C 61.

Name.	Post Office Address.	No. of Shares.
Jacob Goldsmith	87 Smith St., Perth Amboy, N. J.	3
Fred J. Cox	87 Smith St., Perth Amboy, N. J.	3
John K. Sheehy	87 Smith St., Perth Amboy, N. J.	3
Louis Briegs	87 Smith St., Perth Amboy, N. J.	3
Max Goldberger	87 Smith St., Perth Amboy, N. J.	3
Edward M. Kelly	87 Smith St., Perth Amboy, N. J.	3
Ambrose P. Kennedy	87 Smith St., Perth Amboy, N. J.	2
George T. Reynolds	87 Smith St., Perth Amboy, N. J.	2
Clarence A. Sexton	87 Smith St., Perth Amboy, N. J.	2
Henry McCollough	87 Smith St., Perth Amboy, N. J.	2
Clancy D. Boynton	87 Smith St., Perth Amboy, N. J.	2
Nathan Roth	87 Smith St., Perth Amboy, N. J.	2
Jacob Goldberger	87 Smith St., Perth Amboy, N. J.	2
Barnet Goldman	87 Smith St., Perth Amboy, N. J.	2
Peter Floersch	87 Smith St., Perth Amboy, N. J.	2
John P. Holm	87 Smith St., Perth Amboy, N. J.	2
Jesse Sickles	87 Smith St., Perth Amboy, N. J.	2

SIXTH: Any member of this corporation who shall be desirous of selling any of his shares, the executors or administrator or any member, deceased, and the grantee or assignee of any shares sold on execution shall cause such, their shares, respectively to be appraised by the directors, which it shall be their duty to do on request, and shall thereupon offer the same to them for the use of the corporation at such appraised value; and, if said directors shall choose to take such shares for the use of the corporation such member, executor, administrator or assignee shall, upon the payment or tender to him of such appraised value thereof, and the dividends due thereon, transfer and assign such share or shares to said corporation; provided, however, the said directors shall not be obliged to take said shares at the appraised value, unless they shall think it for the interests of the company; and if they shall not, within ten days after such shares are offered to them in writing, take the same, and pay such member, executor, administrator, or assignee the price at which the same shall have been appraised, such member, executor, administrator,

New Jersey State Library

or assignee shall be at liberty to sell and dispose of the same shares to any person whatever.

The directors shall have power, and it shall be their duty, to sell and dispose of the shares which may be transferred as aforesaid to the corporation, whenever in their judgment, it can be done with safety and advantange to the corporation; and in all sales made by the directors, under any of the aforesaid provisions it shall be their duty to sell the shares to such persons as shall appear to them, from their situation and character, most likely to promote confidence in the stability of the corporation.

Term of existence.

SEVENTH. The period of existence of this Company is unlimited.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the twenty-fifth day of February, A. D. 1905.

Signed, sealed and delivered in the presence of

JOHN S. MITCHELL.

CLANCY D. BOYNTON, (L. S.)
C. A. SEXTON, (L. S.)
H. MCCOLLOUGH, (L. S.)
PETER FLOERSCH, (L. S.)
E. M. KELLY, (L. S.)
GEORGE F. REYNOLDS, (L. S.)
FRED J. COX, (L. S.)
JOHN J. SHEEHY, (L. S.)
JESSE SICKLES, (L. S.)
MAX GOLDBERGER, (L. S.)
NATHAN ROTH, (L. S.)
JACOB P. GOLDSMITH, (L. S.)
JACOB GOLDBERGER, (L. S.)
J. P. HOLM, (L. S.)
B. GOLDMAN, (L. S.)
LOUIS BRIEGS, (L. S.)
AMBROSE P. KENNEDY. (L. S.)

New Jersey State Library

Exhibit C 61.

CERTIFICATE OF AMENDMENT.

CITIZENS ELECTRIC LIGHT, HEAT AND POWER COMPANY.

BE IT KNOWN that Citizens Electric Light, Heat and Power Company, a corporation of the State of New Jersey, doth hereby certify:

1. The principal office of the company is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the company may be served is Charles M. Breder.

2. The Board of Directors of the said company, at a meeting duly convened and held on the sixth day of May, in the year of our Lord one thousand nine hundred and twenty-four, a quorum being present, by the unanimous vote of the Directors present, duly passed and adopted a resolution that the amendment to and change and alteration in said certificate of incorporation, which is hereinafter set forth, is advisable, and called a meeting of the stockholders of said company, to be held at its principal office on the twentieth day of May, in the year of our Lord one thousand nine hundred and twenty-four, to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED (1), that in the judgment of the board of directors of Citizens Electric Light, Heat and Power Company it is advisable to amend paragraph THIRD of its certificate of in-

corporation so that the same shall read as follows:

"THIRD. The object for which said company is formed is to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place and use wires therein beneath the pub-

lic roads, highways, streets, avenues and alleys of this state as may be necessary.

"And that it is advisable that said certificate of incorporation be further amended by striking out paragraph SIXTH thereof."

4. Thereafter on the twentieth day of May, in the year of our Lord one thousand nine hundred and twenty-four, pursuant to such call of said Directors, of which meeting notice had been given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning one thousand six hundred and fifty-six (1,656) shares of the stock of said Company, being all of the stock issued and outstanding and at such meeting all of the said stockholders who were so present in person or by proxy, voted in favor of such change, alteration and amendment as proposed in the resolution of the Board of Directors above recited, and none against the same.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing, which is appended hereto, by the owners in person or by proxy, of all of the stock of the company, that is to say, one thousand six hundred and fifty-six (1,656) shares.

6. That the total number of shares of stock of said company issued and outstanding is one thousand six hundred and fifty-six (1,656) shares.

IN WITNESS WHEREOF, the said Citizens Electric Light, Heat and Power Company hath caused this certificate to be made and signed by its Vice-President and Secretary, and its corporate seal to be hereunto affixed, this twenty-sixth day of May, in the year of our Lord one thousand nine hundred and twenty-four.

CITIZENS ELECTRIC LIGHT, HEAT AND POWER COMPANY,
By P. S. YOUNG,
Vice-President.

(SEAL)

Attest:
CHARLES M. BREDER
Secretary.

Exhibit C 62.

CERTIFICATE OF AMENDMENT.

MIDDLESEX ELECTRIC LIGHT AND POWER COMPANY.

BE IT KNOWN that Middlesex Electric Light and Power Company, a corporation of the State of New Jersey, doth hereby certify:

1. The principal office of the company is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the company may be served is Charles M. Breder.

2. The Board of Directors of the said company, at a meeting duly convened and held on the sixth

day of May, in the year of our Lord one thousand nine hundred and twenty-four, a quorum being present, by the unanimous vote of the Directors present, duly passed and adopted a resolution that the amendment to and change and alteration in said certificate of incorporation, which is hereinafter set forth, is advisable, and called a meeting of the stockholders of said company, to be held at its principal office on the twentieth day of May, in the year of our Lord one thousand nine hundred and twenty-four, to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED (1), that in the judgment of the Board of directors of Middlesex Electric Light and Power Company, it is advisable to amend its certificate of incorporation consisting of a consolidation agreement made on the second day of January, in the year of our Lord one thousand nine hundred and five, by and between The Carteret Electric Light and Power Company, of the first part, and Middlesex Lighting Company, of the second part, by adding to ARTICLE IX of said certificate or agreement the following:

"The object of said company hereafter is and shall be to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances neces-

sary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be necessary."

4. Thereafter on the twentieth day of May, in the year of our Lord one thousand nine hundred and twenty-four, pursuant to such call of said Directors, of which meeting notice had been given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning one thousand seven

hundred and fifty (1,750) shares of the stock of said company, being all of the stock issued and outstanding, and at such meeting all of the said stockholders, who were so present in person or by proxy, voted in favor of such change, alteration and amendment as proposed in the resolution of the Board of Directors above recited, and none against the same.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing, which is appended hereto, by the owners in person or by proxy of all of the stock of the company, that is to say, one thousand seven hundred and fifty (1,750) shares.

6. That the total number of shares of stock of said company issued and outstanding is one thousand seven hundred and fifty (1,750) shares.

IN WITNESS WHEREOF, the said Middlesex Electric Light and Power Company hath caused this certificate to be made and signed by its Vice-President and Secretary, and its corporate seal to be hereunto affixed, this twenty-sixth day of May, in the year of our Lord one thousand nine hundred and twenty-four.

MIDDLESEX ELECTRIC LIGHT AND POWER COMPANY,
By P. S. YOUNG
Vice-President.

(SEAL)

Attest:
CHARLES M. BREDER
Secretary.

Exhibit C 63.

P. L. 1855, Chap. 36, page 74.

Title.

AN ACT TO INCORPORATE THE MORRISTOWN GAS LIGHT COMPANY.

Names of corporators.

1. BE IT ENACTED BY THE SENATE AND GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY, That John F. Voorhees, William N. Wood, Albert H. Stanburrough, Augustus W. Cutter, and George T. Cobb, and all and every person or persons who may become subscribers according to the mode hereinafter prescribed, and their successors, are hereby created a body politic and corporate, in fact, by the name of "The Morristown Gas Light Company;" and, by the same name, the said corporation shall have

General powers.

power and authority to manufacture, make, and sell gas, to be made of bituminous coal or other materials, for the purpose of lighting the streets, buildings, manufactories, and other places, situated in Morristown and its vicinity, and to enter into and execute contracts, agreements, or covenants in relation to the objects of this corporation, and of enforcing the same, and be capable of purchasing, taking, and holding any estate, real and personal, necessary to give effect to the specified purposes of this corporation, for the accommodation of their business and concerns, or which it may be necessary for the said corporation to acquire and hold for the purpose of securing debts which have become due to them in the regular business of the said corporation; PROVIDED, that the said real estate shall not exceed what may be necessary for the purposes mentioned; and no private lands shall be in any way injured or defaced, without permission fully obtained in writing from the owner or owners thereof.

Proviso.

2. AND BE IT ENACTED, That the said corporation shall be empowered to lay down their gas pipes, and to erect gas posts, burners, and reflectors in the streets, alleys, lanes, avenues, and public grounds of Morristown and its vicinity, and the dwellings, stores, and other places situated therein; PROVIDED, that the public travel shall at no time be affected or impeded by the laying of the said pipes or the erection of the said posts; and the streets, side and cross walks, public grounds, lanes and avenues, shall not be injured, but all be left in as good and perfect condition as before the laying of the said pipes or the erection of the said posts.

Corporation authorized to lay down pipes.

Proviso.

3. AND BE IT ENACTED, That William N. Wood, John F. Voorhees, and Augustus W. Cutter are hereby appointed commissioners for receiving subscriptions for the sum of seventy-five thousand dollars, to constitute the capital stock of the said corporation, in shares of fifty dollars each; and the said commissioners, or a majority of them, shall open books for that purpose, at such times and in such place or places, within the state, as they shall designate by a public advertisement, to be previously inserted, for at least three weeks, in two public newspapers printed at Morristown, and shall continue the same open until the said capital stock shall be subscribed, or, at their discretion, close the same after they shall have remained open two days, and again open the same at some other time or times, place or places, giving public notice thereof as aforesaid; the sum of ten per centum on each share so subscribed shall be paid in specie, or in the bills of banks which redeem their bills with specie, by each subscriber at the time of subscription to the said commissioners, or a majority of

Commissioners to open books of subscription.

them; and each subscriber shall be entitled to receive a certificate for such stock from said commissioners; and the amount so received by said commissioners at the time of subscription shall by them, or a majority of them, be paid over to the directors of the said company, to be appointed as hereinafter directed; and all the powers of the said commissioners shall cease and determine on the appointment of such board of directors; and the said board, when so appointed, shall have power, and they are hereby authorized, from time to time, under the foregoing regulations, to open the books for the further subscription of stock, until the whole stock subscribed amounts to the sum of seventy-five thousand dollars, and are also authorized to call upon the said subscribers for the payment of further instalments, in such sum or sums, at such time or times, and under such forfeiture or forfeitures, as they may deem expedient, until the whole amount of said shares so subscribed shall have been fully paid.

Annual election of directors.

4. AND BE IT ENACTED, That the management of the concerns of the said company shall be vested in five directors, to be selected from the stockholders, three of whom shall be residents of the county of Morris; and the said directors shall choose, by a plurality of votes, a president from among themselves; and as soon as conveniently may be, after fifteen thousand dollars shall have been subscribed, the before named commissioners, or a majority of them, shall convene the said stockholders by public notice, to be given as aforesaid, and at such time and place as they shall designate in such notice, to choose the first board of directors, who shall hold their offices until the first Monday in May, eighteen

hundred and fifty-six; and the said directors and president shall hold their offices from the first Monday of May, in every year, for one year, and shall be elected on the first Monday of May, in each year, at such time and place as a majority of the directors shall appoint; and public notice shall be given of the time and place of holding such election for ten days, in a newspaper published in Morristown; and any vacancy in the said board of directors may be supplied by appointment, to be made by the board of directors, until the next election; and all elections shall be by ballot of the stockholders, or their proxies, allowing one vote for each share which they shall have held in his, her, or their name or names at least fourteen days before the time of voting.

Vacancies.

5. And be it enacted, That if at any time an election is not held on the day herein appointed, the corporation shall not be dissolved for that cause, but an election shall be held in such manner as is directed by the by-laws, at any time within one year.

Corporation not dissolved for failure to elect on day prescribed.

6. And be it enacted, That the directors for the time being shall form a board, and they, or a majority of them, shall be a quorum for transacting business.

Quorum.

7. And be it enacted, That the stock of the corporation shall be transferable, according to the by-laws and regulations of the corporation, and shall be considered personal property; and the stock and transfer books shall be opened at all times to the inspection of the stockholders.

Stock transferable.

Penalty for injuring works.

8. AND BE IT ENACTED, That if any person or persons shall wilfully do, or cause to be done, any act or acts whatsoever, thereby to injure any conduit, pipe, cocks, machine, or structure whatsoever, or anything appertaining to the works of the said corporation, or whereby the same may be stopped, obstructed, or injured, the person or persons so offending shall be considered guilty of a misdemeanor, and, being thereof convicted, shall be punished by fine, not exceeding three hundred dollars, or imprisonment at hard labor, not exceeding two years, or both; PROVIDED, such criminal prosecution shall not in any wise impair the right of action for damages by a civil suit, hereby authorized to be brought, for any such injury as aforesaid, by and in the name of the said corporation, in any court of this state having cognizance of the same.

Proviso.

Books of accounts to be kept.

9. AND BE IT ENACTED, That the said company shall cause to be kept, at their office, proper books of accounts, in which shall be fairly and truly entered all the transactions of the company, which books shall be open at all times for the inspection of the stockholders.

Restrictions and conditions.

10. AND BE IT ENACTED, That the said corporation shall possess the general powers, and be subject to the restrictions and liabilities, contained in the act entitled, "An act concerning corporations," approved the fourteenth day of February, one thousand eight hundred and forty-six, so far as the same are applicable.

Approved February 19, 1855.

Exhibit C 64.

CERTIFICATE OF INCORPORATION OF THE NICHOLS ELECTRIC LIGHT AND POWER COMPANY OF NUTLEY, N. J.

Filed January 3, 1896.

This is to certify that we, Thomas Nichols, John Nichols, William Nichols and Richard T. Noble, all of Franklin, Essex County, New Jersey, do hereby associate ourselves into a Company under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations," approved April 7th, 1875, and the several supplements thereto, for the purposes hereinafter mentioned, and to that end we do, by this our certificate, set forth: Incorporators.

FIRST. That the name we have assumed to designate such Company and to be used in its business and dealings is "The Nichols Electric Light and Power Company of Nutley, N. J." Corporate name.

SECOND. That the place in this State where the business of such company is to be conducted is Nutley in the Township of Franklin in the County of Essex, and such other points or places in the County of Essex and elsewhere, as the said Company may erect a plant or secure a right to the distribution of electricity for the purposes of light or power, and that the objects for which the said Company is formed are to produce and furnish to customers electric light and power; to purchase land and erect buildings thereon necessary and proper for the uses of the Company in the conducting of its business; to purchase patents and rights for the production Principal place of business. Objects.

of electricity and to erect poles, lines, conduits and conductors for the stringing or holding of wires and for the transmission of electricity thereon for light and power purposes; to lease or purchase any other plant or plants and operate the same, to generally carry on and conduct the business of lighting by electricity and of the furnishing of power by electric motors.

Capital stock.

THIRD. That the total amount of the capital stock is Fifty Thousand Dollars; the number of shares into which the same is divided is One Thousand and the par value of each share is Fifty Dollars. The amount with which said Company will commence business is Ten Thousand Dollars, which is divided into two hundred shares of the par value of fifty dollars each.

Names and residences of stockholders.

FOURTH. That the names and residences of the stockholders and the number of shares held by each, are as follows, to wit:

Thomas Nichols, Franklin, New Jersey, 197 shares
John Nichols, Franklin, N. J., one share.
William Nichols, Franklin, N. J., one share.
Richard T. Noble, Franklin, N. J., one share.

Term of existence.

FIFTH. The period at which said Company shall commence is the second day of January, Eighteen hundred and Ninety-six, and the period at which it shall terminate is the second day of January, Nineteen hundred and Forty-six.

Exhibit C 65.

CERTIFICATE OF ORGANIZATION OF PRINCETON LIGHT, HEAT AND POWER COMPANY.

Filed July 31, 1905.

A corporation organized under and in pursuance of an Act of the Legislature of the State of New Jersey, entitled "An Act concerning the sale of the property and franchises of any corporation created by or under any law or laws of this State, except steam railroad, canal, turnpike or plank-road companies," approved April 16th, 1897, (being Chapter 127 of the Laws of 1897).

Preamble.

WHEREAS, PRINCETON LIGHTING COMPANY was duly formed pursuant to the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)" and the acts amendatory thereof and supplemental thereto by merger or consolidation of THE HOPEWELL ELECTRIC LIGHT, HEAT AND POWER COMPANY, THE PRINCETON ELECTRIC WORKS and PRINCETON GAS LIGHT COMPANY, three corporations severally duly organized under the laws of the State of New Jersey, for the purpose of carrying on business of a similar nature, on the 27th day of February, 1903, by filing in the office of the Secretary of State of the State of New Jersey the Agreement and Act of Merger or Consolidation of said three corporations; and

WHEREAS, the property and franchises of said Princeton Lighting Company have been sold and conveyed under and by virtue of a decree of the Court of Chancery of the State of New Jersey, and

an execution issued thereon, to satisfy a mortgage debt thereon, which decree was entered on the 21st day of March, 1905, and duly recorded in the office of the Clerk of the Court of Chancery aforesaid, as by reference thereto will more fully appear; and

WHEREAS, the property and franchises aforesaid were, pursuant to said sale, on the 31st day of July, 1905, conveyed by Robert S. Woodruff, one of the Special Masters of said Court, to Heman Dowd, the purchaser thereof, who purchased the same for himself and his associates, who were not less than three in number; and

WHEREAS, the persons for and on whose account the property and franchises of said Princeton Lighting Company aforesaid, were purchased as aforesaid, or a majority in interest of them, did, by writing, call a meeting of such persons, pursuant to the provisions of said Act, and did appoint as the time and place of such meeting, No. 111 East State Street, in the City of Trenton, in the County of Mercer and State of New Jersey, (that being the County Town of the County wherein said sale was made), to be held on the 31st day of July, 1905, at the hour of two o'clock in the afternoon of said day, said day being within thirty days after the conveyance made by virtue of said process and decree was delivered, and did cause written notice to be given of the time and place of said meeting, to each of said several persons, at least ten days before said meeting, that said meeting would be held at the time and place aforesaid, for the purpose of organizing the new corporation created under the terms of said Act by said purchase, by electing a President and Board of Directors, to continue in

office until the first Monday of May succeeding such meeting, adopting a corporate name and corporate seal and determining the amount of the capital stock of said corporation; and

WHEREAS, at the time and place so designated as aforesaid, to wit, on the 31st day of July, 1905, at the hour of two o'clock in the afternoon of said day, at No. 111 East State Street, in the City of Trenton, in the County of Mercer and State of New Jersey, all the persons for and on whose account said property and franchises of said Princeton Lighting Company were purchased as aforesaid, did meet and organize a new corporation, pursuant to the provisions of said Act, by electing a President and Board of Directors to continue in office until the first Monday of May succeeding such meeting, and by adopting a corporate name and corporate seal and determining the amount of the capital stock of said corporation;

NOW, THEREFORE, pursuant to the Statute in such case made and provided, the said New Corporation does hereby, within one month after its organization, make this certificate thereof under its common seal, attested by the signature of its President, specifying the date of such organization, the name so adopted, the amount of capital stock, and the names of its President and Directors, that is to say;

FIRST. The date of such organization is the 31st day of July, 1905. Date of organization.

SECOND. The name so adopted is PRINCETON LIGHT, HEAT AND POWER COMPANY. Corporate name.

Exhibit C 65.

Capital stock.

THIRD. The amount of capital stock is Two Hundred and Fifty Thousand Dollars ($250,000), divided into five thousand (5,000) shares of the par value of Fifty Dollars ($50.) each.

Amended October 21, 1909.

Names and residences of officers.

FOURTH. The names and residences of its President and Directors are as follows:

President, Heman Dowd, Orange, N. J.
Directors:
Heman Dowd, Orange, N. J.
George Whitefield Betts, Jr., Englewood, N. J.
Bayard Stockton, Princeton, N. J.
J. H. McNeal, Philadelphia, Pa.

Location of principal office.

FIFTH. The location of its principal office in this State is the office of the Company in Witherspoon Street in the Borough of Princeton, in the County of Mercer, and the name of the agent therein and in charge thereof, and upon whom process against the corporation may be served, is Richard Stockton.

IN WITNESS WHEREOF, the said Princeton Light, Heat and Power Company has made this certificate, under its common seal, and caused the same to be attested by the signature of its President, this 31st day of July, 1905.

Exhibit C 66.

CERTIFICATE OF AMENDMENT

PRINCETON LIGHT, HEAT AND POWER COMPANY.

BE IT KNOWN that Princeton Light, Heat and Power Company a corporation of the State of New Jersey, doth hereby certify:

1. The principal office of the company is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the company may be served is Charles M. Breder.

2. The Board of Directors of the said company, at a meeting duly convened and held on the sixth day of May, in the year of our Lord one thousand nine hundred and twenty-four, a quorum being present, by the unanimous vote of the Directors present, duly passed and adopted a resolution that the amendment to and change and alteration in said certificate of incorporation which is hereinafter set forth, is advisable, and called a meeting of the stockholders of said company, to be held at its principal office on the twentieth day of May, in the year of our Lord one thousand nine hundred and twenty-four, to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED (1) that in the judgment of the board of directors of Princeton Light, Heat and Power Company, it is advisable to amend its certificate of incorporation made on the

thirty-first day of July, in the year of our Lord one thousand nine hundred and five, by adding after paragraph FIFTH thereof the following:

"SIXTH. The object of said company hereafter is and shall be to furnish light, heat and power for domestic and public use in New Jersey:

"(*a*) To accomplish said object, said company shall have power to construct, purchase, maintain and operate gas and electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, gas pipes, posts, burners and reflectors, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas and electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute gas and electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this state for the purpose of erecting posts or poles, laying or constructing gas mains and erecting

burners and reflectors in and on the same to sustain the necessary wires, lamps, burners, reflectors and fixtures, and to lay pipes or conduits and to place and use wires therein beneath the public roads, highways, streets, avenues and alleys of this state as may be necessary."

4. Thereafter on the twentieth day of May, in the year of our Lord one thousand nine hundred and twenty-four pursuant to such call of said Directors, on notice given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable at which meeting there were present in person or represented by proxy stockholders owning two thousand three hundred and forty-seven, (2,347) shares of the stock, being more than two-thirds of the owners in interest of all the stock of said company, and at such meeting all of the said stockholders, who were present in person or by proxy, voted in favor of such change, alteration and amendment as proposed in the resolution of the Board of Directors above recited, and none against the same.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing, which is appended hereto, by more than two-thirds in interest of all of the stock of the company, that is to say, two thousand three hundred and forty-seven (2,347) shares.

6. That the total number of shares of stock of said company issued and outstanding is two thousand four hundred and fifty (2,450).

IN WITNESS WHEREOF, the said Princeton Light, Heat and Power Company hath caused this certificate to be made and signed by its Vice-President and Secretary, and its corporate seal to be hereunto affixed, this twenty-sixth day of May, in the year of our Lord one thousand nine hundred and twenty-four.

PRINCETON LIGHT, HEAT AND POWER COMPANY,
By P. S. YOUNG
Vice-President.

[SEAL]

Attest:
CHARLES M. BREDER
Secretary.

Exhibit C 67.

CERTIFICATE OF INCORPORATION OF THE "WEEHAWKEN CONTRACTING COMPANY."

Filed May 9, 1904.

Incorporators.

THIS IS TO CERTIFY, That we, Thomas H. McCaffery, of the Town of Union in the County of Hudson and State of New Jersey, and Thomas Cavanagh, Peter J. Heagney and Francis L. Manahan, all of the Township of Weehawken in the County of Hudson and State of New Jersey, do hereby associate ourselves into a Corporation, under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act Concerning Corporations (Revision of 1896)," and the several supplements thereto and

acts amendatory thereof; and to that end, we do, by this our Certificate, set forth:

Corporate name.

FIRST. The name to be used to designate such Corporation and to be used in its dealings and business is Weehawken Contracting Company.

Location of principal office.

SECOND. The location of the principal office in this State of the Corporation is at Nos. 421-23 Hackensack Turnpike in the Town of West Hoboken, County of Hudson, and the name of the agent therein, and in charge thereof, upon whom process against the Corporation may be served, is Francis H. McCauley.

Objects.

THIRD. The objects for which the Corporation is formed are:

(1) To engage in and carry on the business of laying, constructing, building, cleaning, repairing and pumping sewers, drains and outlets of every kind and nature, and to buy, lease, hire and acquire any and all appliances, apparatus, machinery, pumps, patents and things that are or may be useful or necessary for said business.

To make, produce, accumulate, transmit, buy, sell and dispose of electricity to any and all persons, firms and corporations, private, public, municipal or body politic, for light, power or any other object, and to buy, lease, hire and acquire any and all appliances, apparatus, machinery, patents, and things that are or may be useful or necessary in connection therewith.

To plan, build, construct, manufacture, acquire, buy, sell and patent any and all kinds of electrical, steam and mechanical devices, machines, engines, pumps and appliances.

To purchase, acquire, take on lease, or in exchange any real or personal property, and plan, contract for, erect, build, lease, buy, hire or otherwise acquire any building, house or structure.

To obtain, accept, use and enjoy any and all kinds of permits, rights, privileges and franchises, municipal, private or otherwise.

To enter into, make and carry out any and all contracts, of any and every nature, with any and all persons, firms and corporations, private, public, municipal or body politic, for the carrying on and doing any and all the objects hereinbefore stated, and in addition to said objects, and in nowise in limitation of the same, to engage in and carry on any other business, and to do any and all other things, which may seem to the corporation capable of being carried on in connection with said objects, and to do any and all of the things set forth herein to the same extent that natural persons might or could do, in any part of the world, as principals, agents, contractors, trustees or otherwise.

The Board of Directors shall have power without the assent or vote of the stockholders, to make, alter, amend and resign, rescind the By-Laws of this corporation, to fix the amount to be reserved as a working capital, to declare dividends subject to the amount of working capital so fixed.

The Corporation is to have power also to conduct its business in all its branches, in all the other of the United States, territories and colonies, and in any foreign country or place, have one or more offices; and to hold, purchase, mortgage and convey real and personal property in all or any of said States and Territories, foreign countries and places.

Capital stock.

FOURTH. The total amount of the authorized capital stock of this Corporation is Fifty Thousand

Exhibit C 67.

($50,000) dollars; divided into one thousand shares, of a par value of fifty ($50) dollars each.

The amount with which it will commence business is One thousand ($1,000) dollars.

FIFTH. The names and post-office addresses of the Incorporators, and the number of shares subscribed for by each, are as follows: Names and residences of incorporators.

Name.	Post-office Address.	No of shares.
Thomas Cavanagh.....	Station 1, Hoboken, N. J..	5
Peter J. Heagney.....	Station 1, Hoboken, N. J..	5
Thomas McCaffery....	Weehawken, N. J.....	5
Francis L. Manahan..	Station 1, Hoboken, N. J..	5

SIXTH. The existence of this Corporation shall begin on the tenth day of May, A. D. Nineteen Hundred and Four, and shall continue forever. Term of existence.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the sixth day of May, A. D. Nineteen Hundred and Four.

THOMAS CAVANAGH, L. S.
PETER J. HEAGNEY, L. S.
THOMAS MCCAFFERY, L. S.
FRANCIS L. MANAHAN. L. S.

Signed, sealed and delivered in the presence of }
FRANCIS H. MCCAULEY.

Exhibit C 68.

BE IT KNOWN that WEEHAWKEN CONTRACTING COMPANY, a corporation of the State of New Jersey, doth hereby certify:

1. The principal office of the Company is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and the agent therein and in charge thereof upon whom process against this company may be served is Charles M. Breder.

2. The Board of Directors of said company, at a meeting duly convened and held on the twentieth day of May, in the year of our Lord one thousand nine hundred and twenty-four, a quorum being present, by the unanimous vote of the Directors present, duly passed and adopted a resolution that the amendment to and change and alteration in said certificate of incorporation, which is hereinafter set forth, is advisable and called a meeting of the stockholders of said company, to be held at its principal office on the second day of June, in the year of our Lord one thousand nine hundred and twenty-four, to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED (1), that in the judgment of the Board of Directors of Weehawken Contracting Company, it is advisable to amend paragraph THIRD of its certificate of incorporation, dated the sixth day of May, nineteen hundred and four, so that said paragraph shall read as follows:

"THIRD. The object for which said company is formed is to furnish light, heat and

power for domestic and public use in New Jersey:

"(*a*). To accomplish said object, said company shall have power to construct, purchase, maintain and operate electric plants and works, buildings, machinery, conduits, poles, towers, transmission lines, and all appliances, fixtures and appurtenances necessary or convenient to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to extend and enlarge the same from time to time; and to manufacture, generate, buy, sell, accumulate, store, transmit, furnish, supply and distribute electrical energy for light, heat and power; and to buy, sell and furnish fixtures and appliances for the use thereof.

"(*b*) To do any and all things that may be incidental to or connected with said above named object; and to have, possess, use, occupy and employ all powers which by law apply to a corporation with that object.

"(*c*) To use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, and to lay pipes or conduits and to place wires therein beneath the public roads, highways, streets, avenues and alleys of this State as may be deemed necessary".

4. Thereafter on the second day of June, in the year of our Lord one thousand nine hundred and twenty-four, pursuant to such call of said Directors, of which meeting notice had been given to each stockholder, as provided in the by-laws and

specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning one thousand four hundred (1,400) shares of the stock of said company, being all of the stock issued and outstanding, and at such meeting all of the said stockholders, who were so present in person or by proxy, voted in favor of such change, alteration and amendment as proposed in the resolution of the Board of Directors above recited, and none against the same.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing, which is appended hereto, by the owners in person or by proxy of all of the stock of the company, that is to say, one thousand four hundred (1,400) shares.

6. That the total number of shares of stock of said company issued and outstanding is one thousand four hundred (1,400).

IN WITNESS WHEREOF, the said Weehawken Contracting Company hath caused this certificate to be made and signed by its Vice-President and Secretary, and its corporate seal to be hereunto affixed, this second day of June, in the year of our Lord one thousand nine hundred and twenty-four.

WEEHAWKEN CONTRACTING COMPANY,
By

(SEAL) P. S. YOUNG
Vice-President.

Attest:
CHARLES M. BREDER
Secretary.

Exhibit C 69.

THIS AGREEMENT, made this fifth day of November, in the year of our Lord one thousand nine hundred and twenty-four, between PUBLIC SERVICE ELECTRIC AND GAS COMPANY, a corporation created by a consolidation agreement dated April 8, 1924, under an act of the legislature of the State of New Jersey entitled "An Act concerning corporations (Revision of 1896,)" of the first part; BURLINGTON ELECTRIC LIGHT AND POWER COMPANY, a corporation created under an act of the legislature entitled "An Act concerning corporations," approved April 7, 1875, of the second part; CITIZENS' ELECTRIC LIGHT, HEAT AND POWER COMPANY, a corporation created under said act of the legislature entitled "An Act concerning corporations (Revision of 1896)," of the third part; MIDDLESEX ELECTRIC LIGHT AND POWER COMPANY, a corporation created under said act of the legislature entitled "An Act concerning corporations (Revision of 1896)," of the fourth part; THE MORRISTOWN GAS LIGHT COMPANY, a corporation created by and organized under an act of the legislature of New Jersey entitled "An Act to incorporate The Morristown Gas Light Company," approved February 19, 1855, of the fifth part; THE NICHOLS ELECTRIC LIGHT AND POWER COMPANY OF NUTLEY, N. J., a corporation created under an act of the legislature of New Jersey entitled "An Act concerning corporations," approved April 7, 1875, of the sixth part; PRINCETON LIGHT, HEAT AND POWER COMPANY, a corporation organized under and in pursuance of an act of the legislature of New Jersey entitled "An Act concerning the sale of the property and franchises of any corporation created by or under any law or laws of this state, except

steam railroad, canal, turnpike or plank-road companies," approved April 16, 1897, of the seventh part; and WEEHAWKEN CONTRACTING COMPANY, a corporation created under said act of the legislature of New Jersey entitled "An Act concerning corporations (Revision of 1896)," of the eighth part.

The principal office of each of the said eight parties to this agreement is at No. 80 Park Place in the City of Newark, New Jersey, and the agent of each of said parties therein and in charge thereof and upon whom process may be served is Charles M. Breder.

WHEREAS, the said corporations were created and organized under and in pursuance of said acts of the legislature hereinabove referred to for the purpose of furnishing light, heat and power in said state, their physical properties are united, and said party of the first part hereto desires to acquire the properties and franchises of said parties of the second, third, fourth, fifth, sixth, seventh and eighth parts hereto, respectively; and

WHEREAS, the respective boards of directors of the said corporations unanimously deem it advisable for the purpose of greater efficiency and economy of management and operation, and to be better able to carry on the business in which they are engaged that the property, rights, powers, privileges and franchises of said parties of the second, third, fourth, fifth, sixth, seventh and eighth parts hereto, respectively, should be acquired by said party of the first part hereto, under and pursuant to the provisions of sections 104 to 109, both inclusive, of an act entitled "An Act concerning corporations (Revision of 1896)," and the supplements

thereto and amendments thereof, and in pursuance of all other legal powers and authority for that purpose conferred:

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES and in order to accomplish said object, it is hereby agreed by and between the parties hereto and their directors, respectively, as follows:

ARTICLE I.

The capital stock of Burlington Electric Light and Power Company now outstanding, amounting to three hundred and fifty-one shares (351) of the par value of fifty dollars ($50) each shall be exchanged pro rata for one or more promissory notes of Public Service Electric and Gas Company, amounting in the aggregate to seventeen thousand five hundred and fifty dollars ($17,550), to bear interest at the rate of six per cent. (6 per cent.) per annum, and to be payable at the expiration of six months after the date of filing this agreement in the office of the secretary of state.

The capital stock of Citizens' Electric Light, Heat and Power Company now outstanding, amounting to one thousand six hundred and fifty-six (1,656) shares of the par value of twenty-five dollars ($25) each shall be exchanged pro rata for one or more promissory notes of Public Service Electric and Gas Company, amounting in the aggregate to forty-one thousand four hundred dollars ($41,400), to bear interest at the rate of six per cent. (6 per cent.) per annum, and to be payable at the expiration of six months after the date of filing this agreement in the office of the secretary of state.

Exhibit C 69.

The capital stock of Middlesex Electric Light and Power Company now outstanding, amounting to one thousand seven hundred and fifty (1,750) shares of the par value of one hundred dollars ($100) each, shall be exchanged pro rata for one or more promissory notes of Public Service Electric and Gas Company, amounting in the aggregate to one hundred and seventy-five thousand dollars ($175,000), to bear interest at the rate of six per cent. (6 per cent.) per annum, and to be payable at the expiration of six months after the date of filing this agreement in the office of the secretary of state.

The capital stock of The Morristown Gas Light Company now outstanding, amounting to seven thousand three hundred and fifty (7,350) shares of the par value of fifty dollars ($50) each, shall be exchanged pro rata for one or more promissory notes of Public Service Electric and Gas Company, amounting in the aggregate to three hundred and sixty-seven thousand five hundred dollars ($367,500), to bear interest at the rate of six per cent. (6 per cent.) per annum, and to be payable at the expiration of six months after the date of filing this agreement in the office of the secretary of state.

The capital stock of The Nichols Electric Light and Power Company of Nutley, N. J., now outstanding, amounting to five hundred (500) shares of the par value of fifty dollars ($50) each, shall be exchanged pro rata for one or more promissory notes of Public Service Electric and Gas Company, amounting in the aggregate to twenty-five thousand dollars ($25,000), to bear interest at the rate of six per cent. (6 per cent.) per annum, and to be payable at the expiration of six months after

the date of filing this agreement in the office of the secretary of state.

The capital stock of Princeton Light, Heat and Power Company now outstanding, amounting to two thousand four hundred and fifty (2,450) shares of the par value of fifty dollars ($50) each, shall be exchanged pro rata for one or more promissory notes of Public Service Electric and Gas Company, amounting in the aggregate to one hundred and twenty-two thousand five hundred dollars ($122,500), to bear interest at the rate of six per cent. (6 per cent.) per annum, and to be payable at the expiration of six months after the date of filing this agreement in the office of the secretary of state.

The capital stock of Weehawken Contracting Company, now outstanding, amounting to eight hundred and twenty-one (821) shares of preferred stock of the par value of fifty dollars ($50) each, and one thousand four hundred (1,400) shares of common stock of the par value of fifty dollars ($50) each, all of which are owned by the same party, shall be exchanged for one or more promissory notes of Public Service Electric and Gas Company, amounting in the aggregate to forty-one thousand and fifty dollars ($41,050), to bear interest at the rate of six per cent. (6 per cent.) per annum, and to be payable at the expiration of six months after the date of filing this agreement in the office of the secretary of state.

ARTICLE II.

Every stockholder of the corporations, parties of the second, third, fourth, fifth, sixth, seventh and eighth parts to this agreement, upon presenting his certificate of stock and surrendering the same to be cancelled, shall be entitled to receive one

of the promissory notes aforesaid for his proportionate share of the amount of promissory notes hereby authorized to be issued in exchange for the entire amount of the capital stock of the said parties of the second, third, fourth, fifth, sixth, seventh and eighth parts to this agreement.

ARTICLE III.

It is expressly understood and agreed by all the parties hereto that Public Service Electric and Gas Company, party of the first part hereto, shall and does remain in being, and shall and does absorb into itself said parties of the second, third, fourth, fifth, sixth, seventh and eighth parts hereto, and that no new corporation is or will be created hereby. The capital stock of said party of the first part, namely, twenty million (20,000,000) shares of common stock of no par value, and three hundred thousand (300,000) shares of preferred stock of the par value of one hundred dollars ($100) each, authorized by a certain agreement of merger and consolidation dated the 8th day of April, 1924, made by Public Service Electric Company, United Electric Company of New Jersey and Public Service Gas Company, creating Public Service Electric and Gas Company, and filed in the office of the secretary of state on July 25, 1924, is not changed by anything in this agreement.

ARTICLE IV.

The board of directors of Public Service Electric and Gas Company are ten (10) in number, and the names and places of residence of the directors and officers thereof, who shall hold office until their successors are elected or appointed, are as follows:

Exhibit C 69.

Directors.	Place of Residence.
Walton Clark	Chestnut Hill, Philadelphia, Pa.
Anthony R. Kuser	Bernardsville, N. J.
Lewis Lillie	Haverford, Pa.
Alfred L. Loomis	New York City, N. Y.
Thomas N. McCarter	Rumson, N. J.
Uzal H. McCarter	Red Bank, N. J.
Randal Morgan	Chestnut Hill, Philadelphia, Pa.
Landon K. Thorne	New York City, N. Y.
Edmund W. Wakelee	Demarest, N. J.
Percy S. Young	Newark, N. J.

President.

Thomas N. McCarter	Rumson, N. J.

Vice-Presidents.

Percy S. Young	Newark, N. J.
Edmund W. Wakelee	Demarest, N. J.
Dudley Farrand	Newark, N. J.
John L. O'Toole	Newark, N. J.
Henry D. Whitcomb	East Orange, N. J.
Edgar J. Allegaert	Newark, N. J.

Secretary.

Charles M. Breder	Newark, N. J.

Assistant Secretaries.

William H. Feller	Linden, N. J.
William T. Crudge	Bloomfield, N. J.

Treasurer.

T. W. Van Middlesworth	Highland Park, N. J.

Assistant Treasurers.

Frederick A. Neis	Newark, N. J.
Robert S. Tomkins	East Orange,, N. J.

IN WITNESS WHEREOF, the said corporations, parties to this agreement, in pursuance of resolutions passed by their respective boards of directors, at regular meetings, have caused their respective corporate seals to be hereto affixed and these presents to be signed by their respective presidents or vice-presidents, and attested by their respective secre-

taries or assistant secretaries, all duly thereunto authorized, and these presents have been signed by their respective directors, the day and year first above written.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY,
By THOMAS N. McCARTER,
(SEAL) President.

BURLINGTON ELECTRIC LIGHT AND POWER COMPANY,
By THOMAS N. McCARTER,
(SEAL) President.

CITIZENS' ELECTRIC LIGHT, HEAT AND POWER COMPANY,
By THOMAS N. McCARTER,
(SEAL) President.

MIDDLESEX ELECTRIC LIGHT AND POWER COMPANY,
By THOMAS N. McCARTER,
(SEAL) President.

THE MORRISTOWN GAS LIGHT COMPANY,
By THOMAS N. McCARTER,
(SEAL) President.

THE NICHOLS ELECTRIC LIGHT AND POWER COMPANY OF NUTLEY, N. J.,
By THOMAS N. McCARTER,
(SEAL) President.

PRINCETON LIGHT, HEAT AND POWER COMPANY,
By THOMAS N. McCARTER,
(SEAL) President.

WEEHAWKEN CONTRACTING COMPANY,
By THOMAS N. McCARTER,
(SEAL) President.

Exhibit C 1—12/16/27.

A GROUP OF FOURTEEN GUARANTEED RAILROAD STOCKS
SHOWING THE PRESENT RATE OF ANNUAL RETURN THEREON, AND THE SECURITY THEREOF
(AS MEASURED BY GOVERNMENT COST OF REPRODUCTION, NEW)

Annual Divd $	Name of Stock	Guarantor	Mkt price Dec. 1 '27 Bid—Asked	% Return Based on Asked Price	Valuation brought down to Dec. 31:	Total Valuation, New	Bonds at par value	Stocks at par value	Total Capitalization	Times Bonds and stocks covered by valuation
$9.00	Atlanta & Charlotte Air Line	(Southern Ry)	186–189	4.76%	1921	$34,767	$20,000	$1,700	$21,700	1.60
2.00	Beech Creek Railway	(N. Y. Central)	44–46	4.35%	1926	12,523	6,000	6,000	12,000	1.04
8.75	Boston & Albany RR	(N. Y. Central)	184–186	4.70%	1926	96,211	26,000	25,000	51,000	1.88
10.00	Boston & Providence RR	(N. Y. N. H. & H.)	207–212	4.72%	1920	25,838	2,170	4,000	6,170	4.18
2.25	Catawissa RR 1st & 2nd pfd	(Phila. & Rdg.)	47–49	4.59%	1921	9,305	2,215	3,996	6,211	1.50
3.50	Cleveland & Pittsburg, Orig. Stk	(Penna RR)	80–81½	4.30%	1926	80,644	8,049	39,151	47,200	1.71
4.00	Dayton & Michigan, pfd. stk	(Balt. & Ohio)	93–95	4.21%	1924	10,268	2,724	3,615	6,339	1.63
3.20	Erie & Pittsburg RR	(Penna RR)	65–67	4.78%	1926	12,116	4,320	4,933	9,253	1.31
7.00	Joliet & Chicago	(Chic. & Alton)	135–139	5.02%	1922	8,266	.....	1,500	1,500	5.50
3.88	Morris & Essex Railroad	(D. L. & W.)	87–90	4.30%	1926	69,548	45,000	15,000	60,000	1.16
5.00	N. Y., Lackawanna & Western	(D. L. & W.)	109–112	4.46%	1926	44,576	23,635	10,000	33,635	1.33
10.00	Philadelphia & Trenton RR	(Penna RR)	224–228	4.39%	1926	10,956	.....	1,259	1,259	8.73
7.00	Pitts. Ft. Wayne & Chicago pfd	(Penna RR)	163–166	4.22%	1926	182,075	.....	106,528	106,528	1.70
10.00	United New Jersey RR & Canal	(Penna RR)	225–229	4.37%	1923	94,764	20,000	20,875	40,875	2.32
	TOTAL and AVERAGE, Fourteen Stocks			4.51%		$691,857	$160,113	$243,557	$403,670	1.71

Quotations on stocks obtained from the Dec. 1, 1927 list of Adams & Peck 20 Exchange Place, New York.

Data *re* bonds and stocks outstanding at Dec. 31, 1926, taken from Poor's Manual of Railroads for 1927.

Valuation figures (Cost of Reproduction, New) are the figures of the Valuation Bureau of the Interstate Commerce Commission, available to us through the agency of H. H. Copeland & Son, 111 Broadway, New York. These figures have been brought down to the latest possible date by the addition of capital expenditure (at cost) from the date of valuation (in the above either June 1, 1916, 1917 or 1918). Such capital expenditures have been obtained either from the books of Copeland and Son, or from the annual reports of the carriers.

Exhibit C 2—12/16/27.

Dealers in
INVESTMENT SECURITIES

J. S. RIPPEL & Co.
18 Clinton Street
Newark, N. J.

Telephones
Mulberry
3250
3251
3252

JUNE 6, 1927

Mr. JOSEPH KAHRS
c/o Lintott, Kahrs, & Young
810 Broad Street
Newark, N. J.

DEAR MR. KAHRS:

I have your favor of June 3rd, asking whether I would be interested in making a bid for the gas securities held by the B. M. Shanley Estate. In answer I would say that I will make an offer and herewith tender same on the following terms:

I will bid for the following stocks, namely:

188	shrs.	Somerset, Union & Middlesex Ltg Co a 80	$15,040
127	"	South Jersey Gas Electric & Traction a 160	20,320
2361	"	Essex & Hudson Gas Company a 160	377,760
3279	"	Paterson & Passaic Gas & Elec Co a 100	327,900
4370	"	Hudson County Gas Company a 160	699,200
16854	"	Newark Consolidated Gas Co. a 100	1,685,400
			$3,125,620

To the above prices accrued dividend will be added to date of delivery, in case of sale. The above bid is made *for the entire holdings and not for any part thereof.* If my bid is accepted by those in

interest and the Trustee, I understand it will be necessary to submit the same to his Honor, the Vice Chancellor, for either approval or disapproval. This being the case I will agree to leave the offer open for a reasonable time in order that the matter may be passed upon by the court.

Should my offer be accepted, I will agree to deposit a certified check for 10% of the purchase price, and the balance on demand, when the necessary legal requirements have been complied with.

Yours very truly,

J. S. Rippel

JSR/GF

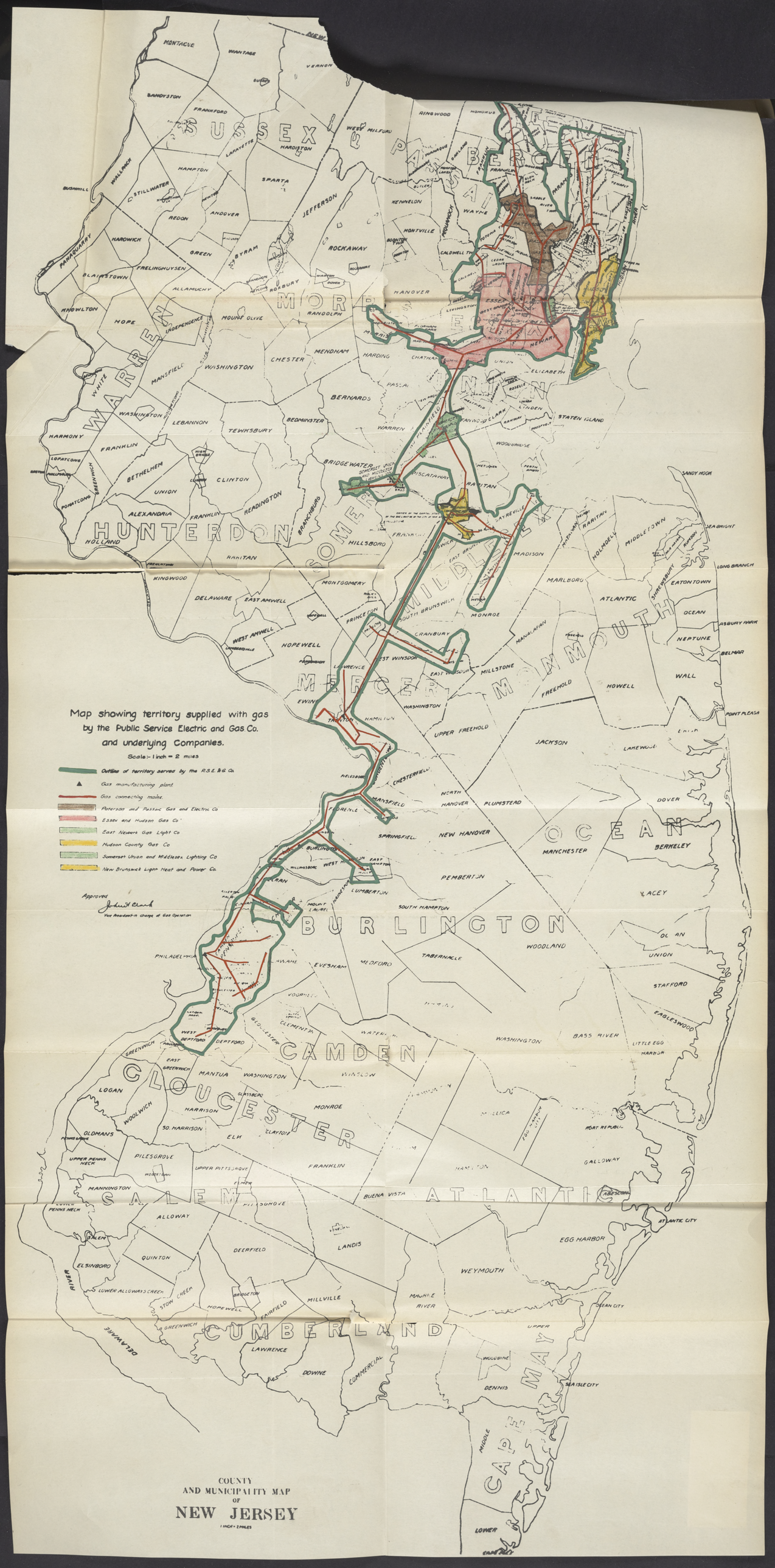
Map showing territory supplied with gas by the Public Service Electric and Gas Co. and underlying Companies.
Scale:- 1 inch = 2 miles
Outline of territory served by the P.S.E. & G. Co.
Gas manufacturing plant
Gas connecting mains
Paterson and Passaic Gas and Electric Co
Essex and Hudson Gas Co.
East Newark Gas Light Co
Hudson County Gas Co
Somerset Union and Middlesex Lighting Co
New Brunswick Light Heat and Power Co.
Approved
Vice President in charge of Gas Operation
SUSSEX
WARREN
HUNTERDON
MORRIS
PASSAIC
BERGEN
ESSEX
HUDSON
UNION
SOMERSET
MIDDLESEX
MONMOUTH
MERCER
BURLINGTON
OCEAN
CAMDEN
GLOUCESTER
SALEM
ATLANTIC
CUMBERLAND
CAPE MAY
COUNTY
AND MUNICIPALITY MAP
OF
NEW JERSEY
1 INCH = 2 MILES

Exhibit D 1.

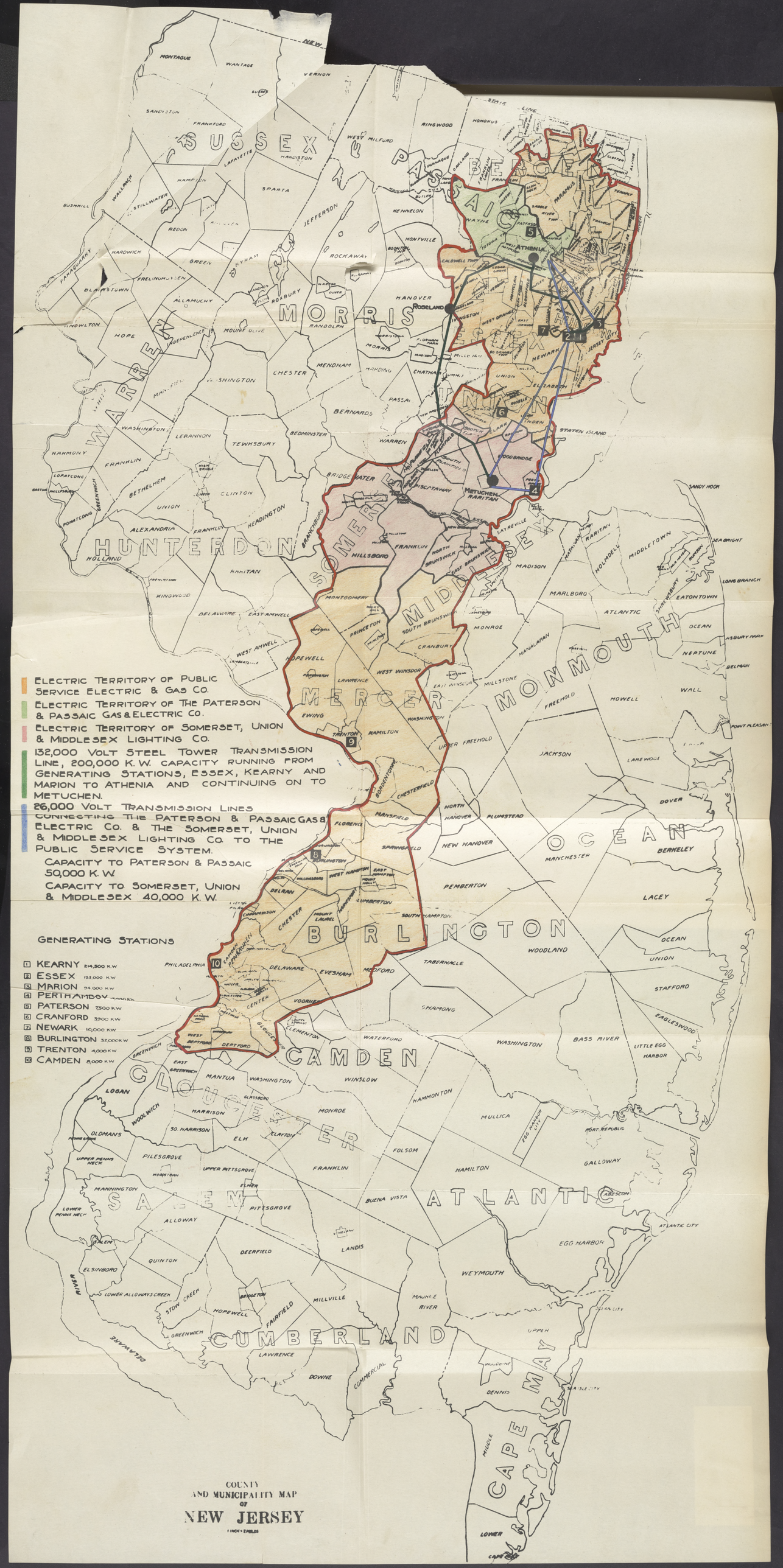
ELECTRIC TERRITORY OF PUBLIC SERVICE ELECTRIC & GAS CO.
ELECTRIC TERRITORY OF THE PATERSON & PASSAIC GAS & ELECTRIC CO.
ELECTRIC TERRITORY OF SOMERSET, UNION & MIDDLESEX LIGHTING CO.
132,000 VOLT STEEL TOWER TRANSMISSION LINE, 200,000 K.W. CAPACITY RUNNING FROM GENERATING STATIONS, ESSEX, KEARNY AND MARION TO ATHENIA AND CONTINUING ON TO METUCHEN.
26,000 VOLT TRANSMISSION LINES CONNECTING THE PATERSON & PASSAIC GAS & ELECTRIC CO. & THE SOMERSET, UNION & MIDDLESEX LIGHTING CO. TO THE PUBLIC SERVICE SYSTEM.
CAPACITY TO PATERSON & PASSAIC 50,000 K.W.
CAPACITY TO SOMERSET, UNION & MIDDLESEX 40,000 K.W.
GENERATING STATIONS
1 KEARNY 214,500 K.W.
2 ESSEX 193,000 K.W.
3 MARION 94,000 K.W.
4 PERTH AMBOY
5 PATERSON 7500 K.W.
6 CRANFORD 3900 K.W.
7 NEWARK 10,000 K.W.
8 BURLINGTON 32,000 K.W.
9 TRENTON 4,000 K.W.
10 CAMDEN 8,000 K.W.
SUSSEX
PASSAIC
BERGEN
WARREN
MORRIS
ESSEX
HUNTERDON
SOMERSET
UNION
HUDSON
MIDDLESEX
MERCER
MONMOUTH
OCEAN
BURLINGTON
CAMDEN
GLOUCESTER
SALEM
ATLANTIC
CUMBERLAND
CAPE MAY
ROSELAND
METUCHEN RARITAN
ATHENIA
NEW YORK
PHILADELPHIA
COUNTY AND MUNICIPALITY MAP OF NEW JERSEY
1 INCH = 2 MILES

Exhibit D 2.

Exhibit D 3.

(May 6, 1903.)

CERTIFICATE OF INCORPORATION.

PUBLIC SERVICE CORPORATION OF NEW JERSEY.

THIS IS TO CERTIFY, That we, the undersigned, do hereby associate ourselves into a corporation, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations," (Revision of 1896), and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names.

FIRST. The name of the corporation is "PUBLIC SERVICE CORPORATION OF NEW JERSEY."

SECOND. The location of the principal office in the State of New Jersey is No. 763 Broad street, in the City of Newark, County of Essex. The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, until otherwise changed, is Thomas N. McCarter. Said office is to be the registered office of the corporation.

THIRD. The objects for which this corporation is formed are:

To purchase, subscribe for, or otherwise acquire and own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of or any bonds, securities, or evidences of indebtedness created by any other cor-

poration or corporations, private, public or quasi-public, of this State or of any other State, or of the United States, and while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

To aid in any manner any corporation any of whose shares of capital stock, bonds, or other obligations are held or are in any manner guaranteed by this company, and to do any acts or things for the preservation and protection, improvement or enhancement of the value of any such shares of capital stock, bonds or other obligations, or the property represented thereby; to do any and all acts and things tending to increase the value of any of the property at any time held or controlled by this company; to further and otherwise facilitate the organization of subsidiary companies; to issue bonds and to secure the same by pledge or deed of trust or mortgage of or upon the whole or any part of the property, real and personal, including shares of stock, held by the company, and to sell or pledge such bonds for proper corporate purposes as and when the board of directors shall determine. The company shall also have power to issue other obligations, including perpetual interest bearing certificates in payment for property, real or personal, including shares of stock, purchased or acquired by it, or for any other object in or about its business; to mortgage and to pledge any stocks, bonds or other obligations, or any property which may be acquired by it, not excluding any class of property, real or personal, not herein specifically enumerated; to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends or the principal and interest of bonds or other obligations, and the performance of contracts, agreements

New Jersey State Library

and leases made by other corporations, and to issue its stock, bonds or other obligations in payment for any such guarantee when made by any other corporation, for the improvement or enhancement of the value of any shares of stock, securities or other property owned by this company or any corporation in which it is interested; and in the furtherance of its corporate business and to the extent authorized by law to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature; to acquire, in any lawful manner, by lease or other instrument, the property and franchises of any corporation or corporations, for such terms and upon such conditions as may be agreed upon, and to perform the obligations of any such lease or other instrument with reference to the maintenance, operation, extension and improvement of the leased property; to purchase or otherwise acquire, and hold, own, mortgage, pledge, assign and transfer or otherwise dispose of, trade, deal in and deal with property of every class and description. The company may have and exercise all the powers conferred by the laws of the State of New Jersey upon corporations formed under "An Act Concerning Corporations," (Revision of 1896) and its several amendments and supplements; it being expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the company.

FOURTH. The total authorized capital stock of the corporation is twenty-five million dollars ($25,000,000), divided into two hundred and fifty thousand (250,000) shares of one hundred dollars ($100) each.

New Jersey State Library

Exhibit D 3.

The amount of the capital stock with which the corporation will commence business is one hundred thousand dollars ($100,000).

FIFTH. The names and post office addresses of the incorporators, and the number of shares of stock subscribed for by each, the aggregate of which, being one hundred thousand dollars ($100,000), is the amount of capital stock with which the corporation will commence business, are as follows:

Name	Post Office Address	Number of Shares
Thomas N. McCarter	Newark, N. J.	334
Thomas Dolan	Philadelphia, Pa.	333
John I. Waterbury	Morristown, N. J.	333

SIXTH. The duration of the corporation shall be perpetual.

SEVENTH. The number of directors of the company shall be fixed from time to time by the by-laws; but the number if fixed at more than three, shall be some multiple of three. The directors, if more than three in number, shall be classified with respect to the time for which they shall severally hold office by dividing them into three classes, each consisting of one-third of the whole number of the Board of Directors. The directors of the first class shall be elected for a term of one year; the directors of the second class for a term of two years; and the directors of the third class for a term of three years; and at each annual election the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term

of office of one class of directors shall expire in each year.

The number of the directors may be increased or diminished as may from time to time be provided in the by-laws. In case of any increase of the number of directors the additional directors shall be elected as may be provided in the by-laws, either by the directors or by the stockholders at an annual or special meeting; and one-third of their number shall be elected for the then unexpired portion of the term of the directors of the first class, one-third of their number for the unexpired portion of the term of the directors of the second class, and one-third of their number for the unexpired portion of the term of the directors of the third class, so that each class of directors shall be increased equally.

The Board of Directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except as otherwise provided by law), outside of the State of New Jersey, at such places as may be from time to time designated by them.

The Board of Directors may appoint from the directors an Executive Committee, of which a majority shall constitute a quorum, and to such extent as shall be provided in the by-laws such committee shall have and may exercise all or any of the powers of the Board of Directors, including the power to cause the seal of the corporation to be affixed to all papers that may require it.

The Board of Directors may appoint any other standing committees, and such standing committees shall have and may exercise such powers as shall be conferred or authorized by the by-laws.

Exhibit D 3.

The Board of Directors shall have power from time to time to fix and to determine and to vary the amount of the working capital of the company and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in.

There shall be no obligation upon the directors to declare dividends on any date or in any month specified by statute. In the absence of by-laws regulating or fixing the date of declaration and payment of dividends the Board of Directors may declare and pay dividends among the stockholders out of the earnings of the company applicable thereto, and said dividends shall be of such amounts and declared and paid at such times as shall be fixed by the Board of Directors in their discretion.

The Board of Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the company, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the company, except in his capacity as a stockholder, and then only with respect to his interests as a stockholder and respecting matters germane to his status as a stockholder, and not for a purpose hostile to the interests of the corporation.

The Board of Directors, before the issue of any new or additional shares of the capital stock of the corporation, over and above the amount of the capital stock with which the corporation commences business, viz.: one hundred thousand dollars, may determine that such new or additional shares, or any part thereof, shall be offered in the first in-

stance to all of the then stockholders, in proportion to the number of shares of stock then held by them respectively, or said board, in its discretion, may make any other provision respecting the issue and allotment of the new or additional shares of capital stock.

As authorized by an act of the Legislature of the State of New Jersey, approved March 22, 1901, amending the seventeenth section of "An Act Concerning Corporations" (Revision of 1896), any corporate action which theretofore required the consent of the holders of two-thirds of the stock of any meeting, after due notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock, represented at such meeting in person or by proxy.

No contract or other transaction between this company and any other corporation, firm, co-partnership or individual shall be affected by the fact that directors of this company are directors, officers or stockholders of such other corporation, or are interested in such contract or transaction, if, at the meeting of the Board of Directors or of any committee of this company making, authorizing or confirming such contract or transaction, there shall be present and voting affirmatively thereon, a quorum of the directors or of the committee, respectively, none of whom are directors, officers or stockholders of such other corporation.

Any contract or transaction that shall be approved or ratified by the vote of the holders of a majority of the capital stock of the company which is represented in person or by proxy, at any meeting of the stockholders called, solely or in part, for the purpose of considering any such contract or

transaction, shall be valid and binding upon the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation, notwithstanding that any officer or director of this company shall be personally interested in any such contract or transaction, or a director or officer of any corporation with which any such contract or transaction may be made.

Subject always to alteration and repeal by the stockholders, and to by-laws, made by the stockholders, the Board of Directors may make by-laws and from time to time may alter, amend or repeal any by-laws; and any by-laws made by the Board of Directors may be so altered or repealed by the stockholders at any annual meeting or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the special meeting.

In Witness Whereof we have hereunto set our hands and seals the sixth day of May, nineteen hundred and three.

Thos. N. McCarter, (seal)
Thomas Dolan, (seal)
John I. Waterbury. (seal)

Signed, sealed and delivered
in the presence of
Edgar B. Ward.

Exhibit D 3.

(September 27, 1909.)

CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION OF PUBLIC SERVICE CORPORATION OF NEW JERSEY.

PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation of the State of New Jersey, by its President and Assistant Secretary, does hereby certify:

1. That the principal office of the Company is at No. 763 Broad Street, in the City of Newark, County of Essex and State of New Jersey.

That the agent therein, in charge thereof, and upon whom process against this corporation may be served is JAMES P. DUSENBERRY.

2. That the Board of Directors of said corporation, at a meeting duly convened and held on the fourteenth day of September, ninteen hundred and nine, passed resolutions, declaring that the change and amendment in the certificate of incorporation of said Company hereinafter set forth, is advisable, and calling a meeting of the stockholders to take action thereon.

3. That a copy of said resolutions of the Board of Directors is hereto appended.

4. That thereafter on the twenty-seventh day of September, nineteen hundred and nine, pursuant to such call of the Board of Directors, and upon notice given to each of the stockholders as provided in the By-Laws, a special meeting of the stockholders of the Company was held, at which more than two-thirds in interest of the stockhold-

ers having voting powers were present in person or represented by proxy (there being only one class of stockholders of the Company), and that more than two-thirds in interest of the stockholders having voting powers voted in favor of such change and amendment and to authorize and adopt the same, said amendment is as follows:

"Third: The objects for which this corporation is formed are:

"To purchase, subscribe for, or otherwise acquire and own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock of or any bonds, securities, or evidences of indebtedness created by any other corporation or corporations, private, public, or quasi-public, of this State or of any other State, or of the United States, and while owner of such stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon.

"To aid in any manner any corporation any of whose shares of capital stock, bonds or other obligations are held or are in any manner guaranteed by this Company, and to do any acts or things for the preservation and protection, improvement or enhancement of the value of any such shares of capital stock, bonds or other obligations, or the property represented thereby; to do any and all acts and things tending to increase the value of any of the property at any time held or controlled by this Company; to further and otherwise facilitate the organization of subsidiary companies; to issue bonds and to secure the same by pledge or deed of trust or mortgage of or upon the whole or any part of the property, real and personal, including shares of stock, bonds, leases, contracts,

or other obligations held by the Company, or any property, which may be acquired by it, not excluding any class of property, real or personal, not herein specifically enumerated, and to sell or pledge such bonds for proper corporate purposes, as and when the Board of Directors shall determine; to construct, maintain, extend, enlarge and operate in this State, works for the supply and distribution of electricity for electric lights, heat and power, to acquire and hold such works with the franchises and rights under which the same are or may be operated by purchase, lease or otherwise; to operate such works and exercise and enjoy such franchises and rights; to make, execute, accept, hold, perform, assign and transfer leases of works constructed and to be constructed for the purpose of supplying and distributing electricity for electric lights, heat or power; to operate such works under and in pursuance of such leases, and to use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures and to lay pipes or conduits and to lay wires therein beneath the public roads, highways, streets, avenues and alleys of this State as may be deemed necessary. The Company shall also have power to issue obligations, other than those mentioned above, including perpetual interest bearing certificates in payment for property, real or personal, including shares of stock, purchased or acquired by it or for any other object in or about its business; to mortgage and to pledge any stocks, bonds, leases, contracts, or other obligations, or any property which may be acquired by it, not excluding any class of property, real or personal, not herein

specifically enumerated; to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends or the principal and interest of bonds or other obligations, and the performance of contracts, agreements and leases made by other corporations, and to issue its stock, bonds or other obligations in payment for any such guarantee when made by any other corporation, for the improvement or enhancement of the value of any shares of stock, securities or other property owned by this Company or any corporation in which it is interested; and as a primary object of this incorporation and also in furtherance of its corporate business and to the extent authorized by law to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature, the Company shall also have power to acquire, in any lawful manner, by lease or other instrument, the property and franchises of any corporation or corporations, for such terms and upon such conditions as may be agreed upon, and to perform the obligations of any such lease or other instrument with reference to the maintenance, operation, extension and improvement of the leased property; to purchase or otherwise acquire, and hold, own, mortgage, pledge, assign and transfer or otherwise dispose of, trade, deal in and deal with property of every class and description. The Company shall have and exercise all the powers conferred by the laws of the State of New Jersey upon corporations formed under 'An Act Concerning Corporations' (Revision of 1896) and its several amendments and supplements, it being expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the Company."

5. That at said meeting of the stockholders the foregoing amendment was assented to in writing by more than two-thirds in interest of the stockholders having voting powers, which said written consent is hereto appended.

6. That one hundred and eighty-four thousand nine hundred and sixty-two (184,962) shares of common stock and no shares of preferred stock of said corporation are issued and outstanding.

IN WITNESS WHEREOF said Public Service Corporation of New Jersey has caused this certificate to be signed by its President and its Secretary and its corporate seal to be hereto affixed this twenty-seventh day of September, in the year one thousand nine hundred and nine.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,

(CORPORATE SEAL) By THOS N. McCARTER,
President.

Attest:

H. C. STEVENSON,
Asst. Secretary.

ASSENT OF STOCKHOLDERS.

The undersigned, being more than two-thirds in interest of the stockholders of PUBLIC SERVICE CORPORATION OF NEW JERSEY, having voting powers, having at a meeting regularly called for that purpose voted in favor of the change and amendment set forth in the foregoing certificate, do now, pursuant to law, give our written assent to such change and amendment. Dated, September twenty-seventh, one thousand nine hundred and nine.

[Signed in person and by proxy by the owners of 158,230 shares of stock.]

Exhibit D 3.

RESOLUTIONS.

Passed September 14, 1909, by the BOARD OF DIRECTORS OF PUBLIC SERVICE CORPORATION OF NEW JERSEY to amend its Certificate of Incorporation:

RESOLVED, That it is advisable to amend the third numbered Article of the Certificate of Incorporation of Public Service Corporation of New Jersey, so that the same shall read as follows:

"Third: The objects for which this corporation is formed are:

"To purchase, subscribe for, or otherwise acquire and own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of or any bonds, securities, or evidences of indebtedness created by any other corporation or corporations, private, public or quasi-public, of this State or of any other State, or of the United States, and while owner of such stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

"To aid in any manner any corporation any of whose shares of capital stock, bonds or other obligations are held or are in any manner guaranteed by this Company, and to do any act or things for the preservation and protection, improvement or enhancement of the value of any such shares of capital stock, bonds or other obligations, or the property represented thereby; to do any and all acts and things tending to increase the value of any of the property at any time held or controlled by this Company; to further and otherwise facilitate the

organization of subsidiary companies; to issue bonds and to secure the same by pledge or deed of trust or mortgage of or upon the whole or any part of the property, real and personal, including shares of stock, bonds, leases, contracts or other obligations held by the Company, or any property, which may be acquired by it, not excluding any class of property, real or personal, not herein specifically enumerated, and to sell or pledge such bonds for proper corporate purposes as and when the Board of Directors shall determine; to construct, maintain, extend, enlarge and operate in this State works for the supply and distribution of electricity for electric lights, heat and power; to acquire and hold such works with the franchises and rights under which the same are or may be operated by purchase, lease or otherwise; to operate such works and exercise and enjoy such franchises and rights; to make, execute, accept, hold, perform, assign and transfer leases of works constructed and to be constructed for the purpose of supplying and distributing electricity for electric lights, heat or power; to operate such works under and in pursuance of such leases, and to use the public roads, highways, streets, avenues and alleys in this State for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures and to lay pipes or conduits and to lay wires beneath the public roads, highways, streets, avenues and alleys of this State as may be deemed necessary. The Company shall also have power to issue obligations, other than those mentioned above, in-

cluding perpetual interest bearing certificates in payment for property, real or personal, including shares of stock, purchased or acquired by it, or for any other object in or about its business; to mortgage and to pledge any stocks, bonds, leases, contracts, or other obligations, or any property which may be acquired by it, not excluding any class of property, real or personal, not herein specifically enumerated; to secure any bonds or other obligations by it issued or incurred; to guarantee any dividends or the principal and interest of bonds or other obligations, and the performance of contracts, agreements and leases made by other corporations, and to issue its stock, bonds or other obligations in payment for any such guarantee when made by any other corporation, for the improvement or enhancement of the value of any shares of stock, securities or other property owned by this Company or any corporation in which it is interested; and as a primary object of this incorporation and also in furtherance of its corporate business and to the extent authorized by law to lease, purchase, hold, sell, assign, transfer, pledge, mortgage and convey real and personal property of any name and nature, the Company shall also have power to acquire, in any lawful manner, by lease or other instrument, the property and franchises of any corporation or corporations, for such terms and upon such conditions as may be agreed upon, and to perform the obligations of any such lease or other instrument with reference to the maintenance, operation, extension and improvement of the leased property; to

purchase or otherwise acquire, and hold, own, mortgage, pledge, assign and transfer, or otherwise dispose of, trade, deal in and deal with property of every class and description. The Company shall have and exercise all the powers conferred by the laws of the State of New Jersey upon corporations formed under 'An Act Concerning Corporations,' (Revision of 1896) and its several amendments and supplements; it being expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the Company."

And be it further

RESOLVED, That a meeting of the stockholders of Public Service Corporation of New Jersey to take action upon the foregoing resolution be and the same is hereby called to be held at the principal office of the Company, No. 763 Broad Street, in the City of Newark, N. J., on the twenty-seventh day of September, 1909, at twelve o'clock noon.

(February 2, 1914.)

BE IT KNOWN that PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation and body politic of the State of New Jersey, doth hereby certify:

1. The principal office of the company is at the northwest corner of Broad and Bank Streets, in the City of Newark, County of Essex and State of New Jersey, and that the agent therein and in charge thereof and upon whom process against the Company may be served is James P. Dusenberry.

2. That the Board of Directors of the said corporation at a meeting duly convened and held on the twentieth day of January, nineteen hundred and fourteen, resolved that it was advisable to change, alter and amend the certificate of incorporation of the said corporation now on file, and called a meeting of the stockholders to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED, That in the judgment of the Board of Directors of Public Service Corporation of New Jersey, it is advisable to change, alter and amend the third numbered article of the certificate of incorporation of Public Service Corporation of New Jersey, as amended by certificate filed in the office of the Secretary of State on September 27, 1909, by striking therefrom the following:

'to construct, maintain, extend, enlarge and operate in this State, works for the supply and distribution of electricity for electric lights, heat and power; to acquire and hold such works with the franchises and rights under which the same are or may be operated by purchase, lease or otherwise; to operate such works and exercise and enjoy such franchises and rights; to make, execute, accept, hold, perform, assign and transfer leases of works constructed and to be constructed for the purpose of supplying and distributing electricity for electric lights, heat or power; to operate such works under and in pursuance of such leases, and to use the public roads, highways, streets, avenues and alleys in this State for the purpose of erect-

ing posts or poles on the same to sustain the necessary wires and fixtures and to lay pipes or conduits and to lay wires therein beneath the public roads, highways, streets, avenues and alleys of this State as may be deemed necessary. * * * the Company shall also have power to acquire, in any lawful manner, by lease or other instrument, the property and franchises of any corporation or corporations, for such terms and upon such conditions as may be agreed upon, and to perform the obligations of any such lease or other instrument with reference to the maintenance, operation, extension and improvement of the leased property, to purchase or otherwise acquire, and hold, own, mortgage, pledge, assign and transfer or otherwise dispose of, trade, deal in and deal with property of every class and description. The Company shall have and exercise all the powers conferred by the laws of the State of New Jersey upon corporations formed under "An Act Concerning Corporations," (Revision of 1896) and its several amendments and supplements; it being expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the Company,' and to relinquish such branch or branches of its business as were authorized thereby.

"AND BE IT FURTHER RESOLVED, That a meeting of the stockholders of Public Service Corporation of New Jersey be and the same is hereby called to be held on the second day of February, 1914, at the hour of twelve o'clock noon, at the office of the company in Public

Service Building, in the City of Newark, New Jersey, to take action on the foregoing resolution, and that notice thereof at least ten days prior to such meeting be given by the Secretary by mail to each stockholder at his or her last postoffice address given or appearing upon the books of the Company."

4. Thereafter on the second day of February, nineteen hundred and fourteen, pursuant to such call of the said directors, on notice given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on such resolution, at which meeting there were present in person or represented by proxy stockholders owning two hundred and sixteen thousand three hundred and four (216,304) shares of stock, being more than two-thirds in interest of all of the stock of said corporation having voting powers, and the owners of all of said two hundred and sixteen thousand three hundred and four (216,304) shares of stock of said corporation having voting powers voted in favor of the change, alteration and amendment as proposed in the resolution of the Board of Directors above recited.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing by more than two-thirds in interest of all of the stockholders of the corporation having voting powers, which said written assent is hereto appended.

6. That the total number of the shares of stock of said corporation at the time of said meeting was

two hundred and fifty thousand, of the par value of one hundred dollars each.

IN WITNESS WHEREOF the said Public Service Corporation of New Jersey has caused this certificate to be made and signed by its Vice-President and Secretary, and its corporate seal to be hereunto affixed, this second day of February, in the year of our Lord One thousand nine hundred and fourteen.

PUBLIC SERVICE CORPORATION OF NEW JERSEY.

[SEAL]

By
J. J. BURLEIGH,
Vice-President.

Attest:
EDWIN W. HINE,
Secretary.

The undersigned, being more than two-thirds in interest of all the stockholders of Public Service Corporation of New Jersey having voting powers, having at a meeting regularly called and held for that purpose voted in favor of the foregoing amendment, change and alteration in the certificate of incorporation of said Company, set forth in the resolution recited in the above certificate, do now pursuant to law give our written assent to such amendment, change and alteration in the certificate of incorporation of the said Company.

WITNESS our hands this second day of February, in the year of our Lord One thousand nine hundred and fourteen.

[Signed in person and by proxy by the owners of 216,304 shares of stock.]

Exhibit D 3.

(July 27, 1916.)

BE IT KNOWN that PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation and body politic of the State of New Jersey, doth hereby certify:

1. The principal office of the company is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the company may be served is Percy Ingalls.

2. That the board of directors of the said corporation, at a meeting duly convened and held on the twentieth day of June, nineteen hundred and sixteen, resolved that it was advisable to change, alter and amend the certificate of incorporation of the said corporation now on file, and called a meeting of the stockholders to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED, That in the judgment of the Board of Directors of Public Service Corporation of New Jersey it is desirable to increase the capital stock of said company from twenty-five million dollars ($25,000,000) to fifty million dollars ($50,000,000), divided into five hundred thousand shares of the par value of one hundred dollars ($100) each, and to that end it is advisable that Article Fourth of the certificate of incorporation of said corporation now on file in the office of the Secretary of State at Trenton, in the State of New Jersey, be amended so that it shall hereafter read as follows:

"'FOURTH: The total authorized capital stock of the corporation is fifty million dollars

($50,000,000), divided into five hundred thousand (500,000) shares of one hundred dollars ($100) each.

"'The amount of the capital stock with which the corporation will commence business is one hundred thousand dollars ($100,000).'"

4. Thereafter on the twenty-sixth day of July, nineteen hundred and sixteen, pursuant to such call of the said directors, on notice given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on such resolution, at which meeting there were present in person or represented by proxy stockholders owning two hundred sixteen thousand three hundred and sixty-six (216,366) shares of stock, being more than two-thirds in interest of all of the stock of said corporation having voting powers, and the owners of all of said two hundred sixteen thousand three hundred and sixty-six (216,366) shares of stock of said corporation having voting powers voted in favor of the change, alteration and amendment as proposed in the resolution of the board of directors above recited.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing by more than two-thirds in interest of all of the stockholders of the corporation having voting powers, to wit, those voting in favor thereof as aforesaid, which said written assent is hereto appended.

6. That the total number of the shares of stock of said corporation at the time of said meeting was two hundred and fifty thousand, of the par value of one hundred dollars each.

Exhibit D 3.

IN WITNESS WHEREOF, The said Public Service Corporation of New Jersey has caused this certificate to be made and signed by its President and Secretary, and its corporate seal to be hereunto affixed, this twenty-sixth day of July, in the year of our Lord one thousand nine hundred and sixteen.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,

[SEAL] By

THOS. N. McCARTER,
President.

Attest:

PERCY INGALLS,
Secretary.

[10c. U. S. Internal Revenue stamp attached and canceled.]

CERTIFICATE OF CHANGE OF LOCATION OF THE PRINCIPAL OFFICE OF THE PUBLIC SERVICE CORPORATION OF NEW JERSEY.

RESOLUTION OF DIRECTORS.

"The Board of Directors of the PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation of New Jersey, on this twentieth day of June, A. D. 1916, do hereby resolve and order that the location of the principal office of this corporation within this State be and the same hereby is changed from Broad and Bank streets, Newark, in the County of Essex, to No. 80 Park Place, in the City of Newark, County of Essex."

Exhibit D 3.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is PERCY INGALLS.

CERTIFICATE OF CHANGE.

The PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation of New Jersey, doth hereby certify that the foregoing is a true copy of a resolution adopted by the Board of Directors by a majority vote of the members thereof, at a meeting held as therein stated.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by its Vice-President and Assistant Secretary, and its corporate seal to be hereto affixed, the 22nd day of June, A. D. 1916.

(SEAL)

(10c. I. R. Stamp Can.)

GEO. J. ROBERTS,
Vice-President.

H. C. STEVENSON,
Assistant Secretary.

Endorsed:

"Filed and Recorded June 23, 1916.

THOMAS F. MARTIN,
Secretary of State."

Exhibit D 3.

(February 10, 1919.)

CERTIFICATE OF AMENDMENT.

BE IT KNOWN that PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation and body politic of the State of New Jersey, doth hereby certify:

1. The principal office of the company is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the company may be served is PERCY INGALLS.

2. The Board of Directors of the said corporation at a meeting duly convened and held on the twenty-seventh day of January, nineteen hundred and nineteen, a quorum being present, by the unanimous vote of the directors present, duly passed and adopted a resolution that the amendments to and changes and alterations in said certificate of incorporation, which are hereinafter set forth, are advisable, and called a meeting of the stockholders of said corporation to be held at its principal office on the tenth day of February, in the year of our Lord one thousand nine hundred and nineteen, to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED, That in the judgment of the Board of Directors of Public Service Corporation of New Jersey it is advisable to increase the capital stock of said corporation from fifty million dollars, divided into five hundred thousand shares, of the par value of one hundred

dollars each, as now fixed by an amendment to the articles of incorporation of said corporation, on file in the office of the Secretary of State at Trenton, in the State of New Jersey, to one hundred million dollars, divided into one million shares of the par value of one hundred dollars each, of which fifty million dollars shall be common stock, and fifty million dollars preferred stock, as hereinafter stated, and to that end that the said certificate as now amended be further amended as follows, viz:

"I. *That Article Fourth of said certificate be amended so as to read as follows:*

" 'FOURTH. The total authorized capital stock of the corporation is one hundred million dollars, divided into one million shares of one hundred dollars each.

" 'Of such capital stock five hundred thousand shares shall be eight per cent. cumulative preferred stock, and the balance, five hundred thousand shares, shall be common stock. The par value of each share is one hundred dollars. At no time shall the amount of such preferred stock of the corporation issued and outstanding be larger than the amount of the common stock thereof issued and outstanding; subject to this limitation further amounts of the preferred stock hereby authorized may be issued and additional preferred stock may be authorized and issued from time to time in the manner provided by law. All stock, other than preferred stock, shall be subordinate, as to dividends and assets as herein provided, to the preferred stock at any time issued and outstanding.

" 'The holders of the eight per cent. cumulative preferred stock shall be entitled to receive, when and as declared by the Board of Directors, dividends from the surplus or net profits of the corporation, at the rate of eight per cent. per annum and no more, from March 1, 1919, payable quarterly on June 30, September 30, December 31 and March 31 in each year. Such dividends shall be payable before any dividends shall be paid upon or set apart for any other shares of stock of the corporation, and shall be cumulative, so that if, in any quarterly dividend period, dividends at the rate of eight per cent. per annum shall not have been paid upon, or set apart for, the eight per cent. cumulative preferred stock, the deficiency shall be fully paid or set apart for payment before any dividend shall be paid upon or set apart for any other shares of stock of the corporation. Whenever full cumulative dividends upon the eight per cent. cumulative preferred stock for all previous quarterly dividend periods shall have been paid, and the full instalment for the current quarterly dividend period shall have been paid, or shall have been declared and a sum sufficient for the payment thereof set apart, the Board of Directors may declare dividends out of the then remaining surplus or net profits of the corporation on the common stock.

" 'The outstanding eight per cent. cumulative preferred stock may be redeemed at the option of the corporation in whole or from time to time in amounts of not less than one thousand shares, at any time after three years from the issue thereof, on any quarterly dividend payment date, on notice to the holders of rec-

ord of said stock given not less than thirty or more than sixty days previous to the redemption date by mail and by publication in such manner as may be prescribed by the by-laws of the corporation or by resolution of its Board of Directors, by the payment in cash for each share of stock so to be redeemed of 110% of the par amount thereof and in addition thereto all dividends accumulated and unpaid thereon. If less than all the outstanding shares of such eight per cent. cumulative preferred stock, then subject to redemption, are to be redeemed, such redemption shall be made *pro rata* and in such manner as may be prescribed by resolution of the Board of Directors. From and after the date fixed in any such notice as the date of redemption (unless default be made by the corporation in the payment of the redemption price pursuant to such notice) all dividends on the eight per cent. cumulative preferred stock called for redemption shall cease to accrue, and all rights of the holders of record thereof as stockholders of the corporation, except the right to receive the redemption price, shall cease and determine.

" 'In the event of the dissolution or liquidation of the corporation, whether voluntary or involuntary, or of any distribution of the capital of the corporation, the holders of the eight per cent. cumulative preferred stock shall be entitled to be paid in full both the par amount of their shares and the amount of accumulated and unpaid dividends thereon, before any amount shall be paid to the holders of any other stock.

" 'The amount of the capital stock with which the corporation will commence business is one hundred thousand dollars.'

"II. *That the paragraph of Article Seventh of said certificate, which reads as follows:*

" 'The Board of Directors, before the issue of any new or additional shares of the capital stock of the corporation, over and above the amount of the capital stock with which the corporation commences business, viz., one hundred thousand dollars, may determine that such new or additional shares, or any part thereof, shall be offered in the first instance to all of the then stockholders, in proportion to the number of shares of stock then held by them, respectively, or said Board, in its discretion, may make any other provision respecting the issue and allotment of the new or additional shares of capital stock,' *be amended so as to read as follows:*

" 'The Board of Directors, before the issue of any new or additional shares of the capital stock of the corporation, over and above the amount of the capital stock with which the corporation commences business, viz., one hundred thousand dollars, may determine that such new or additional shares, or any part thereof, shall be offered in the first instance to all of the then stockholders, in proportion to the number of shares of stock then held by them respectively, or said Board, in its discretion, may make any other provision respecting the issue and allotment of the new or additional shares of capital stock; except, that said Board shall impose no limitation upon any right existing by law of

the holders of the eight per cent. cumulative preferred stock of the corporation to subscribe for shares of the capital stock of the corporation hereafter issued.' "

4. Thereafter on the tenth day of February, nineteen hundred and nineteen, pursuant to such call of the said directors, on notice given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning two hundred and sixty-five thousand four hundred and seventy-nine (265,479) shares of stock, being more than two-thirds in interest of all of the stock of said corporation, and the owners of all of said two hundred and sixty-five thousand four hundred and seventy-nine (265,479) shares of stock of said corporation voted in favor of the change, alteration and amendment as proposed in the resolution of the Board of Directors above recited.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing, which written assent is appended hereto, by more than two-thirds in interest of all of the stockholders of the corporation, to wit, two hundred and sixty-five thousand four hundred and seventy-nine (265,479) shares of stock.

6. That the total number of the shares of stock of said corporation at the time of said meeting was two hundred and ninety-nine thousand nine

hundred and ninety-six, of the par value of one hundred dollars each.

In Witness Whereof, the said Public Service Corporation of New Jersey has caused this certificate to be made and signed by its President and Secretary, and its corporate seal to be hereunto affixed, this tenth day of February, in the year of our Lord one thousand nine hundred and nineteen.

Public Service Corporation
of New Jersey,
By
(L. S.) Thos. N. McCarter,
President.

Attest:
Percy Ingalls,
Secretary.

(December 19, 1922.)

Certificate of Amendment.

Be It Known that Public Service Corporation of New Jersey, a corporation and body politic of the State of New Jersey, doth hereby certify:

1. The principal office of the corporation is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the corporation may be served is Percy Ingalls.

2. The Board of Directors of the said corporation, at a meeting duly convened and held on the

twenty-first day of November, in the year of our Lord one thousand nine hundred and twenty-two, a quorum being present, by the unanimous vote of the directors present, duly passed and adopted a resolution that the amendments to and changes and alterations in said certificate of incorporation which are hereinafter set forth, are advisable, and called a meeting of the stockholders of said corporation, to be held at its principal office on the eighteenth day of December, in the year of our Lord one thousand nine hundred and twenty-two, to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED, That in the judgment of the Board of Directors of Public Service Corporation of New Jersey, it is advisable to amend its certificate of incorporation as the same is now amended, by changing Article Fourth thereof to read as follows:

"'FOURTH. The total authorized capital stock of the corporation is one hundred million dollars ($100,000,000), divided into one million (1,000,000) shares of one hundred dollars ($100) each.

"'Of such capital stock, two hundred and fifty thousand (250,000) shares shall be in one series eight per cent. (8%) cumulative preferred stock, and two hundred and fifty thousand (250,000) shares shall be in another series seven per cent. (7%) cumulative preferred stock, making in all five hundred thousand (500,000) shares of preferred stock, and the balance, five hundred thousand (500,000) shares, shall be common stock. At no time shall the amount of such preferred stock of the corporation issued and outstanding be larger

than the amount of the common stock thereof issued and outstanding; subject to this limitation further amounts of the preferred stock hereby authorized may be issued and additional preferred stock may be authorized and issued from time to time in the manner provided by law. All stock, other than preferred stock, shall be subordinate, as to dividends and assets as herein provided, to the preferred stock at any time issued and outstanding.

" 'The holders of the preferred stock shall be entitled to receive, when and as declared by the Board of Directors, dividends from the surplus or net profits of the corporation, payable quarterly on June 30th, September 30th, December 31st and March 31st in each year. Such dividends shall be payable before any dividends shall be paid upon or set apart for any other shares of stock of the corporation and shall be cumulative, so that if in any quarterly dividend period such dividends at the specified rate per annum shall not have been paid upon or set apart for the preferred stock, the deficiency shall be fully paid or set apart for payment before any dividend shall be paid upon or set apart for any other shares of stock of the corporation. Whenever full cumulative dividends upon all of the preferred stock for all previous quarterly dividend periods shall have been paid, and the full installment for the current quarterly dividend period shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart, the Board of Directors may declare dividends out of the then remaining surplus or net profits of the corporation on the common stock. The

dividend to be paid on the series of eight per cent. (8%) cumulative preferred stock shall be at the rate of eight per cent. (8%) per annum and no more; and the dividend to be paid on the series of seven per cent. (7%) cumulative preferred stock shall be at the rate of seven per cent. (7%) per annum and no more.

"'In the event of the dissolution or liquidation of the corporation, whether voluntary or involuntary, or of any distribution of the capital of the corporation, the holders of the respective series of preferred stock shall be entitled to be paid in full both the par amount of their shares and the amount of accumulated and unpaid dividends thereon, before any amount shall be paid to the holders of any other stock.

"'The amount of the capital stock with which the corporation will commence business is one hundred thousand dollars ($100,000).'"

4. Thereafter on the eighteenth day of December, in the year of our Lord one thousand nine hundred and twenty-two, pursuant to such call of said directors, on notice given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning one hundred and twenty-seven thousand two hundred and eight (127,208) shares of the preferred stock, and stockholders owning two hundred and twenty-seven thousand two hundred and eighty-

seven (227,287) shares of the common stock, being more than two-thirds in interest of both the preferred and common stock of the said corporation, and at such meeting one hundred and twenty-seven thousand one hundred and ninety-three (127,193) shares of the preferred stock voted in favor of such change, alteration and amendment as proposed in the resolution of the Board of Directors above recited and fifteen (15) against the same, and two hundred and twenty-seven thousand two hundred and eighty-seven (227,287) shares of the common stock voted in favor and none against the same.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing, which is appended hereto, by more than two-thirds in interest of all of the preferred stock and of all of the common stock, that is to say, one hundred and twenty-seven thousand one hundred and ninety-three (127,193) shares of preferred stock, and two hundred and twenty-seven thousand two hundred and eighty-seven (227,287) shares of common stock.

6. That the total number of shares of preferred stock of said corporation at the time of said meeting issued and outstanding was one hundred and eighty-four thousand one hundred and forty-five (184,145), and three hundred thousand (300,000) shares of common stock, all of the par value of one hundred dollars ($100) each.

In Witness Whereof, the said Public Service Corporation of New Jersey hath caused this certificate to be made and signed by its President and

Secretary, and its corporate seal to be hereunto affixed, this nineteenth day of December, in the year of our Lord one thousand nine hundred and twenty-two.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,

(SEAL) By

THOMAS N. McCARTER,
President.

Attest:

PERCY INGALLS,
Secretary.

April 11, 1923.

CERTIFICATE OF AMENDMENT.

BE IT KNOWN that PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation and body politic of the State of New Jersey, doth hereby certify:

1. The principal office of the corporation is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the corporation may be served is Percy Ingalls.

2. The Board of Directors of the said corporation, at a meeting duly convened and held on the twentieth day of March, in the year of our Lord one thousand nine hundred and twenty-three, a quorum being present, by the unanimous vote of the directors present, duly passed and adopted a

resolution that the amendments to and changes and alterations in said certificate of incorporation which are hereinafter set forth, are advisable, and called a meeting of the stockholders of said corporation, to be held at its principal office on the second day of April, in the year of our Lord one thousand nine hundred and twenty-three, to take action thereon.

3. The following is a copy of the said resolution:

RESOLVED, that in the judgment of the Board of Directors of Public Service Corporation of New Jersey it is advisable to amend the certificate of incorporation in relation to the capital stock of said corporation as now fixed by an amendment, so as to provide for one million (1,000,000) shares of preferred stock of the par value of one hundred dollars ($100) each, and two million (2,000,000) shares of common stock of no par value, and to that end and for that purpose that Article Fourth thereof be changed so as to read as follows:

"FOURTH: The total authorized capital stock of the corporation is one hundred million dollars ($100,000,000.) of preferred stock, divided into one million (1,000,000) shares of one hundred dollars ($100.) each, and two million (2,000,000) shares of common stock of no par value.

"Of such shares of preferred stock two hundred and fifty thousand (250,000) shares, amounting to twenty-five million dollars ($25,000,000.), shall be eight per cent. (8%) cumulative preferred stock, five hundred thousand (500,000) shares, amounting to fifty million

dollars ($50,000,000.), shall be seven per cent. (7%) cumulative preferred stock, and two hundred and fifty thousand (250,000) shares, amounting to twenty-five million dollars ($25,000,000.), shall be six per cent. (6%) cumulative preferred stock. At no time shall the total number of shares of such preferred stock of the corporation issued and outstanding be larger than the total number of shares of the common stock thereof issued and outstanding; subject to this limitation further amounts of the preferred stock hereby authorized may be issued and additional preferred stock may be authorized and issued from time to time in the manner provided by law. All stock, other than preferred stock, shall be subordinate, as to dividends and assets, as herein provided, to the preferred stock at any time issued and outstanding.

"The holders of the preferred stock shall be entitled to receive, when and as declared by the Board of Directors, dividends from the surplus or net profits of the corporation, payable quarterly on June 30th, September 30th, December 31st and March 31st in each year. Such dividends shall be payable before any dividends shall be paid upon or set apart for any other shares of stock of the corporation and shall be cumulative, so that if in any quarterly dividend period such dividends at the specified rate per annum shall not have been paid upon or set apart for the preferred stock, the deficiency shall be fully paid or set apart for payment before any dividend shall be paid upon or set apart for any other shares

of stock of the corporation. Whenever full cumulative dividends upon all of the preferred stock for all previous quarterly dividend periods shall have been paid, and the full installment for the current quarterly dividend period shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart, the Board of Directors may declare dividends out of the then remaining surplus or net profits of the corporation on the common stock. The dividend to be paid on the series of eight per cent. (8%) cumulative preferred stock, shall be at the rate of eight per cent. (8%) per annum and no more; the dividend to be paid on the series of seven per cent. (7%) cumulative preferred stock shall be at the rate of seven per cent. (7%) per annum and no more; and the dividend to be paid on the series of six per cent. (6%) cumulative preferred stock shall be at the rate of six per cent. (6%) per annum and no more.

"In the event of the dissolution or liquidation of the corporation, whether voluntary or involuntary, or of any distribution of the capital of the corporation, the holders of the respective series of preferred stock shall be entitled to be paid in full both the par amount of their shares and the amount of accumulated and unpaid dividends thereon, before any amount shall be paid to the holders of any other stock.

"The present common stock issued and outstanding of the said corporation at the time this amendment takes effect shall be exchangeable and exchanged by the Board of Directors of the corporation at the rate of two (2) shares

of common stock, without par value, for one (1) share of the present common stock.

"Further and additional shares of common stock may be issued and sold by the Board of Directors, at such price, and from time to time, for the purpose of the corporation, as said Board may think proper.

"The amount of the capital stock with which the corporation will commence business is one hundred thousand dollars ($100,000.)."

4. Thereafter on the second day of April, in the year of our Lord one thousand nine hundred and twenty-three, pursuant to such call of said directors, on notice given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning one hundred and eighty thousand one hundred and forty-nine (180,149) shares of the preferred stock, being one hundred and fifty thousand and ten (150,010) shares of the eight per cent. (8%) preferred stock, and thirty thousand one hundred and thirty-nine (30,139) shares of the seven per cent. (7%) preferred stock, and stockholders owning two hundred and thirty-seven thousand one hundred and eighty-one (237,181) shares of common stock, being more than two-thirds in interest of both preferred and common stock of the said corporation, and at such meeting the owners of all of the shares of the preferred stock, and all of the owners of the shares of the common stock so present in per-

son or by proxy voted in favor and none against the same.

5. That at said meeting of stockholders the foregoing amendment was assented to in writing, which is appended hereto, by more than two-thirds in interest of all of the preferred stock, being more than two-thirds in interest of all of the eight per cent. (8%) preferred stock, as well as of all of the seven per cent. (7%) preferred stock, and more than two-thirds in interest also of all of the common stock, that is to say: one hundred and eighty thousand one hundred and forty-nine (180,149) shares of the preferred stock, being one hundred and fifty thousand and ten (150,010) shares of the eight per cent. (8%) preferred stock, and thirty thousand one hundred and thirty-nine (30,139) shares of the seven per cent. (7%) preferred stock, and two hundred and thirty-seven thousand one hundred and eighty-one (237,181) shares of common stock.

6. That the total number of shares of preferred stock of said corporation at the time of said meeting issued and outstanding was two hundred and thirty-six thousand eight hundred and seven (236,807) of which one hundred and ninety-six thousand three hundred and ninety-three (196,393) were eight per cent. (8%) and forty thousand four hundred and fourteen (40,414) were seven per cent. (7%), and three hundred thousand (300,000) shares of common stock, all of the value of one hundred dollars ($100.) each.

In Witness Whereof, the said Public Service Corporation of New Jersey hath caused this certificate to be made and signed by its President and

Secretary, and its corporate seal to be hereunto affixed, this second day of April, in the year of our Lord one thousand nine hundred and twenty-three.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,

[SEAL] By

THOMAS N. McCARTER,
President.

Attest:

PERCY INGALLS,
Secretary.

October 19, 1926.

CERTIFICATE OF AMENDMENT.

BE IT KNOWN that PUBLIC SERVICE CORPORATION OF NEW JERSEY, a corporation and body politic of the State of New Jersey, doth hereby certify:

1. The principal office of the corporation is at No. 80 Park Place, Public Service Terminal, in the City of Newark, County of Essex and State of New Jersey; and that the agent therein and in charge thereof and upon whom process against the corporation may be served is Charles M. Breder.

2. The Board of Directors of the said corporation, at a meeting duly convened and held on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and twenty-six, a quorum being present, by the unanimous vote of the Directors present, duly passed and adopted a resolution that the amendment to and change and

alteration in said certificate of incorporation which is hereinafter set forth, is advisable, and called a meeting of the stockholders of said corporation, to be held at its principal office on the nineteenth day of October, in the year of our Lord one thousand nine hundred and twenty-six, to take action thereon.

3. The following is a copy of the said resolution:

"RESOLVED, That in the judgment of the Board of Directors of Public Service Corporation of New Jersey it is advisable to amend the certificate of incorporation in relation to the capital stock of said corporation as now fixed by an amendment, and to that end and for that purpose that Article Fourth thereof be changed so as to read as follows:

" 'FOURTH: The total authorized capital stock of the corporation is two hundred million dollars ($200,000,000) of preferred stock, divided into two million (2,000,000) shares of one hundred dollars ($100.) each, and ten million (10,000,000) shares of common stock without par value.

" 'Of such shares of preferred stock two hundred and fifty thousand (250,000) shares, amounting to twenty-five million dollars ($25,000,000), shall be eight per cent. (8%) cumulative preferred stock, five hundred thousand (500,000) shares, amounting to fifty million dollars ($50,000,000), shall be seven per cent. (7%) cumulative preferred stock, and one million two hundred and fifty thousand (1,250,000) shares, amounting to one hundred and twenty-five million dollars ($125,000,000), shall be six per cent. (6%) cumulative pre-

ferred stock. At no time shall the total number of shares of such preferred stock of the corporation issued and outstanding be larger than the total number of shares of the common stock thereof issued and outstanding; subject to this limitation further amounts of the preferred stock hereby authorized may be issued and additional preferred stock may be authorized and issued from time to time in the manner provided by law. All stock, other than preferred stock, shall be subordinate, as to dividends and assets, as herein provided, to the preferred stock at any time issued and outstanding.

" 'The holders of the eight per cent. (8%) and seven per cent. (7%) cumulative preferred stock shall be entitled to receive, when and as declared by the Board of Directors, dividends from the surplus or net profits of the corporation, payable quarterly on June 30th, September 30th, December 31st and March 31st in each year; and the holders of the six per cent. (6%) cumulative preferred stock shall be entitled to receive, when and as declared by the Board of Directors, dividends from the surplus or net profits of the corporation, payable monthly on the last day of the month in each year. Such dividends shall be payable before any dividends shall be paid upon or set apart for any other shares of stock of the corporation and shall be cumulative, so that if in any dividend period such dividends at the specified rate per annum shall not have been paid upon or set apart for the preferred stock, the deficiency shall be fully paid or set apart for payment before any dividend shall be paid upon or

set apart for any other shares of stock of the corporation. Whenever full cumulative dividends upon all of the preferred stock for all previous dividend periods shall have been paid, and the full installment for the current dividend period shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart, the Board of Directors may declare dividends out of the then remaining surplus or net profits of the corporation on the common stock. The dividend to be paid on the series of eight per cent. (8%) cumulative preferred stock shall be at the rate of eight per cent. (8%) per annum and no more; the dividend to be paid on the series of seven per cent. (7%) cumulative preferred stock shall be at the rate of seven per cent. (7%) per annum and no more; and the dividend to be paid on the series of six per cent. (6%) cumulative preferred stock shall be at the rate of six per cent. (6%) per annum and no more.

" 'In the event of the dissolution or liquidation of the corporation, whether voluntary or involuntary, or of any distribution of the capital of the corporation, the holders of the respective series of preferred stock shall be entitled to be paid in full both the par amount of their shares and the amount of accumulated and unpaid dividends thereon and no more, in full discharge of their interest, before any amount shall be paid to the holders of any other stock.

" 'The present common stock issued and outstanding of the said corporation at the time this amendment takes effect shall be exchangeable and exchanged by the Board of Directors

of the corporation at the rate of three (3) shares of common stock, without par value, for one (1) share of the present common stock.

" 'Further and additional shares of common stock may be issued and sold by the Board of Directors, at such price, and from time to time, for the purpose of the corporation, as said Board may think proper.

" 'The amount of the capital stock with which the corporation will commence business is one hundred thousand dollars ($100,000.).' "

4. Thereafter on the nineteenth day of October, in the year of our Lord one thousand nine hundred and twenty-six, pursuant to such call of said Directors, on notice given to each stockholder, as provided in the by-laws and specified in said resolution, a meeting of the stockholders was held to take action on the above recited resolution declaring the amendment of the certificate of incorporation to be advisable, at which meeting there were present in person or represented by proxy stockholders owning four hundred and thirty-three thousand six hundred and fifty-four (433,654) shares of the preferred stock, being one hundred and seventy-two thousand two hundred and eighty-five (172,285) shares of the eight per cent. (8%) preferred stock, two hundred and eleven thousand nine hundred and three (211,903) shares of the seven per cent. (7%) preferred stock, and forty-nine thousand four hundred and sixty-six (49,466) shares of the six per cent. (6%) preferred stock, and stockholders owning nine hundred and sixty-two thousand seven hundred and fifty (962,750) shares of the common stock, being more than two-thirds in interest of each class of both preferred and common stock of

the corporation, and at such meeting the owners of all of the shares of the preferred stock, and all of the owners of the shares of the common stock so present in person or by proxy voted in favor and none against the same.

5. That the total number of shares of preferred stock of said corporation at the time of said meeting issued and outstanding entitled to vote thereon was five hundred and sixty-five thousand and twenty-three (565,023), of which two hundred and fifteen thousand three hundred and twelve (215,312) were eight per cent. (8%) and two hundred and eighty-eight thousand seven hundred and thirty-four (288,734) were seven per cent. (7%), and sixty thousand nine hundred and seventy-seven (60,977) were six per cent. (6%), all of the value of one hundred dollars ($100.) each, and one million one hundred and ninety-two thousand four hundred and twenty-five (1,192,425) shares of common stock without par value.

In Witness Whereof, the said Public Service Corporation of New Jersey hath caused this certificate to be made and signed by its President and Secretary, and its corporate seal to be hereunto affixed, this nineteenth day of October, in the year of our Lord one thousand nine hundred and twenty-six.

Public Service Corporation of
New Jersey,

[seal] By

Thomas N. McCarter,
President.

Attest:

Charles M. Breder,
Secretary.

Exhibit D 4.

PLAN FOR REFINANCING MARCH 13, 1924.

(Exhibit 1 annexed to the Answer, page 310, Vol. I.)

Exhibit D 5.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS

I. IN THE MATTER OF THE PETITION OF PUBLIC SERVICE ELECTRIC COMPANY, UNITED ELECTRIC COMPANY OF NEW JERSEY, AND PUBLIC SERVICE GAS COMPANY FOR APPROVAL OF MERGER AND CONSOLIDATION.

II. IN *re* PROPOSED EXCHANGE OF NO PAR FOR OUTSTANDING CAPITAL STOCK OF PUBLIC SERVICE RAILWAY COMPANY

Decision

FRANK BERGEN, E. W. WAKELEE and G. H. BLAKE, for the Petitioners.

EDWARD HOPKINSON, JR., for Drexel & Co.

JOHN WAHL QUEEN for the Board.

JOHN P. PETTY, Deputy Chief Eng., for the Board.

I.

The petition in the matter of the merger and consolidation of the Public Service Electric Company,

United Electric Company of New Jersey and Public Service Gas Company shows that Public Service Electric Company, United Electric Company of New Jersey, and Public Service Gas Company, corporations under the laws of this State, "are desirous of merging" the said three corporations, "their property, right, privileges, franchises and corporate existence into a corporation to be known as Public Service Electric and Gas Company, subject to the duties, obligations, and liabilities of Public Service Electric Company, United Electric Company of New Jersey, and Public Service Gas Company, under and by virtue of an act of the Legislature of the State of New Jersey entitled, 'An Act concerning corporations, revision of 1896' and the acts supplementary thereto and amendatory thereof.

The petition further shows:

> "That their directors have made and entered into an agreement of consolidation * * * and have called the necessary meetings of the stockholders as required by law to consummate the same.
>
> "That such merger is a step necessary to the consummation of a contemplated financial program" more fully set forth in exhibits attached to the petition.

The agreement of consolidation attached to the petition, made the eighth day of April, 1924, sets forth, among other things, the following:

Public Service Electric Company, a corporation, was organized under an act of the legislature of the State of New Jersey entitled "An Act concerning corporations (revision of 1896)". The United Elec-

tric Company of New Jersey, a corporation, was organized March 4th, 1899 under said act and Public Service Gas Company, a corporation, was created April 4th, 1873 by Chapter DXLIII of the pamphlet laws of said year. (Incorporated under the name of Oxy-Hydrogen Company of the United States; name changed to Public Service Gas Company August 6th, 1909.)

The said corporations were created "for the purpose of furnishing light, heat and power for domestic and public use in the said state,".

That "the respective boards of directors of the said corporations deem it advisable for the purpose of greater efficiency and economy of management and in order to be better able to carry on their business and discharge their public duties to merge and consolidate said corporations under and pursuant to the provisions of an act entitled 'An Act concerning corporations (Revision of 1896)' and the supplements thereto and amendments thereof."

That said corporations "are hereby merged and consolidated into a single new corporation under the name of Public Service Electric and Gas Company."

That "the consolidated corporation shall have and possess and may use, exercise and enjoy all the rights, powers, privileges and franchises of the said corporations, parties to this agreement."

That "all property, real personal and mixed, of the said corporations * * * shall vest in the consolidated corporation immediately upon the adoption of (the said) agreement."

That "the capital stock of the consolidated corporation is twenty million (20,000,000) shares of common stock of no par value; and three hundred thousand (300,000) shares of preferred stock of

the par value of one hundred dollars ($100.) each, two hundred thousand (200,000) of which shall be seven per cent. (7%) cumulative preferred stock, and one hundred thousand (100,000) of which shall be six and one-half per cent. (6½%) cumulative preferred stock. All stock other than preferred stock shall be subordinate as to dividends and assets, as herein provided, to the preferred stock at any time issued and outstanding," said preferred stock being preferred both as to dividends and upon dissolution.

That "the capital stock of Public Service Electric Company now outstanding, amounting to four hundred and thirty-two thousand five hundred (432,500) shares of the par value of one hundred dollars ($100.) each, shall be exchangeable pro rata for four million three hundred and twenty-five thousand (4,325,000) shares of no par common stock of the consolidated corporation."

That "the capital stock of the United Electric Company of New Jersey now outstanding, amounting to two hundred thousand (200,000) shares of the par value of one hundred dollars ($100.) each, shall be exchangeable for two hundred thousand (200,000) shares ($100. par) of the seven per cent. (7%) cumulative preferred stock of the consolidated corporation."

That "the capital stock of Public Service Gas Company now outstanding, amounting to two hundred and ten thousand (210,000) shares of the par value of one hundred dollars ($100.) each, shall be exchangeable pro rata for two million one hundred thousand (2,100,000) shares of no par common stock of the consolidated corporation."

That the remaining authorized capital stock may be issued for purposes authorized by law.

Exhibit D 5.

The merger and consolidation, approval of which is sought, is but a means to an end. The consolidation is the first step in a larger plan for reconstruction of the entire plan of financing not only the merged companies but the parent company, Public Service Corporation and a third subsidiary of the latter, the Public Service Railway Company. In order that the reason for this merger may be more apparent, it will be necessary to explain in this connection some of the antecedent facts with respect to the companies' history and relations.

Public Service Corporation of New Jersey was incorporated under the laws of New Jersey, May 6th, 1903, under a perpetual charter. The company, through its subsidiaries, Public Service Electric Company, Public Service Gas Company, Public Service Railway Company, and Public Service Railroad Company, serves possibly three-fourths of the inhabitants of the state with electric light, gas and railway service. When it first began its corporate existence it was an operating company which acquired by lease or otherwise the property of the utility corporations theretofore operating in its territory.

On August 20th, 1907 it caused to be incorporated the Public Service Railway Company. Certain railway properties held by the corporation by lease or otherwise were leased to the Public Service Railway Company and all of the initial capital stock of Public Service Railway Company was issued to the Public Service Corporation.

On October 1st, 1909 Public Service Gas Company was organized. It took over the gas property theretofore operated by Public Service Corporation under assignment of leases held by the latter corporation.

Exhibit D 5.

On July 1st, 1910 Public Service Electric Company began operations, having taken over leases of electric property theretofore operated by Public Service Corporation, and all its stock was issued to the latter corporation with the exception of directors' shares.

Public Service Railroad Company was incorporated and began operations on July 29th, 1913.

All of these utilities, including the petitioners in this matter, have been since controlled and financed almost entirely by the Public Service Corporation.

FINANCING OF PUBLIC SERVICE CORPORATION AND ITS SUBSIDIARIES.

The original financial structure of Public Service Corporation did not contemplate financing on the enormous scale now required to meet the rapidly growing requirements of the communities now served by its subsidiaries and is not sufficiently elastic to permit of adequate financing now urgently needed by the gas company and particularly by the electric company. Aside from stock issues, the principal funded debt of Public Service Corporation is as follows:

(*a*) Perpetual interest bearing certificates issued under the provisions of a mortgage and agreement of pledge between Public Service Corporation of New Jersey and Fidelity Trust Company, made on the first day of June, 1903, secured by which there were outstanding January 1st, 1924, substantially $19,220,000 par value of these six per cent. perpetual interest bearing certificates. Under this mortgage and agreement there are pledged $47,479,000 out of a total of $48,729,000 par value of common stock of Public Service Railway Company

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subject to the provision of leaseholds and the prior lien of its own funded and unfunded obligations, and also substantially $19,737,000 of the common stock of the United Electric Company of New Jersey, together with certain other securities not necessary to enumerate.

(*b*) General mortgage five per cent. sinking fund fifty year gold mortgage bonds dated October 1st, 1909, authorized amount $50,000,000, all issued. Under the lien of this mortgage there are pledged the equity in the securities pledged to secure the perpetual interest bearing certificates above enumerated and in addition thereto certain stocks of Public Service Railroad Company, $1,250,000 of the common stock of Public Service Railway Company, certain stocks of the New Jersey and Hudson River Railway and Ferry Company, about $25,000,000 par value of the common stock of Public Service Electric Company, substantially $21,000,000 of capital stock of Public Service Gas Company, and the stocks of certain underlying companies, also the leases of Public Service Corporation of the underlying traction, gas and electric properties operated by the subsidiaries hereinabove enumerated. Subject to the lien of this general mortgage the underlying companies leased by the corporation were leased by the latter corporation to the operating companies.

Public Service Gas Company was a party to this general mortgage and all of its property is pledged to secure the bonds issued thereunder.

Article I, 4,—sections (*a*), (*b*) and (*c*)—of the mortgage provides, among other things, (*a*) that bonds under this mortgage, after the original issue, may be drawn down to pay for extensions of prop-

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erty and business of the Public Service Corporation, Public Service Gas Company, or leased companies, and to pay for additional shares of capital stock of Public Service Railway Company and of the Public Service Gas Company (Public Service Electric Company not then being in existence), which may, after the original issue provided for in said mortgage, be issued to pay for new property or for additions to or extensions or betterments of plants and which stock shall be pledged and deposited under said mortgage. It was further provided that no shares of stock in addition to those then issued by Public Service Railway Company (except in the performance of the consolidation agreement whereby Public Service Railway Company was formed) or by the gas company shall hereafter be issued unless immediately upon and after the issue thereof all such shares * * * shall be delivered to and deposited with the trustee hereunder subject to the terms and provisions of said mortgage.

(*b*) Exclusive of the $14,000,000 par value of general mortgage bonds pledged under the twenty year secured seven per cent. gold bond mortgage there are outstanding in the hands of the public $31,953,000 par value of bonds secured under this mortgage.

(*c*) Twenty year secured seven per cent. gold bonds. This issue is secured by a deposit of $14,000,000 par value of general mortgage five per cent. sinking fund bonds referred to in (*b*) and by the deposit of $5,000,000 of common stock of Public Service Electric Company. There were outstanding in the hands of the public $9,500,000 of these bonds on January 1st, 1924.

Exhibit D 5.

The difficulties of financing Public Service Corporation and its subsidiary utilities by reason of the limitations contained in the instruments and agreements under (*a*), (*b*) and (*c*) hereinabove recited were set forth by Mr. McCarter (president of this group of companies) in his testimony in this matter (testimony, pp. 7 to 12 inclusive).

"The business of the Public Service family of corporations is growing so rapidly and is beginning to involve the expenditures of such very large sums of money to keep pace with the growth of the state and to give the service to the people of the state the companies should give, that for a very considerable time past, those of us who are charged with the responsibility of management have recognized that the situation has entirely outgrown the financial structure that was set up for these properties twenty years ago, amended from time to time since to meet particular situations. The greatest development of all was in the electric business. With the increased costs of apparatus that have come about since the new standard following the war, we regard it as quite impossible to raise the necessary funds to keep up with the development of the state unless some very drastic plan of financial reorganization is worked out. This is true only to a lesser extent in the gas company. The expenses for new generating apparatus for gas and for new business in gas are running into very large sums of money. The new capital expenditures of the railway company are less important and of themselves a much less serious matter. The transportation company is going into bus transportation, which involves a very considerable

capital expense. All together the sum total of moneys required for the proper development of the properties in the Public Service family, over and above funds available for amortization funds and surplus earnings for that purpose, has tentatively been fixed for the year 1924 at between thirty and forty millions of dollars, depending somewhat upon a final decision as to whether certain items will be contracted for this year or allowed to go over into next.

This sum is far in excess of any sum of money that can be raised, in our judgment, through the methods that Public Service has heretofore employed. We found that to be so last year when the new Kearny plant was started; there had to be devised a special plan of financing to enable that improvement, costing approximately twenty three millions of dollars, to be authorized, and that was, as the Board will remember, specially authorized and specially financed. The moneys needed for the general development of the company this year, of which I have spoken, do not lend themselves to such separate financing as was done in the case of the Kearny plant because this money will have to be spent for the benefit of all the different companies in different localities and very largely for transmission and distribution expenses to take out the current generated in the Kearny plant when that is completed.

I personally have been working on this matter for two or three years and prepared by myself, and with the help of my associates, one or two plans that I thought were a substantial improvement upon anything that we then had.

Wisely, however, we conferred with the bankers who have done the business of Public Service for many years, notably Messrs. Drexel & Company of Philadelphia and their New York associates, Messrs. J. P. Morgan and Company and also with the firm of Bonbright & Company, Incorporated, who have been coming into our property more of late years, selling large quantities of our preferred stock whereas the financing done by Drexel & Company in collaboration with J. P. Morgan & Company has been bond financing. The standing of these three houses is such and their experience is such that we felt that we could certainly get the best advice in the premises from them. I may say, by way of parenthesis that the plan that we have heretofore used, has been this: The stocks of the gas and electric companies were all owned, except directors' shares, by the corporation; practically all of the stock of the railway company is similarly owned. Some of these stocks were subject, as in the case of the railway company, to a prior pledge. The United Electric Company stock is also owned, practically in its entirety, by the corporation and that was subject to a prior pledge for the perpetual interest bearing certificates. The corporation had executed its general mortgage bonds way back in 1909 for an authorized issue of fifty million dollars, which then seemed quite ample, together with other means of financing that we had. All the bonds under that mortgage have been issued and the stocks of these three companies, four companies, are all pledged as security under it —not all of them; all the gas company's stock,

the railway company's stock, the United Electric Company's stock and so much, in fact a little more, of the electric company's stock as was purchased with the proceeds of bonds sold under the general mortgage.

That mortgage contained very drastic provisions preventing these underlying companies, whose stocks were thus owned, from financing themselves through bonds. Hence, as the expenses have grown, the costs for development have grown to the extent of which I have spoken, it has acted like a stroke of paralysis upon the ability of the company to raise the necessary money. The bankers to whom this subject was referred for advice gave the matter long and thorough consideration. They had before them the plan or plans that we had prepared in the office at home. After full consideration they produced the plan which is now before your Board for approval."

Exhibit P-2, which is appended to this report, sets forth more concretely certain provisions of the proposed new financing so far as pertinent to a consideration of the petition in this matter.

"Upon study it was agreed by all of us that it was a comprehensive, far reaching plan that if adopted, would put these companies in a position where they could finance not only this year but from year to year as the exigencies of the business require. It was agreed by all of us that their plan was very much better, more modern and more comprehensive than any of the plans that we had prepared in our own office looking toward the accomplishment of the same end.

Exhibit D 5.

The plan contemplates the merger of the electric company, the gas company and the United Electric Company into a new corporation to be called the Public Service Electric & Gas Company. That this new corporation when it comes into existence, if it does, as a result of the merger, will execute a mortgage of modern character, an open-ended mortgage, available for the sale of bonds with equal security in series from time to time, but subject to very careful restrictions to be contained in the mortgage itself along the best developed modern thought. I said there were fifty million dollars of bonds of the old general mortgage of the corporation outstanding which must be gotten out of the way if this plan can be put through. Of that fifty million dollars of bonds which have been issued, there are approximately thirty-two million dollars in the hands of the public generally. There were thirty six million dollars, but four million dollars have been bought in under the operation of the sinking fund provided for by that mortgage, and are now owned by the company subject to the provisions of that fund. The remaining fourteen million dollars of bonds are issued but have never been sold by the company but are deposited as part security for the outstanding issue of ten million dollars of the corporation's seven per cent. notes. It will be necessary to remove these notes by calling them and cancelling them so as to free that fourteen million dollars of bonds.

There are owned by the corporation and deposited as collateral security under the mortgage securing the general mortgage bonds, a

variety of bonds aggregating some seven or eight millions of dollars in present market value."

(Stated more accurately in Exhibit P-16 as $6,862,387.61, market value on April 5th, 1924.)

In the general plan as outlined and set forth in more detail in extracts from Exhibit P-2 appended to this report, it is provided that the proposed electric and gas company is later to pledge its property under a 5½ per cent. mortgage and the bonds contemplated to be issued thereunder (in the amount of $31,978,000) are to be turned over to the Public Service Corporation; in exchange therefor Public Service Corporation is to turn over to the proposed consolidated company securities of underlying companies having a market value of $6,862,387.61 and to give its obligation for the difference, unsecured, the latter obligation to bear interest at the rate of 5 per cent. Furthermore, that the capital stock of the United Electric Company of New Jersey, now bearing 5 per cent. guaranteed dividends, is to be exchanged for an equal amount of 7 per cent. cumulative preferred stock of the consolidated corporation. With respect to the excess of one-half per cent. in interest rate borne by the 5½ per cent. bonds of the proposed consolidated utility over the interest rate of five per cent. proposed to be paid on the obligation of the Public Service Corporation proposed to be exchanged in part therefor, the Board does not consider this proposition to be reasonable. The Public Service Corporation should pay the same interest rate on its unsecured obligation to the new company that the latter binds itself to pay on the bonds secured by a mortgage on its

own property. The Board finds that the Public Service Corporation shall pay interest at the rate of five and one-half per cent. per annum on its unpaid obligations to the new electric and gas company if and when this portion of the plan becomes effective.

With respect to the increase of 2 per cent. in the dividend rate of the new preferred stock, the Board might hesitate to permit this increase in dividend to become effective were it not for the fact that substantially the only party at interest in this matter is Public Service Corporation which owns practically the entire stock of the three petitioners and a dividend is payable only if earned and is not in the nature of a fixed obligation, whereas the 5 per cent. on the present stock is a fixed rental for this property, and as such ceases to exist if and when the consolidation becomes effective.

With respect to the exchange of no par common stock of the proposed consolidated company for the $43,250,000 of par value of the Public Service Electric Company and of the $21,000,000 par value of capital stock of the Public Service Gas Company, upwards of $60,000,000 par value of these stocks have been authorized to be issued by this Board to reimburse the respective companies for the actual outlay of capital in extensions and improvements of the property of said companies or of companies held by lease by the respective utilities. This is the sole evidence of value submitted by the petitioners, to enable the Board to pass upon this issue of securities. The Board has no facts showing conclusively the value of the entire properties proposed to be merged and will therefore not pass upon or validate any values beyond those to be represented by secur-

ities, approval of which has been already given, nor is it necessary to do so in the proceeding.

Under the law, future rates must be based solely upon the fair value of the property as determined from time to time and not upon the sum of the securities of the proposed company and the securities of the underlying leased properties.

Mr. Thomas S. Gates, a partner in Drexel & Company, and J. P. Morgan & Company, two prominent banking firms testified as to the merits and competency of the proposed plan of financing and the advantages thereof to the petitioning utilities. The pertinent testimony is quoted below:

> "As Mr. McCarter says, we have been associated in the financing of the Public Service Corporation, I think from its early days. While all of the steps that were taken as the activities of the company developed were along those which were then the convention and were according to the general bound rules which prevailed, the growth of the company has been so very large and very considerable, that now it touches with its activities eighty-five per cent. of your inhabitants in New Jersey, that the time came of course when the corporation had outgrown the structure which had originally been set up for it.
>
> The steps that you are asked to consider are not many; they are really only three. You have a problem of a great company which has an enormous outlet for its activity and of great value to the State, and which by reason of the best judgment, but now which proves to have been short in its anticipation of growth in the

past, is bottled up by the two overlying liens, the Public Service perpetuals and the general mortgage, and the problems we had to meet was to find a way within your rules to so readjust inside the walls of the corporation its structure among its own security holders that there should be freedom in the acquisition of money for the great development this company has to meet in the future. In the old days of course you had the holding company and the underlying companies, and in this case that helped somewhat the problem we had to meet, because we found that the gas and electric properties, those which had been acquired by lease, had been assigned originally to the corporation and reassigned to the underlying gas and electric companies. When they had been reassigned to the corporation and it had created its general mortgage, those leasehold interests were put in that general mortgage, so in effect you had a general mortgage of the holding company which was, you might say, a direct lien so far as it could be a direct lien, upon all that portion of the underlying properties too. The problem therefore was to go back a step and put those two properties together, the gas and electric properties, and find a way to get rid of the general mortgage by the proper exchange of securities. That, therefore, has been our problem and that we believe, sir, the plan proposed meets.

Q. (By Commissioner Osborne) will you state just for the purposes of the record the necessity for getting rid of that general mortgage? A. The general mortgage, as other mortgages of those days required, and in order to meet the

convention that then prevailed, had in it of course provisions—and in order to make it saleable, it necesssarily had in it provisions that no interest bearing obligation could be placed ahead of it. Otherwise, it could not have been sold at the time. That, of course, immediately made it impossible to do anything with these great equities in the gas and electric business or the railway business, if you please, in their development, other than by a common stock or preferred stock, or by the sale of general mortgage bonds. The general mortgage bond issue, of course, again consistent with the rules that then prevailed, was limited in its amount. No one ever dreamed that fifty million dollars could ever be expended on this property when this mortgage was created. It was not until some years after this mortgage was created that the fashion came to be recognized by security holders that open-end mortgages under the guidance and control and direction of Commissions, such as your own, could be sold.

Q. This was a closed mortgage? A. Yes, sir. The fifty million dollars was a closed mortgage. So the problem we had to meet was simply this: From the banking standpoint simplicity is the desideratum. You must have your corporate structure simple in order to get the investor, so there is no mystery and he knows exactly what he is buying. Therefore the first thing we thought of, the first thing to do was to merge, if you could, that portion of the underlying electric property which was given over to the distribution of electricity and that which was given over largely to the generation of

electricity in Public Service Electric Company's grounds, namely, the Public Service Electric Company and the United Electric, and the gas company and by merging these two you simplify, you have a gas and electric company which covers the activities of the State. That is very simple. Now, then, to create a mortgage against that, gives you something that an investor understands, consequently he will pay a better price and the corporation correspondingly will get a better price for itself, a lower interest rate.

Q. (By Commissioner Gnichtel). Does this general mortgage cover the railway too? A. The present general mortgage? You mean the gas and electric company?

Q. No; the five percent that you want to get rid of, the mortgage you want to get rid of. A. I can show you this (indicating).

Q. I have this design here. I thought it did. A. Yes, it does. The railway company is just the same, in its relationship to the general mortgage is just the same, and that therefore makes it possible by eliminating the general mortgage with its restricting provisions, to have all these activities separately financed in the way that they ought to be financed as their development requires, and the service of the public demands.

Q. (By Commissioner Gnichtel). That will release the railway company from that mortgage? A. Yes, sir. That portion of the railway company which is leased all comes under the general mortgage as it now stands, and then goes back again to the railway company. The problems, therefore, that we had to meet

were briefly these; it seemed to us that after working over with Mr. McCarter the various thoughts he had struggled with and worked over and developed in spite of the property to the great extent it has developed, it seemed to all of us by this merger we would first of all simplify our structure. By exchanging the general mortgage we put the corporation in a position where it could borrow money adequately for its needs, and get away from the restricted provisions we have just referred to, and finally buy such other additional mergers of the leasehold interests as we can accomplish from time to time as years go on we can simplify the whole structure of the now rather bewildering corporate growth. So you will have simply the holding company with underneath it a gas and electric company merged, owning the property it operates, and a railway company, the stock of both of which it will own.

Q. (By Commissioner Osborne). Then it is your idea the holding company should own all of the bonds that are issued under this mortgage? A. No, sir; it will only get the bonds of the first issue and thereafter the gas and electric company, as it finds its own requirements demand it, will issue other series of that same open-ended mortgage.

Q. And sell them direct? A. And sell them direct, yes, sir. They can sell them direct, yes, sir. It will be their bond that will be sold. All of its stock being owned by the Corporation. It will be just a matter of bookkeeping as to who makes the sale.

CROSS-EXAMINATION BY MR. PETTY:

Q. Can you state about what economy in the cost of money will be entailed in this plan? Is that possible to approximate? A. Of course that can be answered in this way, sir: You get into a class of investors, when you sell a first mortgage gas and electric bond on such an important property as this, which gives you the benefit of the better and more conservative class of investors. Of course the credit of Public Service Corporation itself is exceedingly good but nevertheless the class of people who want to buy junior securities, while there are many of them, nevertheless they are accustomed to getting a higher rate. It is difficult to put it, sir, in a question of one or two per cent, but as a matter of years I should think that the difference between the possibilities of developing if this plan went through and if it did not go through would be certainly two per cent.

Q. Two percent and you will reach a broader market? A. Yes, sir, I say that because if you sell these securities say around a five and one half percent basis, you would contrast that with what perhaps the junior security of the holding company, after the general mortgage, would have to be sold at. While, as I say, the credit is excellent, nevertheless, the class of purchased who buy that type of security, require usually more for their money.

Q. It would be the difference between a first mortgage obligation and a second or third mortgage? A. That is it; and a second mortgage on the holding company.

Q. And that you think would certainly make economies in the cost of money, of two percent? A. There is no question of that, Mr. Petty.

This mortgage of the gas and electric company ought to come in the highest rating of gas and electric, of its type.

Q. By 'highest rating' it means the lowest interest rate or cost of money? A. Yes, sir; of its type.

You are familiar with the different classifications of course. In other words, sir, to summarize what I would like to say, it seemed to us from a banking standpoint, what you did, if this plan would meet with your approval, would be first of all to simplify and make it easy for investments to be explained and sold. In the second place you would be creating the kind of security which would give a corporation the best avenues of getting money at the best rates. And then third, of course, I think it is only fair to say that the corporation cannot stand still. It has got to go ahead. Here it is now in the middle of the year with a large program; it has got to serve the public; it has got to make its development, it has got to get money, and it has been forced, of course, to temporary financing, and the importance of the plan is to find a ready relief so we can go ahead within a reasonable time, under your direction."

This testimony indicates the advantages in the matter of financing the petitioning utilities over which the Board has control and demonstrates the advisability of favorable action by the Board in this matter. The antecedent circumstances in the instant case reveal underlying leased companies in which gas, electric and traction properties are in one corporate ownership and leased so far as the electric property is concerned to Public Service Electric Company, so far as the gas property is con-

cerned to Public Service Gas Company, and so far as the railway property is concerned to Public Service Railway Company. In this situation, therefore, it is difficult to reform the capital structure of the companies otherwise than by the creation of a new company to accomplish that purpose.

Insofar as accounting and rates are concerned, the consolidated company will be required to separate all of its operations and to set forth in complete detail all facts with respect to capital invested for extensions and improvements to retirements, operating revenues, expenses and physical data with as full detail for each department as under present conditions, the only difference being that possibly new issues of corporate securities for common purposes may be set up on one balance sheet. As a basis for rates of either the electric department or the gas department, the well settled rule as to the fair value of the property, used and useful will control.

CONCLUSIONS:

We have examined the charters of the merging corporations as amended and find that the corporations are organized for the purpose of carrying on business of the same or a similar nature. We also find that the merging corporations are such corporations as may merge or consolidate under the statutes of this state provided for such purposes and that the procedure provided by these statutes has been followed:

The Board also finds and determines, upon the evidence, that the merging or consolidation of these corporations properly conserves the public interests, and that the application for such merger or consolidation should be, and the same is, hereby, approved with the following provisions, that: (1) The

value of this property, other than that represented by securities heretofore issued with the approval of this Board, has not been proven or determined. (2) Each of the merging and consolidating companies shall file a report (in the form of the annual reports) covering operations from January 1st, 1924 to the effective date of the merger and consolidation herein approved, and the new Public Service Electric and Gas Company shall likewise file a report covering its operations in each department (gas and electric) from the effective date of the merger, and consolidation herein approved up to and including December 31st, 1924. (3) That all books of account and other records of the merging companies shall be turned over to the consolidated company.

A certificate will issue accordingly.

II.

The application of Public Service Railway Company for the creation of no par stock in lieu of its present stock is part of a larger program of refinancing recited above and is therefore included in the same decision. This application, made under the laws of 1924, asks the Board's approval of the issue of 500,000 shares of no par stock for the present authorized issue of 500,000 shares of a par value of $100 each of the petitioner. The sole effect of the application is to remove the naming of a par value of the share. The object of the company in asking this change was stated in the testimony as follows:

> "Q. Who is the owner of this stock? A. Public Service Corporation of New Jersey. What will happen? Its position will be the correct position, five hundred thousand shares without par value instead of five hundred thousand shares of a par value of $100 each. And then the total capitalization of the railway company

is one hundred million dollars plus this stock, whatever it may be worth. If the value of the property is $110,000,000 that is worth ten million dollars. If it is worth eighty two million dollars, it isn't worth anything.

"Q. And if it is worth one hundred and seventy five million dollars it is worth considerable? A. It is worth what it is worth. It seems to me to be in everybody's interest it should be done.

"Q. It is purely an exchange between the corporations, inter-company? A. That is all. No change whatever."

CONCLUSIONS:

The Board being satisfied that the approval of this application is in the public interest, hereby approves the same.

A certificate will issue accordingly.

Dated, May 22nd, 1924.

BOARD OF PUBLIC UTILITIES COMMISSIONERS
By
(Signed) H. V. OSBORNE
President.

(SEAL)

Attest:
(Signed) ALFRED N. BARBER,
Secretary.

(SEAL)

I HEREBY CERTIFY the foregoing to be a true copy of a decision rendered by the Board of Public Utlity Commissioners and ordered filed by said Board.

(Signed) ALFRED N. BARBER
Secretary.

Exhibit D 5.

APPENDIX

Taken from Exhibit P-2

In order to meet the requirements of service to the public, to strengthen and improve the position of the holders of its securities, and to provide an adequate means of procuring new capital for necessary extension and development, Public Service Corporation submits herewith a plan of readjustment of certain of its securities and inter-company relations.

The great growth of the territory which the Corporation serves and the rapidly increasing opportunities of service to the public make it desirable that the Corporation should simplify its inter-company relationships and at the same time strengthen its entire financial structure.

The plan has been prepared with the assistance of the Corporation's bankers and has been presented to the Board of Public Utility Commissioners of the State of New Jersey for its approval. It will not disturb the relationship which the Corporation now bears to its subsidiary companies or to the public; nor will it affect the holders of securities of the underlying electric, gas and railway properties, except to improve their position to facilitating the development of these properties. It will make possible the financing by the Corporation itself of the capital requirements of the Railway properties until the credit of the Railway Company is re-established, while the electric and gas activities will be placed in position to finance themselves independently.

Exhibit D 5.

The plan in brief provides for:

1. *Consolidation of Electric and Gas Companies.*

The consolidation of Public Service Electric Company, Public Service Gas Company, United Electric Company of New Jersey and several smaller Companies, practically all of whose stocks are now owned by Public Service Corporation, into a new company to be known as Public Service Electric and Gas Company, all of whose common stock will be owned by Public Service Corporation.

2. *Provision for Perpetual Interest Bearing Certificates.*

The exchange of $19,736,800 Common Stock (limited to 5% dividends) of United Electric Company, now held by the Trustee as part security for the Public Service Perpetual Interest Bearing Certificates, for $19,736,800 7% Preferred Stock of Public Service Electric and Gas Company, as authorized in the Mortgage and Agreement of Pledge securing the Perpetual Interest Bearing Certificates.

3. *Exchange of General Mortgage 5% Bonds for New 5½% Bonds.*

An offer to the holders to exchange the $31,987,000 General Mortgage 5% Bonds of Public Service Corporation outstanding in the hands of the public for $31,978,000 First and Refunding Mortgage 5½% Bonds, Series due 1959, to be issued under a mortgage to be made by Public Service Electric and Gas Company, which will have a direct lien on the Company's owned property and leasehold estates, and will be in modern form, with

appropriate refunding provisions and with conservative restrictions covering the issuance of bonds for acquisitions, additions and betterments.

4. *Redemption of 20-Year 7% Secured Bonds.*

The redemption of the outstanding $9,500,000 Twenty-Year 7% Secured Gold Bonds of Public Service Corporation due December 1, 1941, in order that the $14,000,000 General Mortgage 5% Bonds of Public Service Corporation pledged thereunder may be released and cancelled. Funds for this redemption to be provided by Public Service Corporation.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE ELECTRIC COMPANY, UNITED ELECTRIC COMPANY OF NEW JERSEY AND PUBLIC SERVICE GAS COMPANY FOR APPROVAL OF MERGER AND CONSOLIDATION.	Certificate.

Application being made to the Board of Public Utility Commissioners, by Public Service Electric Company, United Electric Company of New Jersey and Public Service Gas Company, by petition in writing for approval of an agreement of merger and consolidation of said companies, forming Public Service Electric and Gas Company, a copy of said agreement, dated April 8th, 1924, being filed with said petition, and the Board having rendered

a decision of even date in this matter, which agreement and decision by reference thereto herein are made a part hereof.

The Board of Public Utility Commissioners, after investigation and hearing, no reason to the contrary appearing,

HEREBY GRANTS said application and APPROVES said agreement of consolidation and merger in accordance with said petition and said decision.

Dated May 22nd, 1924.

BOARD OF PUBLIC UTILITY COMMISSIONERS
(SEAL) By (sgd) HARRY V. OSBORNE
President

Attest:
(sgd) ALFRED N. BARBER
Secretary.

(SEAL) I HEREBY CERTIFY the foregoing to be a true copy of a Certificate adopted by the Board of Public Utility Commissioners at a meeting held Thursday, May 22nd, 1924, and recorded in the minutes of said meeting.

ALFRED N. BARBER
Secretary.

Exhibit D 5.

To the Board of Public Utility Commissioners,
Trenton, New Jersey.

The petition of Public Service Electric Company, United Electric Company of New Jersey, and Public Service Gas Company respectfully shows that:

Public Service Electric Company and United Electric Company of New Jersey are incorporated under an act of the Legislature of the State of New Jersey entitled, "An Act concerning corporations, revision of 1896," and Public Service Gas Company is a corporation created April 4, 1873, by Chapter DXL-111 of the pamphlet laws of said year.

They are desirous of merging the said Public Service Electric Company, United Electric Company of New Jersey, and Public Service Gas Company, their property, rights, privileges, franchises, and corporate existence into Public Service Electric and Gas Company, subject to the duties, obligations, and liabilities of Public Service Electric Company, United Electric Company of New Jersey, and Public Service Gas Company, under and by virtue of an act of the Legislature of the State of New Jersey entitled, "An Act concerning corporations, revision of 1896," and the acts supplementary thereto and amendatory thereof.

That their directors have made and entered into an agreement of consolidation in the form attached hereto and made part hereof, and marked Exhibit "A", and have called the necessary meetings of the stockholders as required by law to consummate the same.

That it is necessary to obtain the approval in writing of your Honorable Board before such merger can be made.

That such merger is a step necessary to the consummation of a contemplated financial program as described in "Exhibit B" attached hereto.

That your petitioners therefore pray your approval in writing of such merger and consolidation.

Your petitioners will ever pray, etc.

Respectfully submitted,

PUBLIC SERVICE ELECTRIC COMPANY
By
THOMAS N. McCARTER,
President.

UNITED ELECTRIC COMPANY OF NEW JERSEY
By
THOMAS N. McCARTER,
President.

PUBLIC SERVICE GAS COMPANY
By
THOMAS N. McCARTER,
President.

G.H.B.
E.W.W.
P.S.Y.

Dated: Newark, N. J.
April 11th, 1924.

Exhibit D 5.

Exhibit "A".

THIS AGREEMENT, made this eighth day of April, in the year of our Lord one thousand nine hundred and twenty-four, between PUBLIC SERVICE ELECTRIC COMPANY, a corporation organized under an act of the legislature of the State of New Jersey, entitled "An Act concerning corporations (Revision of 1896)," of the first part; UNITED ELECTRIC COMPANY OF NEW JERSEY, a corporation organized under said act, of the second part; and PUBLIC SERVICE GAS COMPANY, a corporation created April 4, 1873, by chapter DXLIII of the pamphlet laws of said year, of the third part, by the directors of said corporations, respectively.

WHEREAS, the said corporations were created and organized under and in pursuance of the said acts of the legislature hereinabove referred to for the purpose of furnishing light, heat and power for domestic and public use in the said state; and

WHEREAS, the respective boards of directors of the said corporations deem it advisable for the purpose of greater efficiency and economy of management and in order to be better able to carry on their business and discharge their public duties to merge and consolidate said corporations under and pursuant to the provisions of an act entitled "An Act concerning corporations (Revision of 1896)," and the supplements thereto and amendments thereof, and in pursuance of all other legal powers and authority for that purpose conferred:

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES and of the mutual agreements, covenants, provisions and grants herein contained, it is hereby

agreed by and between said corporations, parties hereto, and by their directors, respectively, as follows:

ARTICLE I.

The said Public Service Electric Company, United Electric Company of New Jersey, and Public Service Gas Company, shall be and they are hereby merged and consolidated into a single new corporation under the name of PUBLIC SERVICE ELECTRIC AND GAS COMPANY, hereinafter called the consolidated corporation.

ARTICLE II.

The consolidated corporation shall have and possess and may use, exercise and enjoy all the rights, powers, privileges and franchises of the said corporations, parties to this agreement.

ARTICLE III.

The board of directors of the consolidated corporation shall be ten (10) in number, and the names and places of residence of the first directors and officers thereof, who shall hold office until their successors are elected or appointed, are as follows:

Directors.	Place of Residence.
Walton Clark,	Chestnut Hill, Philadelphia, Pa.
Anthony R. Kuser,	Bernardsville, N. J.
Lewis Lillie,	Haverford, Pa.
Alfred L. Loomis,	New York City, N. Y.
Thomas N. McCarter,	Rumson, N. J.
Uzal H. McCarter,	Red Bank, N. J.

Randal Morgan, Chestnut Hill, Philadelphia, Pa.
Landon K. Thorne, New York City, N. Y.
Edmund W. Wakelee, Demarest, N. J.
Percy S. Young, Newark, N. J.

President.

Thomas N. McCarter, Rumson, N. J.

Vice-Presidents.

Percy S. Young, Newark, N. J.
Edmund W. Wakelee, Demarest, N. J.
Dudley Farrand, Newark, N. J.
John L. O'Toole, Newark, N. J.
Henry D. Whitcomb, East Orange, N. J.
Farley Osgood, South Orange, N. J.

Secretary.

Charles M. Breder, Newark, N. J.

Assistant Secretaries.

William H. Feller, Linden, N. J.
William T. Crudge, Bloomfield, N. J.

Treasurer.

T. W. Van Middlesworth, Highland Park, N. J.

Assistant Treasurer.

Frederick A. Neis, Newark, N. J.
Robert S. Tomkins, East Orange, N. J.

ARTICLE IV.

The capital stock of the consolidated corporation is twenty million (20,000,000) shares of common stock of no par value; and three hundred thousand (300,000) shares of preferred stock of the par value

of one hundred dollars ($100) each, two hundred thousand (200,000) of which shall be seven per cent. (7%) cumulative preferred stock, and one hundred thounsand (100,000) of which shall be six and one-half per cent. (6½%) cumulative preferred stock. All stock other than preferred stock shall be subordinate as to dividends and assets, as herein provided, to the preferred stock at any time issued and outstanding.

The holders of the preferred stock shall be entitled to receive, when and as declared by the board of directors, dividends from the surplus or net profits of the consolidated corporation, payable quarterly on June 30th, September 30th, December 31st and March 31st in each year. Such dividends shall be payable before any dividends shall be paid upon or set apart for any other shares of stock of the consolidated corporation and shall be cumulative, so that if in any quarterly dividend period such dividends at the specified rate per annum shall not have been paid upon or set apart for the preferred stock, the deficiency shall be fully paid or set apart for payment before any dividend shall be paid upon or set apart for any other shares of stock of the consolidated corporation. Whenever full cumulative dividends upon all of the preferred stock for all previous quarterly dividend periods shall have been paid, and the full instalment for the current quarterly dividend period shall have been paid or shall have been declared and a sum sufficient for the payment thereof set apart, the board of directors may declare dividends out of the then remaining surplus or net profits of the consolidated corporation on the common stock. The dividend to be paid on the said seven per cent. (7%) cumulative preferred stock shall be at the rate of

seven per cent. (7%) per annum and no more. The dividend to be paid on the said six and one-half per cent. (6½%) cumulative preferred stock shall be at the rate of six and one-half per cent. (6½%) per annum and no more.

In the event of the dissolution or liquidation of the consolidated corporation, whether voluntary or involuntary, or of any distribution of the capital of the consolidated corporation, the holders of the said preferred stock shall be entitled to be paid in full out of the assets (whether capital or surplus) both the par amount of their shares and an amount equal to the amount of accumulated and unpaid dividends thereon, whether or not earned or declared, before any distribution to the holders of the common stock, and shall not be entitled to share in the distribution of the remaining assets of the consolidated corporation.

Only the common stock shall have voting power, unless and until the consolidated corporation shall be in default in the payment of dividends on any of the preferred stock to an amount equal to two (2) full quarterly dividend payments, but as long as such default shall continue, the holders of the preferred stock shall possess the right to one (1) vote for each share of preferred stock held, which right, however, shall cease to exist upon the payment of all dividends in default on the preferred stock, and this right shall be subject to renewal whensoever occasion shall arise therefor by reason of subsequent default in the payment of dividends on the preferred stock to the amount aforesaid. Except in the contingency of such default preferred stock shall have no voting power.

The consolidated corporation may from time to

time amend this certificate of incorporation in any respect as authorized by law, and in particular so as to authorize and issue additional preferred stock which may rank equally as to preference for dividends and in liquidation with the preferred stock now authorized, and bearing such dividend rates, call prices and amounts payable on liquidation, and having such voting rights, as may from time to time be authorized and as may be permitted by law, and unless at the time of such amendment the consolidated corporation shall be in default to an amount equal to two (2) full quarterly dividends on the preferred stock now authorized, the holders of the said preferred stock shall have no voting power in connection with such amendment.

No holder of the said preferred stock shall be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of stock, preferred or common, whether now or hereafter authorized, or any bonds, debentures, or other securities convertible into stock, and no holder of common stock shall be entitled as of right to subscribe for, purchase or receive any part of any new or additional issue of preferred stock with restricted voting rights as provided for the preferred stock now authorized, whether now or hereafter authorized, or any bonds, debentures or other securities convertible into such preferred stock.

ARTICLE V.

All property, real, personal and mixed, of the said corporations, parties hereto, shall vest in the consolidated corporation immediately upon the adoption of this agreement by the stockholders of

the said corporations, according to law, and the said corporations, parties hereto, respectively, shall do any and all things necessary to vest the title to their property of all kinds and franchises in the said consolidated corporation, and otherwise shall carry out the purposes of this agreement.

ARTICLE VI.

The capital stock of Public Service Electric Company now outstanding, amounting to four hundred and thirty-two thousand five hundred (432,500) shares of the par value of one hundred dollars ($100) each, shall be exchangeable pro rata for four million three hundred and twenty-five thousand (4,325,000) shares of common stock of the consolidated corporation.

The capital stock of United Electric Company of New Jersey now outstanding, amounting to two hundred thousand (200,000) shares of the par value of one hundred dollars ($100) each, shall be exchangeable for two hundred thousand (200,000) shares of the seven per cent. (7%) cumulative preferred stock of the consolidated corporation.

And the capital stock of Public Service Gas Company now outstanding, amounting to two hundred and ten thousand (210,000) shares of the par value of one hundred dollars ($100) each, shall be exchangeable pro rata for two million one hundred thousand (2,100,000) shares of common stock of the consolidated corporation.

The balance of the stock of the consolidated corporation, namely, thirteen million five hundred and seventy-five thousand (13,575,000) shares of common stock, and one hundred thousand (100,000)

shares of preferred stock may be issued by the directors of the consolidated corporation, either wholly at once, or by instalments from time to time, to provide or pay for extensions, improvements and betterments of the plant and property of the consolidated corporation, and to construct or acquire other property, and for other purposes as authorized by law.

ARTICLE VII.

Every stockholder of the corporations, parties to this agreement, upon presenting his certificate of stock and surrendering the same to be canceled, shall be entitled to receive a certificate for the proper number of shares of the capital stock of the consolidated corporation, and to be registered as a stockholder of the consolidated corporation.

ARTICLE VIII.

The directors of the consolidated corporation shall be elected by the stockholders thereof annually on the first Monday of April, and shall hold office for one year and until their successors are duly elected.

The officers of the consolidated corporation shall be elected or appointed by the directors thereof at their first meeting after their annual election. The term of all officers shall be one year and until their successors are duly appointed.

Exhibit D 5.

ARTICLE IX.

The by-laws of Public Service Electric Company are hereby adopted and declared to be the by-laws of the consolidated corporation, subject to change and amendment as is therein provided.

ARTICLE X.

The consolidated corporation may issue its stock, common and preferred; may make, issue and dispose of bonds or other obligations in order to carry out the purpose of the consolidation, to pay and discharge bonds, mortgages and encumbrances upon any of the property of the consolidating companies and to free the same from the lien thereof, and for the business of the consolidated corporation, and for the purpose of securing said bonds or obligations the consolidated corporation may mortgage its corporate franchises, rights, privileges and property, real, personal and mixed.

ARTICLE XI.

The principal and registered office of the consolidated corporation, and of said consolidating corporations, is No. 80 Park Place, City of Newark, New Jersey, and Charles M. Breder is the agent therein and in charge thereof, and upon whom process may be served.

IN WITNESS WHEREOF, the said corporations, parties to this agreement, in pursuance of resolutions passed by their respective boards of directors at

regular meetings, have caused their respective corporate seals to be hereto affixed and these presents to be signed by their respective presidents or vice-presidents, and attested by their respective secretaries or assistant secretaries, all duly thereunto authorized, and these presents have been signed by their respective directors, the day and year first above written.

PUBLIC SERVICE ELECTRIC COMPANY,
By THOMAS N. McCARTER,
President.

(SEAL)

Attest:
CHARLES M. BREDER,
Secretary.

THOMAS N. McCARTER,
RANDAL MORGAN,
ANTHONY R. KUSER,
U. H. McCARTER,
LEWIS LILLIE,
P. S. YOUNG,
WALTON CLARK,
EDMUND W. WAKELEE,
Directors of Public Service Electric Company.

UNITED ELECTRIC COMPANY
OF NEW JERSEY,
By THOMAS N. McCARTER,
President.

(SEAL)

Exhibit D 5.

Attest:
CHARLES M. BREDER,
Secretary.

THOMAS N. McCARTER,
RANDAL MORGAN,
ANTHONY R. KUSER,
U. H. McCARTER,
LEWIS LILLIE,
P. S. YOUNG,
WALTON CLARK,
EDMUND W. WAKELEE,
Directors of United Electric Company
of New Jersey.

PUBLIC SERVICE GAS COMPANY,
By THOMAS N. McCARTER,
President.

(SEAL)

Attest:
CHARLES M. BREDER,
Secretary.

THOMAS N. McCARTER,
RANDAL MORGAN,
ANTHONY R. KUSER,
U. H. McCARTER,
P. S. YOUNG,
WALTON CLARK,
EDMUND W. WAKELEE,
Directors of Public Service Gas Company.

Exhibit D 5.

Exhibit "B".

PUBLIC SERVICE CORPORATION OF NEW JERSEY

MARCH 13, 1924.

TO THE HOLDERS OF THE SECURITIES OF PUBLIC SERVICE CORPORATION OF NEW JERSEY:

In order to meet the requirements of service to the public, to strengthen and improve the position of the holders of its securities, and to provide an adequate means of procuring new capital for necessary extension and development, Public Service Corporation submits herewith a plan of readjustment of certain of its securities and inter-company relations.

The great growth of the territory which the Corporation serves and the rapidly increasing opportunities of service to the public make it desirable that the Corporation should simplify its inter-company relationships and at the same time strengthen its entire financial structure.

The plan has been prepared with the assistance of the Corporation's bankers and has been presented to the Board of Public Utility Commissioners of the State of New Jersey for its approval. It will not disturb the relationship which the Corporation now bears to its subsidiary companies or to the public; nor will it affect the holders of securities of the underlying electric, gas and railway properties, except to improve their position by facilitating the development of these properties. It will make possible the financing by the Corporation

itself of the capital requirements of the railway properties until the credit of the Railway Company is re-established, while the electric and gas activities will be placed in position to finance themselves independently.

The plan in brief provides for:

1. Consolidation of Electric and Gas Companies.

The consolidation of Public Service Electric Company, Public Service Gas Company, United Electric Company of New Jersey and several smaller Companies, practically all of whose stocks are now owned by Public Service Corporation, into a new company to be known as Public Service Electric and Gas Company, all of whose common stock will be owned by Public Service Corporation.

2. Provision for Perpetual Interest Bearing Certificates.

The exchange of $19,736,800 Common Stock (limited to 5% dividends) of United Electric Company, now held by the Trustee as part security for the Public Service Perpetual Interest Bearing Certificates, for $19,736,800 6% Preferred Stock of Public Service Electric and Gas Company, as authorized in the Mortgage and Agreement of Pledge securing the Perpetual Interest Bearing Certificates.

3. Exchange of General Mortgage 5% Bonds for New 5½% Bonds.

An offer to the holders to exchange the $31,978,000 General Mortgage 5% Bonds of Public Service Corporation outstanding in the hands of the public for $31,978,000 First and Refunding Mortgage 5½% Bonds, Series due 1959, to be issued under a mortgage to be made by Public Service Electric and Gas Company, which will have a direct lien on the Company's owned property and leasehold estates, and will be in modern form, with appropriate refunding provisions and with conservative restrictions covering the issuance of bonds for acquisitions, additions and betterments.

4. Redemption of 20-Year 7% Secured Bonds.

The redemption of the outstanding $9,500,000 Twenty-Year 7% Secured Gold Bonds of Public Service Corporation due December 1, 1941, in order that the $14,000,000 General Mortgage 5% Bonds of Public Service Corporation pledged thereunder may be released and cancelled. Funds for this redemption to be provided by Public Service Corporation.

5. Further Consolidations.

An offer to the stockholders of certain other gas and electric companies leased to Corporation of the opportunity to exchange their stocks for other securities, so that, eventually, these Companies also may be consolidated with Public Service Electric and Gas Company. The holders of a large amount of these stocks have already expressed their desire to make this

exchange. These consolidations are not an essential part of the plan, however, as the leases in question extend in practically all cases for terms upwards of 900 years.

If the plan is approved by the Board of Public Utility Commissioners of the State of New Jersey, the holders of the General Mortgage 5% Bonds thereupon will be asked to deposit their bonds with depositories for the purpose of making the exchange, and if this offer of exchange is accepted by the General Mortgage Bondholders, steps toward making the plan effective will be taken forthwith.

Holders of securities who are interested may immediately obtain additional information upon request to the undersigned.

PUBLIC SERVICE CORPORATION OF NEW JERSEY
By THOMAS N. McCARTER,
President.

PUBLIC SERVICE CORPORATION OF NEW JERSEY,

NEWARK, NEW JERSEY, March 13, 1924.

I beg to present the following facts relative to the property, capitalization, and earnings of Public Service Corporation and Public Service Electric and Gas Company as they will appear upon the consummation of the plan proposed on the first page of this communication. This statement, however, does not give effect to the changes contemplated by Paragraph 5, namely, the consolidation of certain leased companies, since the steps required to accomplish these consolidations may take

more time than the balance of the plan, and are in any event not essential to it as the leases extend in practically all cases for terms upwards of 900 years.

PUBLIC SERVICE CORPORATION OF NEW JERSEY

Public Service Corporation of New Jersey will own all of the common capital stocks of the following companies:

Public Service Electric and Gas Company (see description on next page), Public Service Railway Company, Public Service Railroad Company, Public Service Electric Power Company, Public Service Production Company, Public Service Transportation Company and Holland Company.

It will also own certain bonds of subsidiary companies of Public Service Railway Company aggregating $9,497,000 principal amount. It will sell to Public Service Electric and Gas Company the stocks and bonds of subsidiary electric and gas companies, which it now owns, aggregating $7,370,545 principal amount of bonds and $692,125 par value of stocks.

Capitalization

Common Stock (no par value, present dividends $4 per share)	$30,000,000
7% Preferred Stock (par value $100 per share)	8,192,500
8% Preferred Stock (par value $100 per share)	21,508,600
	$59,701,100

Perpetual Interest-Bearing Certificates	$19,220,065
To be secured by $19,736,800 6% Preferred Stock of Public Service Electric and Gas Company, and all of the Common Stocks of Public Service Railway Company and Orange and Passaic Valley Railway Company.	
Bonds to be issued in form and amount to be later decided to redeem 20-year 7% Gold Bonds and to fund floating indebtedness (approximately)	18,500,000
	$37,720,065

The above figures of funded debt do not include an inter-company obligation for approximately $25,000,000 to be given by Public Service Corporation to Public Service Electric and Gas Company (all of whose common stock will be owned by Public Service Corporation) as part consideration for the issuance of the First and Refunding Mortgage 5½% Bonds of Public Service Electric and Gas Company in exchange for the General Mortgage Bonds of Public Service Corporation.

Earnings

The consolidated earnings Statement of Public Service Corporation of New Jersey and its subsidiary companies, after giving effect to the proposed plan, follows:

Exhibit D 5.

	1922	1923
Operating Revenue of Subsidiary Companies	$78,356,962	$79,107,882
Operating Expenses, Taxes and Amortization	58,007,162	58,986,760
Operating Income	$20,349,800	$20,121,122
Non-Operating Income	367,256	344,905
	$20,717,056	$20,466,027
Income Deductions of Subsidiary Companies (bond interest, rentals, miscellaneous interest charges)	14,484,500	14,408,634
	$6,232,556	$6,057,393
Public Service Corporation of New Jersey Income from Securities (exclusive of dividends on stocks of operating companies) and from miscellaneous sources, less expenses and taxes	1,547,578	1,516,255
	$7,780,134	$7,573,648
Interest on Perpetual Interest-Bearing Certificates		$1,205,644
Interest on $18,500,000 (approximately) Bonds to be sold to redeem Twenty Year 7% Secured Bonds and fund floating indebtedness		1,202,500
		$2,408,144
		$5,165,504

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

The Public Service Electric and Gas Company will own or control substantially all of the properties now constituting the electric and gas systems of the Public Service Corporation of New Jersey. It will be an operating company formed by con-

solidation of Public Service Electric Company, Public Service Gas Company, United Electric Company of New Jersey, and several smaller companies. If the exchanges of stocks proposed in Paragraph 5 of the Plan are made, certain additional electric and gas companies now leased will be consolidated with the Public Service Electric and Gas Company, thereby strengthening the position of the new Company. In this statement, however, these latter companies are considered as leased companies.

The new Company will be one of the largest of its kind in the world, and will serve with electricity and gas a rapidly growing population in New Jersey estimated at over 2,600,000, or over 80% of the population of the State. The territory to be served includes the larger and more populous sections of the State and is noted for its great industrial activity and growth. In it is located more than 90% of the manufacturing of New Jersey, which is the sixth state in value of manufactured product and the first in diversity of manufactures. The territory extends from the Hudson River opposite New York City southwest across the State to the Delaware River opposite Philadelphia, and includes Newark, Jersey City, Paterson, Trenton, Camden, Elizabeth, Bayonne, Hoboken, Passaic, the Oranges, Perth Amboy, West Hoboken and New Brunswick.

The Company's electric system will include 14 generating stations with an aggregate installed capacity of over 480,000 horsepower, 1029 miles of transmission lines and 24,866 miles of distribution wire serving 426,606 electric customers. Its gas system will include 10 generating plants with an aggregate capacity of 77,700,000 cubic feet daily

and 3,467 miles of mains serving 609,140 gas customers.

CAPITALIZATION

CAPITAL STOCK:

Common Stock, no par value (all to be owned by Public Service Corporation)	$64,250,000*
6% Preferred Stock, $100 par value..	20,000,000†
	$84,250,000

FUNDED DEBT:

First and Refunding Mortgage Gold Bonds, 5½% Series due 1959, (to be issued in exchange for an equal principal amount of General Mortgage 5% Bonds of Public Service Corporation.....	$31,978,000
Divisional Underlying Bonds (closed mortgages) (of which $17,934,500 bear interest at 4%)	19,347,500
	$51,325,500

SECURITY

The First and Refunding Mortgage Bonds will be secured by lien upon all the mortgageable property of the Public Service Electric and Gas Company as follows:

1. By first mortgage on a modern steam generating station near Newark with over 250,000

* 6,425,000 shares representing a cash investment at the rate of $10 per share.

† $19,736,800 to be deposited with Trustee as security for Perpetual Interest Bearing Certificates.

horse-power installed capacity, and on certain electric distributing property and real estate.

2. By direct mortgage on electric properties, serving without competition 67 municipalities, including Newark, Jersey City, Elizabeth, Hoboken, etc., with a total population of over 1,400,000, and on certain gas properties; subject to $19,347,500 divisional underlying bonds (closed mortgages) held by the public.

3. By mortgage on leasehold estates in electric and gas properties serving without competition 210 municipalities, including the gas properties in Newark, Jersey City, Hoboken, etc., and the electric and gas properties in Paterson, Passaic, New Brunswick, Camden, etc.; also, by mortgage on other valuable leasehold estates in certain electric generating properties and substations. The leasehold estates extend in practically all cases upwards of 900 years.

4. By pledge with the Trustee of all of the capital stocks and bonds of present subsidiary companies now owned or hereafter acquired by the Company. Stocks and bonds with a market value of approximately $6,800,000, based on present quotations, will be pledged forthwith.

Earnings

Actual earnings of the properties for the past two years, adjusted to give effect to the proposed reorganization, were as follows:

	1922	1923
Gross Revenue	$51,053,161	$56,227,474
Operating Expenses, Taxes and Amortization	36,385,847	39,306,384
Net Earnings	$14,667,314	$16,921,090

Exhibit D 6.

	1922	1923
Fixed Charges:		
Rentals of Leased Companies.	$4,739,040	
Annual Interest on Public Service Electric and Gas Company Bonded Debt including $31,978,000 First and Refunding Mortgage 5½% Bonds.....	2,618,308	7,357,348
Balance		$9,563,742

Of the net operating revenue aproximately 59% is derived from the electric business and 41% from the gas business.

In 1923, net earnings after amortization, from the properties owned in fee and on which the proposed 5½% Bonds will be secured by direct mortgage lien, were approximately $6,300,000, or over 2.4 times the annual interest charges on the Company's bonded debt including the proposed Bonds. During the same year, net earnings of the leased properties after amortization were aproximately $10,600,000, or nearly 2¼ times the amount of the rentals payable for these properties, leaving a profit earned from these leased properties of approximately $5,861,000.

PUBLIC SERVICE CORPORATION OF NEW JERSEY
By THOMAS N. McCARTER, President.

Exhibit D 6.

CONSOLIDATION AGREEMENT OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY.

(Exhibit 1 annexed to Bill of Complaint, page 64, Vol. I.)

Exhibit D 7.

P. S. E. & G. Co. General Mortgage, July 25, 1924. Sections 4 and 6.

Sec. 4. Additional bonds secured hereby may be authenticated for one or more of the following purposes:— Additional bonds—purposes of issue.

A. To enable the Company to satisfy obligations incurred or to reimburse itself for expenditures made to satisfy obligations incurred for the purpose of

(1) acquiring and/or constructing additions and/or improvements, all as hereinafter more fully defined and specified in Section 6 of this Article, for use by the Company in connection with the primary purposes of its business in supplying the public with light, heat and power; Property and additions or improvements.

(2) acquiring shares of the capital stock of the Lessor Companies, enumerated in the following Table A, which shall not previously have been deposited with the Trustee hereunder, or stocks of said Lessor Companies or their successor corporations issued to replace the same:— Acquisition of stock of Lessor Companies.

Table A.

(*a*) The common capital stock of Essex & Hudson Gas Company of the par value of $6,500,000, being the entire capital stock of said Company authorized and outstanding.

(*b*) The common capital stock of Newark Consolidated Gas Company of the par value of $6,000,000, being the entire capital stock of said Company authorized and outstanding.

(*c*) The common capital stock of New Brunswick Light, Heat & Power Company of the par value of $400,000, being the entire capital stock of said Company authorized and outstanding.

(*d*) The common capital stock of the Gas & Electric Company of Bergen County of the par value of $2,000,000, being the entire capital stock of said Company authorized and outstanding.

(*e*) The common capital stock of Hudson County Gas Company of the par value of $10,500,000, being the entire capital stock of the said Company authorized and outstanding.

(*f*) The common capital stock of the Paterson & Passaic Gas & Electric Company of the par value of $4,730,300 out of a total authorized and outstanding capital stock of the par value of $5,000,000 (the balance of said capital stock, to wit, $269,700, being forthwith, upon the execution of this indenture, pledged with the Trustee as additional security hereunder).

(*g*) The common capital stock of Ridgewood Gas Company of the par value of $100,000, being the entire capital stock of said Company authorized and outstanding.

(*h*) The common capital stock of Somerset, Union & Middlesex Lighting Company of the par value of $627,600, out of a total authorized and outstanding capital stock of said Company of the par value of $1,050,000 (the balance of said stock, to wit, stock of the par value of $422,400, being forthwith, upon the execution of this indenture, pledged with the Trustee as additional security hereunder).

(*i*) The common capital stock of South Jersey Gas, Electric and Traction Company of the par value of $6,000,000, being the entire capital stock of the Company authorized and outstanding.

B. To obtain cash to be simultaneously deposited with the Trustee, to be subsequently withdrawn for any one or more of the foregoing purposes. Against deposit of cash.

SEC. 6. Additional bonds shall in no case be authenticated on account of additions and improvements except on the following conditions: Conditions of issue—property and additions or improvements.

A. Such additions shall consist of real property, plants, easements in perpetuity, and/or transmission and distribution systems, with the buildings, equipment, apparatus, and machinery appurtenant thereto or connected therewith, situated within a radius of 250 miles from Newark, New Jersey, and acquired in fee by the Company and subject to the lien hereof, or acquired in fee by any of the Lessor Companies as an addition to the property covered by any of the leases specified in Part II of the Granting Clauses hereof. No acquisition by the Company or by any of the Lessor Companies from one another of any property now owned or hereafter acquired by any of them shall be considered an addition within the meaning hereof; nor shall any acquisition by the Company or by any of said Lessor Companies of any property covered by the lease dated July 1, 1910, from Public Service Railway Company to Public Service Electric Company be so considered, with the exception of the Marion generating station at Jersey City, New Jersey, the acquisition of which by the Company under the specific conditions hereafter (in subdivision B of Character of additions or improvements.

this Section and in subdivision C (7) of Section 7 of this Article) prescribed shall be considered as such an addition. Nor shall any property owned on January 1, 1924, by Middlesex Electric Light & Power Company, Burlington Electric Light & Power Company, Citizens Electric Light, Heat & Power Company, The Morristown Gas Light Company, The Nichols Electric Light & Power Company of Nutley, New Jersey, Princeton light, Heat & Power Company or Weehawken Contracting Company be considered such an addition.

Such improvements shall consist of those of a permanent nature to any property now owned or hereafter acquired in fee by the Company, and subject to the lien hereof, or to property at that time covered by any of the leases specified in Part II of the granting clauses hereof and subject to no encumbrances other than those outstanding against such property at the date of this indenture.

Such additions or improvements shall not include any on account of which any bonds shall have previously been authenticated hereunder or on account of which the cash deposited against any authentication of bonds secured hereby shall have been withdrawn under Section 17 of this Article (except as to the 25% balance of cost or value as provided in subdivision B of Section 7 of this Article), nor shall they include any acquired or constructed.

(1) before January 1, 1924;

(2) more than 12 months prior to the application for the authentication of bonds secured hereby on account of such property, unless the same shall have been covered by a prior certificate filed with the Trustee pursuant to Section 14 of this Article;

(3) for the renewal or replacement of any property of the Company or any of the Lessor Companies (other than property theretofore released by the Trustee pursuant to Section 1 of Article Eight hereof the proceeds of which have been otherwise applied by the Trustee) except to the amount by which the cost or then fair value (whichever be less) of the property acquired and/or constructed shall exceed the actual cost (or the estimated cost if the actual cost cannot be ascertained) of that renewed or replaced;

(4) in maintaining the property of the Company or any of the Lessor Companies in good and business like working order and condition;

(5) with the proceeds of the sale of any of the mortgaged property released herefrom or of any of the property of any of the Lessor Companies; or

(6) with the proceeds of damages from condemnation of or of insurance on any part of the mortgaged property or the property of any of the Lessor Companies.

Any additions acquired or improvements constructed between January 1, 1924, and July 1, 1925, by any corporation which, prior to July 1, 1925, shall have been merged or consolidated into or with the Company, and any additions acquired or improvements constructed by the Company or by any such corporation to the property of any such corporation between said dates shall for the purpose of this Section, as well as of Sections 7 and 14 of this Article, be considered as having been acquired or constructed by the Company and may form the

basis for the authentication of additional bonds hereunder.

Limitation in amount of prior liens.

B. The principal amount of obligations secured by lien upon any such additions to the property of any one of the Lessor Companies, or secured by a lien prior hereto against any such additions to the property of the Company (excluding in each case such portion of such obligations as shall then be deposited with the Trustee hereunder, and also excluding all the bonds secured by the mortgages specified in Section 1 of Article Three hereof), shall not exceed 70% of the cost plus such obligations or of the fair value to the Company free of liens (whichever be less) of the property subject to such lien; provided, however, that no bonds shall be authenticated on account of the Marion generating plant at Jersey City, New Jersey, unless it be acquired by the Company free of all liens prior hereto.

Net earnings.

C. The net earnings of the Company, ascertained as hereafter provided, for 12 consecutive calendar months within the 15 calendar months immediately preceding the application for the authentication of such bonds, shall have been at least one and three-quarter times the fixed charges of the Company. The fixed charges are, for the purposes of this Article, hereby defined as being the aggregate of

(1) the amount of the aggregate annual rentals then payable under the leases from the Lessor Companies specified in Part II of the granting clauses hereof, and under the lease from Public Service Electric Power Company dated June 1, 1923, specified in subdivision 1 of Part III of said granting clauses, less the total annual interest and dividends payable on

such part of the bonds and stock of said Lessor Companies as shall then be deposited and pledged with the Trustee hereunder;

(2) the amount of the aggregate annual interest charges on all indebtedness secured by lien prior hereto on any part of the mortgaged property or secured by any lien on any part of the property of any of the Lessor Companies (exclusive of the bonds specified as items (7) to (27), both numbers inclusive, in Section 1 of Article Three hereof), less the annual interest charges on so much of such indebtedness as shall then be deposited and pledged with the Trustee hereunder;

(3) the annual interest charges on all outstanding bonds authenticated hereunder, including any bonds held by the Company;

(4) the annual interest charges on the bonds applied for; (this item (4) may, however, be omitted, such omission having the effect provided below in this subdivision C of Section 6 and in subdivision B of Section 7 of this Article); and

(5) The annual interest charges on all other indebtedness of the Company payable in more than twelve months subsequent to such application.

Net earnings defined.

The net earnings of the Company shall for the purposes hereof, be taken to mean its gross revenues less all expenses of operation, said revenues and expenses to be ascertained in accordance with approved accounting practices, with the following qualifications:—

(*a*) All capital gains or increases and capital losses shall be excluded.

(*b*) If the aggregate of the net earnings derived from all sources other than the operation by the Company of property owned in fee by the Company and subject to the lien hereof, and property covered by one of the leases specified in Parts II and III of the granting clauses hereof, shall exceed 15% of the net earnings derived from the operation of said property owned in fee and property covered by said specified leases, such excess shall be excluded.

(*c*) In expenses of operation shall be included all expenses for maintaining the corporate property in good working order and condition, any sums paid to the Trustee pursuant to the second paragraph of Section 15 of Article Five on account of adequate maintenance, all taxes (except as hereafter provided), and insurance. In such expenses shall not be included income taxes, taxes on corporate debt, state taxes refunded to bondholders, amounts carried to renewal or replacement reserves, amortization of bond discount, Sinking Fund payments made hereunder, or the fixed charges.

(*d*) If any property shall have been acquired by the Company after the commencement of the 12 months period in this subdivision C above referred to, the actual net earnings of such property during the part of such 12 months period preceding such acquisition, by use similar to that to which it is to be put by the Company, may be included as if owned during such entire period. There may also be included such actual net earnings from the property on account of the acquisition of

which the authentication of bonds is applied for, except in cases where the item of annual interest charges on the bonds applied for shall have been omitted from the fixed charges as above provided in paragraph (4) of this subdivision C.

Company not to be in default.

D. The Company shall not at the time be in default in the payment of the principal or interest of any bond secured hereby, nor in the payment of any installment of any Sinking Fund provided for any series of bonds hereby secured, nor in the performance of any covenants contained in Sections 15, 16, and 17 of Article Fifth hereof.

Prior liens.

E. The total principal amount of obligations, not deposited hereunder, secured by lien prior hereto against any part of the mortgaged property or of the property of any of the Lessor Companies (exclusive of the bonds defined in Article Three hereof as "prior debt bonds," and not including any bonds secured by mortgages against the property covered by the leases specified in subdivisions (1) and (2) of Part III of the granting clauses hereof), shall be less than 25% of the aggregate principal amount of all bonds secured hereby then outstanding and those applied for.

Exhibit D 8.

CONSOLIDATION AGREEMENT MERGING SEVEN SMALL COMPANIES INTO P. S. ELECTRIC AND GAS CO. NOVEMBER 5, 1924.

(Exhibit C 69, page 355, *supra.*)

Exhibit D 9.

PROCEEDINGS AND CERTIFICATE OF THE BOARD OF PUBLIC UTILITY COMMISSIONERS APPROVING MERGER OF SEVEN SMALL COMPANIES.

(Certificate of Board, printed, page 318, Vol. I.)

Exhibit D 10.

OFFER OF JANUARY 10, 1927.

(Exhibit 8 annexed to Bill of Complaint, page 153, Vol. I.)

Exhibit D 11.

MERGER AGREEMENT OF APRIL 26, 1927.

(Exhibit 10 annexed to Bill of Complaint, page 172, Vol. I.)

Exhibit D 12.

BOARD OF PUBLIC UTILITY COMMISSIONERS,

NEWARK, N. J., Thursday, May 19, 1927.

Public Service Electric & Gas Company. Application for approval of agreement of merger between Public Service Electric & Gas Company, Essex & Hudson Gas Company, Hudson County Gas Company, Paterson & Passaic Gas & Electric Company, Somerset, Union and Middlesex Lighting Company and New Brunswick Light, Heat & Power Company.

Before Commissioner
JOS. F. AUTENRIETH, Esq., President.
P. BETTS, Esq., Chief Inspector.
J. O. BIGELOW, Counsel.

For petitioner appears
GEORGE H. BLAKE, Esq.

PERCY S. YOUNG Sworn on behalf of Petitioner.

Mr. Blake: This is an application for the approval of an agreement and merger between Public Service Electric & Gas Company and Essex & Hudson Gas Company, Hudson County Gas Company, Paterson & Passaic Gas & Electric Company, Somerset, Union & Middlesex Lighting Company, and New Brunswick Light, Heat & Power Company.

Exhibit D 12.

DIRECT-EXAMINATION BY MR. BLAKE:

Q. You are vice president in charge of finances of Public Service Electric & Gas Company? A. Yes, sir.

Q. On the 8th day of April, 1924, Public Service Electric Company and the United Electric Company of New Jersey and the Public Service Gas Company, entered into an agreement of merger and consolidation to form the Public Service Electric & Gas Company? A. That is correct.

Q. And was it part of the plan to merge into one company the various underlying gas and electric companies? A. Yes, sir.

Q. Was that outlined in certain exhibits, which I show you (handing witness pamphlet)? A. It is.

Mr. Blake: I offer that in evidence and ask that it be marked.

(Plan B, marked Ex. P-1.)

Commissioner Autenrieth: Was that the exhibit you forwarded to the Board sometime ago?

Mr. Blake: Yes; it was marked Ex. B or plan B in the original application. I would like to have that marked in this application.

Q. That plan consists of five steps, does it not, Mr. Young? A. Yes.

Q. I won't read them into the record but just refer to them; the first, second, third and fourth steps of the plan have been carried out? A. Yes.

Q. And the fifth step of it for the consolidation provides what? Will you read it, please. A. Provides for "an offer to the stockholders of certain other gas and electric companies, leased to Corporation of the oportunity to exchange their stocks for

other securities, so that, eventually, these companies also may be consolidated with Public Service Electric & Gas Company."

Q. That is the application this morning, to consolidate and absorb into Public Service Electric & Gas Company the five companies, the Essex & Hudson Gas Company, the Hudson County Gas Company, the Paterson & Passaic Gas & Electric Company, the Somerset, Union and Middlesex Lighting Company and the New Brunswick Light, Heat and Power Company? A. All part of the plan as contemplated under section five.

Mr. Blake: I now offer and ask that it be marked the agreement of consolidation and merger to form Public Service Electric & Gas Company.

(Agreement of consolidation and merger forming Public Service Electric & Gas Company, marked Ex. P-2.)

Commissioner Autenrieth: That was submitted to the Board a few weeks ago?

Mr. Blake: No. This is the original.

Commissioner Autenrieth: The original?

Mr. Blake: Yes, sir. With that agreement was the agreement of merger and consolidation which applies to the seven smaller companies, also approved by the Board.

Q. The original agreement of merger and consolidation was approved by the Board of Public Utility Commissioners the 22nd of May, 1924? A. It was.

Q. The agreement absorbs the seven smaller companies and was approved by the Board November 20th, 1924? A. That is correct.

Mr. Blake: I offer a copy of the present merger agreement and ask that it be marked.

Exhibit D 12.

(Copy of present merger agreement, marked Ex. P-3.)

Q. The Essex & Hudson Gas Company was organized as a corporation under the laws of New Jersey the 30th day of November, 1898? A. That is right.

Mr. Blake: I offer and ask to have marked a copy of the certificate of incorporation of the Essex & Hudson Gas Company.

(Certificate of incorporation of Essex & Hudson Gas Company, marked Ex. P-4.)

Mr. Blake: These all have been examined by your counsel and we would like to have them back, if I may; we are getting rather short of them.

Commissioner Autenrieth: All right.

Q. The Hudson County Gas Company was formed by an agreement of merger and consolidation of the People's Gas Light Company of Jersey City, the Jersey City Gas Light Company, the Consumers Gas Company of Jersey City, the Hudson County Gas Light Company, the Bayonne & Greenville Gas Light Company; is that correct, Mr. Young? A. Correct.

Q. That agreement was filed in the office of the secretary of state, the 31st day of October, 1899? A. Correct.

Mr. Blake: I offer a copy of the joint agreement of merger and consolidation of the Hudson County Gas Company and ask that this be marked.

(Joint agreement of merger and consolidation of Hudson County Gas Company, marked Ex. P-5.)

Exhibit D 12.

Q. The Paterson & Passaic Gas & Electric Company was formed by an agreement of merger and consolidation dated the 6th of February, 1899, between Public Service Gas & Electric Company of the City of Paterson, the Paterson Gas Light Company, the Edison Electric Illuminating Company, the Passaic Lighting Company, the Lodi Light, Heat & Power Company, the Passaic & Bergen Gas Company, and filed in the office of the secretary of State on the 28th of February 1899? A. Correct.

Mr. Blake: I offer that and ask that it be marked.

(Agreement of merger and consolidation of Paterson & Passaic Gas & Electric Company, marked Ex. P-6.)

Q. Also, the Somerset, Union & Middlesex Lighting Company was formed by an agreement of consolidation and merger dated the 11th of November, 1903, between the Plainfield Gas & Electric Light Company, the Somerset Lighting Company and the Citizens Electric Company, which certificate was filed in the office of the Secretary of State on the 1st day of December, 1903? A. That is correct.

Mr. Blake: I offer that agreement and ask that it be marked.

(Agreement of consolidation and merger of Somerset Union & Middlesex Lighting Company, marked Ex. P-7.)

Q. Mr. Young, was the New Brunswick Light, Heat & Power Company incorporated under the laws of this State on the 6th day of January, 1899 and—— A. December, isn't it?

Q. December; pardon me; yes, December.—And

filed in the office of the Secretary of State on the same day? A. That is correct.

Mr. Blake: I offer a copy of the certificate of incorporation of that company and ask that it be marked.

(Certificate of incorporation of New Brunswick Light Heat & Power Company, marked Ex. P-8.)

Q. Mr. Young, the merger agreement has been submitted to and approved and executed by the respective boards of directors of the companies involved in the agreement? A. It has.

Q. The companies that are to be merged are now operated under lease to the Public Service Electric & Gas Company, the leases ranging from 900 years to run—— A. Yes. The companies to be merged in the Public Service Electric & Gas Company.

Q. Are now leased to Public Service Electric & Gas Company. Will you explain, just briefly, what will be the result of this merger? A. It is proposed to merge these companies into the Public Service Electric & Gas Company; the properties then will be directly operated by the company; it will simplify the financial structure of the companies; do away with these complicated lease-hold structures, and in every way will, we believe, improve the operating situation. The terms of the merger I think were presented when we presented the application for the issuance of stock, were indicated in the application and are as follows:

For every share of the Essex & Hudson Gas Company, and the Hudson County Gas Company are to be issued one and thirty seven hundredths shares of

Public Service Electric & Gas Company of which the Public Service Corporation of New Jersey, the holder of stock, the owner of the common stock of the Public Service Electric & Gas Company, contributes a definite amount, or the amount in excess of a hundred and thirty three and a third shares, a hundred and thirty three and a third shares of the preferred stock in Electric & Gas being issued by that company only for the purpose of the merger.

The Paterson & Passaic Gas & Electric Company, the merger agreement provides for eighty six hundredths of a share of the six percent preferred stock, 1925 series of Public Service Electric & Gas Company, of which 2.67—the eighty six hundredths of a share represents a par value of $86; of that amount Corporation contributes $2.67 on the par value of the stock of Public Service Electric & Gas Company.

The same contribution is made by corporation in the merger of the New Brunswick Light, Heat & Power Company; the amount of money paid by Public Service Electric & Gas Company direct being the same as in the case of the Paterson & Passaic Gas & Electric Company.

The amount of money in exchange by Public Service Electric & Gas Company of its six percent preferred stock, 1925 series, for each share of the Somerset, Union & Middlesex Lighting Company is $66.63 per share; the balance $2.36 being contributed by the corporation in that stock, making in all $69 par value of the stock of Public Service Electric & Gas Company, six percent preferred stock, 1925 series given in exchange for the stock of that company.

Mr. Blake: I would like to offer at this time the record and the certificates in the matter of

the application of Public Service Electric & Gas Company for the approval of the issuance of $42,060,317 of its six percent cumulative preferred stock, 1925 series, which certificate is dated January 6th, 1927. In that record it is all set out in detail.

Q. Mr. Young, these companies that are now to be absorbed into the Public Service Electric & Gas Company are engaged in the supplying of electricity or gas for light, heat and power purposes at the present time? A. I would like to correct that figure I gave, if I may.

Mr. Blake: Surely.

Witness: The S. U. M. is 2.33 instead of 2.37 contributed by the corporation; the balance to make the $69 is $66.67 per share contributed by the company, Public Service Electric & Gas Company.

Will you read the last question?

Q. (Question read as follows: "Mr. Young, these companies that are now to be absorbed into the Public Service Electric & Gas Company are engaged in the supplying of electricity or gas for light, heat and power purposes at the present time?") A. Correct.

Q. At the present time are the rental on these properties guaranteed so that they become a fixed charge on Public Service Electric & Gas Company? A. They are.

Q. Under the present plan when merged, will there any longer be a fixed charge represented by rentals on the properties? A. No. Those rentals will disappear, as such and, of course, the return to the former owners who have exchanged under the agreement will be that indicated by the dividends

paid on the par value of the stock exchanged by Public Service Electric & Gas Company and contributed by it direct in the exchange.

Mr. Blake: I think that is all.

By Mr. Betts:

Q. Is this the last stage in the process of putting all these companies together, Mr. Young? A. Of these particular companies, yes, sir.

Q. There are still some others? A. There are still some others, yes.

Q. That are to come in. They are later to be consolidated, is that the idea; like the East Newark Gas Light Company? A. I think there are some peculiar conditions existing in connection with East Newark.

Q. And the Newark Consolidated. A. The remaining companies are, that remain outside this particular plan, are the South Jersey Gas, Electric & Traction Company.

Q. It remains outside? A. Yes; this particular plan; the Newark Consolidated Gas Company and the Ridgewood Gas Company and the Gas & Electric Company of Bergen County.

Q. And the Orange Gas Light Company, that was not in this plan. A. That was not in this plan.

Q. That remains outside? A. That is not in this plan.

Mr. Blake: That is all.

Mr. Betts: That is all.

Commissioner Autenrieth: All right. I guess that is all.

(Matter taken into conference.)

Exhibit D 12.

EXHIBITS

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P–2.	Agreement of consolidation and merger forming Public Service Electric & Gas Company	3
P–3.	Copy of present merger agreement	4
P–4.	Certificate of incorporation of Essex & Hudson Gas Company	4
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Exhibit D 12.

STATE OF NEW JERSEY

BOARD OF PUBLIC UTILITY COMMISSIONERS

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY, ESSEX ANL HUDSON GAS COMPANY, HUDSON COUNTY GAS COMPANY, THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, AND NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, FORMING PUBLIC SERVICE ELECTRIC AND GAS COMPANY, FOR APPROVAL OF AGREEMENT OF MERGER AND CONSOLIDATION DATED APRIL 26, 1927.	Certificate.

Application being made to the Board of Public Utility Commissioners by Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, and New Brunswick Light, Heat and Power Company, by petition in writing, dated April 28, 1927, for approval of a merger agreement, dated April 26, 1927, between Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, and New Brunswick Light, Heat and Power Company, forming Public Service Electric and Gas Company, which by reference thereto herein is made part hereof, and the Board

being satisfied after investigation and due hearing that said merger is to be made in accordance with law, and its purpose being approved by the Board.

The said Board HEREBY GRANTS said application and APPROVES the said merger agreement. All books and records of the merging and consolidating companies are to be turned over to the consolidated company.

Dated, May 19, 1927.

BOARD OF PUBLIC UTILITY COMMISSIONERS,
By
(Signed) JOS. F. AUTENRIETH,
President.

(SEAL)

Attest:
(Signed) ALFRED N. BARBER
Secretary.

(SEAL) I HEREBY CERTIFY the foregoing to be a true copy of a Certificate adopted by the Board of Public Utility Commissioners at a meeting held Thursday, May 19th, 1927 and recorded in the minutes of said meeting.

(Signed) ALFRED N. BARBER,
Secretary.

Exhibit D 12.

To the Honorable The Board of Public Utility Commissioners:

The petition of Public Service Electric and Gas Company, Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, and New Brunswick Light, Heat and Power Company respectfully shows that:

1. Public Service Electric and Gas Company was formed into a corporation of this State, by an agreement of merger and consolidation, filed in the office of the Secretary of State, on the twenty-fifth day of July, in the year of our Lord one thousand nine hundred and twenty-four; Essex and Hudson Gas Company is a corporation organized under the laws of the State of New Jersey, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and ninety-eight, by certificate dated on the twenty-ninth day of the said November, recorded in the Clerk's Office of Essex County, in Book 15 of Incorporation Business Companies, page 113, and filed on the day first named in the office of the Secretary of State; Hudson County Gas Company was formed into a corporation of this State by an agreement of merger and consolidation filed in the office of the Secretary of State on the thirty-first day of October, in the year of our Lord one thousand eight hundred and ninety-nine; The Paterson and Passaic Gas and Electric Company was formed into a corporation of this State, by an agreement of merger and consolidation, filed in the office of the Secretary of State, on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and ninety-nine; Somerset, Union and Middlesex Lighting Company was formed into a corporation of this State, by an agreement of

merger and consolidation, filed in the office of the Secretary of State, on the first day of December, in the year of our Lord one thousand nine hundred and three; New Brunswick Light, Heat and Power Company is a corporation organized under the Laws of the State of New Jersey, on the sixth day of December, in the year of our Lord one thousand eight hundred and ninety-nine, by certificate dated the fifth day of December, and recorded in the Clerk's Office of Middlesex County, in Book D of Incorporations, pages 397, &c., and filed on the day first named in the office of the Secretary of State.

2. Public Service Electric and Gas Company is desirous of acquiring and absorbing into itself, these five companies: Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, and New Brunswick Light, Heat and Power Company, their property, rights, privileges and franchises, subject to the duties, obligations and liabilities of Essex and Hudson Gas Company, Hudson County Gas Company, The Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company, and New Brunswick Light, Heat and Power Company, under and by virtue of an act of the Legislature of the State of New Jersey entitled, "An Act concerning corporations, revision of 1896", and the acts supplementary thereto and amendatory thereof.

3. That their directors have made and entered into an agreement in the form attached hereto and made part hereof, and marked "Exhibit A", and have called the necessary meetings of the stockholders as required by law to consummate the same.

4. That it is necessary to obtain the approval in writing of your Honorable Board, of the agreement. G. H. B.

Your petitioners therefore pray your approval in writing of such agreement.

Your petitioners will ever pray, etc.

Respectfully submitted,

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By

(Signed) THOMAS N. McCARTER,
President.

ESSEX AND HUDSON GAS COMPANY,

By

(Signed) JOHN L. O'TOOLE,
Vice-President.

HUDSON COUNTY GAS COMPANY,

By

(Signed) JOHN L. O'TOOLE,
Vice-President.

THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY,

By

(Signed) JOHN L. O'TOOLE,
Vice-President.

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY,

By

(Signed) H. J. BRUNSON,
President.

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY,

By

(Signed) JOHN L. O'TOOLE,
Vice-President.

Dated, Newark, N. J.
April 28th, 1927. G. H. B.

Exhibit D 13.

MERGER AGREEMENT OF OCTOBER 25, 1927.

(Exhibit F, page 414, Vol. I.)

Exhibit D 14.

PROCEEDINGS AND CERTIFICATE OF BOARD OF PUBLIC UTILITY COMMISSIONERS APPROVING THE ISSUE OF $42,060,317 OF PREFERRED STOCK OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY. PROCEEDINGS INCLUDE THE OFFER TO THE STOCKHOLDERS OF JANUARY 10, 1927.

(Not printed by consent.)

Exhibit D 15.

AMENDMENT CHANGING NAME OF OXY-HYDROGEN COMPANY.

(The original charter is Exhibit C 55, page 291, *supra.*)

(Exhibit D 15 not printed by consent.)

Exhibit D 16.

AMENDMENT TO CERTIFICATE OF INCORPORATION OF ESSEX AND HUDSON GAS COMPANY DATED JUNE 1ST, 1903.

(Same as Exhibit C 22, page 80, *supra.*)

Exhibit D 17.

CERTIFICATE OF INCORPORATION OF ESSEX AND HUDSON GAS COMPANY.

(Same as Exhibit C 22, page 80, *supra.*)

Exhibit D 18.

LEASE ESSEX AND HUDSON GAS COMPANY TO PUBLIC SERVICE CORPORATION AND ASSIGNMENT THEREOF TO PUBLIC SERVICE GAS COMPANY.

(Exhibit 4 annexed to Bill of Complaint, page 109, Vol. I.)

Exhibit D 19.

LEASE HUDSON COUNTY GAS COMPANY TO PUBLIC SERVICE CORPORATION.

(Exhibit 3 annexed to Bill of Complaint, page 90, Vol. I.)

Exhibit D 20.

LEASE OF THE PATERSON & PASSAIC GAS & ELECTRIC COMPANY TO PUBLIC SERVICE CORPORATION.

(Exhibit 6 annexed to Bill of Complaint, page 131, Vol. I.)

Exhibit D 21.

LEASE OF SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY.

(Exhibit 7 annexed to Bill of Complaint, page 138, Vol. I.)

Exhibit D 22.

LEASE GAS LIGHT COMPANY OF THE CITY OF NEW BRUNSWICK TO PUBLIC SERVICE CORPORATION.

(Exhibit 5 annexed to Bill of Complaint, page 119, Vol. I.)

Exhibit D 23.

LEASE SOUTH JERSEY GAS, ELECTRIC AND TRACTION COMPANY TO PUBLIC SERVICE CORPORATION.

(Not printed by consent.)

Exhibit D 24.

ASSIGNMENT OF LEASE OF GAS LIGHT COMPANY OF THE CITY OF NEW BRUNSWICK TO SOUTH JERSEY GAS, ELECTRIC AND TRACTION COMPANY.

(Not printed by consent.)

Exhibit D 25.

ASSIGNMENT OF THE ELECTRIC PROPERTIES BY PUBLIC SERVICE CORPORATION TO PUBLIC SERVICE ELECTRIC COMPANY.

(Not printed by consent.)

Exhibit D 26.

LEASE NEWARK CONSOLIDATED GAS COMPANY TO UNITED GAS IMPROVEMENT COMPANY.

(Not printed by consent.)

Exhibit D 27.

ASSIGNMENT OF NEWARK CONSOLIDATED GAS COMPANY LEASE TO ESSEX AND HUDSON GAS COMPANY.

(Not printed by consent.)

Exhibit D 28.

ASSIGNMENT OF NEWARK CONSOLIDATED GAS COMPANY LEASE BY ESSEX AND HUDSON GAS COMPANY TO PUBLIC SERVICE GAS COMPANY.

(Not printed by consent.)

Exhibit D 29.

Contract between NEWARK CONSOLIDATED GAS COMPANY, THE UNITED GAS IMPROVEMENT COMPANY, ESSEX AND HUDSON GAS COMPANY.

DECEMBER 1, 1898.

THIS AGREEMENT made this first day of December, eighteen hundred and ninety-eight, between NEWARK CONSOLIDATED GAS COMPANY, a corporation of the State of New Jersey, of the first part, pursuant to a resolution of its Board of Directors passed on the first day of December, eighteen hundred and ninety-eight, and THE UNITED GAS IMPROVEMENT COMPANY, a corporation of the State of Pennsylvania, of the second part, pursuant to a resolution of its Board of Directors, passed on the thirtieth day of November, eighteen hundred and ninety-eight and ESSEX AND HUDSON GAS COMPANY, a corporation of the State of New Jersey, of the third part, pursuant to a resolution of its Board of Directors passed on the first day of December, eighteen hundred and ninety-eight.

WHEREAS, The first party is a corporation of the State of New Jersey, formed in accordance with the provisions of an Act concerning corporations (Rev. of 1896), by consolidation between The Newark Gas Company, The Montclair Gas and Water Company, The Summit Gas Light Company, The People's Gas Company, of Irvington, New Jersey, and The Clinton Gas Company, and owns all the shares of stock of The Orange Gas Light Company, a corporation of the State of New Jersey, and twelve hundred and sixty (1260) shares of stock of The East Newark

Gas Light Company, and possesses the franchises, rights and privileges defined in the charters of the merged corporations, and in their contracts with various municipal bodies, and has succeeded to all the rights possessed by said companies to manufacture and supply gas, as well as all the rights and powers of said merged companies, to open streets, avenues, highways, and public places, to lay, repair, and maintain therein mains, pipes, and appurtenances, useful and necessary for the distribution of gas;

And whereas, The first party has executed and delivered to Fidelity Trust Company, a corporation of the State of New Jersey, as Trustee, its bonds, all dated December first, eighteen hundred and ninety-eight, aggregating ten million dollars ($10,000,000), at par, bearing interest at the rate of five per cent. per annum, and payable in gold fifty years after their date, secured by a trust mortgage of like date (of which a copy is to be attached hereto, marked Exhibit A), of which bonds four million and twenty-five thousand dollars ($4,025,000), at par, are to remain uncertified for the present in the hands of said Trustee for the purpose of retiring at maturity, or earlier, four million dollars ($4,000,000), at par, of bonds issued by The Newark Gas Company, dated September third, eighteen hundred and ninety-five, bearing interest at the rate of six per cent. per annum, payable April first, nineteen hundred and forty-four, secured by the first mortgage of that company, twenty-five thousand dollars ($25,000), at par, of said bonds, to remain uncertified for the purpose of retiring at their maturity, or earlier, twenty-five thousand dollars ($25,000) of the outstanding bonds of The

Montclair Gas and Water Company. One million and three hundred and seventy-five thousand dollars ($1,375,000), at par, of said bonds, are to remain in the hands of the Trustee under the mortgage, uncertified, to be certified and delivered in accordance with the subsequent provisions of this contract and of the mortgage securing said bonds; and four million six hundred thousand dollars ($4,600,000), at par, of said bonds, have been or are to be issued, certified and delivered in part payment of the consideration for the various properties acquired in the course of said consolidation.

And whereas, The first party has this day executed a lease of all its properties, real and personal, rights, privileges and franchises whatsoever and wheresoever, to the second party, for the term of nine hundred and ninety-nine years in which lease it is, however, distinctly provided that the second party under certain conditions may assign said lease to a new company formed or to be formed under the laws of the State of New Jersey, in which new company the second party is to have the controlling interest in the ownership of the stock, and in which it is further provided that providing said lease be assigned as hereinabove recited the liability of the second party and the said assignee company for the covenants of said lease shall, until the expiration of six years from the first day of January, eighteen hundred and ninety-nine, be concurrent, and after the expiration of said six years shall devolve solely upon said assignee company, except so far as relates to the covenant of the second party not to engage in the manufacture, sale, or distribution of gas in a certain territory set forth in said lease, which said covenant on the part of said second party is to be

binding as long as the period for which said property is leased;

And whereas, Said assignee company in the contemplation of the parties in said lease has been formed under the laws of the State of New Jersey, and is Essex and Hudson Gas Company, the party of the third part hereto;

And whereas, The first party is desirous of securing the aid, experience, and skill of the second party and its officers, agents, servants, and workmen in the management and operation of its business, even if said lease should ever for any reason be declared inoperative:

Now, This Agreement Witnesseth, The parties hereto in consideration of the covenants herein contained, and of the premises, do mutually agree each with the other as follows:—

First. This agreement shall be binding upon neither party so long as the lease hereinabove referred to is in force between said parties or the assignee company therein referred to. Should said lease at any time be declared or become inoperative between the parties thereto, this agreement shall forthwith take effect, go into operation and be a valid and subsisting contract between the parties hereto.

Second.—Said first party hereby employs and authorizes said second party to maintain, extend, and operate for it for nine hundred and ninety-nine years from the first day of December, eighteen hundred and ninety-eight, its gas works and system of distribution, including the laying, repairing, extending, removing, replacing, and maintaining of

the pipes and appurtenances of the first party in the streets, alleys, highways, ways, and public places, with the extensions, improvements, additions, and alterations that may be hereafter made thereto, to purchase the supplies, to sell and deliver the products thereof, and to make its collections and payments, except the payment of the principal of its bonds as hereinafter referred to, and excepting any other debts contracted hereafter without the consent in writing of said second party. The first party shall not without the consent and approval of the second party, during the continuance of this agreement, incur any other liability or contract any obligations than such as are provided for in this agreement. Said first party further agrees that it will during the period above mentioned do all needful acts in its power to maintain its corporate existence, franchises, rights and privileges, and municipal contracts to the end of their respective terms. Said first party further agrees that said second party, or its assigns, as hereinafter provided, may retain for its compensation for operating and managing the property of the first party, as in this agreement above set forth, all the earnings of the first party arising from the management of its business as aforesaid over and above the earnings herein below set forth.

(*a.*) Interest upon four million dollars, at par, of six per cent. bonds of The Newark Gas Company, which, by consolidation has now become a debt of said first party, until the same are paid or refunded as hereinafter provided.

(*b.*) Interest upon twenty-five thousand dollars outstanding bonds of The Montclair Gas and Water Company, which, by consolidation, have become a

debt of said first party, until the same are paid or refunded as hereinafter provided.

(*c.*) Interest upon all outstanding consolidated five per cent. bonds of said first party, which said bonds have been issued as hereinabove set forth under a mortgage bearing even date herewith made by Newark Consolidated Gas Company to Fidelity Trust Company, as Trustee.

(*d.*) All State, county, municipal, franchise, license or permit taxes or assessments assessed upon the property or business of Newark Consolidated Gas Company, together with all fees required to be paid to the city inspector, as well as any taxes assessed upon any dividends declared by said first party, and all taxes, imposts, and duties of whatever description to which the property or capital of said first party is now or may hereafter be subjected.

(*e.*) The sum of one thousand dollars ($1,000) annually for expenses of the first party on the first day of January of each year, beginning with January 1, 1899; five hundred dollars ($500) annually to the Trustee for services under the mortgage of the first party or under this agreement, on the first day of January in each year, beginning with January 1, 1899. All sums of money hereinafter to be paid to the Trustees under the mortgage of The Newark Gas Company, referred to in said mortgage, and any further compensation that may be required to pay for the services of a Trustee or Trustees of said mortgage not specifically set out in said mortgage. The following additional sums of money in each year, beginning with the year nineteen hundred, payable semi-annually on July 1st and January 1st, in each year, the first pay-

ment to be made on July 1, 1900, each payment to be made for one-half the sums named below:

1900	$30,000
1901	60,000
1902	90,000
1903	120,000
1904	150,000
1905	180,000
1906	210,000
1907	240,000
1908	270,000
1909	300,000

And thereafter, so long as this contract shall be in operation, three hundred thousand dollars ($300,000).

THIRD. The party of the second part hereby accepts the foregoing provisions and agrees to maintain, extend, and operate for the first party, for nine hundred and ninety-nine years from the first day of December, eighteen hundred and ninety-eight, its gas works and system of distribution, including the laying, repairing, extending, renewing, replacing and maintaining of the pipes and appurtenances of the first party in the streets, alleys, highways, ways, and public places, with the extensions, improvements, additions, and alterations that may be hereafter made thereto, to purchase the supplies, to sell and deliver the products thereof, and to make its collections and payments, except the payment of the principal of its bonds as hereinafter referred to, and excepting any other debts contracted hereafter without the consent in writing of said second party, and to accept for its compensation in so doing the net earnings of said first party over and above the

expenses and charges set forth in detail in Section Second. The party of the second part further covenants and agrees that it will pay to or for said first party annually the said charges or sums of money specified in Section Second above at the times therein stated, viz.:—

(*a.*) Interest upon four million dollars ($4,000,000) at par, of six per cent. bonds of The Newark Gas Company, which, by consolidation, has now become a debt of said first party, until the same are paid or refunded as hereinafter provided.

(*b.*) Interest upon twenty-five thousand dollars ($25,000) outstanding bonds of The Montclair Gas and Water Company, which, by consolidation, has become a debt of said first party, until the same are paid or refunded as hereinafter provided.

(*c.*) Interest upon all outstanding consolidated five per cent. bonds of said first party, which said bonds have been issued as hereinafter set forth.

(*d.*) All State, county, municipal, franchise, license or permit taxes or assessments, assessed upon the property or business of Newark Consolidated Gas Company, together with all fees required to be paid to the city inspector, as well as any taxes assessed upon any dividends declared by said first party, and all taxes, imposts, and duties of whatever description to which the property or capital of said first party, is now or may hereafter be subject.

(*e.*) The second party shall in addition to the above pay to the first party the following sums of money at the times hereinafter stated:—

One thousand dollars ($1,000) annually on the first day of January in each year, beginning with

January first, eighteen hundred and ninety-nine, for the expenses of the first party's organization; five hundred dollars ($500) on the first day of January in each year, beginning with January first, eighteen hundred and ninety-nine, to the Trustee, for services rendered under said mortgage and this contract. In addition thereto said second party shall pay all sums of money hereinafter to be paid to the Trustees under the mortgage of The Newark Gas Company, referred to in said mortgage, and any further compensation that may be required to pay for the services of a Trustee or Trustees of said mortgage not specifically set out in said mortgage, the following additional sums of money in each year, beginning with the year nineteen hundred, said payments to be made upon the first day of January, and the first day of July in each year, the first payment to be made on the first day of July, nineteen hundred, each payment to be made for one-half of the sums named below:—

1900	$30,000
1901	60,000
1902	90,000
1903	120,000
1904	150,000
1905	180,000
1906	210,000
1907	240,000
1908	270,000
1909	300,000

And thereafter as long as this contract shall be in operation three hundred thousand dollars ($300,000) annually, and no more.

Exhibit D 29.

FOURTH.—The second party further agrees that the various plants, mains, pipes, and property of the first party shall be maintained by the second party in their present state of efficiency, and shall be extended by said second party with the increase of a profitable demand for the service of gas, or to stimulate such increase wherever the second party shall deem judicious, and said second party is hereby authorized to add to, remove, alter, change, improve, repair, replace or abandon any part of said plants in accordance with its best judgment from time to time; *Provided,* That it be not done in violation of any one of the mortgages securing any issue of bonds herein referred to; *and Provided, further,* That if said second party shall, in the course of the discharge of its duties, sell or dispose of any of the real or personal property now or hereafter owned by the first party, which is subject to the provisions of the various mortgages referred to above, and which it is hereby agreed said second party may do from time to time, subject to the conditions of such mortgages, the proceeds of any such sale shall be preserved by the second party as a separate fund to be applied only to the maintenance, extension, improvement, alteration, or change of said plants, mains, services, meters, machinery, apparatus, fixtures, &c., and the acquisition of new property, real and personal, except when, and as otherwise consented to, by the Board of Directors of said first party.

FIFTH.—Said second party further agrees that, except as herein otherwise provided, it will maintain plants and properties in a proper state of preservation, that it will save the party of the first part harmless from any loss or damage to said prop-

erty by fire or the elements; that it will cause the office building situate on Broad Street, Newark, and the property of the company situate in Bank Street, Newark, to be fully insured, and that it will keep all its remaining property insured in such manner and according to the policy adopted by The United Gas Improvement Company from time to time, in reference to its various gas properties owned throughout the United States, and that it will at all times comply with the insurance clauses contained in any of the mortgages securing any of the issues of bonds herein referred to so far as is applicable to the property covered by any such mortgage.

SIXTH.—Said first party, through its proper representatives, shall have the right at all reasonable hours to inspect its property for the purpose of ascertaining its condition and the character of the management of said second party, and whether the terms of this operating agreement are being substantially complied with.

SEVENTH.—Said first party does further grant to the said party of the second part the right to make use of its corporate name in the use of said franchises or in the making of contracts, and in the conduct of the business, and to do all things necessary to carry out the terms and provisions of this contract. The party of the second part agrees to hold said party of the first part harmless from any damage resulting therefrom; and said second party further agrees that it will in good faith to the best of its ability do all it can to preserve and extend the business of the first party.

Exhibit D 29.

EIGHTH.—Said second party further agrees that the gas furnished during its operation of the property of the first part shall at all times be of good quality and delivered to the patrons of the company under proper conditions, and shall be as satisfactory for the purposes for which it is intended to be used as the gas heretofore furnished by The Newark Gas Company; the rates to consumers shall be such as shall be established from time to time by the second party or the assignee thereof as herein referred to, but shall at no time exceed in any place in the territory covered by this agreement the rate now in force to general consumers in such place, without the consent of the Board of Directors of the first party. Said gas, however, shall always be of a quality and be distributed at a price consistent with the further use and enjoyment of the franchises now or hereafter owned or controlled by said first party. Said second party shall see that all existing contracts of said first party for the supply of gas are fully performed. The first party shall not be liable for any obligations for the payment of money which may be made by the second party in the performance of this agreement.

NINTH.—As from time to time funds shall be required for the maintenance, enlargement, extension, addition, improvement, replacement, and alteration of plants, buildings, mains, meters, pipes, services, machinery, apparatus, and other appurtenances of the gas works at the time owned or operated or controlled or managed by or for Newark Consolidated Gas Company, either directly as by ownership of the majority of the stock, or under contracts for operation, or under leases (whether such contracts or leases be retained by Newark Consolidated Gas

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Company or be assigned by it for operation for its benefit in whole or in part), or for the acquisition of other property, real or personal, Newark Consolidated Gas Company, or the company that may be operating the property of Newark Consolidated Gas Company, shall in writing notify the Trustee herein of the amount of money required for such purposes. Such notice shall be in writing, signed by the President or Vice-President of the corporation demanding the same, attested by its Secretary and sworn to as a proper and necessary expenditure by the President or Vice-President of said corporation making said demand, and shall state the amount of money required at the time and the purpose for which it is required, whereupon such Trustee, within thirty (30) days from the date of such notice, shall certify sufficient of said bonds to provide the amount of money so required, and shall sell the same at the then market price, either on the market or at private sale, for cash, at not less than such market price, and shall pay the cash proceeds of such sale to the company making such demand or request as aforesaid; *Provided, however,* That if such company so elects and notifies the Trustee in writing, said Trustee instead of selling the bonds shall deliver the same to the said company, which shall in such event receive and pay for the same, not at their face value, but at their market price at the time. The first party shall on request of either the second or the third party join with it in the execution of any such requisition, notice, and demand. It is distinctly agreed, however, that no portion of such one million three hundred and seventy-five thousand dollars ($1,375,000) of bonds shall be sold in any one year to raise money for any repairs to the plant or plants at the time owned or operated

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or controlled or managed by it for the Gas Company, either directly or under leases or contracts as above set forth, until at least the sum of thirty thousand dollars ($30,000) shall have been expended in that year for repairs to said plant or plants, which facts shall be set out in the requisition made by said company upon said Trustee, and shall be sworn to by the said President or Vice-President of said company making such demand.

TENTH.—The accumulated surplus of the first party (other than the amount of cash now in the business as working capital, which shall be paid to and remain in the hands of the second party for such purposes), remaining after deducting therefrom the sum permitted to be deducted to carry out the merger and consolidation agreement in accordance with the terms of a contract made on the first day of November, 1898, between James Smith, Jr., of the first part; Thomas A. Nevins, of the second part; The United Gas Improvement Company, of the third part, and Fidelity Trust Company, of the fourth part, shall (with the exception of the certificates of stock of any gas companies owned by said first party, which so far as permissible under the mortgages herein referred to are to be placed in the hands of Fidelity Trust Company, as Trustee under this agreement, and the income derived therefrom shall be paid as collected by either such Trustee or by the gas company to the second party, to be applied to the payment of interest charges as herein provided as to other income from such surplus) be paid to or assigned and delivered to Fidelity Trust Company, the Trustee under the consolidated mortgage issued by said first party, and hereinabove set forth as Trustee for the following

purposes, namely, to invest said funds, from time to time, in such securities as may be approved by the first party hereto and the said Trustee, and which shall not be objected to by the second party hereto, which second party shall in every case have submitted to it every such proposed investment before the same shall be made, so as to have the opportunity of approving or objecting thereto. The income derived from the same shall be collected and paid by said Trustee, as collected, to the second party, to be applied on account of the interest charges, first, of The Newark Gas Company and of The Montclair Gas and Water Company upon their bonds now outstanding and specified above; and second, on account of the interest charges of said first party upon its bonds mentioned above; and the principal, except as hereinafter stated shall remain intact in said Trustee's hands until the one million three hundred and seventy-five thousand dollars ($1,375,000) of bonds retained for expenditures upon the property and acquisition of new properties, as hereinabove set out, have been expended or applied in accordance with the provisions in the mortgage securing the same and of this agreement. During this period said accumulated surplus shall constitute a fund which shall be reduced to cash and applied if demanded by the second party, first, so far as necessary to interest upon the bonds, subject to which, as described above, the properties of certain of the consolidated companies have been acquired; and, second, so far as necessary, to interest upon the bonds of said first party whenever the current profits from the manufacture and sale of gas accumulated by the second party thirty (30) days before the next interest date on any of said bonds shall not be sufficient to pay the same when it

falls due, after adding thereto any sums payable to the second party during the period by said Trustee out of interest or income upon such invested fund. Whenever such part of principal of such fund shall be required for such purpose the second party shall, twenty (20) days before such next interest date, in writing, advise the Trustee of the amount required for the purpose and demand payment to it by the Trustee of such amount for such purpose, whereupon said Trustee shall, prior to such interest date, pay such amount to the second party, who shall apply the same only to such interest payment. Such written demand and notice shall be made by the lessee and attested by the seal of the corporation making the demand, attested by its Secretary and verified by the affidavit of one of its officers, and shall be signed by its President or Vice-President, and a copy shall be filed by the second party with the first party. The first party shall on request of either the second or the third party join with it in the execution of any such requisition or demand. In this connection it is further agreed, so long as The United Gas Improvement Company is operating this company, or until its liability thereunder has ceased, to wit, on the second day of January, 1905, there may be included as part of the cost of operation of the plant and manufacture and sale of product, a sum not exceeding twenty thousand dollars ($20,000) per annum, to be paid to The United Gas Improvement Company, and which shall be accepted by it as in full settlement of its outgoes in the way of time, salaries, and expenses of the various officials in its home office, in connection with the performance of its agreement or guarantees under this contract.

ELEVENTH.—After said bonds, amounting to one million three hundred and seventy-five thousand dollars ($1,375,000), shall have all been applied to expenditures upon the plant and acquisition, as provided above in Section Ninth and in said mortgage, then whatever remains of said accumulated surplus shall be applicable and may be applied by the second party to expenditures upon the plant and acquisition of property, and shall be delivered to the second party for that purpose, upon like request, terms and conditions as is provided above for the delivery of any part of said one million three hundred and seventy-five thousand dollars ($1,375,000) of bonds for like purposes.

TWELFTH.—Upon the termination of this contract, by the operation of time, or in any manner whatsoever, the second party shall deliver to the first party the property of said first party, except as the same may have been altered, changed, removed, or replaced, in accordance with the terms of this instrument, together with all the additions, extensions, and improvements made to the same hereunder; *Provided,* The first party shall first pay to the said second party the actual cost, without interest, of all extensions or new acquisitions of property made or acquired by said second party not paid for out of said accumulated surplus, or out of the proceeds of the one million three hundred and seventy-five thousand dollars ($1,375,000) of bonds in the manner hereinabove referred to.

THIRTEENTH.—It is further agreed between the first and second parties that the second party may assign this contract of operation to the third party at any time within six years from the execution of

these presents; *Provided,* That at the time of such assignment said third party has a paid-in cash capital of at least one million dollars ($1,000,000); that said third party shall confine its business during the continuance of this agreement to the manufacture and sale of gas in Essex and Union Counties, in the State of New Jersey, to the town of Harrison, the borough of East Newark, and the township of Kearny, in the county of Hudson, in said State.

FOURTEENTH.—It is further agreed between the parties hereto that all the privileges and rights accruing to the second party by virtue of this agreement shall pass by said assignment to said third party; that all the obligations imposed upon the said first party in connection with said second party by the terms of this agreement shall thereafter be performed by said first party with said third party. It is distinctly understood and agreed, however, that the said second party, notwithstanding such assignment, shall be liable upon all the covenants made by it in this agreement for a period of six (6) years from January first, eighteen hundred and ninety-nine, notwithstanding any assignment thereof to said third party. But that after the expiration of said six (6) years said second party, provided such assignment has been made as aforesaid, shall not be liable upon any of the covenants herein contained any more than if it had never made this agreement, except for breaches thereof occurring during said period of six (6) years, and except as hereinafter stated in Section Fifteenth. And it is further agreed that the liability of the third party to the covenants herein contained shall commence from the assignment to it of this agree-

ment by said second party. This section, except as otherwise hereafter set out in Section Fifteenth, shall be considered to be a full and complete release of said second party from all its covenants in this agreement and from all liability, except as hereinafter set forth in Section Fifteenth, after January second, nineteen hundred and five, and as the substitution of the third party to such covenants and liabilities in place of said second party after that date and in acceptance of such substitution by the first party; *Provided,* Said assignment has at that time been executed by said second party to said third party. No such assignment as is provided for, however, shall be effectual until a notice in writing shall be filed by the third party with the first party, stating the fact that such assignment has been made, that the third party has accepted all the obligations of this instrument, and accompanied by a statement, signed by the President or Vice-President and Treasurer of the third party, and attested by the seal of the corporation, certifying that the third party has received into its treasury the sum of one million dollars ($1,000,000), cash capital, and that the same, or the assets representing the same, are at the date of such notice of assignment intact. From the time of said assignment and notice thereof, as aforesaid, until the expiration of six (6) years from January first, eighteen hundred and ninety-nine, or until and including January second, nineteen hundred and five, the said second party and the third party shall be separately and jointly liable to the first party for the performance of this contract.

FIFTEENTH.—Said second party further agrees that it will not, during the continuance of this

agreement, and the performance of the obligations of this agreement by the first party, to wit, for the period of nine hundred and ninety-nine years, from December first, eighteen hundred and ninety-eight, engage in the business of supplying gas to consumers for use in the territory above defined, otherwise than in accordance with the terms and conditions of this instrument, and subject to its provisions, unless the Board of Directors of said party of the first part shall have first assented thereto in each particular case or by general agreement. It is distinctly agreed that this covenant on the part of the said second party shall be binding for the full term of years covered by this contract of operation, without reference to any assignment thereof to said third party.

SIXTEENTH.—In case the assignment hereinabove referred to has not been made within six years from January first, eighteen hundred and ninety-nine, then and in that case the second party shall be liable on all the covenants herein contained for the full term covered by this contract of operation. In case said assignment has been made as aforesaid, said second party shall be liable after the expiration of said six-year period only for breaches thereof occurring within the six-year period, and for its covenant not to engage in a similar business in the territory above defined as aforesaid.

SEVENTEENTH.—If said second party or third party shall not perform the obligations herein undertaken by or for it, the first party shall have the right to terminate this agreement, and in case any sum of money herein agreed to be paid to or for said party of the first part is not paid within ninety

(90) days from the date when the same becomes due, or by these presents ought to have been paid, and has been demanded, then and in that event this agreement shall, at the option of the first party, at once, cease and be determined, and the party of the first part, its successors or assigns, shall be entitled forthwith to resume control and take immediate possession of its own property, with the appurtenances, corporate rights and franchises, and all additions and improvements thereon, and from thenceforth to manage, operate and control the same as fully as if this contract of operation had not been made, and may demand all moneys due and unpaid by said parties of the second or third part.

EIGHTEENTH.—It is further agreed by and between the parties hereto that the bonds of said first party, amounting to ten million dollars ($10,000,000) may, at the option of said first party, be refunded and reissued when said bonds shall come due, or at any time prior thereto, that when said bonds are reissued they shall then be issued at as low a rate of interest as is practicable at that time; and the second party or the third party, as the case may be, hereto, hereby covenants and agrees to pay said interest on said bonds so issued to or for said party of the first part in lieu and instead of the interest on said present issue of bonds; that said rate of interest shall in no event be higher than five per cent. per annum; that any profit arising from the refunding of said bonds at a lower rate of interest than five (5) per cent. shall be divided equally between the first party and the second party or the first party and the third party, as the case may be, depending upon which company is carrying out this contract of operation at the time; that said

new issue of bonds shall not be greater in amount than the present issue of bonds, except by consent of said first party and said second party, or said first party and said third party, as the case may be. It is further agreed, however, that the execution of this agreement shall in no way complicate the standing, liability, or priority of said proposed new issue of bonds, and that said bonds if issued as aforesaid shall, so far as any result from the execution of this paper is concerned, have the same standing, legality, and priority as have the bonds of said first party heretofore issued as aforesaid.

NINETEENTH.—The first party does hereby assign to the second party a certain agreement dated June twentieth, eighteen hundred and eighty-nine heretofore made between The Citizens Gas Light Company, of Newark, and The Orange Gas Light Company, which contract by merger of The Citizens Gas Light Company and The Newark Gas Light Company became vested in The Newark Gas Company, and by the consolidation herein referred to became finally vested in Newark Consolidated Gas Company, and does agree that in so far as it is in its power as the owner of shares of stock of The Orange Gas Light Company, it will cause whatever deeds of ratification of this assignment and of confirmation of said contract as may be advised by counsel to be executed and delivered to the second party. Said assignment is made for the incompleted term of this agreement. Upon the expiration of said contract a like agreement in renewal thereof shall be executed directly between The Orange Gas Light Company and the party of the second part or the party of the third part, whichever of the two may at that time be the operating company under this

agreement, for the balance of the term of this agreement. This assignment, or any renewal thereof, such as is above provided for, shall terminate at the termination of this agreement.

TWENTIETH.—Newark Consolidated Gas Company agrees that it will vote all shares of stock of The East Newark Gas Light Company which are now or may be hereafter acquired or controlled by it whenever requested so to do by the second party or by the third party for the issue of bonds by The East Newark Gas Light Company to an amount not exceeding two hundred and fifty thousand dollars ($250,000), at par, and for the execution and delivery of a mortgage by said company to secure said bonds, and that it will also in the same manner vote for the sale and disposal of said bonds and the payment of the proceeds thereof to the party of the second part or to the party of the third part hereunder, for application by such party to the extension, maintenance, enlargement, addition, improvement, replacement, and alteration of the plants, buildings, mains, meters, pipes, and services, machinery, apparatus, and other appurtenances of the gas works of The East Newark Gas Light Company.

IN WITNESS WHEREOF, The party of the first part has caused these presents to be executed by its President, and its corporate seal to be hereunto affixed, duly attested by its Secretary; and the party of the second part has caused these presents to be executed by its President, and its corporate seal to be affixed, duly attested by its Secretary, and the party of the third part has caused these presents to be executed by its President, and its corporate seal

affixed, duly attested by its Secretary, the day and year first above written.

NEWARK CONSOLIDATED GAS COMPANY,
By
(SEAL) THOMAS A. NEVINS,
President.

Attest:
U. H. MCCARTER,
Secretary.

THE UNITED GAS IMPROVEMENT COMPANY,
By
(SEAL) THOMAS DOLAN,
President.

Attest:
EDWARD C. LEE,
Secretary.

ESSEX AND HUDSON GAS COMPANY,
By
(SEAL) B. M. SHANLEY,
President.

Attest:
J. P. DUSENBERRY,
Secretary.

Exhibit D 30.

PRINTED PRICE LISTS OF RIPPEL & COMPANY, 1913 TO 1926.

(Not printed by consent.)

Exhibit D 31.

FROM QUOTATION SHEETS OF J. S. RIPPEL AND COMPANY

	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926
Hudson County Gas Company														
High	132	132	132	134½	134	122	115	95	100	114	112	122	130	142½
Low	124	127	128	130	118	105	95	85	85	98	105	107	119	128
Last	126	130	130	132	120	110	100	85	98	110	107	119	128	142
Essex and Hudson Gas Company														
High	136	136	134	136	135	125	115	105	105	115	115	124	131	143
Low	128	127	131	132	120	110	100	95	95	100	108	108	120	128
Last	128	132	132	133	125	110	100	95	100	112	110	120	128	142
The Paterson and Passaic Gas and Electric Company														
High	90	90	90	88	91	85	80	80	65	80	75	81	86	93
Low	90	90	87	87	85	80	80	65	65	65	73	73	80	84
Last	90	90	87	88	85	80	80	65	65	75	73	80	84	93
Somerset, Union and Middlesex Lighting Company														
High	74	74	71	73	73	70	65	65	55	65	60	65	70	74
Low	71	68	68	68	65	60	60	55	50	55	50	50	65	65
Last	72	70	69	70	65	65	65	55	55	58	50	65	65	72
New Brunswick Light, Heat and Power Company														
High	80	82	87	88	88	80	75	70	60	70	75	80	84	90
Low	80	80	80	85	80	75	70	60	60	60	70	70	80	80
Last	80	80	86	88	80	75	70	60	60	70	70	75	80	90

Exhibit D 32.

RIPPEL'S PRICE LISTS FOR 1927.

(Not printed by consent.)

Exhibit D 33.

OUTWATER & WELLS' PRICE LISTS MARCH, 1923, TO DECEMBER, 1927.

(Not printed by consent.)

Exhibit D 34.

FROM OUTWATER AND WELLS QUOTATION SHEETS
BID PRICES

	Essex and Hudson Gas Company	Hudson County Gas Company	The Paterson and Passaic Gas and Electric Company	Somerset, Union and Middlesex Lighting Company	New Brunswick Light, Heat and Power Company
March 15, 1923	112	110	76	55	70
April 16, 1923	110	109	76	53	70
June 1, 1923	110	107½	76	53	70
July 1, 1923	110	107	76	53	70
September 5, 1923	110	107	75	53	70
November 1, 1923	109	106	73	53	70
December 11, 1923	109	107	73	50	70
January 4, 1924	108	106	73	50	70
February 1, 1924	108	105	74	50	70
March 4, 1924	108	105	74	50	70
April 3, 1924	108	106	76	50	70
May 1, 1924	110	107	76	50	70
June 5, 1924	112	110	77	55	74
July 2, 1924	112	111	78½	55	74
August 2, 1924	113	112	78½	55	74
September 3, 1924	113½	112	79	55	74
October 2, 1924	116	115	80	55	75
November 1, 1924	119	118	80	55	75
December 1, 1924	120	119	80	55	75
January 2, 1925	119½	119	80	55	75
February 4, 1925	120	119½	81	60	75
March 2, 1925	121	120	81	60	75
April 1, 1925	122	122	82	60	78
May 1, 1925	123½	123½	83	60	78
June 1, 1925	125	125	83½	60	78
July 1, 1925	127	127	84½	60	80
August 1, 1925	127	127	85	60	80
September 1, 1925	127	127	85	60	80
November 1, 1925	128	127	85	60	80
December 1, 1925	128	127	85	60	80
January 4, 1926	128	127	85	60	80
February 1, 1926	128	127	85	60	80
March 1, 1926	129	128	86	60	80
April 1, 1926	131	131	86	65	80
May 3, 1926	131	131	86	65	80
June 2, 1926	132	131	87	67	80
July 6, 1926	135	133	87	67	80
August 2, 1926	134	134	88½	68	80
September 7, 1926	134	134	88½	68	80
October 4, 1926	135	135	91	70	86
November 1, 1926	136	136	92	70	86
December 1, 1926	138	138	92	71	86
January 3, 1927	142	142	92½	71	86
February 1, 1927	142	142	91	72	90
March 1, 1927	142½	142½	90	72	90
April 1, 1927	148	148	95	74	92
May 1, 1927	153	153	95	76	92
June 1, 1927	148	148	94	73	90
July 6, 1927	146	146	93	72	90
August 1, 1927	142	142	93	72	90
September 7, 1927	144	144	92	72	90
October 5, 1927	144	144	92	72	90
November 2, 1927	145	146	93½	72	90
December 5, 1927	148	148	95	72	90

Exhibit D 35.

FROM OUTWATER AND WELLS QUOTATION SHEETS

BID PRICES

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

6% PREFERRED STOCK

	Per Share	1.37 Shares	.86 Shares	.69 Shares
March 2, 1925	93	127.41	79.98	64.17
April 1, 1925	93	127.41	79.98	64.17
May 1, 1925	92½	126.73	79.55	63.83
June 1, 1925	92½	126.73	79.55	63.83
July 1, 1925	93	127.41	79.98	64.17
August 1, 1925	93	127.41	79.98	64.17
September 1, 1925	96	131.52	82.56	66.24
November 1, 1925	96	131.52	82.56	66.24
December 1, 1925	97	132.89	83.42	66.93
January 4, 1926	97	132.89	83.42	66.93
February 1, 1926	97	132.89	83.42	66.93
March 1, 1926	97	132.89	83.42	66.93
April 1, 1926	97	132.89	83.42	66.93
May 3, 1926	97	132.89	83.42	66.93
June 2, 1926	97	132.89	83.42	66.93
July 6, 1926	99	135.63	85.14	68.31
August 2, 1926	101	138.37	86.86	69.69
September 7, 1926	100	137.00	86.00	69.00
October 4, 1926	102	139.74	87.72	70.38
November 1, 1926	102	139.74	87.72	70.38
December 1, 1926	102	139.74	87.72	70.38
January 3, 1927	102	139.74	87.72	70.38
February 1, 1927	102	139.74	87.72	70.38
March 1, 1927	102	139.74	87.72	70.38
April 1, 1927	103½	141.80	89.01	71.42
May 1, 1927	106½	145.91	91.59	73.49
June 1, 1927	107	146.59	92.02	73.83
July 6, 1927	107	146.59	92.02	73.83
August 1, 1927	107	146.59	92.02	73.83
September 7, 1927	107	146.59	92.02	73.83
October 5, 1927	107	146.59	92.02	73.83
November 2, 1927	107	146.59	92.02	73.83
December 5, 1927	109	149.33	93.74	75.21

Exhibit D 36.

Outstanding Shares	Essex & Hudson Gas Company 65,000		Hudson County Gas Company 105,000		Paterson & Passaic Gas & Electric Co. 50,000		Somerset, Union & Middlesex Ltg. Co. 10,500		New Brunswick Lt. Ht. & Pr. Co. 4,000	
	Shs. Tfd.	Ctfs. Issd.	Shs. Tfd.	Ctfs. Issd.	Shs. Tfd.	Ctfs. Issd.	Shs. Tfd.	Ctfs. Issd.	Shs. Tfd.	Ctfs. Issd.
1913	2,726	88	7,910	233	561	12	904	26	80	8
1914	6,982	99	12,988	110	330	28	236	17	635	16
1915	6,842	125	12,682	147	974	28	906	12	80	3
1916	4,095	112	4,066	132	1,798	51	3,533	97	389	11
1917	951	51	3,964	114	741	17	495	18	300	8
1918	1,041	28	1,817	140	184	7	233	7	295⅘	11
1919	2,186	60	2,605	82	373	16	30	5	275	4
1920	1,016	28	3,819	80	187	5	73	9	225	4
1921	3,365	112	9,102	271	1,571	24	475	20	178	6
1922	10,274	326	15,561	443	1,081	44	565	15	210	6
1923	2,396	90	4,343	217	1,371	64	563	15	170	7
1924	3,937	148	7,295	194	2,535	100	853	20	280	13
1925	3,326*	143	5,903*	230	1,010*	81	448*	17	265	13
1926	6,842	146	12,772	286	1,702†	88	732†	21	496	13
11 Months Ending November 30, 1927	12,460‡	305	16,385‡	413	2,808‡	93	1,749‡	56	919‡	35

* Does not include shares owned by Estate of B. M. Shanley transferred to F. U. Tr. Co. Sub. Trustee
2,361 4,370 3,279 188

† Does not include shares transferred from P. S. Corp. of N. J. to P. S. Electric & Gas Co.
2,697 4,224

‡ Does not include shares transferred to Public Service Corp. of N. J. and P. S. Electric & Gas Co. or Roosevelt Comm.

Exhibit D 37.

6% CUMULATIVE PREFERRED STOCK

PUBLIC SERVICE ELECTRIC & GAS COMPANY

	Newark Office	New York Office	Philadelphia Office	Total
1925				
Shares....New Issue.....	150,000	0	0	150,000
" ....Transferred.....	31,745	150,942	22,837	205,524
Ctfs. ....New Issue.....	4	2,779	2,561	5,344
" ....Transferred.....	588	5,536	1,746	7,870
1926				
Shares....New Issue.....	0	0	150,000	150,000
" ....Transferred.....	30,265	129,461	52,526	212,252
Ctfs. ....New Issue.....	0	0	2,206	2,206
" ....Transferred.....	954	4,151	1,513	6,618
1927				
Shares....New Issue.....	190,398	20,926	5,603	216,927
" ....Transferred.....	15,057	178,564	32,564	226,185
Ctfs. ....New Issue.....	67	496	107	670
" ....Transferred.....	393	4,585	724	5,702
Shares Outstanding November 30, 1927.....				516,927

Exhibit D 38.

Chicago
208 So. La Salle Street

Boston
Boston News Bureau Bldg.

San Francisco
Croker Building

DOREMUS & COMPANY

ADVERTISING

The Wall Street Journal Building
44 Broad Street, New York.

New York
December 8, 1927.

MR. T. W. VAN MIDDLESWORTH,
Treasurer,
Public Service Corp. of N. J.
Newark, New Jersey.

DEAR SIR:

In accordance with the request of Drexel & Company we are attaching herewith the list of newspapers used on March 14th, 1924 for the notice headed "To the Holders of the Securities of Public Service Corporation of New Jersey."

Yours very truly,

(signed) E. T. TOMLINSON, JR.
Vice President.

Philadelphia .....Ledger
Evening Ledger
Bulletin
Inquirer
North American*
Record

* Out of business.

Exhibit D 38.

New York	Herald**
	Evening Post
	Sun
	Times
	Tribune
	Wall St. Journal
	World
	Financial Chronicle
Pittsburgh	Gazette Times-Chronicle Telegraph
Hartford	Courant
Providence	Journal
New Haven	Register
Detroit	Free Press
Baltimore	Sun
Washington	Star
Chicago	Journal of Commerce
	Tribune
Cleveland	Plain Dealer
St. Louis	Globe Democrat
St. Paul	Pioneer Press
Minneapolis	Journal
Milwaukee	Sentinel
Boston	Herald & Traveler
	News Bureau
	Transcript
Paterson	Call
	News
	Press Guardian
Passaic	Herald
	News
Camden	Courier*
	Camden Telegram*
Hudson	Dispatch

* Publications not now being used.

** Combined with Tribune.

Exhibit D 38.

Trenton	Gazette (now consolidated)
	Times
Jersey City	Jersey Journal
Newark	Ledger
	Evening News
	Star Eagle*
	Sunday Call
Bayonne	News
	Times
New Brunswick	Home News
Plainfield	News
Hoboken	Observer
Elizabeth	Journal
	Times
Perth Amboy	News
Hackensack	Record

* Publications not now being used.

Exhibit D 39.

Exhibit D 39.

OUTWATER AND WELLS

	Essex and Hudson Gas Company		Hudson County Gas Company		The Paterson and Passaic Gas and Electric Company	
January 1, 1923, were holders of record of....		0 Shares		9 Shares		0 Shares
To August 1, 1924 Stock Ledger shows						
Credits	327 Shares		478 Shares		518 Shares	
Debits	327 Shares	0 Shares	482 Shares	4 Shares	518 Shares	0 Shares
Balance August 1, 1924...		0 Shares		5 Shares		0 Shares
From August 1, 1924 to January 10, 1927 Stock Ledger shows						
Credits	539 Shares		2 178 Shares		134 Shares	
Debits	451 Shares	88 Shares	2 101 Shares	77 Shares	134 Shares	0 Shares
Balance January 10, 1927.		88 Shares		82 Shares		0 Shares
From January 10, 1927 to April 26, 1927 Stock Ledger shows						
Credits	53 Shares		1 181 Shares		203 Shares	
Debits	141 Shares	88 Shares	1 157 Shares	24 Shares	100 Shares	103 Shares
Balance April 26, 1927...		0 Shares		106 Shares		103 Shares
Outwater and Wells were not stockholders of record	April 20, 1925 to October 5, 1925 October 7, 1925 to October 13, 1925 October 26, 1925 to October 30, 1925 December 16, 1925 to December 19, 1925 February 15, 1926 to April 14, 1926 November 17, 1926 to December 8, 1926 March 18, 1927 to May 11, 1927		February 5, 1925 to February 20, 1925 April 13, 1925 to May 12, 1925 June 10, 1925 to June 16, 1925 October 19, 1925 to November 9, 1925 December 4, 1925 to December 19, 1925 January 23, 1926 to February 8, 1926 February 16, 1926 to February 19, 1926 April 22, 1926 to May 19, 1926 July 14, 1926 to July 22, 1926 November 15, 1926 to December 3, 1926		August 6, 1925 to October 22, 1925 June 11, 1926 to March 3, 1927	

531

40 30 20 10

Exhibit D 40.

Shares credited on Stock Ledgers	Hudson County Gas Company	Essex and Hudson Gas Company	Paterson and Passaic Gas and Electric Company	Somerset, Union and Middlesex Lighting Company	New Brunswick Light, Heat and Power Company
OUTWATER AND WELLS					
August 1, 1924	5	0	0	0	0
January 10, 1927	82	88	0	0	0
April 26, 1927	106	0	103	100	0
ROOSEVELT AND SONS					
August 1st, 1924	0	0	0	0	0
January 10, 1927	0	0	167	22	0
April 26, 1927	0	0	17	76	0
FIDELITY UNION TRUST COMPANY					
Sub. Trustee, Estate of B. M. Shanley					
January 10, 1927	4 370	2 361	3 279	188	0
April 26, 1927	4 370	2 361	3 279	188	0
Mary Regis Shanley	0	0	0	0	0
William C. Shanley, Jr.	0	0	0	0	0
Bernard M. Shanley, 2nd	0	0	0	0	0
Estate of Wm. C. Shanley	0	0	0	0	0
Grace B. S. Hanson	0	0	0	0	0
Mary R. Shanley	0	0	0	0	0
Helen L. Shanley	0	0	0	0	0

Exhibit D 41.

SHARES CREDITED ON STOCK LEDGERS DECEMBER 13, 1927.

	Essex & Hudson Gas Co.	Hudson Co. Gas Company	Pat. & Pas. G. & E. Company	S. U. & M. Lighting Company	N. B. Light, Heat & Power Co.
Shares owned by P. S. Corporation of N. J....	0	60	15.88	13	129⅘
and P. S. Electric & Gas Co.....	48 585	81 558	41 230.20	7 919	2 597
Shares owned by Estate of B. M. Shanley.	2 361	4 370	3 279	188	0
" " " Roosevelt and Sons.....	25	0	0	88	0
" " " Outwater and Wells.....	60	304	135	0	0
Shares in name of Roosevelt Committee.....	3 103	4 617	1 216	981	0
Shares owned by public.....	10 866	14 091	4 123.92	1 311	1 273⅕
Total shares outstanding.....	65 000	105 000	50 000.00	10 500	4 000
Percent owned by Public Service.....	74.74 plus	77.73 plus	82.49 plus	75.54 plus	68.17
" " " parties to suit.....	8.53 "	8.84 "	9.26 "	11.97 "	0.
" " " public	16.71 "	13.42 "	8.24 "	12.48 "	31.83
	100.00	100.00	100.00	100.00	100.00

40 30 20 10

Exhibit D 42.

SHEET SHOWING TOTAL NUMBER OF INDIVIDUAL STOCKHOLDERS IN, AND THE NUMBER WHO DEPOSITED STOCK UNDER AGREEMENT DATED DECEMBER 28TH, 1926.

	Number of Stockholders		Per Cent. of Stockholders Depositing
	12/28/26	Deposited	
Essex and Hudson Gas Company.....	665	254	38.2%
Hudson County Gas Company.....	893	385	43.1%
Paterson and Passaic Gas & Electric Company..	212	67	31.6%
New Brunswick Light, Heat and Power Company.	89	35	39.3%
Somerset, Union & Middlesex Lighting Company.	114	45	40. %

Exhibit D 43.

NUMBER OF SHARES OF STOCK OF THE LESSOR COMPANIES, ESSEX AND HUDSON GAS COMPANY, HUDSON COUNTY GAS COMPANY, NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, AND SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, OWNED BY PUBLIC SERVICE ELECTRIC AND GAS COMPANY, AND BY PUBLIC SERVICE CORPORATION OF NEW JERSEY, ON JANUARY 10, 1927, WHEN THE OFFER WAS MADE.

	Essex and Hudson Gas Company	Hudson County Gas Company	New Brunswick Light, Heat and Power Company	The Paterson and Passaic Gas and Electric Company	Somerset, Union and Middlesex Lighting Company
Public Service Electric and Gas Company..	...	...	...	2 697 (*a*)	4 224 (*b*)
Public Service Corporation of New Jersey..	...	...	1 (*c*)	...	93 (*d*)

(*a*) Acquired in 1905 and 1906.
(*b*) Acquired in 1907.
(*c*) Acquired in 1927 (Directors share).
(*d*) Acquired in 1925.

TOTAL NUMBER OF SHARES OF LESSOR COMPANIES OUTSTANDING JANUARY 10, 1927

	Essex and Hudson Gas Company	Hudson County Gas Company	New Brunswick Light, Heat and Power Company	The Paterson and Passaic Gas and Electric Company	Somerset, Union and Middlesex Lighting Company
Shares outstanding.....	65 000	105 000	4 000	50 000	10 500

NUMBER OF SHARES OF STOCK OF LESSOR COMPANIES ACQUIRED IN PURSUANCE OF THE OFFER DATED JANUARY 10, 1927

	Essex and Hudson Gas Company	Hudson County Gas Company	New Brunswick Light, Heat and Power Company	The Paterson and Passaic Gas and Electric Company	Somerset, Union and Middlesex Lighting Company
Number of Shares.....	48 265	80 351	2 728.8	38 529.08	3 260.68

TOTAL NUMBER OF SHARES OF LESSOR COMPANIES NOW HELD BY PUBLIC SERVICE ELECTRIC AND GAS COMPANY AND PUBLIC SERVICE CORPORATION OF NEW JERSEY

	Essex and Hudson Gas Company	Hudson County Gas Company	New Brunswick Light, Heat and Power Company	The Paterson and Passaic Gas and Electric Company	Somerset, Union and Middlesex Lighting Company
Public Service Electric and Gas Company..	48 265	80 351	2 597	41 225.20	7 562
Public Service Corporation of New Jersey..	...	...	132.8	.88	15.68

Exhibit D 44.

AGREEMENT dated the 10th day of June, 1927, by and between W. EMLEN ROOSEVELT, EVANS R. DICK, ROSCOE C. INGALLS, R. IRVING OUTWATER, WILLIAM C. SHANLEY, JR., and ERNEST STURM, and those who may be associated with them and their successors (hereinafter called the "Committee"), parties of the first part, and

Such holders of the shares of the capital stock of ESSEX AND HUDSON GAS COMPANY, HUDSON COUNTY GAS COMPANY, THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY, SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY, NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY, SOUTH JERSEY GAS, ELECTRIC AND TRACTION COMPANY, THE GAS AND ELECTRIC COMPANY OF BERGEN COUNTY, NEWARK CONSOLIDATED GAS COMPANY and THE RIDGEWOOD GAS COMPANY (hereinafter sometimes called the "Lessor Corporations"), all of which companies are corporations organized and existing under the laws of the State of New Jersey, as shall become parties to this agreement in the manner hereinafter provided, together with their assignees, transferees and successors in interest, and the holders from time to time of the certificates of deposit issued hereunder (all of whom are hereinafter sometimes called the "Depositors"), parties of the second part.

RECITALS.

1. The Public Service Corporation of New Jersey, a New Jersey corporation, is the owner of all or substantially all of the common capital stock of the Public Service Electric and Gas Company, a New Jersey corporation.

2. The said Public Service Electric and Gas Company is in possession and enjoyment under leases and assignments of leases of the properties and franchises owned or controlled by the above-named several companies, which for convenience are divided into two groups, viz.:

Group 1:

Hudson County Gas Company.
Essex and Hudson Gas Company.
The Paterson and Passaic Gas and Electric Company.
Somerset, Union and Middlesex Lighting Company.
New Brunswick Light, Heat and Power Company.

Group II:

Newark Consolidated Gas Company.
South Jersey Gas, Electric and Traction Company.
The Gas and Electric Company of Bergen County.
The Ridgewood Gas Company.

From the rentals paid to the Lessor Corporations respectively they are enabled to pay and do pay dividends upon their outstanding capital stock, which capital stock and dividends are respectively as follows:

(*a*) Essex and Hudson Gas Company has authorized $6,500,000 in par value of capital stock, all of which is issued and outstanding, on which dividends at the rate of 8% per annum are being paid;

(*b*) Hudson County Gas Company has authorized $10,500,000 in par value of capital stock, all of which is issued and outstanding, on which dividends at the rate of 8% per annum are being paid;

(*c*) South Jersey Gas, Electric and Traction Company has authorized $6,000,000 in par value of capital stock, all of which is issued and outstanding, on which dividends at the rate of 8% per annum are being paid;

(*d*) The Gas and Electric Company of Bergen County has authorized $2,000,000 in par value of capital stock, all of which is issued and outstanding, on which dividends at the rate of 5% per annum are being paid;

(*e*) New Brunswick Light, Heat and Power Company has authorized $400,000 in par value of capital stock, all of which is issued and outstanding, on which dividends at the rate of 5% per annum are being paid out of the rental reserved in the lease made by Gas Light Company of the City of New Brunswick, all of the capital stock of which is owned by said first-named company, which also joined in said lease;

(*f*) Newark Consolidated Gas Company has authorized $6,000,000 in par value of capital stock, all of which is issued and outstanding, on which dividends at the rate of 5% per annum are being paid;

(*g*) The Paterson and Passaic Gas and Electric Company has authorized capital stock of the par value of $5,000,000, all of which is

issued and outstanding, on which dividends at the rate of 5% per annum are being paid;

(*h*) Somerset, Union and Middlesex Lighting Company has authorized capital stock of the par value of $1,050,000, all of which is issued and oustanding, on which dividends at the rate of 4% per annum are being paid;

(*i*) The Ridgewood Gas Company has authorized $100,000 in par value of capital stock, all of which is issued and outstanding, on which dividends at the rate of 2% per annum are being paid.

3. The above specified stocks of Essex and Hudson Gas Company, Hudson County Gas Company and South Jersey Gas, Electric and Traction Company (on which dividends at the rate of 8% per annum are being paid) are hereinafter called "8% stocks"; the above specified stocks of The Paterson and Passaic Gas and Electric Company, Newark Consolidated Gas Company, The Gas and Electric Company of Bergen County and New Brunswick Light, Heat and Power Company (on which dividends at the rate of 5% per annum are being paid) are hereinafter called "5% stocks"; the above specified stock of the Somerset, Union and Middlesex Lighting Company (on which dividends at the rate of 4% per annum are being paid) is hereinafter called "4% stock"; the above specified stock of The Ridgewood Gas Company (on which dividends at the rate of 2% per annum are being paid) is hereinafter called "2% stock." Such dividends at rates not exceeding those above specified respectively are hereinafter sometimes called "regular dividends."

4. For upwards of the last twenty years the properties and franchises of the Lessor Corporations, with the exception of those of Ridgewood Gas Company leased in 1910, have been operated under the said leases by the respective lessees therein named or by the immediate or remote assignees thereof.

5. In and subsequent to the month of December, 1926, the said Public Service Corporation of New Jersey and Public Service Electric and Gas Company made and have been making efforts to purchase or cause to be purchased the stocks of the Lessor Corporations with a view to the ultimate merger or consolidation thereof into the said Public Service Electric and Gas Company or some other corporation or corporations affiliated therewith, and in connection with such efforts did, in or about the month of January, 1927, make certain offers for the stocks of the Lessor Corporations, including a cash offer of the following respective amounts per share of such stocks:

(*a*) For each share of the 8% stocks.... $142
(*b*) For each share of the 5% stocks.... 90
(*c*) For each share of the 4% stock..... 72
(*d*) For each share of the 2% stock..... 36

6. In pursuance of such plan of ultimate consolidation and merger, the said Public Service Electric and Gas Company and its Directors entered into a purporting merger agreement dated April 26, 1927, with the five corporations composing Group I of said Lessor Corporations and the respective Directors thereof, such agreement providing that all of said five Lessor Corporations should be absorbed by and merged into said Public Service Electric and Gas Company under certain terms and conditions

which are deemed unfair and unsatisfactory to certain of the stockholders of the said five Lessor Corporations. Such purporting merger agreement has not yet been ratified by the stockholders of the said five Lessor Corporations.

7. Although no agreement has yet been made looking toward any merger or consolidation of the four companies included in said Group II, nevertheless certain stockholders thereof desire to prevent any such ultimate merger or consolidation except upon just and equitable terms and desire to preserve intact and unimpaired the investments represented by their respective shares.

8. Certain of the stockholders of all of the said Lessor Corporations are apprehensive lest their rights as such stockholders and otherwise may have been or may be impaired or jeopardized by reason of the operation under the said leases and by the possible violations of the terms and provisions therof.

9. The Depositors desire to unite and to organize for their mutual advantage, and to take concerted and immediate action for the protection of their several rights and interests in all of the said Lessor Corporations.

NOW, THEREFORE, in consideration of the premises and the advantages to result from concerted action as aforesaid and the mutual agreements hereinafter set forth, and other good and valuable considerations, the Depositors hereby, each for himself, and not the one for the other, agree with each other and with the Committee as follows:

FIRST: The above-named parties of the first part, their associates and successors appointed as herein

provided, are hereby constituted a Committee for the Depositors with the powers hereinafter specified.

SECOND: (*a*) Central Union Trust Company of New York, having its principal office at 80 Broadway, New York City, is hereby appointed the Depositary under this agreement. The Committee, or the Depositary at the request and subject to the approval of the Committee, may designate any bank, trust company, banking house, firm or individual to act as agent of the Depositary or as a subdepositary, within or without the United States, to receive stock deposited hereunder, to issue certificates of deposit therefor as hereinafter provided and to assist in the performance of any other duties imposed by this agreement or by the Committee. Said Central Union Trust Company of New York and any successor thereto is hereinafter referred to as the Depositary.

(*b*) Wherever in this agreement it is provided that any act shall be done by or at the principal office of the Depositary, the Committee may in its absolute discretion require that in addition such act be done by or at the office of any sub-depositary. Wherever in this agreement it is provided that any act shall be done by or at the office of any one or more sub-depositaries, the Committee may nevertheless require that such act be done only at the principal office of the Depositary and/or of one or more sub-depositaries.

THIRD: (*a*) Holders of stock in any one or more of the Lessor Corporations may become parties to this agreement by depositing, under the terms of this agreement, within such period as the Commit-

tee from time to time may limit for that purpose, with the Depositary at its principal office, or with any sub-depositary or agent appointed as herein provided, their certificates of stock in such Lessor Corporation or Lessor Corporations, duly endorsed in blank or to a nominee of the Committee for transfer, or accompanied by proper instruments of assignment in blank or to a nominee of the Committee, duly executed. All such stock or the transfers thereof must have affixed thereto all stock transfer stamps required by law.

(*b*) The Committee may in its sole and absolute discretion require that the deposit of stock in any one or more of such corporations, as above provided, shall be accompanied by a proxy and dividend order in substantially the form shown in Schedule B hereto annexed. The execution or delivery of such proxy and dividend order shall not, however, be necessary to constitute any such stockholder a party to this agreement.

(*c*) Each Depositor agrees to execute and deliver to the Committee from time to time, upon its request, either before or after the issuance of any certificate of deposit, any and all further instruments of deposit or transfer, assignments, powers of attorney and other instruments necessary or desirable or which in the opinion of the Committee may be necessary or desirable to enable it fully to carry out the purposes of this agreement.

(*d*) The Committee may limit or extend the time within which and fix the conditions under which deposits may be made under this agreement; may impose penalties in respect to deposits after such time limit shall have expired and either gen-

erally or in special instances may in its discretion, before or after any time limit has expired, accept deposits under or otherwise obtain assents to this agreement and the terms and provisions hereof.

(*e*) The deposited stock shall be held by the Depositary subject to the order of the Committee, and the Depositary shall be fully protected in delivering and transferring all or any of the deposited stock in accordance with the direction of the Committee.

(*f*) For all deposits of stock under this agreement certificates of deposit, executed by or in behalf of the Depositary in substantially the form shown in Schedule A hereto annexed shall be issued to the Depositors. Such certificates of deposit in respect of each of the Lessor Corporations shall be separately registered as to ownership in the names of the respective Depositors or of their nominees, at the office of the Depositary, in books to be kept by it for that purpose, which shall also show the addresses of the respective holders of record of such certificates of deposit. Upon the transfer of any certificate of deposit issued under this agreement, the transferee shall for all purposes in all respects be substituted for the prior holder, and the registered holder (whether original or subsequent) for the time being of each certificate of deposit may be treated as the absolute owner thereof and of all rights of the original Depositor, and neither the committee nor the Depositary nor any sub-depositary shall be affected by any notice to the contrary. The Committee, under regulations to be adopted by it, may permit the issue of substitute certificates for certificates lost, stolen, mutilated or destroyed.

(*g*) Pending the preparation of the definitive certificates of deposit, temporary certificates of deposit may be issued in such form as the Committee shall approve.

(*h*) The Committee may in its discretion, at any time and from time to time, cause any or all transfer books of certificates of deposit issued under this agreement to be closed for such period or periods as the Committee may deem expedient. The Committee at any time and from time to time may appoint such registrar or registrars of certificates of deposit of one or more of the Lessor Corporations as it may determine, and may make application or cause application to be made for the listing of said certificates of deposit or any of them upon the New York Stock Exchange and elsewhere.

(*i*) All moneys or property coming into the hands of the Committee pursuant to the terms of this agreement shall be deposited with the Depositary which shall hold and dispose of the same as the agent of the Committee as provided in this agreement.

FOURTH: The Committee is hereby vested, under and subject to the terms of this agreement, as trustees of an express trust, with the complete and absolute legal and equitable title to all the shares of stock which may be deposited hereunder, and the Depositors hereby assign and transfer the same to the Committee as joint tenants and not as tenants in common. The Depositors further constitute and appoint the Committee their sole and exclusive agents and attorneys in fact and the sole and exclusive agents and attorneys in fact of each and every Depositor for the purpose of carrying out this

agreement, and the Depositors hereby jointly and severally confer upon the Committee whatever power and authority it may be necessary for the Committee to exercise in order legally and effectually to carry out and accomplish the purposes of this agreement, and they also constitute and appoint the Committee the true and lawful attorneys irrevocable of them and of each of them, to execute in their behalf such instruments in writing, and do such acts and things as the Committee may deem proper to enable the Committee to carry out this agreement, hereby giving and granting to the Committee full power and authority to do and perform each and every act and thing which it may deem requisite to be done in and about the premises, as fully to all intents and purposes as the Depositors might or could do personally, with full power of substitution, hereby ratifying and confirming all that the Committee shall lawfully do or cause to be done by virtue hereof. It is the intention of this instrument to confer upon the Committee in respect of stock at any time deposited hereunder, and in all other respects, all powers which the Committee may deem necessary or expedient in and toward the furtherance of the general purposes of this agreement in any respect, even though such powers be not herein expressly conferred or be of a character not now contemplated. The Committee may exercise any and every such power whether herein enumerated or not, as fully and effectually as if the same were herein distinctly specified and as often as it may deem expedient, the methods to be adopted in carrying out this agreement being entirely discretionary with the Committee. Any specific power or authority herein granted to the Committee shall

no be construed to impair or limit the general grant of power contained in any part of this agreement.

FIFTH: (*a*) Without in any manner limiting the powers hereby elsewhere conferred, the Committee is authorized and empowered, in its own name or the name or names of one or more of its members, or in the names of the Depositors or any one or more of them or in the names of such other person or persons, firm or firms, corporation or corporations as the Committee may deem desirable, and either with or without the preparation, adoption, approval and/or filing of any plan as hereinafter provided:

(1) To cause the deposited shares of stock of one or more of the Lessor Corporations to be transferred on the books thereof to the person or persons who for the time being shall constitute the Committee, or one or more of such persons and/or to any other person or persons whatsoever, and from time to time to cause to be made on said books such additional transfers of such shares as may be necessary or convenient by reason of any change in the personnel of the Committee as herein provided, or otherwise, or, in its discretion, in the case of deposited shares of stock of one or more of such corporations, to refrain from making or causing such transfers.

(2) To attend at and/or waive notice of or consent to the holding of any meeting of stockholders of any or all of the Lessor Corporations and any adjournment or adjournments of any such meeting, and at any such meeting or any adjournment or adjournments thereof or otherwise to vote and act in person or by proxy in respect of the deposited shares of stock of such corporation or corporations,

and also to give any consent in respect of such shares of stock either with or without a stockholders' meeting, with all the powers which the holder of record of such shares of stock would possess if personally present at any such meeting or meetings, or if otherwise acting. Any proxy, waiver, consent or ballot given, issued or voted in behalf of the Committee by one or more of its members for the time being, shall be deemed the act of the Committee.

(3) To receive from each of the Lessor Corporations any and all regular dividends as defined in the Third Recital and all other dividends or distributions declared and paid either in money or property upon the stock of such corporation deposited hereunder, and/or to pay over the same or cause the same to be paid over to the Depositary which shall

(*a*) Distribute all such regular dividends as and when received, ratably among the holders of certificates of deposit issued hereunder in respect of stock of such corporation of record at the close of business on the day fixed by such corporation for the determination of the stockholders entitled to receive such dividend.

(*b*) Hold and dispose of any such dividends or distributions or other accretions to such stock other than such regular dividends, in accordance with the provisions of this agreement hereinafter contained.

(4) To ascertain, determine, assert, enforce, exercise and protect any and all rights, powers and privileges of the Depositors and/or of the Committee and/or of any other person as stockholders or

otherwise, of or in respect of one or more of the Lessor Corporations, of every kind whatsoever and whether such rights, powers and/or privileges are or shall be based upon or arise out of the existence or total or partial validity, invalidity, construction, effect or violation of any actual or purporting control, ownership, lease, merger, consolidation, certificate of incorporation, charter, by-law, contract, deed, mortgage or other individual or corporate instrument or act or otherwise.

(5) To institute, maintain, defend or take or cause to be instituted, maintained, defended or taken, any and all actions or proceedings at law or in equity or before any court, or any Federal, State or Municipal board, body, commission, appraiser or officer whatsoever, or otherwise, or in any manner to intervene in or become a party to any such action or proceeding, instituted by others, in which the holders of stock of one or more of the Lessor Corporations are or may in the opinion of the Committee be interested or concerned, and in all such actions and/or proceedings to take such steps, give such directions, make such requests, petitions, applications and demands, file such protests and execute such papers, authorizations, consents, powers of attorney, substitutions or revocations thereof, or other instruments of any kind or nature whatsoever, as will, in the judgment of the Committee, tend to further, protect and enforce the rights and interests of any of the Depositors.

(6) To oppose, contest, appeal from, or otherwise act or move in opposition to, or in any manner to cause to be reversed, reviewed, modified, vacated, quashed or reopened, any order, judgment, decree,

decision, report, finding or other determination of any court or of any Federal, State or Municipal board, body, commission, appraiser or officer which may have been or may be rendered or made and which in the judgment of the Committe may relate to or affect in any way the interests of any of the Depositors or of the Committee or any member thereof or any of the property of any of the Lessor Corporations or otherwise.

(7) To adjust, compromise, settle and discon tinue any such or all actions or proceedings or to institute others and to adjust, compromise, settle and discontinue the same as well as the claims on which they are based.

(8) To take any and all steps which the Committee may deem advisable to protect the interests of the Depositors or any of them in connection with any appraisal of any or all of the stock of any or all of the Lessor Corporations.

(*b*) Unless otherwise provided by law, the powers hereinbefore or hereinafter conferred upon the Committee may be exercised in respect of any Lessor Corporation or the shares of stock thereof, either with or without the transfer to the Committee on the books of such corporation of any of the deposited shares of stock as herein provided.

SIXTH: The deposited stock shall be charged with the payment of the expenses of the Committee, which term is hereby defined to include the compensation of the Committee and compensation and expenses of the Depositary and/or of any sub-depositary or sub-depositaries, secretary, agent or agents, attorneys and counsel appointed or retained

hereunder and also any indebtedness, obligations and liabilities of the Committee, together with any interest on any thereof. Except as herein otherwise provided, any and all amounts of cash at any time or from time to time received or held by the Committee under this agreement may in its discretion be applied by it to or on account of the payment of such expenses as the Committee may in its discretion determine to be necessary or advisable for the purposes of this agreement.

The proportionate share of such expenses in respect of each share of stock deposited hereunder shall not exceed the greater of the following:

(*a*) $2.00 for each share of each of the 8% stocks.
1.25 for each share of each of the 5% stocks.
1.00 for each share of the 4% stock.
.50 for each share of the 2% stock; or

(*b*) The following percentages of the amount by which the sum of money or the value, as determined by the Committee, of any property received, receivable, recovered or offered in settlement, payment or exchange for any of the respective stocks of the Lessor Corporations exceeds the amounts of cash heretofore offered therefor respectively:

In the case of each of the 8% stocks, 10% of such excess over $142 per share.

In the case of each of the 5% stocks, 12½% of such excess over $90 per share.

In the case of the 4% stock, 12½% of such excess over $72 per share.

In the case of the 2% stock, 20% of such excess over $36 per share.

The Committee may in its absolute discretion charge its expenses to any one or more of the several stocks deposited hereunder, whether or not such expenses shall be incurred in connection with the Lessor Corporation to the stock of which such expenses or any part thereof shall be charged, provided that the burden on any stock shall not exceed the amounts per share hereinabove provided.

For the purpose of providing funds necessary to enable the Committee to exercise any of the rights or powers vested in or conferred upon the Committee by any of the provisions of this agreement or for the payment of the expenses of the Committee, the Committee may borrow money upon such terms and at such rates of interest, as it may in its discretion determine and may pledge or charge, as security for the payment of any and all moneys so borrowed, any or all of the stock deposited hereunder, whether or not the shares of stock so pledged shall be of the same corporation or corporations as that or those to which the whole or any part of such expenses may relate. Any pledge of stock shall be made subject to the right of the respective Depositors to receive their deposited stock when entitled thereto under any of the provisions of this agreement, subject to compliance with the conditions in respect thereof in this agreement set forth, upon making payment of their proportionate share of the expenses of the Committee.

No Depositor shall be in any manner personally liable or responsible by reason of any deposit of stock under this agreement or otherwise by reason of any of the terms and provisions hereof, it being understood and agreed that the Committee shall have recourse for the payment of its expenses only to the deposited stock and to any proceeds thereof,

the substitutes therefor or to any other property or moneys received or held by the Committee under this agreement.

All regular dividends received by the Committee upon the deposited stock of any Lessor Corporation not in excess of the respective current rates specified in the Third Recital shall be wholly free from any charge provided for in this Article Sixth and nothing herein contained shall be deemed to permit the Committee, during the deposit of any such deposited stock, to make or permit any deduction from any such regular dividend thereon received by it or on its behalf.

SEVENTH: The Committee shall have power, if and whenever in its judgment it shall become advisable so to do, to prepare and adopt a plan or plans and agreement or agreements for the reorganization, readjustment, control, separate operation, merger and/or consolidation of one or more of the Lessor Corporations with one or more of such corporations or with any other corporation or corporations, and/or for the sale, exchange, deposit, transfer or other disposition of the stocks of all or any of the Lessor Corporations; or the Committee may approve and adopt or agree to the modification of any such plan and agreement, although not proposed by it.

Any such plan and agreement may provide for the deposit, transfer, sale or exchange or other disposition of all or any of the deposited stock of all or any of the Lessor Corporations, and the Committee, subject to the right of withdrawal hereinafter provided, may deposit, transfer, sell or exchange or otherwise dispose of all or any of the deposited stock in such manner as may be pre-

scribed or contemplated by such plan and agreement and may recognize and make provision for the rights of holders of stock of the Lessor Corporations or any of them.

Such plan and agreement may provide for the purchase or sale of all or any of the property of one or more of the Lessor Corporations or of any other corporation or of any other property and for the readjustment of any indebtedness to which said property may be subject; for the acquisition of any property (including shares of stock, bonds and obligations) which in the opinion of the Committee may be advantageous; for the organization or utilization of such corporation or corporations as may be deemed suitable and for the acquisition in any manner by such corporation or corporations or by any other corporation directly or indirectly, through stock or certificates representative thereof or otherwise, of any such property; for the issue, disposition and distribution of all or any of the stock or bonds or other obligations of the new corporation or corporations, and for the raising of any sums in cash deemed necessary by the Committee for such purposes. Any such plan and agreement may constitute reorganization or readjustment managers and/or directors of or in respect of the corporation or corporations so organized or utilized and provide for their compensation and expenses, and members of the Committee may act as such managers or directors.

Any such plan and agreement may make provision for the compensation and expenses of the Committee and under such plan and agreement may charge with the payment thereof the stock or other securities and property subject to such plan and agreement; any such plan and agreement may con-

tain any terms and provisions and confer on the Committee or any other committee provided for under such plan and agreement any powers and discretion which the Committee may deem expedient, although not expressed or contemplated, and may impose such conditions on participation therein or in the benefits thereof as the Committee may deem expedient; and full power and discretion in these respects is conferred upon the Committee.

Whenever the Committee shall prepare or approve and adopt any plan and agreement, a copy thereof shall be filed with the Depositary at its principal office in the City of New York, or with such sub-depositary or sub-depositaries as the Committee may determine, and thereupon a brief notice of the fact of such preparation or approval and adoption and filing shall be given in the manner and with the effect provided in Article Fifteenth hereof, to holders of certificates of deposit issued hereunder in respect of stock of each of the Lessor Corporations included in such plan.

Such notice shall be conclusive as of the date of the mailing thereof to all Depositors, whether they receive actual notice or not of the preparation or approval and adoption of such plan and agreement by the Committee and of the filing of a copy or copies thereof as aforesaid.

Any holder of record of any certificate of deposit for stock of the corporation or corporations included in said plan, but no holder of any certificate of deposit for stock of any other Lessor Corporation, within the period of twenty days from the mailing of such notice, upon surrender to the Depositary at its principal office, or to any sub-depositary, of his certificate or certificates of deposit for shares of stock of such corporation or corporations, properly

stamped for transfer and duly endorsed in blank or accompanied by proper instruments of assignment duly executed in blank, and upon payment of his proportionate share of such amount as the Committee may in its sole and absolute discretion fix as its expenses, not exceeding, however, for such expenses the amounts per share in this agreement provided for, may withdraw from this agreement in respect of the one or more of the Lessor Corporations, included in said plan, and thereupon he shall be entitled to receive the number of shares of stock of such corporation or corporations called for by his certificate or certificates of deposit so surrendered or the proceeds of and/or accretions to such shares or the substitutes therefor then held by the Committee under this agreement.

Depositors so withdrawing during said period of twenty days shall, upon such withdrawal, without any further act be fully relieved from the obligations of this agreement in respect of such stock so withdrawn, and shall cease to have any rights hereunder in respect of such stock. Depositors who do not so withdraw within said period of twenty days shall be conclusively and finally deemed for all purposes to have waived irrevocably the right of withdrawal hereby given to them, and such plan and agreement shall be binding on all Depositors who shall not have so withdrawn, all of whom shall be conclusively and finally deemed for all purposes to have consented to said plan and agreement and the terms thereof, whether they receive actual notice or not, and shall be irrevocably bound and concluded by the same, and the rights of such Depositors shall be such only as are conferred by said plan and agreement subject to compliance with such conditions as such plan and agreement may impose.

The Committee shall have full power and authority to use, transfer or deliver under or in accordance with such plan and agreement, all stock not so withdrawn within the period aforesaid, or to permit the same to be dealt with or disposed of in the manner by such plan and agreement provided or otherwise as fully as though said plan and agreement were a part hereof and had been expressly assented to by the Depositors.

No Depositor shall at any time prior to the mailing of such notice of the preparation or approval and adoption and filing of any such plan and agreement be entitled to withdraw from this agreement in respect of any Lessor Corporation or to receive any deposited stock or other securities, cash or property held under the terms hereof except in the event of the amendment or termination of this agreement as provided in Articles Eleventh and Thirteenth of this agreement, and then only in accordance with the provisions and subject to the conditions and limitations in said respective Articles provided.

EIGHTH: No enumeration by any of the provisions of this agreement of any special rights or powers or of any other matter or thing shall be construed to limit any grant of general rights or powers vested in or conferred upon the Committee by any of the provisions hereof, nor shall the same be construed to limit any of the general provisions of this agreement.

NINTH: (*a*) The Committee as at any time constituted, and notwithstanding any vacancy, shall have all the powers, rights and interests of the Committee as originally formed. The Committee from

time to time may add to its number by choosing, by the affirmative vote or concurrent action of a majority of its members as from time to time constituted, an additional member or additional members and the member or members so chosen shall have all the rights, powers and authority of members of the Committee, and together with those herein named or their successor or successors shall constitute the Committee under this agreement with like force and effect as if they were specifically herein named as parties of the first part. Any member of the Committee may resign by filing written notice of his resignation with the secretary of the Committee or with the Depositary, and the Committee may settle any account or transaction with such member and give a full release and discharge to him upon such resignation. In case at any time any vacancy shall occur in the Committee by death, resignation or otherwise, such vacancy may, but need not be, filled by the affirmative vote or concurrent action of a majority of the other members of the Committee by the choice of a successor to fill such vacancy, and such successor shall have and may exercise all the rights, power and authority under this agreement previously possessed by his predecessor to the same extent and effect as if he were herein named as one of the Committee.

(*b*) The Depositary or any sub-depositary or any agent of the Depositary may resign upon ten days' notice in writing to the Committee, and the Committee shall have power to remove the Depositary or any sub-depositary or any agent of the Depositary and from time to time to fill any vacancy, however arising, in the office of the Depositary or sub-depositary or agent of the Depositary. In the event of any such resignation or removal the Deposi-

tary or sub-depositary or agent of the Depositary shall, upon receiving its reasonable compensation and expenses and due and proper receipt and acquittance, deliver all cash, securities, property and records held by it to the new Depositary or sub-depositary or agent of the Depositary or otherwise as the Committee may direct.

TENTH: The Committee may act by a majority of its members either at a meeting or in writing or by telephone, telegraph or wireless, without a meeting. Any member of the Committee may vote or act by proxy (who may, but need not be, another member of the Committee), and the vote or act of such proxy shall be as effective as the vote or act of the member appointing such proxy.

The Committee shall have power to appoint and at pleasure remove a chairman, a secretary, whether expressly named herein or otherwise, and such counsel, attorneys, accountants, appraisers, technical experts, agents or employees as shall be necessary or useful, and to prescribe and fix their respective duties and compensation. The Committee shall be entitled to a reasonable compensation for its services.

Any member of the Committee and any firm or corporation of which he may be a member, director, officer or stockholder and the Depositary or any sub-depositary or any agent of the Depositary, or their respective officers, directors, stockholders or agents, may be or become pecuniarily interested in any property or matter which is or may become subject to this agreement or to any plan and agreement which the Committee may prepare or adopt and approve as herein provided and may contract with the Committee or be a member or a manager of any

other committee, association or syndicate which may contract with the Committee or be formed in contemplation of or in connection with any plan and agreement prepared or approved and adopted by the Committee in the same manner as if he, it or they were in no way connected with the Committee. Any member of the Committee and any firm or corporation of which he may be a member, director, officer or stockholder and the Depositary or any sub-depositary or any agent of the Depositary, or their respective officers, directors, stockholders or agents may become Depositors under this agreement, and in such event shall be entitled to the same rights and benefits as other Depositors hereunder and they may buy or sell certificates of deposit and undeposited shares of stock on the same footing as any other Depositors.

ELEVENTH: The Committee is hereby authorized and empowered to construe this agreement and its construction of the same made in good faith shall be final, conclusive and binding upon all the parties.

The Committee may supply defects and omissions or reconcile inconsistencies herein and may from time to time, and whenever in its judgment it may be advisable, amend this agreement in any and all respects whatsoever, and any such amendment or amendments may confer additional rights and powers upon the Committee, even though such rights and powers be not now contemplated by this agreement. All amendments shall be filed with the Depositary at its principal office in New York City, and if in the judgment of the Committee, which shall be conclusive and binding, any such amendment does not materially alter the rights of Depositors, it shall, when so filed, become binding

upon all Depositors without notice thereof being given to the Depositors. If in the judgment of the Committee any such amendment shall materially alter the rights of the Depositors, notice of such filing shall be given in the manner and with the effect provided in Article Fifteenth hereof to the holders of record of certificates of deposit issued hereunder in respect of stock of each of the Lessor Corporations affected by such amendment. Such notice shall be conclusive notice as of the date of the mailing thereof to all Depositors, of such amendment, and of the filing thereof. Any Depositor within the period of twenty days commencing on the date of the mailing of such notice, and upon surrender of his certificate or certificates of deposit to the Depositary at its principal office, properly stamped for transfer and duly endorsed in blank or accompanied by proper instruments of assignment duly executed in blank and upon payment of his proportionate share of such amount as the Committee in its sole and absolute discretion may fix as its expenses, but not exceeding, however, the respective amounts provided for in Article Sixth hereof, may withdraw from this agreement in respect of the Lessor Corporation or Lessor Corporations to which such amendment relates but no other, and thereupon he shall be entitled to receive the shares of stock in such Lessor Corporation or Lessor Corporations called for by his certificate or certificates of deposit so surrendered or the proceeds of and/or accretions to such shares or the substitutes therefor then held by the Committee under this agreement. Depositors so withdrawing during said period of twenty days shall upon such withdrawal without any further act be fully relieved from the obligations of this agreement in respect of such stock so

withdrawn, and shall cease to have any rights thereunder in respect of such stock.

Depositors who do not so withdraw within said period of twenty days shall be conclusively and finally deemed for all purposes to have assented to any such amendment whether they receive actual notice or not and shall be irrevocably bound and concluded by the same.

TWELFTH: The Committee undertakes in good faith to endeavor to protect the interests of the Depositors, but the members of the Committee assume no further responsibility. Neither the Committee nor the Depositary nor any sub-depositary nor any agent of the Depositary assumes any responsibility or liability as to the genuineness, validity or regularity of any of the deposited stock. Neither the Committee nor any member of the Committee nor the Depositary nor any sub-depositary nor any agent of the Depositary shall be liable for any action taken in good faith in the belief that any of the deposited stock, or other documents or signatures are genuine. Neither the Committee nor any member of the Committee nor the Depositary nor any sub-depositary nor any agent of the Depositary shall be personally liable for the acts of each other nor for any act or omission of any agent, attorney or employee selected in good faith, nor for any error of judgment or mistake of law or fact, nor for anything other than his or its own wilful malfeasance. No statement, explanation or suggestion contained in this agreement, or in any plan prepared or approved and adopted hereunder, or in any communication or notice issued by advertisement or otherwise, or which may hereafter be issued by the Depositary or any sub-depositary or by the

Committee, is intended or is to be accepted as a representation or warranty or as a condition of deposit, subscription or assent under this agreement or any agreement supplemental hereto. No defect or error shall release any deposit under this agreement or affect or release any assent hereto made, except by the written consent of the Committee.

Neither the Depositary nor any sub-depositary nor any agent of the Depositary shall incur any liability for anything done, omitted or permitted to be done or omitted at the request and direction of the Committee, or a majority thereof, or of any officer or sub-committee of the Committee, the deposited stock being intended and agreed to be held at the order and under the control of the Committee. The Depositary and any sub-depositary shall be bound only to exercise reasonable care in the safekeeping of any deposited stock, and other securities and property which may be received or held by them hereunder and to deal therewith in accordance with the directions of the Committee. The direction of the Committee, or a majority thereof, or of any officer or sub-committee of the Committee, shall be a complete justification for any action or omission to act on the part of the Depositary or any sub-depositary or agent. The Depositary shall not be required to see to the application of stock or other property delivered or paid by it to the Committee upon the Committee's order. Any loss or liability of the Depositary, or of any sub-depositary or of the agent of the Depositary or of the Committee or any member thereof or of its agents, except when caused by wilful malfeasance, shall be conclusively deemed to be part of the expenses of the Committee as herein provided for.

THIRTEENTH: (*a*) If for any reason the Committee shall consider it expedient at any time to terminate this agreement as to one or more or all of the Lessor Corporations, it may do so upon notice of its election so to do given in the manner and with the effect provided in Article Fifteenth of this agreement, to holders of record of certificates of deposit issued hereunder in respect of shares of stock of each of the Lessor Corporations as to which this agreement is terminated, but such termination shall not affect any previous acts of the Committee.

In the event of such termination of this agreement, the several holders of record of certificates of deposit for stock of the corporation or corporations as to which this agreement is so terminated, but no holders of record of certificates of deposit for stock of any other Lessor Corporation, upon the payment of all stamp taxes required by law and also their proportionate share of such amount as the Committee shall in its sole and absolute discretion fix as its expenses, not exceeding, however, for such expenses the amounts per share provided in Article Sixth hereof, and upon surrender of their certificates of deposit to the Depositary at its principal office with properly executed transfers of said certificates of deposit, shall thereupon be entitled to receive the number of shares of stock in each of said Lessor Corporations as to which this agreement is so terminated called for by their certificates of deposit so surrendered or the proceeds of and/or accretions to such shares of the substitutes therefor then held by the Committee under this agreement.

(*b*) This agreement shall terminate on the expiration of ten years from the date hereof and in such case the Committee shall give notice of such ter-

mination in the manner and with the effect provided by Article Fifteenth hereof to all holders of record of certificates of deposit issued hereunder and still outstanding.

In the event of such termination by lapse of time the several holders of record of any outstanding certificates of deposit, upon the payment of all stamp taxes required by law and also their proportionate share of such amount as the Committee shall in its sole and absolute discretion fix as its expenses, not exceeding, however, for such expenses the amounts per share provided in Article Sixth hereof, and upon surrender to the Depositary at its principal office of their certificates of deposit with properly executed transfers thereof, shall thereupon be entitled to receive the number of shares of stock in each of said Lessor Corporations called for by said certificates of deposit so surrendered, or the proceeds of and/or accretions to such shares or the substitutes therefor then held by the Committee under this agreement.

FOURTEENTH: (*a*) By the receipt of any stock, securities, cash or other property distributed by the Committee under any of the provisions of this agreement and the surrender of their certificates of deposit, in respect of one or more of the Lessor Corporations, the several Depositors release and discharge the Committee and the Depositary and any sub-depositary from all liability and accountability of every kind, character and description whatsoever in respect of such corporation or corporations.

(*b*) Within sixty (60) days after the termination of this agreement in respect of the shares of stock

of any Lessor Corporation deposited hereunder, the Committee shall file with the Depositary a statement of its account with respect to such Lessor Corporation, setting forth in reasonable detail its receipts and disbursements in connection therewith. The Committee shall thereupon give notice of the filing of such statement to the holders of certificates of deposit for the stock of such Lessor Corporation in the manner and with the effect provided in Article Fifteenth hereof. The said statement shall be subject at all reasonable times to examination, but only by the members of the Committee and its representatives and by any holder of a certificate of deposit personally or by attorney in fact duly authorized thereunto in writing. Unless legal proceedings impeaching the correctness of such account shall be duly commenced within sixty (60) days after the mailing of such notice, such account, as against all parties interested therein, shall be conclusively presumed to be in all respects correct, and the Committee and the Depositary shall be released and discharged from all liability and accountability of every kind and description arising out of this agreement or any action taken by the Committee with respect to such Lessor Corporation, excepting only such liabilities to holders of outstanding certificates of deposit for stock of such Lessor Corporation, or otherwise, as are expressly admitted in said statement.

FIFTEENTH: All notices to the Depositors or any thereof under this agreement shall be sufficiently given if mailed to each of the holders of record on the books of the Depositary of the certificates of deposit entitled to receive such notice as provided in this agreement at his last address as it appears

on such books. Such notice shall be deemed to have been given and be taken and considered as though personally served on each of such Depositors as of the date of such mailing, and shall be conclusive notice to each such Depositor as of such date of all matters contained therein, whether or not received by him. No other notice under this agreement is required to be given.

SIXTEENTH: (*a*) The Committee may, but nothing herein contained shall require it to exercise any of the powers herein conferred in the same or similar manner in respect of any two or more of the Lessor Corporations or the shares thereof. It may take any action herein authorized in respect of any one or more of the Lessor Corporations or the shares thereof without taking the same or similar or any action in respect of any other Lessor Corporation or the shares thereof.

(*b*) Any invalidity in respect of any provision of this agreement, or in respect of any Lessor Corporation or the stock thereof, shall not affect the validity hereof in respect of any other provision or in respect of any other of such Lessor Corporations or the stock thereof.

SEVENTEENTH: This agreement may be executed in any number of counterparts with the same effect as if all the parties executing such counterparts had executed the same instrument, and all copies thereof though separately signed shall be deemed and taken together as constituting one original agreement.

An original counterpart of this agreement shall be signed by a majority of the members of the Com-

mittee and filed with the Depositary at its principal office in the City of New York. Original counterparts of this agreement or copies thereof shall also be filed elsewhere as may be required by law. Every person not otherwise a party to this agreement, by accepting a certificate of deposit issued hereunder, thereby accepts and becomes a party to this agreement and bound by all the terms and provisions hereof with the same force and effect as though actually executing and delivering the same.

The Committee is not under any obligation, legal or equitable, express or implied, to any holder of stock who shall not deposit the same hereunder, or to any other person whomsoever other than the Depositors.

EIGHTEENTH: This agreement shall bind and benefit the executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties of the first part have executed this agreement and lodged it with the Depositary and the parties of the second part have deposited their stock hereunder and accepted certificates of deposit therefor, on or as of the day and year first above written.

W. EMLEN ROOSEVELT
WILLIAM C. SHANLEY, JR.
ROSCOE C. INGALLS
R. IRVING OUTWATER
EVANS R. DICK
ERNEST STURM

Exhibit D 44.

SCHEDULE A.

No. ....Shares

CERTIFICATE OF DEPOSIT

FOR

CAPITAL STOCK

OF

.....

(Name of Company)

DEPOSITED UNDER A DEPOSIT AGREEMENT DATED JUNE 10TH, 1927, IN WHICH W. EMLEN ROOSEVELT, EVANS R. DICK, ROSCOE C. INGALLS, R. IRVING OUTWATER, WILLIAM C. SHANLEY, JR., AND ERNEST STURM ARE NAMED AS A COMMITTEE.

CENTRAL UNION TRUST COMPANY OF NEW YORK HEREBY CERTIFIES THAT ..... Shares of the above-mentioned stock have been deposited under the above-mentioned Deposit Agreement and that ..... is entitled to the rights and interest of a Depositor of such stock, as the same are specified and defined in said Deposit Agreement, an original of which has been filed with the Depositary. The holder, by receiving this Certificate, assents to and is bound by the provisions of said Deposit Agreement in the same manner and with the same effect as if he had executed the same. The interest represented by this Certificate is transferable, subject to the terms and conditions of said Deposit Agreement, on the books of the Depositary by the holder hereof in person or by attorney upon surrender of this Certificate

properly endorsed. Title to this Certificate, when duly endorsed, shall, to the extent permitted by law, be transferable with the same effect as in the case of a negotiable instrument. Each holder hereof consents and agrees that delivery by the bearer hereof of this Certificate duly endorsed in blank shall vest title hereto and all rights hereunder in the transferee to the same extent for all purposes as would delivery under like circumstances of a negotiable instrument payable to bearer; provided, however, that the Depositary may treat the record holder hereof (or, when presented duly endorsed in blank, the bearer hereof) as the absolute owner hereof for all purposes, and shall not be affected by any notice to the contrary.

This Certificate is not valid unless signed by the Depositary.

Dated, New York City, ...

CENTRAL UNION TRUST COMPANY
OF NEW YORK,

Depositary,

By.....,
Authorized Officer.

Exhibit D 44.

ENDORSEMENT.

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto.....
.....
all the right, title and interest of the undersigned in and to the within Certificate of Deposit and all the rights and interests evidenced thereby, and hereby irrevocably constitutes and appoints.....
.....attorney, to transfer the same on the books of the within-named Depositary, with full power of substitution.

Dated....., 19....

.....

In the Presence of:

.....

NOTE: The signature to the above assignment must be guaranteed by a bank or trust company having a New York correspondent or by a New York Stock Exchange firm.

The signature must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

If the assignment be executed by a corporation, an administrator, executor, trustee, committee, guardian, attorney or other fiduciary, proper evidence of authority so to act, if not on file with the Depositary, must be forwarded with the assignment.

Exhibit D 44.

SCHEDULE B.

.....

(Name of Company)

STOCKHOLDER'S PROXY AND DIVIDEND ORDER.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned stockholder of the above-named Company (hereinafter called the "Company"), hereby constitutes and appoints W. EMLEN ROOSEVELT, EVANS R. DICK, ROSCOE C. INGALLS, R. IRVING OUTWATER, WILLIAM C. SHANLEY, JR., and ERNEST STURM, and each of them, the true and lawful attorneys and proxies of the undersigned, with several power of substitution, for and in the name of the undersigned—

(1) To the extent authorized by law, to attend at and/or waive notice of or consent to the holding of any meeting of stockholders of the Company which may held subsequent to the date hereof and prior to the termination in respect of the Company of a certain Deposit Agreement dated June 10th, 1927, between the aforesaid W. Emlen Roosevelt, Evans R. Dick, Roscoe C. Ingalls, R. Irving Outwater, William C. Shanley, Jr., and Ernest Sturm, a Committee, parties of the first part thereto, and such stockholders of the Company as shall become parties to said Agreement as provided therein, and others, parties of the second part thereto, and at any such meeting or any adjournment or adjournments thereof, or

otherwise, to vote and act in respect of all the shares of the capital stock of the Company standing in the name of the undersigned or upon which the undersigned may be entitled to vote, and also to give any consent in respect of such stock either with or without a stockholders' meeting, and with all the powers which the undersigned would possess if personally present at any such meeting or meetings, or if otherwise acting, hereby ratifying and confirming all that said attorneys or proxies may do by virtue hereof;

(2) To execute and file with the Company in behalf of the undersigned any and all dividend orders which may be necessary or proper to enable the Company to pay to said attorneys or their nominee or nominees any and all dividends upon the stock above described so long as the same shall remain registered in the name of the undersigned on the books of the Company and shall be held by the Committee under said Deposit Agreement;

(3) To do and perform any act or thing which is or may be authorized or contemplated by the said Deposit Agreement, which is hereby made a part of this instrument with the same effect as though such Deposit Agreement were herein set forth in full.

A majority of such of the attorneys or proxies as shall be present and shall vote or otherwise act in the premises (or if only one shall so vote or act, then that one) shall have and may exercise all the powers of all of the said attorneys or proxies of the undersigned hereunder. This proxy is irrevocable

except as otherwise provided in said Deposit Agreement.

WITNESS the hand and seal of the undersigned this ..... day of ....., 19....

..... (L. S.)
(Name)

.....
(Address)

In the Presence of

.....

NOTE: The signature to the above instrument must correspond with the name of the stockholder as written upon the face of his certificate or certificates of stock in every particular, without any enlargement or any change whatever.

NEW YORK, June 16, 1927.

TO THE STOCKHOLDERS OF THE FOLLOWING COMPANIES:

GROUP I

Hudson County Gas Company, 8% stock
Essex and Hudson Gas Company, 8% stock
The Paterson and Passaic Gas and Electric Company, 5% stock
Somerset, Union and Middlesex Lighting Company, 4% stock
New Brunswick Light, Heat and Power Company, 5% stock

Exhibit D 44.

GROUP II

South Jersey Gas, Electric and Traction Company, 8% stock
The Gas and Electric Company of Bergen County, 5% stock
Newark Consolidated Gas Company, 5% stock
The Ridgewood Gas Company, 2% stock

NOTICE OF FORMATION OF PROTECTIVE COMMITTEE

The nine companies above named are being operated under long term leases by Public Service Electric & Gas Company, a wholly controlled subsidiary of Public Service Corporation of New Jersey.

Dividends on the stock of each of these leased companies are secured by rentals, thus placing the stocks on the basis of guaranteed stocks; these rentals are direct obligations of Electric & Gas Company superior, as to the leased properties, to its own First and Refunding Mortgage (its only outstanding mortgage). In fact, these leases are pledged to secure the bonds issued under that mortgage and payment of rentals under them is necessary to prevent a default under that mortgage.

Public Service Corporation, through Electric & Gas Company and by means of the leases, stock ownership and interlocking directors, dominates and controls the operations and financial policy of the nine leased companies.

In order to increase their own credit and borrowing capacity, and to simplify their own capital structure, Public Service Corporation and Electric & Gas Company have been endeavoring to acquire a two-thirds ownership of the stock of each of the nine leased companies for the declared purpose of merging them into Electric & Gas Company. They

have, we understand, succeeded in acquiring such ownership in respect of Group I companies.

They are now attempting to force through this merger and have caused to be adopted by their respective directors an agreement merging the Group I companies into Electric & Gas Company. This agreement will undoubtedly be consummated unless prevented by action of the minority stocks held by you. The merger agreement provides that 6% Preferred Stock, Series 1925, of Electric & Gas Company (which is subject to call and retirement) shall be issued in exchange for your stock in the Group I companies.

This proposed merger agreement we regard as unfair and unjust:

It is made at the expense of investors and without due regard to the rights of minority interests, to coerce stockholders of your companies for the benefit of Public Service Corporation.

For your stocks, which are superior to the bonds of Electric & Gas Company, it offers a stock which is inferior to those bonds.

For your stocks which cannot in effect be diluted by increase it offers a stock which is already outstanding at $50,000,000 with practically no fixed limitation to the amount of further increases.

For your stocks which cannot be called or retired it offers a stock which can.

If reduced to money, the amount offered for your stocks is insufficient to enable you to buy in the market other stocks of equal security, and is considerably below the present market price of your stocks.

What is here attempted as to Group I companies is, we believe, a fair indication of what Group II may expect if Public Service Corporation suceeds in acquiring a two-thirds control in those companies.

Informal efforts to secure just terms have been repeatedly made by stockholders of your companies. The only apparent result has been to increase the coercive attitude of Public Service Corporation.

A large group of stockholders has requested us to take action to prevent such threatened or any future merger so that they may not be deprived of their stocks without just compensation. We have accordingly executed a deposit agreement which provides, in substance, for the separate deposit of the stocks of each of the nine leased companies with us as a Committee, in order that prompt and decisive action may be taken to preserve the essential value of these stocks as high-grade investments.

The agreement will continue for a maximum of ten years and contains appropriate provisions for withdrawal.

The Deposit Agreement assures to the Depositors continued dividends on the deposited stocks at the above respective rates, if and as paid by those companies respectively.

The Committee, under the terms of the Deposit Agreement, is entitled to its expenses as therein defined, including reasonable compensation; such expenses are definitely limited and will not become a charge upon the dividends referred to above.

Copies of the Deposit Agreement may be had upon application to the Depositary, sub-depositary or Secretary of the Committee.

All stockholders in any one or more of the above

named companies are invited to deposit with the Depositary or sub-depositary:

1. Their certificates of stock endorsed in blank or accompanied by a duly executed transfer in blank, and in either case with the necessary stock transfer tax stamps affixed.

2. A separate deposit blank for stock in each such company in the form enclosed and marked C.

3. A separate proxy and dividend order in respect of stock in each such company in the form enclosed and marked B. This authorizes the Committee without making transfer, on the company's books, of the deposited stock, to vote such stock to the extent authorized by law while on deposit under the Deposit Agreement, and enables the Committee to collect dividends thereon.

All regular dividends so collected are required by the Deposit Agreement to be paid forthwith to holders of certificates of deposit for stock of the company declaring the same.

Deposits of stock may be made at any time until the close of business on August 1, 1927, but under the terms of the Deposit Agreement the Committee may in its discretion extend such time.

W. Emlen Roosevelt,
Chairman
Evans R. Dick,
Roscoe C. Ingalls,
R. Irving Outwater,
William C. Shanley, Jr.,
Ernest Sturm,
Committee.

Exhibit D 44.

Secretary:
HALVAR UTVIK,
30 Pine Street, New York City.

Counsel:
ROOT, CLARK, BUCKNER, HOWLAND & BALLANTINE,
31 Nassau Street, New York City.
HOES, LOW & MILLER,
30 Broad Street, New York City.

Depositary:
CENTRAL UNION TRUST COMPANY OF NEW YORK,
80 Broadway, New York City.

Sub-Depositary:
COMMERCIAL TRUST COMPANY OF NEW JERSEY,
15 Exchange Place, Jersey City, N. J.

C

.....
(Name of Company)

STOCKHOLDER'S INDIVIDUAL DEPOSIT

FOR VALUE RECEIVED, the undersigned has deposited and does hereby deposit.....shares of the stock of the above named company (hereinafter called the Company) with W. Emlen Roosevelt, Evans R. Dick, Roscoe C. Ingalls, R. Irving Outwater, William C. Shanley, Jr. and Ernest Sturm, as a Committee, for the purposes set forth and upon the terms and conditions stated in a Deposit Agreement dated June 10th, 1927, between the aforesaid members of said Committee, parties of the

first part thereto, and such stockholders of the Company as shall become parties to said Deposit Agreement as provided therein and others, parties of the second part thereto, and does hereby accept and agree to all the terms and conditions of said Deposit Agreement as though the same were herein fully set forth.

WITNESS the hand and seal of the undersigned this.....day of.....192...

.....(L. S.)
(*Name*)

.....
(*Address*)

IN THE PRESENCE OF:

NOTE: The signature to the above instrument must correspond with the name of the stockholder as written upon the face of his certificate or certificates of stock in every particular without any enlargement or any change whatever.

Exhibit D 45.

IN CHANCERY OF NEW JERSEY

Between

R. IRVING OUTWATER and Others,
Complainants,

AND

PUBLIC SERVICE CORPORATION OF NEW JERSEY, and others,
Defendants.

On Bill, &c.

Admission by Complainants Roosevelt & Son.

The Complainants, W. Emlen Roosevelt and others, partners trading as Roosevelt & Son, admit, for the purposes of the cause, saving all objection to the admissibility of the facts, that they have, since January 1, 1913, purchased and sold from time to time shares of stock of Hudson County Gas Company, Essex and Hudson Gas Company, Paterson and Passaic Gas and Electric Company, Somerset, Union and Middlesex Lighting Company and New Brunswick Light, Heat and Power Company, as set forth upon the annexed schedules at the prices and on the dates therein set forth; that, except as shown in said schedules, they were the owners of no stock in said companies; and that they have not at any time since January 1, 1913, issued, published or distributed any circular, letters, lists, or quotations in which the prices of the shares of stock of the said Companies were given.

WALL, HAIGHT, CAREY & HARTPENCE
PITNEY HARDIN & SKINNER
Solicitors for Complainants.

September 22, 1927.

Exhibit D 45.

PATERSON & PASSAIC GAS & ELECTRIC COMPANY

Date	Bought	Sold	Price
Jan. 30, 1925	25 shs.		82¾ & Div.
Feb. 2, 1925		25 shs.	84¾ "
Mch. 20, 1925	100 "		84½ "
Apr. 3, 1925		100 "	87 "
Feb. 5, 1926	20 "		87 "
Feb. 9, 1926	25 "		87½ "
Sept. 28, 1926	200 "		92¼ "
Oct. 11, 1926	100 "		92¾ "
Oct. 20, 1926		200 "	93½ "
Oct. 21, 1926	5 "		92¾ "
Nov. 12, 1926		100 "	94-1/16 "
Jan. 12, 1927	100 "		93¼ "
Jan. 14, 1927	10 "		92¾ "
Jan. 18, 1927	7 "		92¼ "
Apr. 22, 1927		150 "	98-1/16 "
May 5, 1927	25 "		97¼ "
May 6, 1927	13 "		97¼ "
May 9, 1927	244 "		97½ "
May 9, 1927	10 "		97¼ "
TOTAL	884	575	

NEW BRUNSWICK LIGHT, HEAT & POWER COMPANY

Date	Bought	Sold	Price
Apr. 13, 1925	20 shs.		80½ & Div.
" " "		10 shs.	84 "
" 23, "		10 "	84 "
TOTAL	20	20	

Exhibit D 45.

HUDSON COUNTY GAS COMPANY

Date	Bought	Sold	Price	
Feb. 8, 1927	605 shs.		142	& Div.
" 9, 1927		50 shs.	142½	"
Mch. 4, 1927	388 "		144	"
" 15, 1927		250 "	144	"
" 18, 1927		693 "	144	"
TOTAL	993	993		

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY

Date	Bought	Sold	Price	
Nov. 21, 1924	50 shs.		63½	& Div.
" 24, 1924		20 shs.	65½	"
" " "		30 "	65½	"
" 28, "	50 "		64	"
" " "		50 "	65¾	"
Aug. 14, 1925	50 "		68¼	"
" 14, 1925		50 "	69¾	"
Dec. 4, 1925	20 "		68	"
" 14, 1925		20 "	69⅝	"
May 5, 1926	37 "		68¼	"
June 25, 1926	100 "		71¾	"
Aug. 6, 1926	30 "		72	"
Oct. 19, 1926		150 "	74¾	"
" 21, 1926	50 "		73¼	"
" 22, 1926		50 "	74¾	"
" 22, 1926	5 "		73¼	"
Jan. 17, 1927	40 "		73¾	"
" 18, 1927	14 "		73¾	"
" 31, 1927	5 "		73¾	"
Feb. 10, 1927	7 "		73	"
TOTAL	458	370		

Exhibit D 46.

CERTIFICATES DEPOSITED WITH ROOSEVELT COMMITTEE

HUDSON COUNTY GAS COMPANY

		Date Acquired	Shares
10	T. Earle Bartram	4/29/27	20
	Mary Keyes Beard	5/ 3/27	3
	David A. Bishop	11/ 1/99—20	
	"	3/13/00—30	100
	"	12/13/01—50	
	Blake Bros. & Co	12/30/26	28
	Frederick L. Braman	5/ 5/27	10
	Paul H. Brandes	4/29/27	10
	Jane S. Bryan	11/ 9/21	10
	Walter D. Buchanan	5/14/24	50
	Helen Willets Carson	3/ 8/23—50	55
	"	3/27/23— 5	
20	Golston, Heald & Trail	3/ 9/27	6
	"	4/23/27	20
	"	4/27/27	30
	"	5/ 4/27	80
	"	5/10/27	60
	"	8/ 5/27	15
	Anna S. Davis	5/ 3/16	28
	William F. Decker	4/ 6/27	50
	Fannie C. Dewing	4/23/27	50
	Albert Evitts	4/29/27	10
	Elizabeth F. Fisher	2/18/22	20
30	Mary Bell Fitch	8/ 3/26	10
	William A. Formes	4/15/24	10
	Conrad G. Goddard	2/18/26	50
	Minna G. Goddard	4/19/26	50
	Bruce N. Griffing	5/ 7/27	40
	Walter A. Hamilton	4/23/27	5
	Maude R. Hawley	5/ 4/27	50
	Arthur H. Hayes	2/13/25	10
	Daniel A. Heald	4/23/27—25	37
		5/ 4/27—12	
	Mary N. Hoffman	5/14/23	100
40	Hess & Hess	4/12/27	50

Exhibit D 46.

	Date Acquired	Shares
Hess & Hess	6/ 3/27	61
Dr. A. C. Howe	2/ 5/23	40
John L. Husman	8/10/26	10
Ingalls & Snyder	5/10/27	200
"	5/19/27	305
"	6/15/27	2
"	9/ 2/26	5
"	5/14/26	15
"	3/30/27	50
Charlotte D. Kepke	3/17/26	20
Joseph F. Kitchell	6/ 4/23	13
"	11/ 5/23	5
"	1/21/24	50
"	3/21/24	50
"	8/ 5/24	30
"	2/20/26	3
"	4/10/26	7
Raymond J. Koger	4/27/27	25
"	5/ 7/27	50
Marie E. Koven	4/13/26	125
Herman R. Lange	5/ 4/27	13
Maxwell B. Leiter	3/17/27	50
Louis Levy	3/ 9/27	4
Marion F. Maher	6/21/26	70
J. Howard Marlin	4/23/27	100
Bertha B. Meeker	5/14/27	10
Leo Mendelson	9/23/21	20
Robert M. Morgan	6/22/26	100
Edna Grippin Morris	5/ 5/27	75
Anne W. McKenna	4/ 6/26	10
The New York Indemnity Co	9/ 8/26	500
Annie C. Renner	5/14/24	35
Florence J. Reynolds	9/24/25	25
Harry C. Reynolds	1/ 6/27	25
Morton G. Reynolds	4/29/27	10
Wilhelmina A. Rhodes	4/29/27	10
Amorita Schwartz	3/26/25	40
Edgar B. Shackman	7/12/26	40
Caroline Shippen	5/ 3/16	27
"	5/16/18	10

Exhibit D 46.

	Date Acquired	Shares
Ettie Shippen	5/ 3/16	27
"	5/16/18	9
Sofie M. Shippen	5/ 3/16	27
"	5/16/18	9
Dr. Paul P. Swett	5/ 5/27	40
"	5/27/27	10
Josephine Earl Van Name	5/25/27	36
"	5/27/27	14
John Waldron Company	11/ 9/26	30
Joseph S. Wall	2/26/26	50
Hobart G. Warner	5/ 2/27	10
Arthur N. Wheeler	5/ 9/27	14
Willets & Company Inc	9/29/25	200
"	10/19/25	100
Maria Willets	11/ 1/22	100
"	9/ 4/25	100
Clara W. Allan	2/13/25	10
Percy Allan	2/13/25	20
Mary S. Brown	5/23/23	20
Bella S. Castell	4/ 6/26	10
Francis L. Chrisman	10/31/22	10
Emma Whiting Gopsill	11/20/19	15
James W. Gopsill	12/ 3/09	8
Thomas M. Gopsill	2/21/13	8
James W. O'Connor	4/ 9/27	20
Lillie S. Murray Jones	2/20/23	10
Victor B. Seidler	1/27/23	10
"	4/25/24	10
Elizabeth C. Shields	11/25/22	10
N. Carolyn Shields	11/25/22	10
Viola Shields	11/25/22	10
John T. L. Hubbard & Frederick L. Stead etc.	5/ 7/27	10
Montclair Essex Trust Co. & Benjamin V. Harrison Extrs	5/ 2/23	100
Montclair Essex Trust Co	4/21/24	150
Trustee etc. Louise H. Ingalls	6/23/24	65
Do.	12/23/25	28
Joseph V. Clark	12/16/09	25
		4 642

Exhibit D 46.

CERTIFICATES DEPOSITED WITH ROOSEVELT COMMITTEE

ESSEX & HUDSON GAS COMPANY

Ctf. No.	Shares	Name	Date
F1615	18	Joseph F. Kitchell	2/18/24
F1580	7	Joseph F. Kitchell	10/30/23
F1887	5	Joseph F. Kitchell	5/ 3/26
F1793	10	Joseph F. Kitchell	6/24/25
F1693	11	Joseph F. Kitchell	7/21/24
F2065	20	Mary R. Christy	3/15/27
F2063	8	Daisy M. Rohrer	3/15/27
C1127	100	Susan M. Ellis	7/26/26
F1346	10	Margaret L. Baumann	4/20/22
F1878	35	Francis J. Williams	4/ 1/25
F1930	15	Francis J. Williams	8/16/26
F1448	9	Michael Connor	9/ 5/22
F2104	60	Colston, Healt & Trail	4/23/27
F1557	31	Mary W. Hoffman	6/18/23
F1471	69	Mary W. Hoffman	10/ 2/22
F2068	50	Maxwell B. Leiter	3/17/27
F2074	10	Walter D. Wise	3/22/27
F1247	20	Elizabeth I. Fisher	2/20/22
F2052	50	William F. Decker	3/10/27
F2081	20	Daniel A. Heald	3/25/27
F2075	15	John B. Johnston	3/22/27
F2079	3	Colston, Heald & Trail	3/23/27
F2093	15	Colston, Heald & Trail	4/ 8/27
F2158	9	Colston, Heald & Trail	6/15/27
F2064	17	Colston, Heald & Trail	3/15/27
F2054	25	Colston, Heald & Trail	3/10/27
F2056	2	Colston, Heald & Trail	3/11/27
F2011	5	Colston, Heald & Trail	2/ 8/27
F2076	10	Daniel A. Heald	3/22/27
C1204	100	Clark, Dodge & Co	7/22/27
C1205	100	Clark, Dodge & Co	7/22/27
F2157	25	Foster C. Remsberg	6/15/27
F1481	20	Elizabeth Meeker Trafford	10/24/22
F1325	2	Emma Williams	4/13/22
F1289	4	Emma Williams	3/24/22
F1545	4	Emma Williams	5/17/23
F2092	25	Leroy N. Mills	4/ 8/27

Exhibit D 46.

Ctf. No.	Shares	Name	Date
F2072	14	Caroline Doran George	3/21/27
C1142	100	Perkins & Son	1/29/27
F2010	25	Francis H. Gilpin	2/ 8/27
F2085	50	John Martin	4/ 2/27
F2055	10	Ira Rosenbaum	3/11/27
F2053	25	Irving Rosenbaum	3/10/27
F1348	22	Samuel M. Dorrance	4/21/22
F1945	25	Agnes F. Cokefair	11/ 4/26
F1832	80	Willets & Company, Inc.	10/13/25
F1855	20	Willets & Company, Inc.	12/24/25
C1107	100	Willets & Company, Inc.	10/13/25
F1848	17	J. Macy Willets	12/ 8/25
F1713	58	J. Macy Willets	11/20/24
F1712	25	J. Macy Willets	11/20/24
F1938	50	Adolph R. Dyer	10/ 1/26
C1110	100	Minna G. Goddard	1/20/26
F1955	60	Maud R. Strong	11/17/26
C1055	100	George W. Howell	4/10/22
F1943	40	Sigurd Nathan	10/25/26
F1956	25	Blanche M. Nathan	11/17/26
F1459	45	Edward H. Floyd-Jones	9/16/22
F1467	5	Edward H. Floyd-Jones	9/29/22
F1915	30	Edgar B. Shackman	7/12/26
F1865	20	Edgar B. Shackman	2/ 6/26
F1345	40	Walter D. Buchanan	4/20/22
F1320	37	Walter D. Buchanan	4/13/22
F1550	8	Walter D. Buchanan	6/ 5/23
F1858	5	Harry C. Reynolds	1/20/26
F1532	5	Joella Outwater	5/ 1/23
C1135	100	National Surety Company	11/26/26
C1136	100	National Surety Company	11/26/26
C1139	100	National Surety Company	12/13/26
C1140	100	National Surety Company	12/13/26
F1959	39	National Surety Company	11/26/26
F1965	61	National Surety Company	12/13/26
F1828	10	Florence J. Reynolds	9/28/25
F1830	10	Florence J. Reynolds	10/ 5/25
F1937	15	Mary F. Cauley	10/ 1/26
F1281	40	Ernest M. Turner	3/22/22
C1160	100	Harry Footer	3/31/27
F1454	10	Jane S. Bryan	9/13/22

Exhibit D 46.

Ctf. No.	Shares	Name	Date
F1350	10	Charles W. Romeyn	4/21/22
F1465	10	Francis Leon Chrisman	9/27/22
F1730	28	Victor B. Seidler	2/ 9/25
F1731	50	George B. Verbeck	2/16/25
F1804	10	Lily S. Murray Jones	7/ 9/25
F1954	30	Florence P. Robbins	11/17/26
	138—11/17/27		
C1077	100	Joseph H. Choate, Jr., Mabel Choate and Carl A. de Gersdorff, Trustees u/w Joseph H. Choate	10/ 3/22
F1876	25	Montclair Trust Co. as Trustee under an indenture dated Feb. 21, 1923 between Louise H. Ingalls and Montclair Trust Co.	3/25/26
F2008	40	Aubrey Pearre, Jr. and Sifford Pearre, joint tenants with right of survivorship	2/ 8/27
F2071	10	Aubrey Pearre Jr. & Sifford Pearre	3/18/27
F2107	25	Fanny Lyon Pearre	4/27/27

After January 1st, 1927—968

Exhibit D 46.

CERTIFICATES DEPOSITED WITH ROOSEVELT COMMITTEE

PATERSON & PASSAIC GAS & ELECTRIC COMPANY

Date Acquired	Name	Certificate No.	Shares
8- 6-25	Amorita Schwartz	F-751	25
4-16-26	Colston, Heald & Trail	F-859	4
4-19-27	" " "	F-861	50
3-15-27	" " "	F-841	50
3-23-27	" " "	F-844	50
5-25-27	Daniel A. Heald	F-877	28
4-18-27	" " "	F-860	50
3- 3-27	Outwater & Wells	C-700	100
11-10-26	Fidelity & Casualty Co.	C-695	100
4-23-27	" " "	C-704	100
4-23-27	" " "	F-863	50
3-21-27	Kate E. Carlisle	F-842	50
3-15-27	W. B. Howe	F-840	50
3- 4-27	Colston, Heald & Trail	C-701	100
3- 7-27	" " "	F-833	50
3-21-27	" " "	F-843	50
11-15-26	Roosevelt & Sons	F-831	10
11-15-26	" "	F-824	7
6-13-27	Joseph T. Clark	C-706	100
6-13-27	" "	C-707	100
6-13-27	" "	F-880	92
	Total number issued		1216
	Total number issued since March 1, 1927		1090

Exhibit D 46.

CERTIFICATES DEPOSITED WITH ROOSEVELT COMMITTEE

SOMERSET, UNION & MIDDLESEX LIGHTING COMPANY

Certificate	Shares	Name	Date Issued
720	100	Martin E. Goetzinger	3- 8-27
729	50	William F. Decker	3-21-27
718	50	William F. Decker	2-11-27
721	20	Colston, Heald & Trail	3- 8-27
730	50	" " "	3-21-27
601	100	Frederick C. J. Wise	2-24-21
666	30	Edith Craven	12- 8-23
700	100	The Aetna Casualty & Surety Co.	10-26-26
701	50	" " " " "	10-26-26
703	50	" " " " "	11- 3-26
717	50	Paul S. Brinsmade	2- 3-27
688	70	Minna G. Goddard	4- 6-26
312	11	Robert Percy Schenck	9-30-11
682	50	Bertha V. K. Read	8-20-25
755/6	200	Colston, Heald & Trail	8-11-27

Total number issued 981
Total number issued since 2-1-27..... 520

Exhibit D 47.

ROOSEVELT AND SON

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY

January 1, 1923, were holders of record of.....			0 Shares
To August 1, 1924 Stock Ledger shows			
Credits	0 Shares		
Debits	0 Shares		0 Shares
Balance August 1, 1924.....			0 Shares
From August 1, 1924 to January 10, 1927 Stock Ledger shows			
Credits	259 Shares		
Debits	237 Shares		22 Shares
Balance January 10, 1927.....			22 Shares
From January 10, 1927 to April 26, 1927 Stock Ledger shows			
Credits	54 Shares		
Debits	0 Shares		54 Shares
Balance April 26, 1927.....			76 Shares

Roosevelt and Son were not stockholders of record December 16, 1925 to May 15, 1926.

ROOSEVELT AND SON

PATERSON & PASSAIC GAS & ELECTRIC COMPANY

January 1, 1923, were holders of..			0 Shares
To August 1, 1924 Stock Ledger Shows			
Credits	0 Shares		
Debits	0 Shares		0 Shares
Balance August 1, 1924.....			0 Shares
From August 1, 1924 to January 10, 1927 Stock Ledger Shows			
Credits	475 Shares		
Debits	425 Shares		50 Shares
From January 10, 1927 to April 26, 1927 Stock Ledger Shows			
Credits	117 Shares		
Debits	150 Shares		—33 Shares
Balance April 26, 1927.....			17 Shares

Exhibit D 48.

OPERATING REVENUE

	Public Service Gas Co.	Public Service Electric Co.	Public Service Electric and Gas Co.
1911	$8 972 002 84	$6 666 326 95	
1912	9 798 799 85	7 527 654 74	
1913	9 960 937 54	8 465 603 55	
1914	10 320 536 59	9 283 592 27	
1915	10 475 933 18	10 425 851 78	
1916	11 558 413 17	12 814 597 36	
1917	12 729 060 87	15 168 255 44	
1918	14 578 269 71	17 587 806 75	
1919	14 941 745 80	20 054 659 90	
1920	20 872 062 04	23 563 929 63	
1921	23 516 318 23	24 390 321 49	
1922	23 152 426 42	27 660 026 21	
1923	24 814 283 34	31 188 595 51	
1924			$59 432 276 29
1925			64 197 606 41
1926			73 240 608 77
1927 8 Months			51 119 249 29

Exhibit D 49.

THE PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY

CAPITAL STOCK

PRICE RANGE

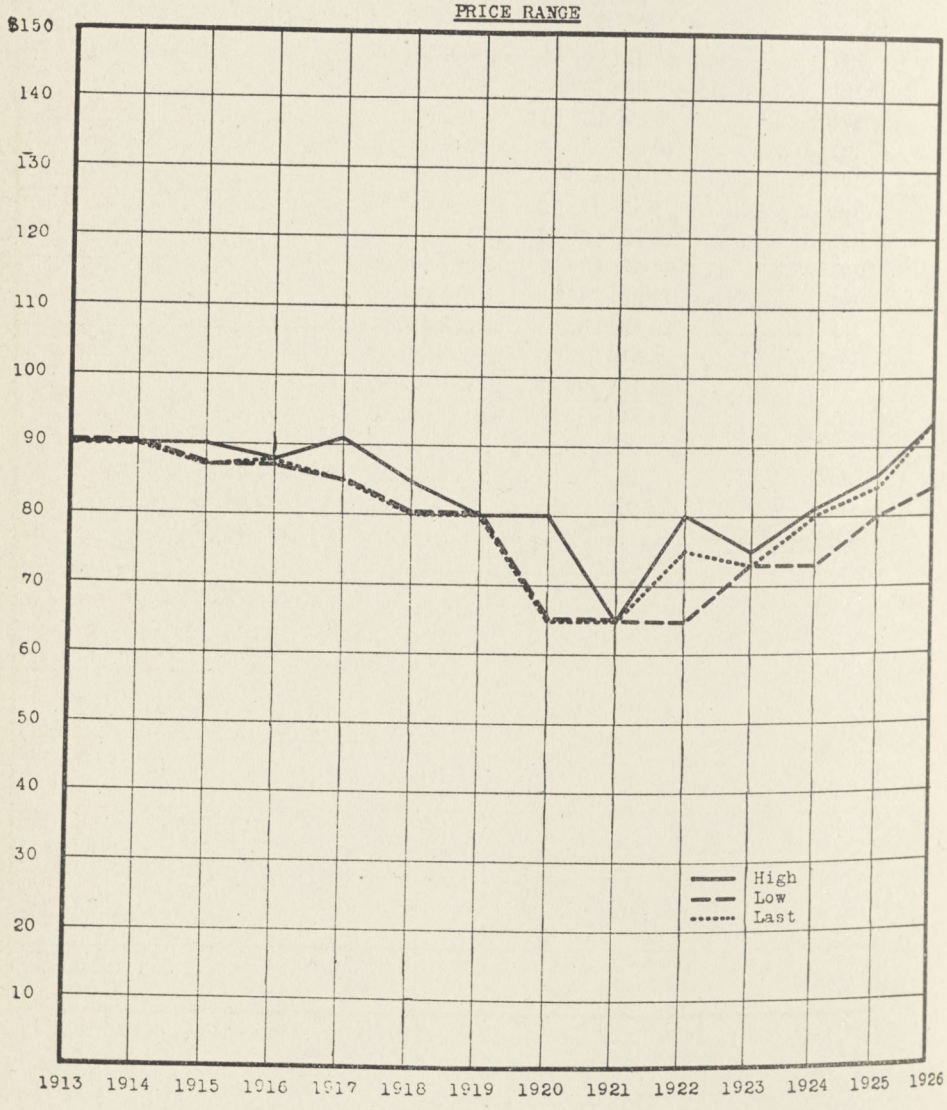


Exhibit D 49.

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY

CAPITAL STOCK

PRICE RANGE

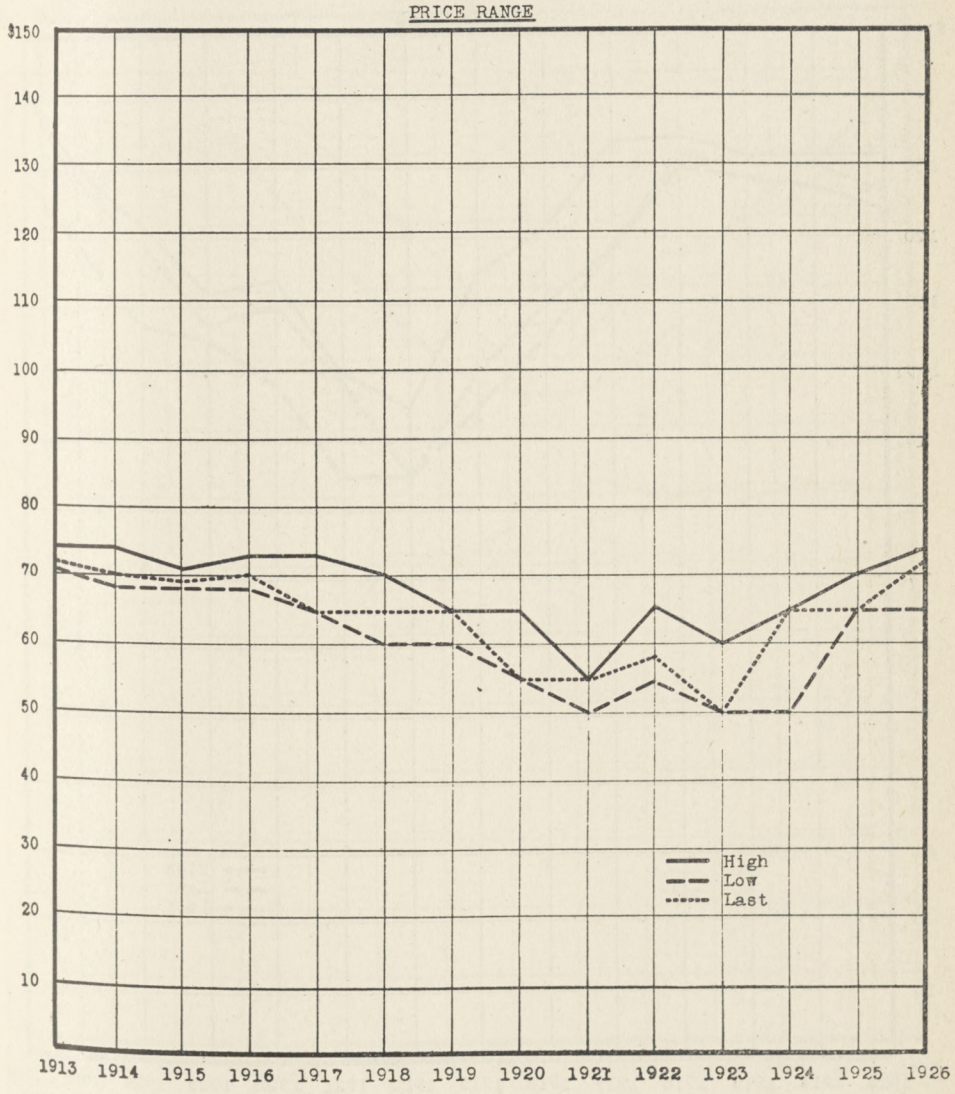


Exhibit D 49.

HUDSON COUNTY GAS COMPANY

CAPITAL STOCK

PRICE RANGE

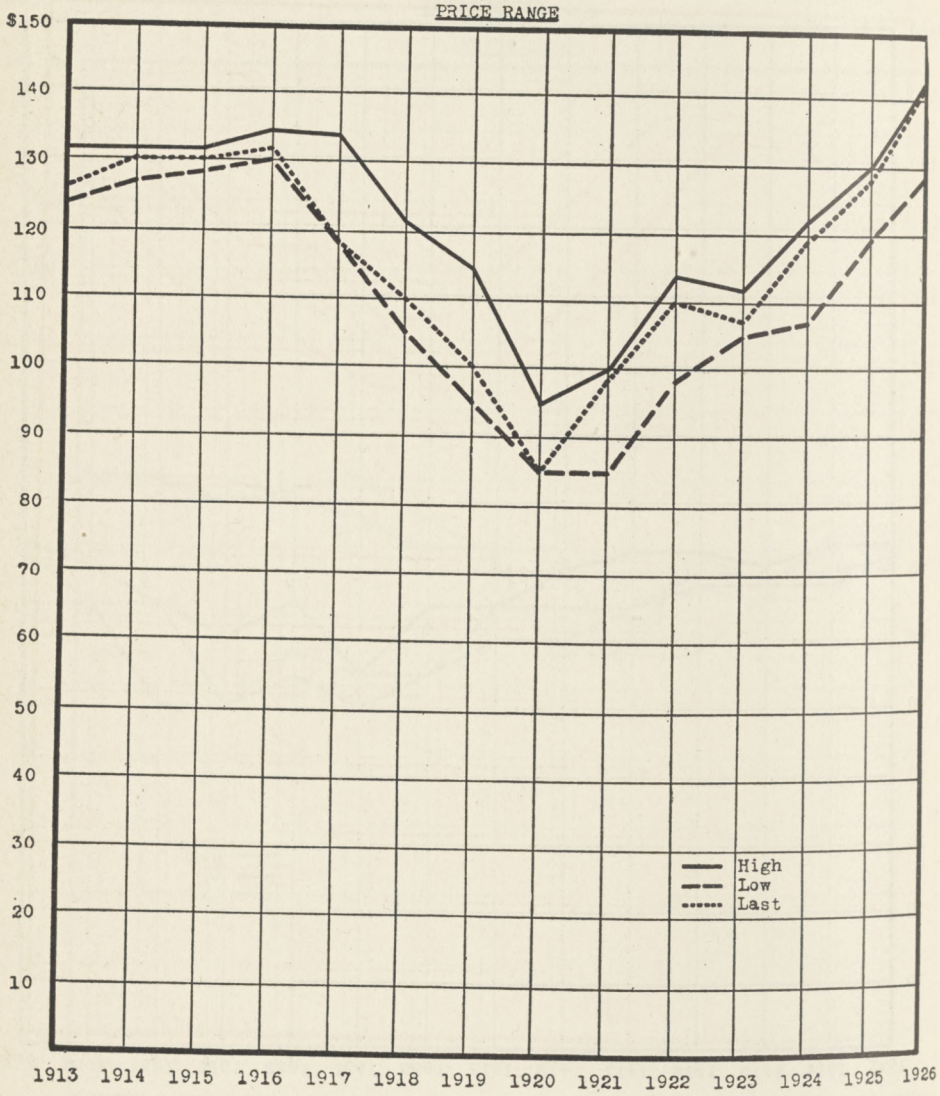


Exhibit D 49.

ESSEX AND HUDSON GAS COMPANY

CAPITAL STOCK

PRICE RANGE

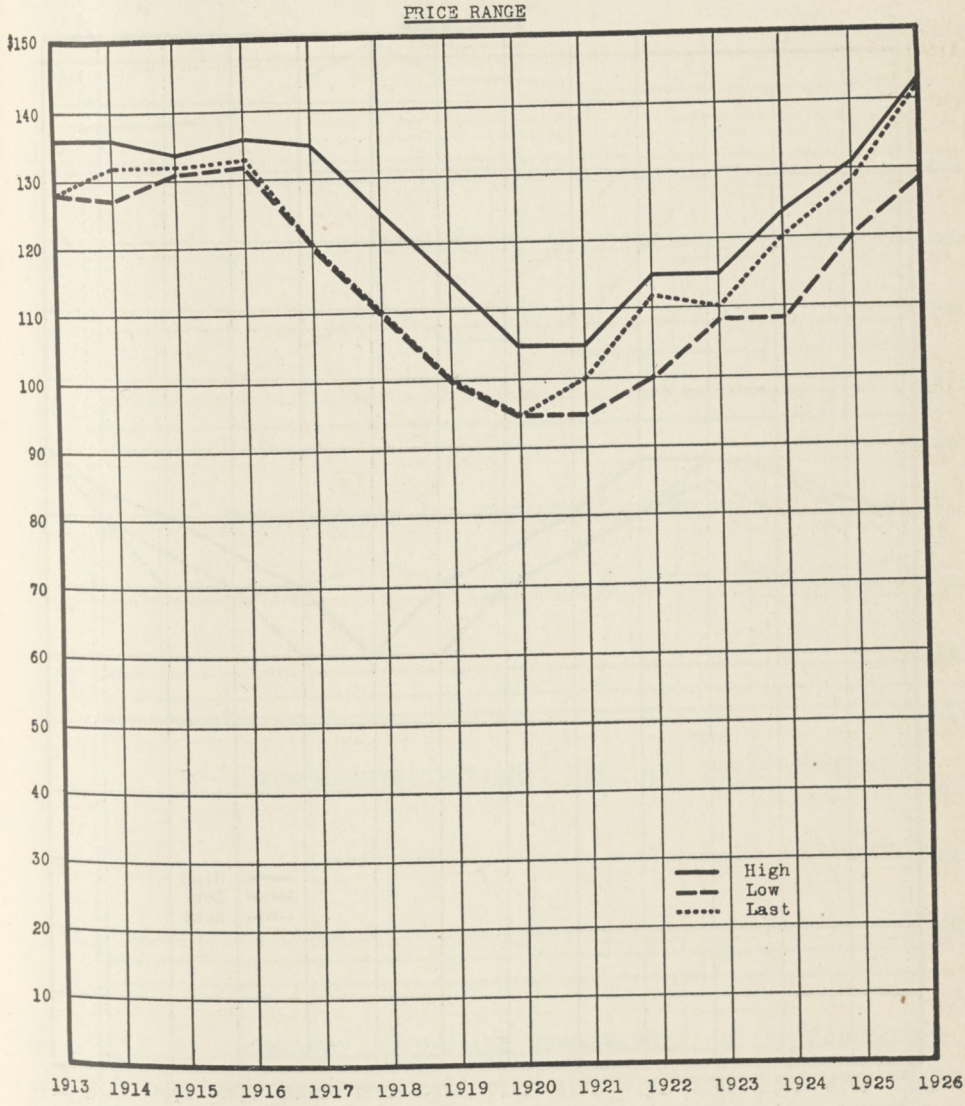


Exhibit D 49.

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY

CAPITAL STOCK

PRICE RANGE

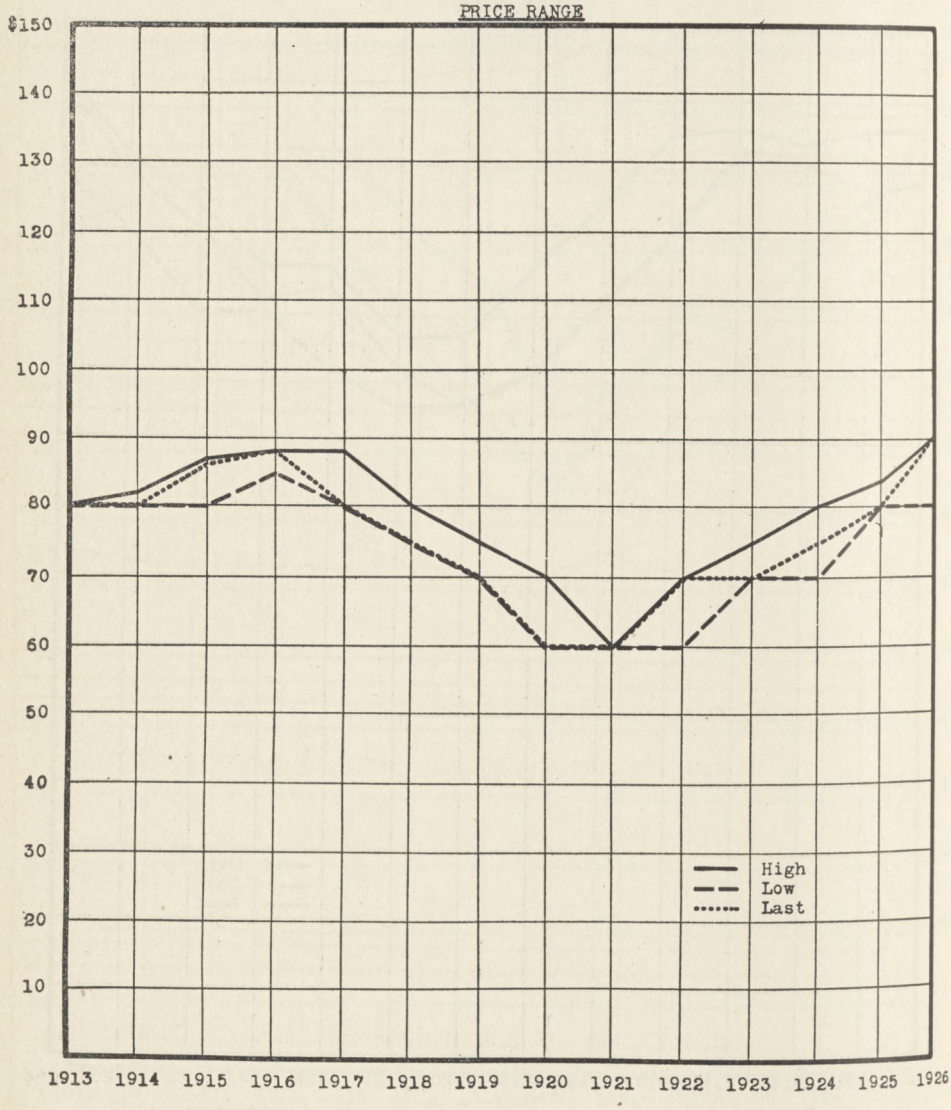


Exhibit D 50.

BID PRICES FOR CAPITAL STOCKS

JANUARY TO DECEMBER 1927

AS QUOTED BY J. S. RIPPEL AND COMPANY

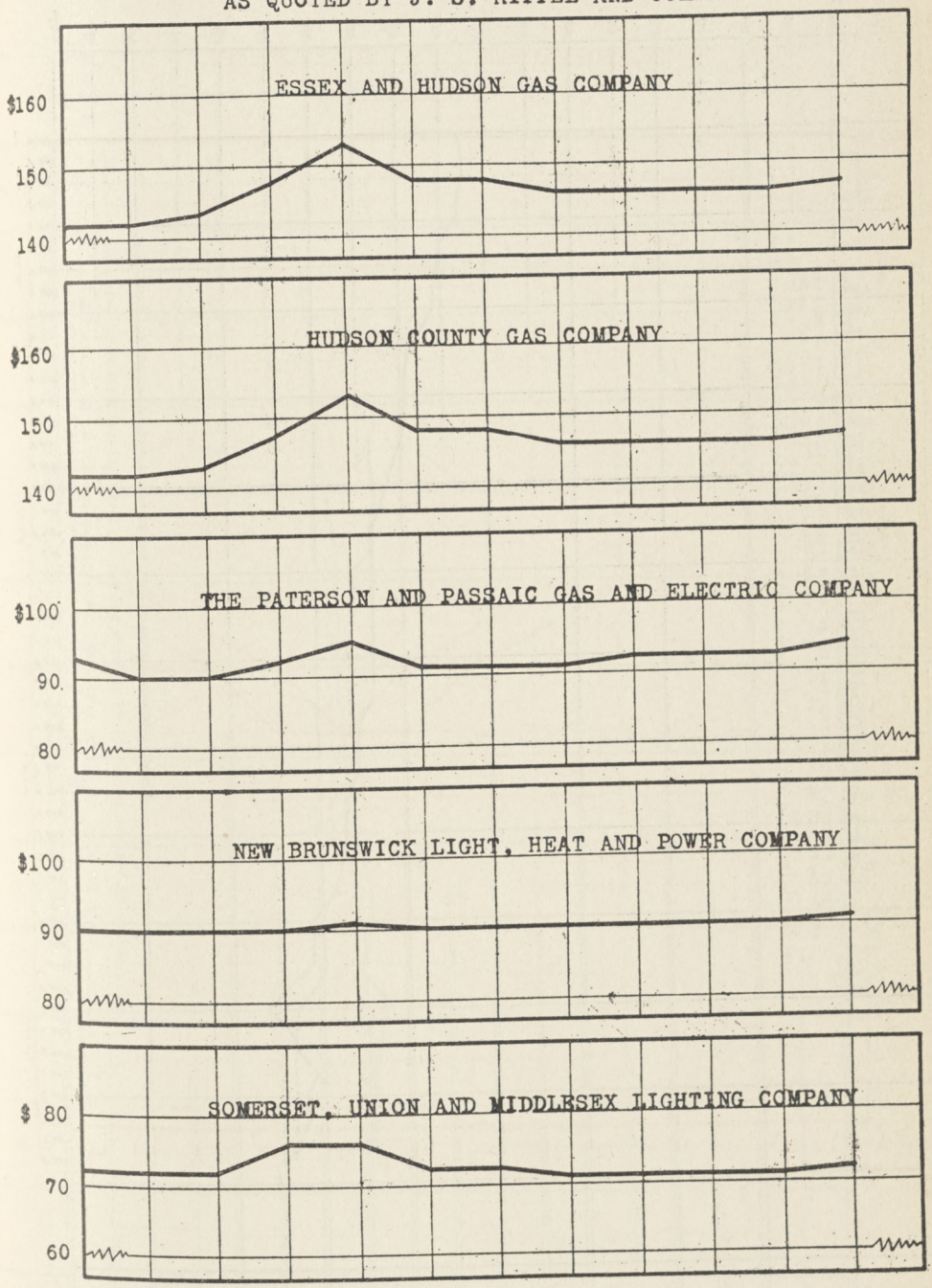
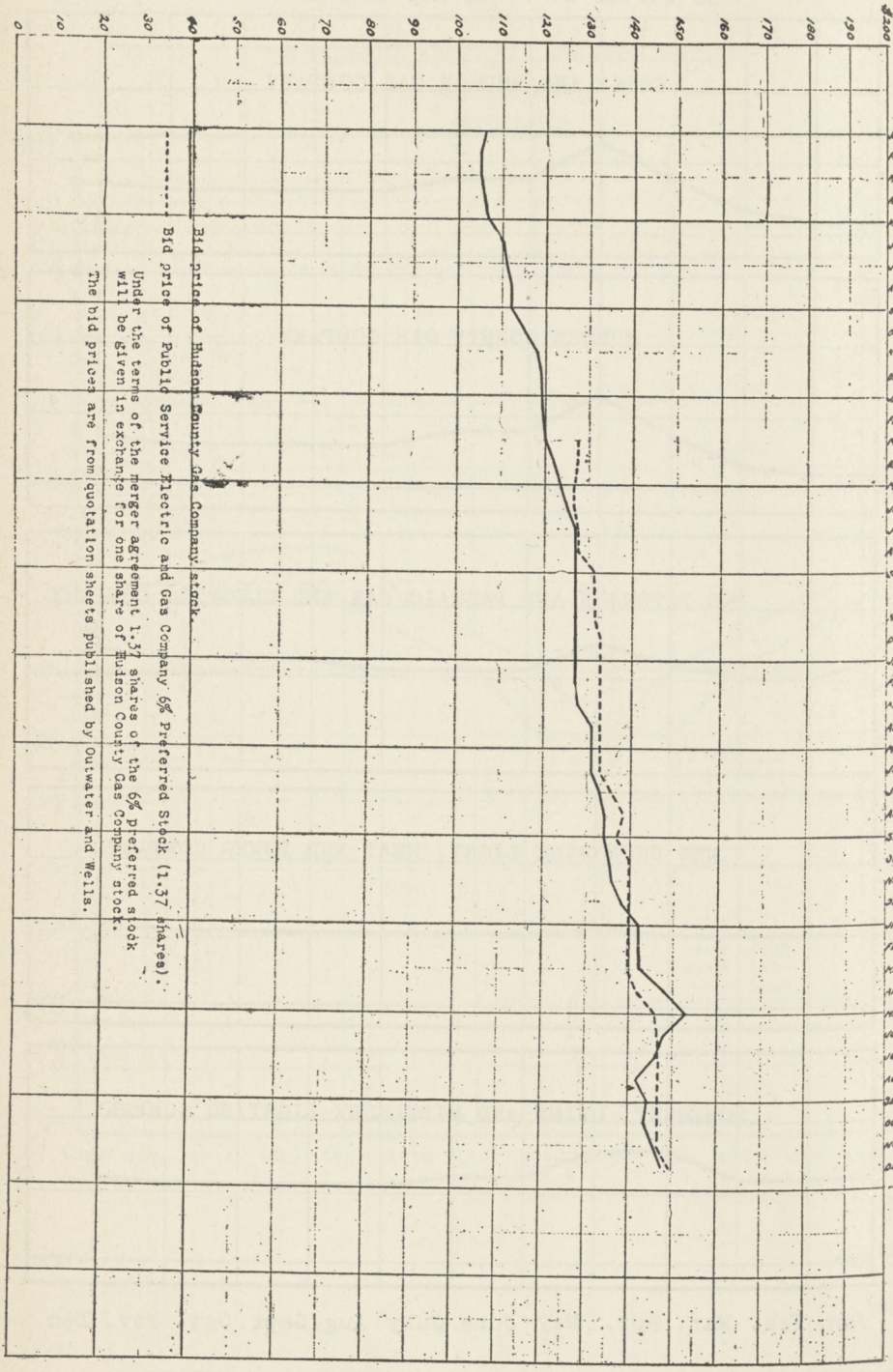


Exhibit D 51.

"BID PRICE" RANGE
OF
HUDSON COUNTY GAS COMPANY STOCK
AND
6% PREFERRED STOCK OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY



Bid price of Hudson County Gas Company stock.

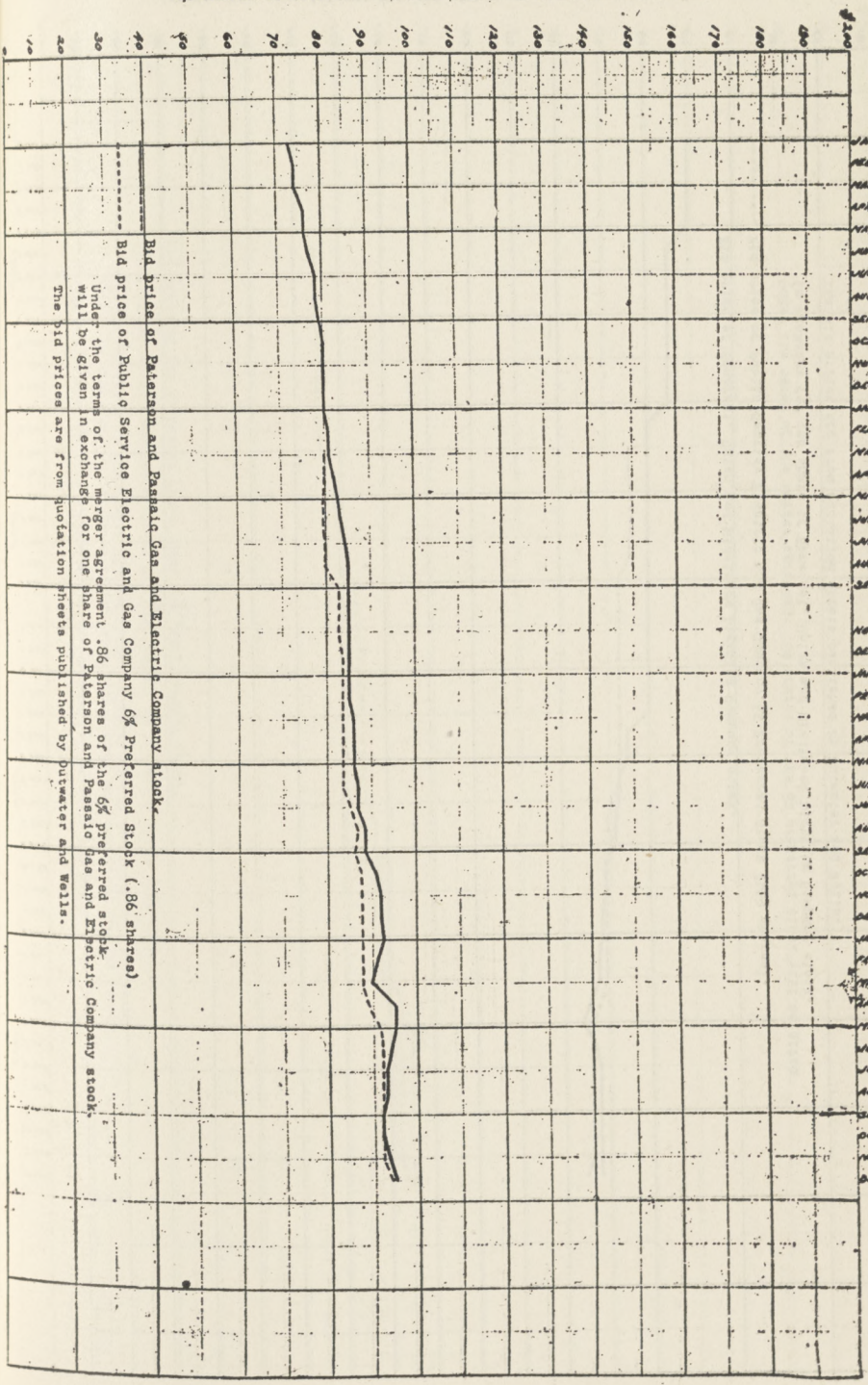
---------- Bid price of Public Service Electric and Gas Company 6% Preferred Stock (1.37 shares).

Under the terms of the merger agreement 1.37 shares of the 6% preferred stock will be given in exchange for one share of Hudson County Gas Company stock.

The bid prices are from quotation sheets published by Outwater and Wells.

Exhibit D 51.

"BID PRICE" RANGE
OF
PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY STOCK
AND
6% PREFERRED STOCK OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY

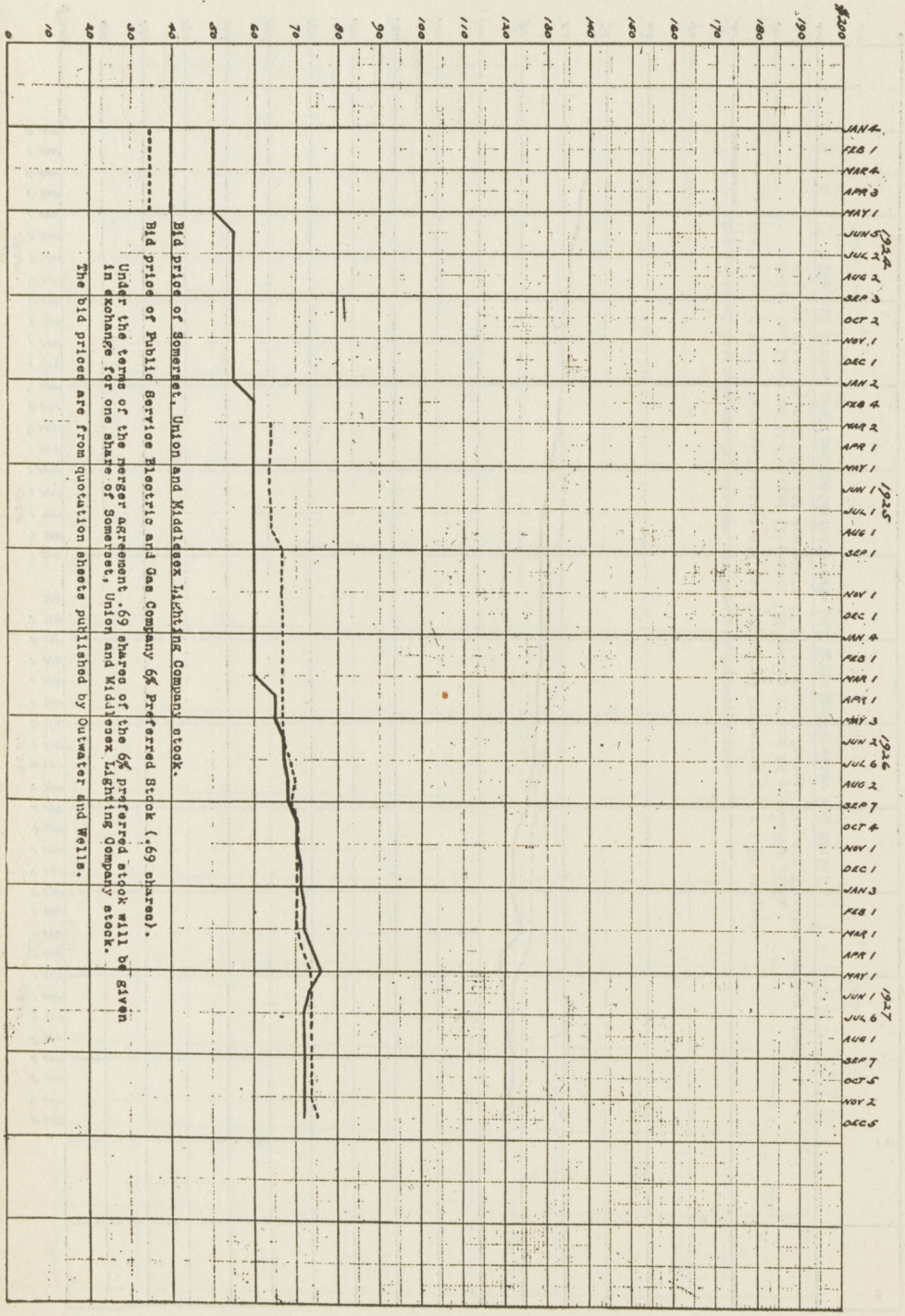


Under the terms of the merger agreement .86 shares of the 6% preferred stock will be given in exchange for one share of Paterson and Passaic Gas and Electric Company stock.

The bid prices are from quotation sheets published by Outwater and Wells.

Exhibit D 51.

"BID PRICE" RANGE
OF
SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY STOCK
AND
6% PREFERRED STOCK OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY



Bid price of Somerset, Union and Middlesex Lighting Company stock.

Bid price of Public Service Electric and Gas Company 6% Preferred Stock (.69 shares).

Under the terms of the merger agreement .69 shares of the 6% preferred stock will be given in exchange for one share of Somerset, Union and Middlesex Lighting Company stock.

The bid prices are from quotation sheets published by Outwater and Wells.

Exhibit D 51.

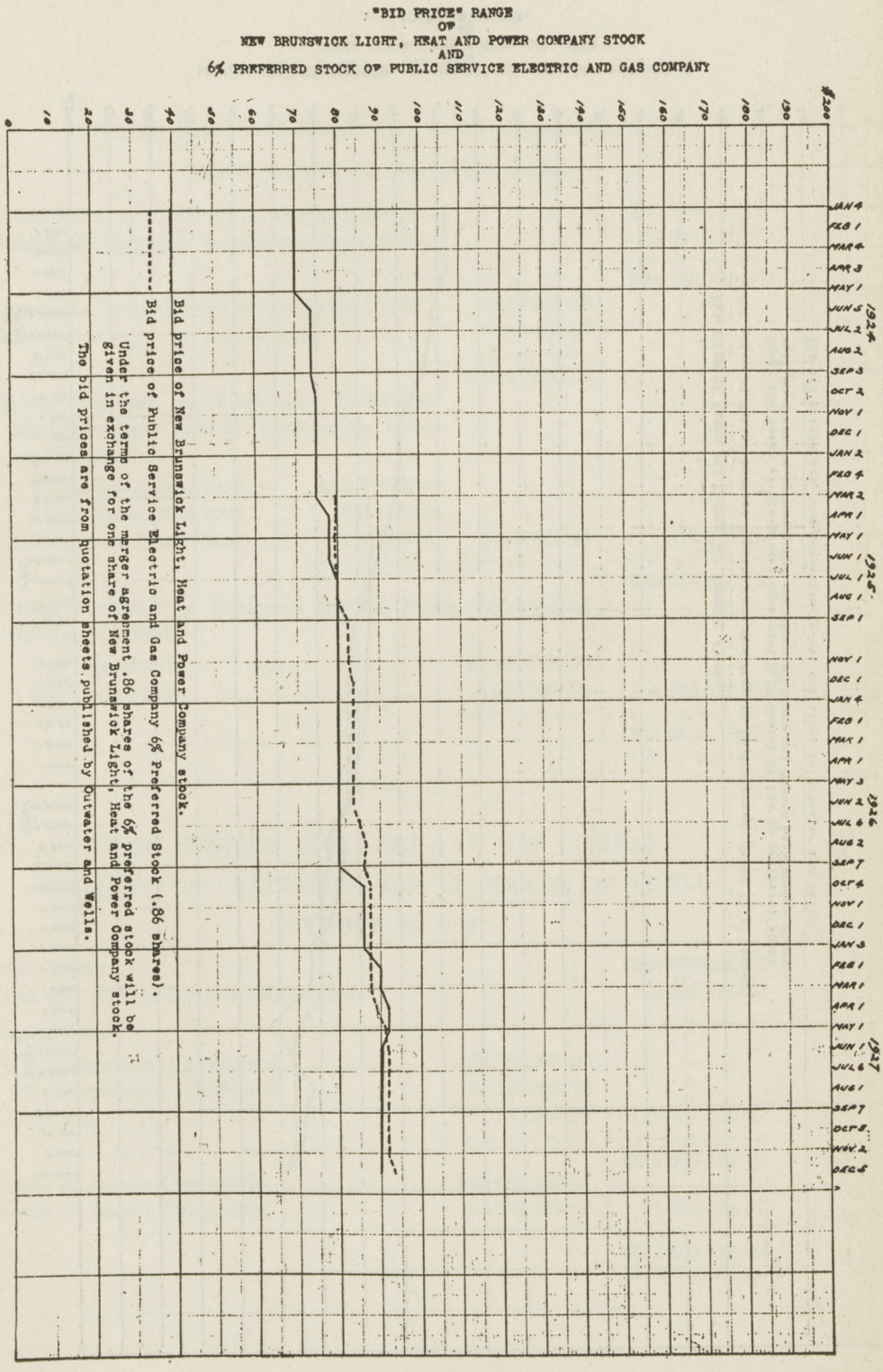
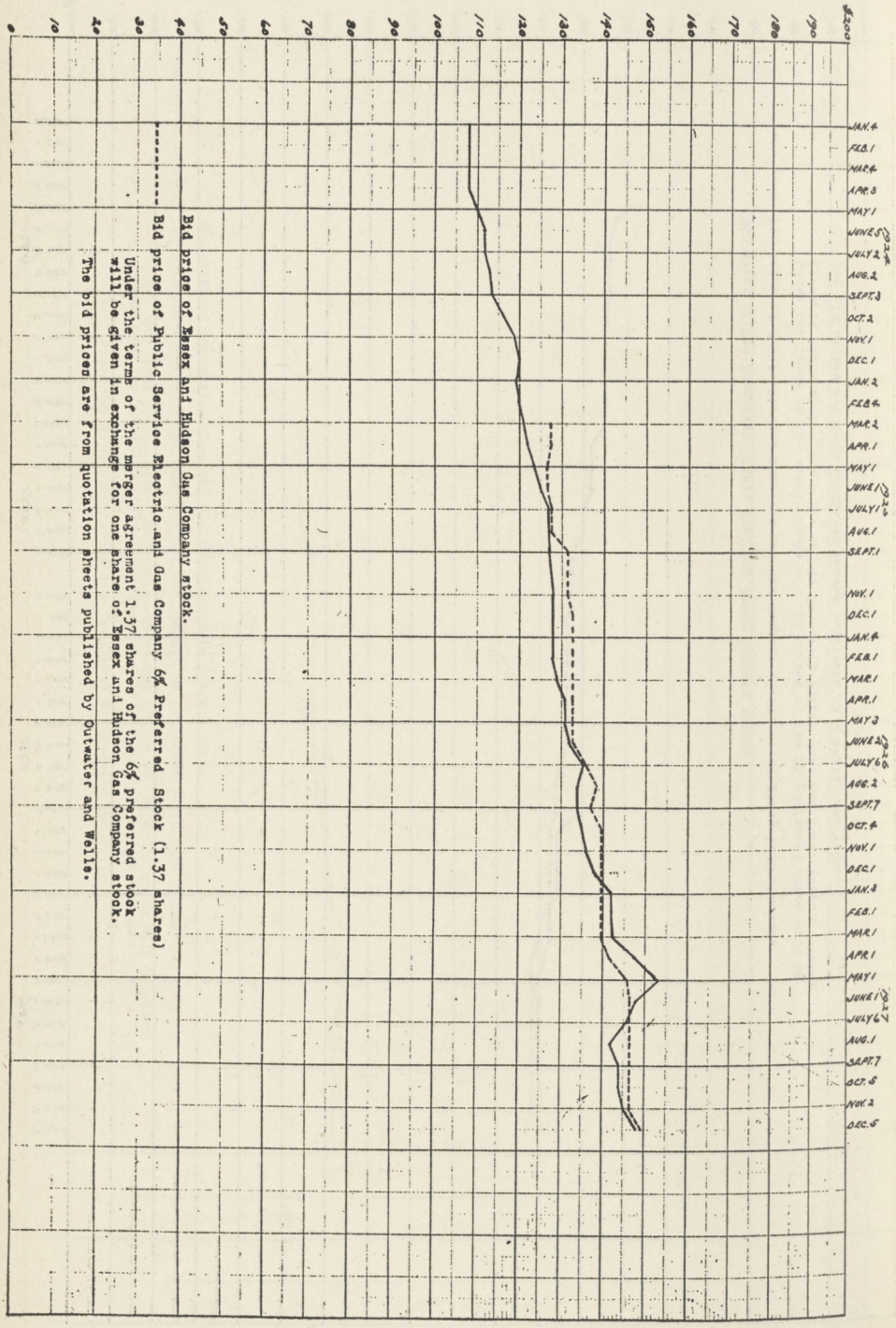

"BID PRICE" RANGE
OF
NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY STOCK
AND
6% PREFERRED STOCK OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY
$200
190
180
170
160
150
140
130
120
110
100
90
80
70
60
50
40
30
20
10
0
JAN 4
FEB 1
MAR 4
APR 3
MAY 1
JUN 5
JUL 2
AUG 3
SEP 3
OCT 2
NOV 1
DEC 1
JAN 2
FEB 4
MAR 2
APR 1
MAY 1
JUN 1
JUL 1
AUG 1
SEP 1
NOV 1
DEC 1
JAN 4
FEB 1
MAR 1
APR 1
MAY 3
JUN 2
JUL 6
AUG 2
SEPT
OCT 4
NOV 1
DEC 1
JAN 3
FEB 1
MAR 1
APR 1
MAY 1
JUN 1
JUL 6
AUG 1
SEPT
OCT 8
NOV 2
DEC 6
1924
1925
1926
1927
Bid price of New Brunswick Light, Heat and Power Company stock.
Bid price of Public Service Electric and Gas Company 6% Preferred Stock (.86 shares).
Under the terms of the merger agreement .86 shares of the 6% preferred stock will be given in exchange for one share of New Brunswick Light, Heat and Power Company stock.
The bid prices are from quotation sheets published by Outwater and Wells.

Exhibit D 51.

"BID PRICE" RANGE
OF
ESSEX AND HUDSON GAS COMPANY STOCK
AND
6% PREFERRED STOCK OF PUBLIC SERVICE ELECTRIC AND GAS COMPANY



Bid price of Essex and Hudson Gas Company stock.

---------- Bid price of Public Service Electric and Gas Company 6% Preferred Stock (1.37 shares)

Under the terms of the merger agreement 1.37 shares of the 6% preferred stock will be given in exchange for one share of Essex and Hudson Gas Company stock.

The bid prices are from quotation sheets published by Outwater and Wells.

Exhibit D 52.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

YEAR ENDED OCTOBER 31, 1927

Gross Revenue (including non-operating)			$80 180 425 02
Operating Expenses (including depreciation)			53 047 258 75
			$27 133 166 27
Aggregate Annual Interest on Prior Liens		$877 651 48	
Rentals		3 388 440 87	
		$4 266 092 35	
Annual Interest on First and Refunding Mortgage Gold Bonds Outstanding October 31, 1927—			
5½% Series due 1959	$1 408 055 00		
5½% Series due 1964	825 000 00		
5% Series due 1965	1 115 000 00	3 348 055 00	7 614 147 35
			$19 519 018 92
Annual Dividend on Preferred Capital Stock Outstanding October 31, 1927—			
7% Cumulative		$1 400 000 00	
6% Cumulative		3 093 822 00	4 493 822 00
			$15 025 196 92

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

SUMMARY OF CAPITALIZATION IN HANDS OF PUBLIC

OCTOBER 31, 1927

Prior Liens			$20 818 491 12
First and Refunding Mortgage Bonds			62 901 000 00
Capital Stock			
7% Cumulative Preferred		$20 000 000 00	
6% Cumulative Preferred		51 563 700 00	
Common		114 750 000 00	186 313 700 00
			$270 033 191 12
Bonds of Lessor Companies		$42 487 109 37	
Stocks of Lessor Companies		18 882 455 00	61 369 564 37
			$331 402 755 49

Exhibit D 52.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

PRIOR LIENS

YEAR ENDED OCTOBER 31, 1927

	Outstanding	Reacquired Securities	In Hands of Public	Rate	Annual Interest
United Electric Company of New Jersey 4% First Mortgage Bonds	$18 617 500 00	$683 000 00	$17 934 500 00	4%	$717 380 00
Consumers Light, Heat and Power Company 5% First Mortgage Bonds	885 000 00	577 000 00	308 000 00	5%	15 400 00
North Hudson Light, Heat and Power Company 5% First Mortgage Bonds	2 000 000 00	1 633 000 00	367 000 00	5%	18 350 00
Middlesex Electric Light and Power Company 5% First Mortgage Bonds	181 000 00	21 000 00	160 000 00	5%	8 000 00
Princeton Light, Heat and Power Company 5% 30-Year Sinking Fund Mortgage Bonds	98 300 00	.....	98 300 00	5%	4 915 00
Weehawken Contracting Company 6% First Mortgage Bonds	30 000 00	.....	30 000 00	6%	1 800 00
Bonds of Merged Companies	$21 811 800 00				
Public Service Electric Company Equipment Trust Series "A" 8% Certificates	390 000 00	.....	390 000 00	8%	31 200 00
Real Estate Mortgages (See schedule attached)	1 359 695 00	.....	1 359 695 00		78 296 70
Miscellaneous Long Term Debt (See schedule attached)	170 996 12	.....	170 996 12		2 309 78
	$23 732 491 12	$2 914 000 00	$20 818 491 12		$877 651 48

Exhibit D 52.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

OCTOBER 31, 1927

REAL ESTATE MORTGAGES

	Rate	Amount Outstanding	Annual Interest
Coal Street Property Newark	6%	25 000 00	1 500 00
Passaic River, East of River Street, Newark	5½	45 000 00	2 475 00
Coal Street Station Property	6	25 000 00	1 500 00
Property adjoining Market Street Gas Works	6	13 000 00	780.00
Property adjoining Essex Station	6	123 195 00	7 391 70
160-162 North Canal Street, 81-83 River Street, Newark	5	50 000 00	2 500 00
Cumberland Street and Passaic River, Harrison	5	100 000 00	5 000 00
Main and Centre Streets, Orange	6	50 000 00	3 000 00
Springfield and Summit Avenues, Summit	6	5 000 00	300 00
84 Sip Avenue, Jersey City	5½	120 000 00	6 600 00
Adjoining Marion Station	6	20 000 00	1 200 00
Washington Street between 6th and 7th, Hoboken	6	15 000 00	900 00
Bergenline Avenue and 5th Street, West New York	6	54 000 00	3 240 00
Main Avenue North of Park Place, Passaic	5	8 000 00	400 00
Spruce and Oliver Streets, Paterson	6	31 500 00	1 890 00
217 West 2nd Street, Plainfield	6	5 000 00	300 00
Albany and Neilson Streets, New Brunswick	6	30 000 00	1 800 00
9-13 Maiden Lane, Bound Brook	5½	5 000 00	275 00
Township and Boro of Chatham	6	82 000 00	4 920 00
Spruce and Second Streets, Camden	6	5 000 00	300 00
East State Street, Trenton	5½	20 000 00	1 100 00
1-23 Boudinot Street, 34-60 North Canal Street, Newark	6	350 000 00	21 000 00
S. E. Cor. Ferry Street and Webster Avenue, Jersey City	6	2 000 00	120 00
71-73-75 Mulberry Street, Newark	5½	151 000 00	8 305 00
Park and Donaldson Avenues, Rutherford	6	25 000 00	1 500 00
		$1 359 695 00	$78 296 70

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

MISCELLANEOUS LONG TERM DEBT

Annual Interest on Miscellaneous Long Term Debt—Advances in aid of Construction—Outstanding October 31, 1927	$38 496 40	
At 6%		$2 309 78 40

Exhibit D 52.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BONDS OF LESSOR COMPANIES

OCTOBER 31, 1927

	Bonds				
	Outstanding	Owned By P. S. E. & G. Co.	In Hands of Public	Yearly Rate	Amount
Essex and Hudson Gas Company	.....	.....	.....	..	.....
Hudson County Gas Company	$10 500 000 00	.....	$10 500 000 00	5	$525 000 00
Paterson and Passaic Gas and Electric Company					
Consolidated Mortgage	4 099 000 00	50 000 00	4 049 000 00	5	202 450 00
Edison Electric Illuminating Company of Paterson	585 000 00	585 000 00	.....	5	.....
Passaic Lighting Company	316 000 00	316 000 00	.....	5	.....
Somerset, Union and Middlesex Lighting Company					
First Mortgage	1 974 809 37	573 700 00	1 401 109 37	4	56 044 37
Central Electric Company	750 000 00	20 700 00	729 300 00	5	36 465 00
Plainfield Gas and Electric Light Company	500 000 00	.....	500 000 00	5	25 000 00
Somerset Lighting Company	150 000 00	21 000 00	129 000 00	5	6 450 00
New Brunswick Light, Heat and Power Company	500 000 00	.....	500 000 00	4	20 000 00
Newark Consolidated Gas Company					
Consolidated Mortgage	6 000 000 00	.....	6 000 000 00	5	300 000 00
Newark Gas Company	3 999 700 00	.....	3 999 700 00	6	239 982 00
South Jersey Gas, Electric and Traction Company					
First Mortgage	12 994 000 00	3 507 000 00	9 487 000 00	5	474 350 00
Trenton Gas and Electric Company	1 998 000 00	.....	1 998 000 00	5	99 900 00
Gas and Electric Company of Bergen County					
General Mortgage No. 2	3 462 000 00	1 846 000 00	1 616 000 00	5	80 800 00
General Mortgage No. 1	38 000 00	.....	38 000 00	5	1 900 00
Consolidated Mortgage	1 443 000 00	.....	1 443 000 00	5	72 150 00
Hackensack Gas Light Company	24 000 00	.....	24 000 00	5	1 200 00
Hackensack Gas and Electric Company	10 000 00	.....	10 000 00	5	500 00
Englewood Gas and Electric Company	23 000 00	.....	23 000 00	5	1 150 00
Ridgewood Gas Company					
First Mortgage	100 000 00	100 000 00	.....	5	.....
Second Mortgage	85 000 00	85 000 00	.....	5	.....
Cinnaminson Electric Light, Power and Heating Co	40 000 00	.....	40 000 00	6	2 400 00
Bordentown Electric Company	.....	.....	.....	..	.....
	$49 591 509 37	$7 104 400 00	$42 487 109 37		$2 145 741 37

Exhibit D 52.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

STOCKS OF LESSOR COMPANIES

OCTOBER 31, 1927

	Stocks						
	Outstanding	Owned By P. S. E. & G. Co.	In Hands of Public	Yearly Rate	Amount	Maintenance of Organization	Total Stock Rentals and Maintenance
Essex and Hudson Gas Company....	$6 500 000 00	$4 828 700 00	$1 671 300 00	8	$1 133 704 00	$1 500 00	$135 204 00
Hudson County Gas Company.....	10 500 000 00	8 088 100 00	2 411 900 00	8	192 952 00	1 800 00	194 752 00
Paterson and Passaic Gas and Electric Company	5 000 000 00	4 123 020 00	876 980 00	5	43 849 00	1 000 00	44 849 00
Somerset, Union and Middlesex Lighting Company.....	1 050 000 00	790 700 00	259 300 00	4	10 372 00	1 500 00	11 872 00
New Brunswick Light, Heat and Power Company.....	400 000 00	259 700 00	140 300 00	5	7 015 00	200 00	7 215 00
Newark Consolidated Gas Company..	6 000 000 00	233 000 00	5 767 000 00	5	288 350 00	1 500 00	289 850 00
South Jersey Gas, Electric and Traction Company	6 000 000 00	159 500 00	5 840 500 00	8	467 240 00	1 000 00	468 240 00
Gas and Electric Company of Bergen County	2 000 000 00	311 500 00	1 688 500 00	5	84 425 00	500 00	84 925 00
Ridgewood Gas Company.....	100 000 00	3 300 00	96 700 00	2	1 934 00	.....	1 934 00
Cinnaminson Electric Light, Power and Heating Company.....	20 000 00	.....	20 000 00	½	100 00	.....	100 00
Bordentown Electric Company.....	50 000 00	.....	50 000 00	⅕	100 00	.....	100 00
East Newark Gas Light Company....	60 000 00	25 00	59 975 00	6	3 598 50	.....	3 598 50
Plainfield Gas Light Company.....	.....	.....	.....	..	.....	60 00	60 00
	$37 680 000 00	$18 797 545 00	$18 882 455 00		$1 233 639 50	$9 060 00	$1 242 699 50

Exhibit D 52.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

INTEREST ON FIRST AND REFUNDING MORTGAGE GOLD BONDS

YEAR ENDED OCTOBER 31, 1927

	Outstanding	Bonds in Sinking Fund	In Hands of Public	Annual Interest
5½% Series due 1959...	$26 586 000 00	$985 000 00	$25 601 000 00	$1 408 055 00
5½% Series due 1964...	15 000 000 00	.....	15 000 000 00	825 000 00
5% Series due 1965.....	22 300 000 00	.....	22 300 000 00	1 115 000 00
	$63 886 000 00	$985 000 00	$62 901 000 00	$3 348 055 00

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

CAPITAL STOCK OCTOBER 31, 1927

	Outstanding	Annual Dividend
200,000 shares 7% Cumulative Preferred Stock—$100 par	$20 000 000	$1 400 000 00
515,637 shares 6% Cumulative Preferreed Stock—$100 par	51 563 700	3 093 822 00
11,475,000 shares Common Capital Stock—No par value	$114 750 000	.....

Exhibit D 52.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

INCOME ACCOUNT

Year ended October 31.	1927	1926
Operating Revenues	$78 600 660 94	$71 808 901 97
Operating Expenses and Taxes	$45 785 647 93	$41 469 915 68
Retirement Expenses	7 261 610 82	6 857 558 53
Operating Revenue Deduction	$53 047 258 75	$48 327 474 21
Operating Income	$25 553 402 19	$23 481 427 76
Non-Operating Income	2 693 923 71	1 922 706 05
Gross Income	$28 247 325 90	$25 404 133 81
Income Deductions (Bond Interest, Rentals and Miscellaneous Interest Charges)	10 716 008 74	10 104 565 52
Net Income	$17 531 317 16	$15 299 568 29
Profit and Loss Accounts—		
Adjustments of Surplus Accounts (exclusive of dividends)	44 575 55	*140 67
Balance before Dividends	$17 486 741 61	$15 299 708 96

* Credit.

New Jersey State Library

Exhibit D 52.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

BALANCE SHEET OCTOBER 31, 1927

ASSETS

Fixed Capital			$249 626 520 38
Investments:			
5½% Installment Note of Public Service Corporation of New Jersey	$19 133 771 39		
Securities of Affiliated Companies	33 477 064 54		
Other Investments	18 453 47		52 629 289 40
Reacquired Securities			2 914 000 00
Miscellaneous Assets:			
Sinking Funds	$1 173 323 34		
Miscellaneous Special Funds	15 993 21		
Special Deposits	6 625 60		1 195 942 15
Current Assets:			
Cash	$8 976 652 14		
Notes Receivable	105 74		
Accounts Receivable	11 406 315 32		
Interest and Dividends Receivable	938 454 75		
Materials and Supplies	5 687 597 00		
Miscellaneous Current Assets	234 955 95		27 244 080 90
Deferred Charges:			
Prepayments	$727 307 82		
Unamortized Debt Discount and Expense	2 014 789 84		
Miscellaneous Suspense	2 572 954 16		5 315 051 82
			$338,924,884.65

New Jersey State Library

Exhibit D 52.

LIABILITIES, CAPITAL STOCK AND SURPLUS

Long Term Debt:		
First and Refunding Mortgage Gold Bonds, 5½% Series due 1959	$26 586 000 00	
First and Refunding Mortgage Gold Bonds, 5½% Series due 1964	15 000 000 00	
First and Refunding Mortgage Gold Bonds, 5% Series due 1965	22 300 000 00	
Bonds of Merged Companies	21 811 800 00	
Real Estate Mortgages	1 359 695 00	
Equipment Obligations	390 000 00	
Advances for Construction	170 996 12	$87 618 491 12
Current Liabilities:		
Accounts Payable	$1 708 959 57	
Consumers' Deposits	3 852 024 54	
Miscellaneous Current Liabilities	3 578 32	
Taxes Accrued	3 947 506 14	
Interest Accrued	1 476 091 21	
Miscellaneous Accrued Liabilities	1 487 551 68	12 475 711 46
Reserves:		
Premium on Capital Stock	$337 500 00	
Retirement Reserve	31 823 846 42	
Unamortized Premium on Debt	41 44	
Casualty and Insurance Reserve	1 280 062 02	
Miscellaneous Unadjusted Credits	1 730 180 27	
Miscellaneous Reserves	3 905 642 77	39 077 272 92
Capital Stock:		
Common Stock	$114 750 000 00	
7% Cumulative Preferred	20 000 000 00	
6% Cumulative Preferred	51 563 700 00	186 313 700 00
Profit and Loss—Surplus		13 439 709 15
		$338 924 884 65

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

Year Ended—	Gross	Operating	Net
December 31, 1923	$56 172 536 14	$39 306 384 30	$16 866 151 84
December 31, 1924	60 132 119 99	41 187 861 90	18 944 258 09
December 31, 1925	65 739 192 59	43 676 820 94	22 062 371 65
December 31, 1926	74 755 339 57	49 524 038 29	25 231 301 28
October 31, 1927	80 180 425 02	53 047 258 75	27 133 166 27

Exhibit D 53.

AGREEMENT OF MERGER AND CONSOLIDATION FORMING NEWARK CONSOLIDATED GAS COMPANY DATED NOVEMBER 4, 1898.

(Not printed by consent.)

Exhibit D 54.

HUDSON COUNTY GAS COMPANY

PURCHASES

Date	Shares	Price
12/ 1/27	220	147
8/17/27	8	143
6/ 2/27	2	148
9/26/27	10	145
8/17/27	47	143
8/ 6/27	35	144
6/14/27	1	148
6/ 1/27	51	150
6/ 2/27	7	148
6/ 1/27	10	149
6/ 1/27	60	150
6/ 1/27	5	153
5/ 6/27	25	153
4/29/27	100	154
4/18/27	7	151
4/27/27	50	151½
3/10/27	128	142¾
4/ 8/27	50	150
4/ 8/27	11	149½
4/ 4/27	10	149½
3/28/27	50	146½

Exhibit D 54.

Date	Shares	Price
3/10/27	20	142¾
3/ 7/27	23	143
3/11/27	30	143¼
3/10/27	200	143¾
3/19/27	50	144¼
3/18/27	20	143¼
3/17/27	1	143½
3/16/27	15	143
3/17/27	50	143
3/14/27	4	142¾
3/12/27	15	143
3/14/27	30	143
3/11/27	5	143¼
3/11/27	100	143½
3/11/27	100	143
3/11/27	78	143
3/10/27	200	143¾
3/10 27	2	142¾
3/ 7/27	34	143¼
3/ 7/27	43	143
12/ 3/26	8	139
3/ 7/27	100	143
3/ 7/27	200	143
3/ 4/27	95	143¼
3/ 4/27	100	143
3/ 3/27	200	142¾
3/ 2/27	5	142½
3/ 2/27	100	142½
3/ 2/27	8	142½
3/ 1/27	50	142½
3/ 1/27	40	142½
3/ 1/27	40	142½
12/13/26	32	141
2/24/27	10	142
1/19/27	30	142⅜

Exhibit D 54.

Date	Shares	Price
2/24/27	7	142
2/10/27	5	142
2/ 9/27	22	142
2/ 8/27	15	142
1/13/27	9	142½
1/31/27	4	142¼
2/ 7/27	100	142¼
2/ 4/27	10	142¼
2/ 4/27	15	142¼
2/ 4/27	32	142¼
2/ 4/27	345	142¼
2/ 1/27	25	142¼
1/31/27	23	142¼
1/28/27	10	142
1/27/27	60	142
1/25/27	59	142
1/24/27	100	142
1/19/27	20	142⅜
1/17/27	3	142½
1/13/27	11	142½
1/10/27	7	142
1/ 7/27	100	143
12/13/26	18	141
12/29/26	5	139
12/18/26	25	141
12/17/26	4	140½
12/13/26	25	141
12/13/26	8	138
12/ 4/26	5	139½
12/ 4/26	25	139½
12/13/26	2	138
12/ 3/26	6	139
12/ 2/26	100	140
12/ 2/26	10	139
11/ 4/26	30	137

Exhibit D 54.

Date	Shares	Price
10/ 6/26	300	135¼
9/ 8/26	235	135
6/15/26	1	131½
7/ 1/26	3	133
9/ 1/26	4	134½
7/ 1/26	7	133
8/30/26	1	134
8/30/26	13	135
7/ 1/26	1	133
8/18/26	50	134
7/29/26	50	134½
6/30/26	43	133
7/ 1/26	10	133
6/30/26	27	133
6/26/26	100	135
6/23/26	100	135
6/15/26	1499	131½
6/23/26	100	131½
7/ 2/26	200	134
7/ 1/26	4	133
6/ 2/26	1	130
5/14/26	1	130½
4/13/26	100	131
4/19/26	1	128½
4/ 1/26	3	131
3/19/26	8	130
4/13/26	10	131¼
4/ 1/26	7	131
3/19/26	92	130
2/18/26	15	129
2/ 6/26	70	128½
2/10/26	1	127½
2/ 4/26	40	129
1/ 8/26	25	127½
12/16/26	15	127

Exhibit D 54.

Date	Shares	Price
12/ 3/25	4	129
11/25/25	7	128½
11/24/25	3	128
11/12/25	1	127
11/ 6/25	10	128
10/21/25	6	128
10/16/25	50	129
9/29/25	17	128
10/ 7/25	5	128
9/28/25	200	128¾
9/21/25	40	129
9/18/25	10	128¼
9/15/25	11	127½
9/10/25	100	128¼
9/ 3/25	111	127⅛
8/31/25	5	127¾
8/18/25	10	127½
7/30/25	2	127½
7/17/25	20	129½
6/ 8/25	5	125
6/15/25	2	125
6/ 8/25	15	126½
6/ 9/25	9	125
6/ 5/25	11	125
5/ 4/25	45	125
3/27/25	1	121
3/25/25	42	122
3/25/25	15	123
3/13/25	2	121
3/10/25	45	122
3/ 9/25	6	121
2/11/25	4	120
1/21/25	50	119¾
1/19/25	24	120½
1/15/25	508	120

Exhibit D 54.

Date	Shares	Price
12/ 2/24	40	120
1/ 7/25	50	119⅛
12/24/24	14	119¼
12/22/24	22	119¾
12/ 2/24	50	120
12/11/24	10	119
12/ 2/24	10	120
10/30/24	50	119
10/30/24	50	119
10/29/24	25	118
10/11/24	1	116½
9/30/24	5	116½
9/20/24	30	116¾
8/ 6/24	1	112
7/23/24	20	112¾
7/ 3/24	1	110
6/11/24	15	111¼
6/10/24	18	110
3/21/24	10	105¾
4/ 9/24	10	106¾
4/ 4/24	15	106½
3/28/24	2	107
3/21/24	10	105¾
3/ 6/24	50	106⅛
3/17/24	8	106
3/ 3/24	21	106
2/ 8/24	10	106
1/18/24	30	107
1/17/24	50	107
12/31/23	5	105½
12/21/23	5	106
11/ 2/23	20	107
11/ 1/23	30	107⅛
10/31/23	5	107⅛
10/17/23	1	107½

Exhibit D 54.

Date	Shares	Price
5/14/23	14	109
5/10/23	7	109
5/ 3/23	43	109
3/ 7/23	18	113
2/21/23	7	110
1/12/22	4	110¼
12/22/22	80	110
1/12/23	4	110¼
12/27/22	2	109½
12/22/22	20	110
12/28/22	6	108¼
12/18/22	4	112
10/31/22	80	110⅞
10/31/22	20	110⅞
4/26/22	8	104
4/13/22	25	107
4/13/22	50	106
4/ 4/22	100	106
3/27/22	8	103
3/ 4/22	4	102½
3/ 8/22	1	101
3/ 2/22	8	104½
3/ 1/22	50	103
1/ 4/22	2	97½
12/31/21	3	97½
11/15/21	2	89
9/22/21	5	84
9/22/21	15	84
10/12/21	100	88½
9/29/21	70	84
9/22/21	125	84
9/19/21	10	84
12/29/20	2077	90
7/15/19	33	105½
5/18/17	15	130

Exhibit D 54.

Date	Shares	Price
5/18/17	45	129¼
5/ 8/17	10	130
7/19/16	8	131
6/ 8/16	5	133
2/ 1/16	35	130¼
12/17/15	2	132
8/30/15	10	128¾
10/ 6/14	1	110
1/16/14	25	129¼
10/15/13	10	129¾
10/17/23	10	107⅜
9/25/23	4	107¾
8/16/23	21	107¼
7/27/23	15	107½
7/27/23	10	108
7/25/23	4	106
5/23/23	15	108
6/ 7/23	3	107
5/23/23	10	108
5/22/23	4	107
5/15/23	5	107½
5/17/23	40	108
5/15/23	1	107½
5/15/23	35	108
12/ 1/27	220	148
11/10/27	50	147½
10/ 6/27	10	146¾
8/ 9/27	35	145
6/ 1/27	51	151¼
10/28/27	17	148½
6/ 1/27	10	151¼
6/ 1/27	50	152¾
4/26/27	50	154½
4/18/27	7	152
4/12/27	50	152

Exhibit D 54.

Date	Shares	Price
4/ 8/27	50	150½
4/ 8/27	11	150½
4/ 5/27	10	150
3/25/27	50	147½
4/ 2/27	20	148¾
3/18/27	18	144½
3/15/27	5	144
3/10/27	30	144¼
3/ 7/27	200	144¼
3/18/27	50	144½
3/18/27	20	144½
3/15/27	195	144
3/18/27	4	144½
3/10/27	15	144¼
3/ 9/27	5	144¼
3/15/27	100	143
3/ 9/27	23	143¾
3/10/27	5	144¼
3/ 7/27	200	144¼
3/18/27	2	144½
3/ 9/27	34	143¾
3/ 9/27	43	143¾
3/ 3/27	100	144¼
3/ 9/27	395	144¼
3/ 3/27	200	144½
3/ 2/27	5	144
3/ 1/27	50	143¾
3/ 2/27	50	144
3/ 2/27	8	144
3/ 1/27	50	144
3/ 2/27	72	144
2/28/27	40	142¾
2/26/27	12	142¾
2/14/27	50	142¾
2/ 4/27	550	142¾

Exhibit D 54.

Date	Shares	Price
1/31/27	70	143
1/25/27	159	142¾
2/26/27	20	142¾
2/28/27	3	142¾
2/ 7/27	11	142¾
2/28/27	7	142¾
2/28/27	50	143¼
2/28/27	50	143
2/26/27	18	142¾
1/ 5/27	25	143
3/ 2/27	4	144
12/20/26	25	143
3/ 2/27	5	144
12/ 7/26	25	141½
12/ 2/26	12	140½
3/ 2/27	6	144
12/ 3/26	100	141
11/ 8/26	30	139
10/19/26	10	137¼
10/ 6/26	15	137
10/14/26	175	137
10/ 4/26	15	136½
10/19/26	1	137¼
9/28/26	3	137
9/29/26	20	136½
9/ 9/26	200	136
9/29/26	4	136½
9/ 9/26	7	136¼
8/30/26	15	137
8/17/26	100	135½
8/12/26	10	136½
9/ 9/26	43	136¼
7/26/26	27	135½
6/28/26	100	135¼
6/24/26	100	135¼

Exhibit D 54.

Date	Shares	Price
9/29/26	1	136½
6/23/26	100	135
6/23/26	60	136
7/ 2/26	200	135
7/ 6/26	4	136
6/19/26	15	136
6/15/26	23	135
6/15/26	1300	133
6/15/26	100	131½
10/18/26	1	137¼
10/18/26	1	137¼
4/20/26	35	133
4/13/26	1	133
4/15/26	20	133
4/15/26	3	133½
4/19/26	8	133
4/13/26	55	133
4/13/26	69	133
3/24/26	10	133
3/22/26	20	133
2/18/26	3	131
2/17/26	12	131½
2/11/26	11	130
2/ 9/26	100	130½
1/22/26	22	130
1/11/26	3	130
1/ 7/26	15	130
12/ 3/25	25	130
10/23/25	6	130
10/14/25	50	129½
10/16/25	7	130
10/ 7/25	15	130
9/28/25	200	129¼
9/23/25	100	129½
10/16/25	12	130

Exhibit D 54.

Date	Shares	Price
9/14/25	50	129¼
9/15/25	11	127½
9/ 3/25	100	128¼
8/ 5/25	16	130
7/22/25	20	130
6/23/25	3	128
6/15/25	4	127½
6/12/25	5	127
6/15/25	9	127½
6/11/25	10	128
6/ 5/25	5	127½
6/ 5/25	6	128
6/ 5/25	2	127½
6/ 2/25	5	126¾
5/15/25	5	127
5/13/25	8	126
5/ 8/25	20	127
5/ 6/25	5	125½
4/ 9/25	3	125
3/25/25	40	124
3/27/25	15	124
3/18/25	47	123
3/ 5/25	10	122
1/21/25	50	121
1/22/25	24	121
1/15/25	508	120
1/ 9/25	136	121
1/ 6/25	50	122
12/ 9/24	10	121
11/19/24	25	121
11/12/24	25	121
11/10/24	50	120¼
10/30/24	25	120
11/19/24	1	121
1/31/25	5	116½

Exhibit D 54.

Date	Shares	Price
9/29/24	20	118
9/24/24	10	118
1/31/25	1	116½
7/21/24	20	114
7/21/24	1	113
6/20/24	18	113
4/24/24	35	109
4/ 4/24	2	108
5/ 6/24	9	109½
3/24/24	1	107½
3/24/24	49	107½
3/18/24	25	108¾
3/17/24	15	108½
1/18/24	30	108½
1/18/24	50	107½
1/11/24	5	107¼
12/27/23	5	110
11/ 2/23	20	108¼
11/ 1/23	30	108¼
11/ 2/23	5	108¼
10/18/23	1	109
10/17/23	10	108¾
9/25/23	4	108¾
8/23/23	20	109
8/20/23	1	109
7/27/23	29	109
7/10/23	3	109
6/25/23	2	109½
6/13/23	10	109½
7/10/23	3	109
5/11/23	5	108½
5/28/23	5	109⅛
7/10/23	4	109
5/21/23	45	109½
5/17/23	36	109½

Exhibit D 54.

Date	Shares	Price
5/17/23	14	109½
5/11/23	7	109½
5/ 3/23	43	110
3/ 9/23	18	112¼
5/ 3/23	7	110
2/15/23	1	112
2/ 7/23	3	113
2/15/23	80	112
1/29/23	4	112
2/15/23	1	112
12/29/22	1	111
1/16/23	20	112
12/18/22	6	110
12/18/22	4	112
11/13/22	15	110½
11/13/22	65	110½
11/ 3/22	20	113
6/13/22	8	109
4/18/22	25	108½
4/13/22	50	106½
4/ 5/22	100	106½
4/12/22	8	108½
3/16/22	5	105
3/ 7/22	8	105
3/ 3/22	50	105
1/ 6/22	5	100
11/18/21	2	91
10/20/21	5	90
10/19/21	15	90
10/20/21	100	89
10/13/21	20	90
10/ 6/21	10	90
10/ 4/21	10	90
10/ 3/21	20	90
9/30/21	10	90

Exhibit D 54.

Date	Shares	Price
9/22/21	30	90
9/22/21	50	89½
9/22/21	45	90
9/21/21	10	90
1/14/21	25	90
1/14/21	20	90
3/15/21	1200	90
1/28/21	800	90
1/14/21	32	90
7/16/19	33	110
5/18/17	5	130
5/19/17	10	130
9/19/17	45	129¼
5/ 8/17	10	130½
11/ 2/16	8	133
6/ 8/16	5	133½
2/ 7/16	35	131¼
12/16/15	2	132
8/30/15	10	128¾
10/13/14	1	123
1/16/14	25	129½
10/16/13	10	130¾
11/20/12	5	137
6/ 8/11	100	138¼
1/26/11	5	134
1/25/11	20	134
1/23/11	15	134

Exhibit D 54.

HUDSON COUNTY GAS COMPANY

Securities on Hand

Month	Shares	Price
Nov. 30, 1927.....	288	50 @ 154
		30 @ 153
		1 @ 143½
		58 @ 143
		128 @ 142¾
		8 @ 139
		5 @ 139
		8 @ 138
Oct. 31, 1927.....	338	50 @ 154
		30 @ 153
		2 @ 148
		1 @ 148
		1 @ 143½
		105 @ 143
		128 @ 142¾
		8 @ 139
		5 @ 139
		8 @ 138
Sept. 30, 1927.....	373	50 @ 154
		30 @ 153
		7 @ 149
		10 @ 148
		1 @ 148
		1 @ 143½
		105 @ 143
		128 @ 142¾
		8 @ 139
		5 @ 139
		8 @ 138
		10 @ 145
Aug. 31, 1927.....	353	50 @ 154
		30 @ 153
		7 @ 149

Exhibit D 54.

	Month	Shares	Price
			10 @ 148
			1 @ 148
			1 @ 143½
			105 @ 143
			128 @ 142¾
			8 @ 139
10			5 @ 139
			8 @ 138
	July 31, 1927.....	298	50 @ 154
			30 @ 153
			7 @ 149
			10 @ 148
			1 @ 148
			1 @ 143½
			50 @ 143
			128 @ 142¾
20			8 @ 139
			5 @ 139
			8 @ 138
	June 30, 1927.....	298	50 @ 154
			30 @ 153
			7 @ 149
			10 @ 148
			1 @ 148
			1 @ 143½
30			50 @ 143
			128 @ 142¾
			8 @ 139
			8 @ 138
			5 @ 139
	May 31, 1927.....	280	50 @ 154
			30 @ 153
			1 @ 143½
			50 @ 143
40			128 @ 142

Exhibit D 54.

Month	Shares	Price
		8 @ 139
		5 @ 139
		8 @ 138
Apr. 30, 1927.....	250	50 @ 154
		1 @ 143½
		50 @ 143
		128 @ 142¾
		8 @ 139
		5 @ 139
		8 @ 138
Mar. 31, 1927.....	230	10 @ 144
		1 @ 143½
		50 @ 143
		148 @ 142¾
		8 @ 139
		5 @ 139
		8 @ 138
Feb. 28, 1927.....	68	32 @ 141
		4 @ 140½
		5 @ 139½
		14 @ 139
		5 @ 139
		8 @ 138
Jan. 31, 1927.....	293	100 @ 143
		50 @ 142⅜
		20 @ 142½
		3 @ 142½
		27 @ 142¼
		7 @ 142
		50 @ 141
		4 @ 140½
		5 @ 139½
		14 @ 139
		5 @ 139
		8 @ 138

Exhibit D 54.

Month	Shares	Price
Dec. 31, 1926.....	111	75 @ 141
		4 @ 140½
		5 @ 139½
		14 @ 139
		5 @ 139
		8 @ 138
Sept. 30, 1926.....	18	15 @ 135
		1 @ 131½
		1 @ 130½
		1 @ 130
Aug. 31, 1926.....	57	38 @ 133
		15 @ 133
		2 @ 131½
		1 @ 130½
		1 @ 130
July 31, 1926.....	118	50 @ 134½
		2 @ 131½
		1 @ 130½
		1 @ 130
		25 @ 133
		39 @ 133
June 30, 1926.....	74	1 @ 130½
		1 @ 130
		2 @ 131½
		70 @ 133
May 31, 1926.....	1	@ 130½
Mar. 31, 1926.....	70	@ 130
Dec. 31, 1925.....	15	@ 127
Nov. 30, 1925.....	21	7 @ 128½
		13 @ 128
Sept. 30, 1925.....	29	17 @ 128
		1 @ 127¾
		11 @ 127½
Aug. 31, 1925.....	1	@ 127¾
July 31, 1925.....	2	@ 127½

Exhibit D 54.

Month	Shares	Price
May 31, 1925	7	@ 125
Mar. 31, 1925	3	2 @ 122
		1 @ 121
Feb. 28, 1925	4	@ 120
Dec. 31, 1924	142	90 @ 120
		22 @ 119¾
		14 @ 119¼
		10 @ 119
		5 @ 116½
		1 @ 112
Nov. 30, 1924	6	5 @ 116½
		1 @ 112
Oct. 31, 1924	107	1 @ 112
		5 @ 116½
		1 @ 116½
Sept. 30, 1924	6	1 @ 112
		5 @ 116½
Aug. 31, 1924	1	@ 112
Apr. 30, 1924	9	@ 106¾
Mar. 31, 1924	21	2 @ 107
		19 @ 105¾
Feb. 29, 1924	10	@ 106
Dec. 31, 1923	5	@ 105½
Oct. 31, 1923	5	@ 107⅛
June 30, 1923	10	3 @ 108
		7 @ 107
May 31, 1923	24	20 @ 108
		4 @ 107
Apr. 30, 1923	7	@ 110
Mar. 31, 1923	7	@ 110
Feb. 28, 1923	7	@ 110
Jan. 31, 1923	85	80 @ 110
		1 @ 109½
		4 @ 110¼

Exhibit D 54.

Month	Shares	Price
Dec. 30, 1922.....	101	100 @ 110
		1 @ 109½
Oct. 31, 1922.....	100	@ 110⅞
May 31, 1922.....	8	@ 104
Apr. 30, 1922.....	8	@ 104
Mar. 31, 1922.....	8	@ 103
Dec. 31, 1921.....	3	@ 97½
Sept. 30, 1921.....	80	@ 84
Feb. 28, 1921.....	1200	@ 90
Jan. 31, 1921.....	1200	@ 90
Dec. 31, 1920.....	2077	@ 90
Oct. 31, 1916.....	8	@ 131
Sept. 30, 1916.....	8	@ 131

ESSEX AND HUDSON GAS COMPANY

PURCHASES

Date	Shares	Price
11/15/27.....	40	146
9/26/27.....	10	145
6/ 2/27.....	10	148
3/14/27.....	25	143¾
3/14/27.....	25	143¾
4/18/27.....	5	151
3/10/27.....	10	143¼
3/16/27.....	25	143
3/15/27.....	100	143
3/14/27.....	10	143¾
3/10/27.....	50	143¼
3/10/27.....	50	143¼
3/ 8/27.....	13	144¼
12/17/26.....	2	140½
1/17/26.....	5	142

Exhibit D 54.

Date	Shares	Price
3/ 7/27	15	143
3/ 2/27	15	142½
2/28/27	4	142¼
3/ 1/27	26	142¼
3/ 1/27	12	142
2/28/27	10	142¼
2/28/27	40	142¾
2/10/27	5	142¼
2/10/27	10	142¼
2/ 8/27	17	142¾
1/27/27	30	142
1/21/27	10	142
1/17/27	20	142
1/ 7/27	100	143
12/17/26	26	140½
12/16/26	10	141¼
12/ 6/26	100	140
10/27/26	20	136
10/25/26	25	136
7/26/26	50	135⅜
7/31/26	50	134½
6/21/26	50	132
6/23/26	100	135
6/21/26	50	132
6/23/26	400	132
6/15/26	500	132
4/ 9/26	1	128½
2/15/26	5	130
11/25/25	5	128
11/ 6/26	5	130
1/ 6/26	5	128½
12/30/25	15	128
11/ 6/25	5	130
11/25/25	45	128
11/ 6/25	10	130

Exhibit D 54.

Date	Shares	Price
12/16/25	10	128
11/ 6/25	5	130
10/29/25	50	129½
10/ 9/25	180	129¾
10/ 7/25	5	128
10/ 3/25	15	128¾
10/ 3/25	10	128¾
9/18/25	5	128½
4/ 8/25	8	123
12/ 8/24	60	120½
11/14/24	13	120
11/12/24	35	119½
10/31/24	10	120
4/ 3/24	7	108
3/ 5/24	10	109¾
2/28/24	20	109¾
1/28/24	100	109
1/25/24	100	109
1/16/24	50	108
1/16/24	18	110½
11/22/23	5	110
15/16/23	5	108
4/ 7/23	3	110
6/22/23	10	110
6/15/23	100	111⅜
4/ 7/23	67	110
11/29/22	10	110

Exhibit D 54.

ESSEX AND HUDSON GAS COMPANY

Sales

Date	Shares	Price
11/15/27	40	147½
11/15/27	10	147½
4/ 6/27	25	150
4/18/27	5	153
3/12/27	10	144½
3/10/27	100	144
4/ 5/27	10	151
3/10/27	100	144¼
3/11/27	13	144½
3/12/27	2	144½
3/ 2/27	5	144
3/12/27	15	144½
3/ 2/27	15	144
3/ 1/27	30	143¾
3/ 2/27	12	144
2/28/27	50	143¼
3/ 2/27	5	144
2/11/27	10	142¾
3/ 2/27	17	144
1/27/27	30	143
3/ 2/27	46	144
3/ 1/27	20	143¾
1/10/27	100	144
3/ 7/27	50	144¼
12/ 7/26	50	141
10/28/26	25	137¼
10/26/26	20	137
9/28/26	15	137
9/ 8/26	25	136¼
7/26/26	50	137¼
8/ 5/26	10	136½

Exhibit D 54.

Date	Shares	Price
6/29/26	50	135
6/24/26	100	135¼
6/23/26	5	135
6/23/26	30	136
6/23/26	400	135
6/19/26	15	136
6/15/26	500	132
10/28/26	1	137¼
2/11/26	35	132
1/20/26	5	130
1/25/26	25	130
12/23/25	10	129½
12/23/25	10	129½
12/18/25	3	129½
12/ 7/25	17	130
12/18/25	5	129½
11/17/25	50	130¾
10/ 9/25	180	130¼
10/23/25	5	130
10/ 6/25	15	130
10/ 2/25	10	129¾
9/21/25	5	129
4/20/25	2	124
4/13/25	3	125
4/ 9/25	3	125
12/ 5/24	60	123½
11/20/24	58	121¼
4/ 4/24	7	110¼
3/ 5/24	10	110¼
2/28/24	20	110½
1/31/24	50	109½
1/29/24	50	110½
1/25/24	100	110½
1/22/24	50	110½
1/16/24	18	111

Exhibit D 54.

Date	Shares	Price
11/23/23	10	110¼
12/ 4/23	3	111½
7/10/23	10	111½
6/18/23	100	112¼
7/24/23	10	112½
5/14/23	12	112⅛
5/ 8/23	20	112½
5/ 4/23	5	110
5/ 1/23	10	112
4/11/23	10	114
12/ 4/22	10	113

ESSEX AND HUDSON GAS COMPANY

Securities on Hand

Month	Shares	Price
Nov. 30, 1927	60	10 @ 148
		25 @ 143¾
		25 @ 143
Oct. 31, 1927	70	10 @ 148
		10 @ 145
		25 @ 143¾
		25 @ 143
Sept. 30, 1927	70	10 @ 148
		25 @ 143¾
		25 @ 143
		10 @ 145
Aug. 31, 1927	60	10 @ 148
		25 @ 143¾
		25 @ 143
July 31, 1927	60	10 @ 148
		25 @ 143¾
		25 @ 143

Exhibit D 54.

Month	Shares	Price
June 30, 1927.....	60	10 @ 148
		25 @ 143¾
		25 @ 143
May 31, 1927.....	50	25 @ 143¾
		25 @ 143
Apr. 30, 1927.....	50	25 @ 143¾
		25 @ 143
Mar. 31, 1927.....	85	60 @ 143¾
		25 @ 143
Feb. 28, 1927.....	149	17 @ 142¾
		4 @ 142¼
		5 @ 142¼
		35 @ 142
		10 @ 141¼
		28 @ 140½
		50 @ 140
Jan. 31, 1927.....	123	35 @ 142
		10 @ 141¼
		28 @ 140½
		50 @ 140
Dec. 31, 1926.....	88	10 @ 141¼
		28 @ 140½
		50 @ 140
Sept. 30, 1926.....	1	@ 128½
Aug. 31, 1926.....	41	40 @ 135⅜
		1 @ 128½
July 31, 1926.....	51	50 @ 135⅜
		1 @ 128½
June 30, 1926.....	1	@ 128½
May 31, 1926.....	1	@ 128½
Apr. 30, 1926.....	1	@ 128½
Jan. 31, 1926.....	30	5 @ 130
		5 @ 128½
		20 @ 128

Exhibit D 54.

Month	Shares	Price
Dec. 31, 1925	55	10 @ 130
		45 @ 128
Nov. 30, 1925	75	25 @ 130
		50 @ 128
Oct. 31, 1925	50	@ 129½
Oct. 31, 1924	10	@ 120
Nov. 30, 1923	3	@ 110
Oct. 31, 1923	3	@ 110
Sept. 30, 1923	3	@ 110
Aug. 31, 1923	3	@ 110
July 31, 1923	3	@ 110
June 30, 1923	23	13 @ 110
		10 @ 110
May 31, 1923	13	@ 110
Apr. 30, 1923	60	@ 110
Nov. 30, 1922	10	@ 110

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY

PURCHASES

Date	Shares	Price
5/ 6/27	50	76
3/ 8/27	100	72½
3/ 7/27	300	72½
2/ 8/27	50	72
1/19/27	70	72
10/29/26	50	70
8/ 6/26	30	68
4/16/26	10	66
4/ 6/26	19	66
3/13/25	7	60
4/ 9/23	20	53½
2/ 2/23	100	54¼
10/28/12	50	74

Exhibit D 54.

SALES

Date	Shares	Price
5/ 6/27	50	77
3/10/27	100	74
3/16/27	300	74
3/ 3/27	50	73½
3/ 3/27	70	73½
10/29/26	50	73
8/ 6/26	30	71¾
4/20/26	10	70
4/20/26	19	70
3/17/25	7	65½
6/ 6/23	20	55
2/ 9/23	100	56¾
10/30/12	50	74¼

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY

PURCHASES

Date	Shares	Price
7/22/26	20	85
2/17/25	20	79
11/20/24	20	75
6/ 5/24	25	71½
1/22/24	10	70¼
1/18/24	10	65

SALES

7/26/26	20	88
2/18/25	20	80¼
12/10/24	20	77
7/ 2/24	25	75
1/23/24	10	70½
1/23/24	10	70½

Exhibit D 54.

PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY—STOCK

PURCHASES

Date	Shares	Price
3/18/27	120	@ 91
5/26/27	15	94
5/20/27	20	95
4/28/27	5	95
3/19/27	150	91¼
3/18/27	4	91
3/ 2/27	200	90¼
2/10/27	3	90¼
2/ 4/27	10	91
1/21/27	10	92
10/18/26	5	92
10/11/26	100	91½
4/ 9/26	1	85½
1/14/26	2	85½
10/20/26	58	87
7/23/25	25	85
7/ 1/25	8	86¼
12/23/24	17	81
1/18/24	200	73¾
1/17/24	100	73¾
1/11/24	156	74
10/ 5/23	62	75¼
4/ 9/23	28	77½
12/20/22	100	77
2/27/22	78	70

SALES

5/ 9/27	20	97
5/ 9/27	5	97
3/22/27	150	92¼

Exhibit D 54.

Date	Shares	Price
5/ 4/27	4	98
3/ 7/27	200	91
3/22/27	3	92¼
3/ 2/27	10	91¼
1/21/27	10	92½
10/21/26	5	92½
10/11/26	100	92½
6/ 4/26	1	89
1/14/26	2	89
10/23/25	8	88
10/20/25	50	88
8/ 1/25	25	88
7/ 3/25	8	88
1/12/25	7	83
1/ 9/25	10	82
1/23/24	100	76½
1/22/24	100	76½
1/21/24	100	75
1/19/24	20	76½
1/11/24	136	76½
10/11/23	62	77½
4/10/23	28	78⅝
12/20/22	100	78⅛
2/27/22	78	70½

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY

Securities on Hand

Month	Shares	Price
Apr. 30, 1923	20	@ 53½
May 31, 1923	20	53½
Jan. 31, 1927	70	72
Feb. 28, 1927	120	72

Exhibit D 54.

PATERSON AND PASSAIC GAS AND ELECTRIC COMPANY

Month	Shares	Price
Dec. 31, 1924	17	81
July 31, 1925	25	85
Apr. 30, 1926	1	85½
May 31, 1926	1	85½
Feb. 28, 1927	13	10 @ 91
		3 @ 90¼
Mar. 31, 1927	124	91
Apr. 30, 1927	129	5 @ 95
		124 @ 91
May 31, 1927	135	20 @ 95
		15 @ 94
		100 @ 91
June 30, 1927	135	20 @ 95
		15 @ 94
		100 @ 91
July 31, 1927	135	20 @ 95
		15 @ 94
		100 @ 91
Aug. 31, 1927	135	20 @ 95
		15 @ 94
		100 @ 91
Sept. 30, 1927	135	20 @ 95
		15 @ 94
		100 @ 91
Oct. 31, 1927	135	20 @ 95
		15 @ 94
		100 @ 91
Nov. 30, 1927	135	20 @ 95
		15 @ 94
		100 @ 91

NEW BRUNSWICK LIGHT, HEAT AND POWER COMPANY

Month	Shares	Price
June 30, 1924	25	71½
Nov. 30, 1924	20	75

Exhibit D 55.

ROOSEVELT & SON,
30 PINE STREET
NEW YORK

SEPTEMBER 22, 1927.

MR. JOHN L. KUSER,
Trenton, New Jersey.

DEAR SIR:

Mr. Slater has told us of his conversation with you yesterday with regard to the stock of the nine companies which are being operated under long term leases by the Public Service Electric and Gas Company. We are enclosing a notice dated June 16, 1927, stating the reasons for the formation of the Protective Committee.

As you know the Public Service owns 2/3rds of the stock of the companies which we have designated as Group 1 and unless the minority get together a merger with respect to these companies will unquestionably be consummated. We have secured a temporary injunction restraining this merger and September 23rd has been set by the court for argument on the subject of our injunction. In the meantime, we are endeavoring to secure deposits of stock and we have been much gratified by the manner in which deposits of stock have been coming in. However, in this respect we are working under a serious handicap because the various subsidiary companies have been advised by their counsel that we are not entitled to examine the stock books and make copies thereof. This is hampering our work in attempting to secure deposits. We are informed by counsel that we may be able to accomplish something

through a mandamus action, but that, in view of the congested calendar and the number of judges who are away on vacation, we could not hope for hearings on a mandamus action before October.

As far as the Group 2 companies are concerned, deposits are coming in in an even more satisfactory manner and we have a reasonable hope that we will soon have such large deposits of stock that we can feel confident no merger with respect to these companies can be put through by the Public Service as long as our Committee continues in existence except on terms which would be satisfactory to all the stockholders of the subsidiary companies. We are particularly anxious to secure additional deposits of stock in the South Jersey Gas, Electric & Traction Company. It seems obvious to us that if the Public Service Corporation wishes to merge all these subsidiary companies into the Public Service Electric & Gas Company for the purpose of simplifying its financial structure that they will have made very little progress even should they succeed in merging the Group 1 companies. We believe that we now have sufficient deposits of the Group 2 companies so that if the Public Service wishes to simplify its balance sheet and wishes to merge all nine companies if they will display a reasonable attitude we can make it possible for them to put through the entire merger. Of course, the attitude of ourselves and the other stockholders with whom we have communicated is that they would prefer to hold their present investment rather that to take any action whatever. However, in view of the fact that this merger may be considered a constructive thing from several points of view, our people do not wish to find themselves in the position of obstructionists or blackmailers and if a merger could be arranged

on terms that were liberal and fair to them, we would not be inclined to stand in the way of such a plan.

We do not consider the offer for your stock made by the Public Service, *i. e.,* to exchange it for some preferred stock in the Public Service Electric and Gas Co. to be a fair offer. The preferred stock of the Public Service Electric & Gas Co. is lacking in those essential elements of security which are inherent in the stock you hold. In addition, if you accepted the offer of the Public Service and then sold the preferred stock of that corporation we do not believe you could reinvest the proceeds of such sale without either weakening your security or reducing your income.

We have nothing definite on which we can go, but we have reason to believe that the Public Service may consider entering into negotiations with us on some basis covering the stock now deposited with the Committee and, of course, in any such event, we would have to deal for the best interest of the stock which the Committee represents. In the event that any such activity were undertaken by the Public Service and carried through to a successful conclusion the position of the non-depositing stockholders might indeed be a difficult one as, with the Public Service holding such very large amounts of stock in all nine companies, the non-depositing holders would have a comparatively small base over which to spread the expenses of protecting themselves. It therefore appeals to us as being entirely wise for stockholders in these nine subsidiary companies to deposit their stocks with the Committee.

Very truly yours

(Signed) ROOSEVELT & SON.

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New Jersey Court of Errors and Appeals

Between

R. Irving Outwater and others,
Complainants-Respondents,

and

Public Service Corporation of New Jersey and others,
Defendants-Appellants.

On Appeal from Court of Chancery.

BRIEF FOR RESPONDENTS OUTWATER & WELLS, ROOSEVELT & SON, STOCKHOLDERS' PROTECTIVE COMMITTEE, AND MARY REGIS SHANLEY AND OTHERS.

Nature of Suit and Parties.

This is a stockholders' representative suit brought to enjoin the consummation of the merger into the Public Service Electric and Gas Company of five companies now leased to the Electric and Gas Company for 900 years, more or less.

The complainants-respondents are:

1. R. Irving Outwater and H. Prescott Wells, partners trading as Outwater & Wells.

2. W. Emlen Roosevelt, George Emlen Roosevelt, Philip J. Roosevelt, Fairman R. Dick and Archibald B. Roosevelt, partners trading as Roosevelt & Son.

3. Fidelity-Union Trust Company, as Substituted Trustee of the Estate of Bernard M. Shanley, deceased. Admitted as party by order dated September 10, 1927.

4. Mary Regis Shanley, William C. Shanley, Jr., and Bernard M. Shanley, 2d, individually and as Executors of William C. Shanley, deceased; and Grace B. S. Hanson, Mary R. Shanley and Helen L. Shanley, an infant, by Mary Regis Shanley, next friend (beneficiaries under the will of William C. Shanley). These complainants have an interest in the Estate of Bernard M. Shanley, and were admitted as parties by order dated June 21, 1927.

5. W. Emlen Roosevelt, Evans R. Dick, Roscoe C. Ingalls, R. Irving Outwater, William C. Shanley, Jr., and Ernest Sturm, as a Committee for the Protection of Stockholders of the Leased Companies under Deposit Agreement dated June 10, 1927. Admitted as parties by order dated October 25, 1927.

The respondents are stockholders in all of the leased Companies proposed to be merged except New Brunswick Light, Heat & Power Co.

The par value of the shares in these companies held by respondents is:

Essex & Hudson Gas Co.	$ 554,900
Hudson County Gas Co.	929,100
Paterson & Passaic Gas & Electric Co.	463,000
Somerset, Union & Middlesex Lighting Co.	125,700
Aggregate	$2,072,700

The aggregate annual dividends on the stocks held by respondents amount to $146,898.

The actual value of the shares held by respondents is, of course, considerably in excess of the aggregate par, as the greater number are shares paying an $8 dividend.

The defendants-appellants are the Public Service Electric and Gas Company, the Public Service Corporation of New Jersey, the five leased companies, and the directors of the lessor and lessee Companies.

Introduction.

Public Service Corporation of New Jersey was organized in 1903 with a capital of $10,000,000 (Case, II-112), under the General Corporation Act of 1896 (Bill, par. 9, Case, I-4).

It in effect unified the operation of the gas and electric properties now within its system (as well as of the traction properties) (Case, II-111).

This unification was effected not by outright purchase of the properties or by acquisition of the stocks of the companies then operating independently, but chiefly through the medium of *leases* made by the existing companies to Public Service Corporation.

The principal leases of gas and electric properties were made by the following (Bill, par. 12 *et seq.*, Case, I-5; Case, II-111):

Essex & Hudson Gas Company,
Hudson County Gas Company,
Newark Consolidated Gas Company,
United Electric Company of New Jersey,
Gaslight Company of the City of New Brunswick (rental payable to New Brunswick Light, Heat & Power Co. as owner of its capital stock),
The Paterson and Passaic Gas & Electric Company,
Somerset, Union & Middlesex Lighting Company,

South Jersey Gas, Electric & Traction Company,
The Gas & Electric Company of Bergen County,
The Ridgewood Gas Company.

Newark Consolidated Gas Company had leased its properties in 1898 to the United Gas Improvement Company which immediately assigned same to Essex & Hudson Gas Company (Bill, par. 18 *et seq.*, Case, I-6; Ex. D 26-29, Case, III-497-520). The lease by the latter to Public Service Corporation included the Newark Consolidated Gas properties (Bill, par. 15 *et seq.*, Case, I-5; Bill, Ex. 4, Case, I-109; Ex. D 18).

These leases to Public Service Corporation were made in the year 1903, except the lease of the Gaslight Company of the City of New Brunswick and of The Gas & Electric Company of Bergen County, which were made in the year 1905, the lease of the United Electric Company, made in 1907, and the lease of The Ridgewood Gas Company, made in 1910 (to the Public Service Gas Company) (Bill, par. 12 *et seq.*, Case, I-5).

There were a few other minor leases made at or within a few years after that time. There have been from time to time other acquisitions by Public Service Corporation or Public Service Electric Company or Public Service Gas Company of gas or electric properties in outlying territory of lesser importance, such as Burlington, Princeton and Morristown (Bill, par. 194, Case, I-54; Ex. D 8).

The territory embraced within the then operating boundaries of the leased companies included the area in the northeastern part of the state now commonly considered a part of the so-called "Metropolitan Area" and the territory to the

south and southwest, including Elizabeth (as to electricity, but not gas), Plainfield, New Brunswick and adjacent municipalities, and the populous area in the southwestern part of the state lying along the Delaware River, including Trenton, Camden and surrounding territory. The area of operations of Public Service Corporation and its subsidiaries, is substantially the same today as then. The territory is the most populous, prosperous, active and progressive portion of the State of New Jersey. Within the area is a large percentage of its population, homes and industries (Bill, pars. 10, 55, Case, I-4, 16; Case, II-112; Ex. C 12, 13, 14, Case, III-23, 33, 47; Ex. D 1, 2, Case, III-366, 367).

The leases (we do not include the United Electric lease, since merged) were substantially uniform in respect to form and covenants. They provided for the payment by the lessee of the interest on the funded indebtedness of the lessors, maintenance of the corporate organization of the lessors, payment of all taxes and charges on the leased property, *and for a net cash rental in addition.*

The cash rental, with minor exceptions, was on a sliding scale, beginning at a small percentage on the par value of the capital stock of the lessor companies and graduating upwards, year by year, to a maximum rental. The maximum was reached in the more important cases in or a few years before or after 1910. *Thereafter it remained at a fixed rate, at which it will continue, practically in perpetuity, unless the leases are extinguished by the merger.*

The net cash rental differs as between the leased companies and produces a differing percentage on the par value of the stock of the lessor companies.

The amount of the outstanding stock of the lessor companies has not been increased since the leases were made. The rentals have been regularly paid, and the net cash rentals have been disbursed in regular dividends at fixed rates to the stockholders.

The leases also provided in substantially uniform language for the payment by the lessee of all obligations of the lessors (except principal of funded indebtedness, provision being made for refunding same at maturity), for the operation by the lessee of the properties leased, the preservation and extension of the business of the lessors, the renewal, repair, replacement and maintenance of the leased properties by the lessee, the extension and expansion of the same by the lessee, and that the lessee should, at its expense, make all extensions, additions, alterations, improvements, renewals and betterments necessary or proper, and that all such should become the property of the lessor (with a qualification in the case of the Somerset, Union and Middlesex Lighting Co.; Case, I-150; Ex. D 21; also in the case of the Newark Consolidated Gas Co. lease, Ex. D 26). The leases also provided for insurance of the properties by the lessee. They also provided that in case of any default by the lessee, continued for thirty days, the lessor might terminate the lease, re-enter and re-possess the leased property, with all additions and extensions thereto (Bill, par. 12 *et seq.*, Case, I-5; Bill, Ex. 3-7, Case, I-90-152; Ex. D 18, 19, 20, 21, 22, 23, 26).

In 1909, Public Service Corporation assigned all of its leasehold interest in the gas properties to Public Service Gas Company, the stock of which was owned by the former. The Gas Company assumed the obligations of the leases and thereupon took over the operation of the gas properties (Bill, par. 51, Case, I-14; Ex. D. 18).

In 1910, Public Service Corporation assigned all of its leasehold interest in the electric properties to Public Service Electric Company, the capital stock of which was owned by the former. The Electric Company assumed the obligations of the leases and took over the operations of the electric properties (Bill, par. 52, Case, I-14; Ex. D 25).

In 1924, pursuant to a Plan for the Readjustment in certain respects of the financial and corporate structure of the Public Service (Answer, Ex. 1, Case, I-310; Ex. D 4), the Electric Company, the Gas Company, and the United Electric Company of New Jersey (which owned the fee to the electric properties, generally speaking, in Hudson and Essex Counties and parts of Union, Bergen and Morris Counties) were consolidated, to form Public Service Electric and Gas Company (Bill, par. 53, 59, Case, I-15, 17; Bill, Ex. 1, Case, I-64; Ex. D 6).

The stock of the old and separate Public Service Electric Company and Public Service Gas Company was converted into common stock of the new consolidated Electric and Gas Company, which, of course, came into the treasury of the Public Service Corporation (Bill, par. 54, Case, I-15). The stock of the United Electric Company, $20,000,000 par value, was paying a dividend of 5% out of rentals received from the Public Service Electric Company. This stock was converted, share for share, into 7% Cumulative Non-Redeemable Preferred Stock of the new Electric and Gas Company, nearly all of which also came into the treasury of Public Service Corporation as owner of nearly all of the United Electric stock (Bill, par. 53, 54, Case, I-15; Bill, Ex. 1, Case, I-64).

As a result of the consolidation the fixed charge for the net cash rental of $1,000,000 under the United Electric lease was extinguished as a rental charge (Bill, par. 41, 53, Case, I-12, 15).

The Plan of Readjustment of 1924 necessitated certain changes in the financial structure of Public Service Corporation itself. The stock of the Electric Company and of the Gas Company had been pledged by it to secure its General Mortgage Bonds, and the terms of the pledge did not permit the physical properties of the Electric Company and the Gas Company to be mortgaged (Case, II-216).

The stock of the United Electric Company had been pledged by the Corporation to secure its Perpetual Interest Bearing Certificates. Pursuant to the Plan of 1924, the 7% Preferred Stock of the new Electric and Gas Company was substituted under that pledge for the United Electric Company stock (Answer, Ex. 1, Case, I-310; Case, II-114).

Pursuant to the Plan, the new Electric and Gas Company created its new open Refunding Mortgage, secured by all of the operating properties owned by it, then consisting chiefly of the property formerly leased from the United Electric, its leasehold interests in the other leased companies, bonds and stocks owned by it in the leased companies, etc. (Bill, par. 62 *et seq.*, Case, I-18).

5½% bonds were issued at the time by the new Company, and these were in part used in exchange for the General Mortgage 5% Bonds of the Corporation, enabling it to satisfy its General Mortgage (Answer, Ex. 1, Case I-310).

Refunding Mortgage Bonds were then, or soon thereafter, issued for other purposes as well, and, of course, have been since issued in large amounts for additional financing as necessary.

As a result of the consolidation, the Electric and Gas Company, of course, became bound as lessee under the existing leases.

The Refunding Mortgage of the Electric and Gas Company permits bonds to be issued without limit as to aggregate amount (Bill, par. 62 *et seq.*, Case, I-18; Ex. D 7, Case III-469).

Bonds may be issued thereunder, among other purposes, for the acquisition or construction of additions or improvements to property and plants, whether owned by the Electric and Gas Company or by the lessor companies, up to 75% of the cost or fair value thereof, also for refunding underlying funded indebtedness, including that of the lessor companies.

In the Mortgage, the Electric and Gas Company covenants to preserve its franchises and those of the lessor companies; not to permit any default to occur under any of the leases and to perform all of the obligations therein. It covenants against the creation of any mortgage upon the properties of the leased companies except for refunding purposes, and to prevent any increase of their capital stock or indebtedness.

The new Company also covenants in its Mortgage to pay or cause to be paid all bonds of the leased companies, to perform all obligations of the mortgages of the leased companies, and to permit no default thereunder.

It also covenants to maintain the leased property in good order and condition, and to make all needful and proper repairs, replacements and improvements thereto, and to make periodic appropriations for replacements required by reason of inadequacy or obsolescence of the property owned or operated by it.

The Mortgage also provides that default in the payment of the principal of any of the underlying bonds, including those of the leased companies, when due, or default in any payment for rental or otherwise due under any of the leases, shall constitute an event of default under the Mortgage, permitting, of course, its foreclosure.

Thus, it appears that default by the lessee under any of the leases not only would subject the leasehold property to repossession by the lessor, but would also subject all of the property of the Electric and Gas Company, including that owned by it as well as its leasehold interests, to foreclosure under the Mortgage.

Earlier, in 1923, when it was desired to erect a new and expensive electric generating plant at Kearny, a new and separate corporation was formed for the purpose of financing the operation. This was the Public Service Electric Power Company. It issued bonds and preferred stock to the public and its common stock was held by Public Service Corporation. It made a long term lease to the Public Service Electric Company. In 1927 the Electric Power Company redeemed its securities held by the public and conveyed its property to the Electric and Gas Company in fee. This extinguished the fixed charge for rental of this property of $2,100,000 a year, substituting a fixed interest charge on securities issued for the purpose of redeeming Public Service Electric Power bonds and preferred stock of about $1,000,000 per year (Case, II-171; Ex. C 10, Case, III-21).

The Plan of Readjustment of 1924 briefly stated that the Plan contemplated an offer to the stockholders of "certain other gas and electric companies" leased to the Corporation of an opportunity to exchange their stocks for "other securi-

ties'' so that eventually these companies might also be consolidated with the Electric and Gas Company, *but that such consolidations were not an ''essential'' part of the plan* (Answer, Ex. 1, Case, I-310).

No step was taken to this end until January, 1927. Thereupon the Electric and Gas Company and Public Service Corporation joined in an Offer to stockholders of Essex and Hudson Gas Company, Hudson County Gas Co., New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas & Electric Company, Somerset, Union & Middlesex Lighting Company (which five companies we herein at times refer to as Group I), The Ridgewood Gas Company, South Jersey Gas, Electric & Traction Company, Newark Consolidated Gas Company, The Gas and Electric Company of Bergen County (which four companies we so refer to as Group II) (Bill, par. 71 *et seq.*, Case, I-22; Bill, Ex. 8, 9, Case, I-153, 158; Ex. D 10).

The Offer classified these lessors in accordance with the rate of dividend being paid upon their respective capital stock. The offer, as between the different companies, was relatively the same, that is, the differences in the amounts offered were proportioned to the differing rates of dividend upon the leased companies' stock; for instance, the Offer to the stockholders of Essex and Hudson Gas Company (an 8% stock) was practically double that made to the holders of Somerset, Union & Middlesex Lighting Company (a 4% stock).

For purposes of illustration and discussion, it is, we think, simplest to take a 5% stock as the basis of discussion.

The holder of a share of Paterson & Passaic Gas & Electric Company of the par value of $100 was offered by Public Service Electric & Gas Company $86 par value of its 6% Cumulative Preferred Stock, 1925 series (Option A).

The Preferred Stock is redeemable at $110 per share (three years after its issue), so that in the case of the redemption of $86 par value, the holder would receive $94.60.

The 6% dividend on the $86 of Preferred Stock would amount to $5.16 per annum.

Public Service Corporation offered, under Option B $90 in cash for a share of the 5% stock, or, under Option C 2.63 shares of Public Service Corporation common stock without par value.

The $86 of Preferred Stock (Option A) or the 2.63 shares of Public Service common stock (Option C) at the then prevailing market prices therefore each had a market price of practically the same as the amount of cash offered under Option B viz., $90. The Preferred Stock was then selling at about 101½-102½, and the Public Service common at about 32-33 (Ex. D 32, Jan. 8, 1927).

(A comparison of the prices at which securities bearing different interest or dividend rates are sold is commonly and conveniently made by reducing the price to the "basis" or "yield". A stock which pays dividend of 6% and is purchased for $120 yields 5% on the amount invested; so does a 4% stock for which $80 is paid. Such a purchase or sale in either case is said to be upon a 5% basis. In the case of bonds having a fixed maturity and selling either above or below the face amount payable at maturity, the true yield is affected, of course, by the amount of the premium or the discount which will eventually be wiped out at maturity and the calculation of the

true yield to maturity is a mathematical calculation. The calculation of the basis upon which a dividend paying stock is bought or sold is simple, unless the stock is subject to redemption, in which case the possibility of redemption may call for a calculation of the yield "to redemption" in the same manner as in the case of a bond).

To return to our 5% stock, the offer of $90 in cash was an offer upon a 5.55 basis. If the cash were accepted and the $90 were reinvested, in order to produce an income of $5 it would have to be invested on a 5.55 basis.

The Preferred Stock later increased in market price to about 109-110 (Ex. D 32, Dec. 3, 1927). At that price the $86 par value offered for one share of a 5% stock is worth about $94. To sell a 5% stock at $94 or take in exchange another security worth that amount, is to sell on a basis of about 5.30.

The offer for the other stocks (8%, 4% and 2% stocks) was upon the same "basis", both as to the cash offer and the offer of Preferred Stock and Public Service common. In other words, if the stockholder took either the Preferred Stock or Public Service common and sold at the then market, the proceeds would have been practically the same amount as the cash offer.

The operative date of the Deposit Agreement (dated Dec. 28, 1926; Bill, Ex. 9, Case, I-158; under which stockholders who accepted the Offer first deposited their stock in the leased companies) was extended from February 10 to March 12, 1927 (Bill, par. 80, Case, I-25). It was then declared operative as to the stock of companies involved in this merger (Bill, par. 82, Case, I-25), (Group I), namely:

Essex and Hudson Gas Company,
Hudson County Gas Company,

The Paterson & Passaic Gas & Electric Company,
Somerset, Union and Middlesex Lighting Company, and
New Brunswick Light, Heat and Power Company.

That is, as to the deposited stock in these companies, all stock deposited was retained and the holders received either Preferred Stock, cash, or Public Service common, as originally elected by them.

As to companies in Group II, and not involved in this merger, that is, South Jersey Gas, Electric and Traction Company, The Gas and Electric Company of Bergen County, Newark Consolidated Gas Company, and The Ridgewood Gas Company, less than a majority of the stock was deposited, so that the Deposit Agreement did not become operative in all of its provisions as to those stocks.

As pointed out more specifically later, a comparatively small number of holders of stock in the leased companies selected Preferred Stock (*post,* p. 67). In other words, the terms which are proposed to be forced upon the outstanding stockholders under the proposed Merger Agreement since adopted are the terms which proved *least attractive* to the stockholders in general.

The figures in evidence do not show the respective relative amounts of stock deposited under Options B and C, but we do know that the United Gas Improvement Company, holder of a large percentage of the stock of the Essex and Hudson Gas Company, Hudson County Gas Company, and The Paterson and Passaic Gas and Electric Company exchanged its holdings for Public Service common (*post,* p. 67; Case, II-155, *et seq.*).

As pointed out more fully later (*post*, p. 68), there is still a substantial percentage of outstanding stock in companies in Group I, the holders of which have accepted none of the options under the offer, have not voted for the merger, and did not vote for the amendments of the charters of companies in Group I, made during the pendency of this cause in order to facilitate the merger. Defendants argue that those stockholders will have no alternative except to convert their stock, because they have not dissented. The statute, it seems clear to us, gives them thirty days after the merger agreement is filed in which to dissent and apply for an appraisal.

It was, of course, the intention of the Public Service to merge all the nine leased companies. Having first obtained two-thirds of the stock of companies in Group I, a merger was proposed under the Merger Agreement dated April 26, 1927 (Bill, par. 85 *et seq.*, Case, I-28; Bill, Ex. 10, Case, I-172; Ex. D 11). Not having obtained the requisite percentage of stock in companies in Group II, the Public Service has not seen fit to place before the directorates and stockholders of these companies the proposition of a merger (Case, II-132), notwithstanding the eminent fairness claimed for it by defendants.

By the Merger Agreement, only the *least attractive* merger option is extended to non-assenting stockholders. The door was closed upon further acceptance of either Option B or C. (Not of necessity, but by the choice of the Public Service).

The Boards of Directors of the five companies in Group I without hesitation or consultation, as far as appears, have displayed a remarkable degree of unanimity as to the terms on which the merger should be made. Each and all of them valued the stock of their companies at exactly the

same relative amount, measured in terms of Preferred Stock of the Electric and Gas Company, as fixed by the Public Service and its bankers in December, 1926.

These Boards of Directors were all fully manned with Public Service representatives, with the exception of Somerset, Union and Middlesex Lighting Company. The directors in that case included two Public Service men and three others not clearly marked as such; Messrs. Brunson, McDonald and Pope. It appears, however, that Mr. Brunson had, before the merger was passed upon, exchanged his stock in the leased company for Public Service common (Case, II-99).

See following table showing the interlocking of the directorates (Bill, par. 108 *et seq.*, Case, I-34).

Service oration	*Public Service Elec. & Gas Co.*	*Essex & Hudson Gas Co.*	*Hudson County Gas Co.*	*Paterson & Passaic Gas & Elec. Co.*	*Somerset Union & Middlesex Lighting Co.*	*New Brunswick Light H. & P. Co.*	*Holds Office in Public Service Elec. & Gas Co*
rd, Jr.							
gen							
Bodine	Samuel T. Bodine	Samuel T. Bodine	Samuel T. Bodine	Samuel T. Bodine		Samuel T. Bodine	
Gates	Thomas S. Gates	Thomas S. Gates	Thomas S. Gates	Thomas S. Gates		Thomas S. Gates	
Harding							
eppenheimer							
Hobart							
. Kuser	Anthony R. Kuser	Anthony R. Kuser	Anthony R. Kuser	Anthony R. Kuser		Anthony R. Kuser	
Loomis	Alfred L. Loomis						
McCarter	Thomas N. McCarter	Thomas N. McCarter	Thomas N. McCarter	Thomas N. McCarter		Thomas N. McCarter	President
cCarter	Uzal H. McCarter	Uzal H. McCarter	Uzal H. McCarter	Uzal H. McCarter		Uzal H. McCarter	
heerer							
. Speer							
Thompson	Arthur W. Thompson	Arthur W. Thompson	Arthur W. Thompson	Arthur W. Thompson		Arthur W. Thompson	
pson							
Thorne	Landon K. Thorne						
. Wakelee	Edmund W. Wakelee	Edmund W. Wakelee	Edmund W. Wakelee	Edmund W. Wakelee		Edmund W. Wakelee	Vice-President
oung	Percy S. Young	Percy S. Young	Percy S. Young	Percy S. Young	Percy S. Young	Percy S. Young	Vice-President
		Charles M. Breder	Charles M. Breder	Charles M. Breder			Secretary
					Augustus J. Brunson		
					Harry B. MacDonald		
					William H. Pope		
					T. W. VanMiddlesworth		Treasurer

It appears from Exhibit C 20 (Case, III-78) that when the merger was adopted no one of the directors in any one of the five companies held more than a qualifying share or two of stock in the leased companies. They, or most of them, are, in greater or lesser degree, the registered holders of stock in the Public Service Corporation (Answer, par. 48, Case, I-307; Case, II-87, 100). To what extent they are indirectly interested, through holding companies, or otherwise, or to what extent their families may be interested, in other or larger amounts of Public Service stock, does not appear, and is of slight importance.

It has been announced publicly and is admitted that the Public Service will consider the merger as effecting the extinguishment of the leases. That is its purpose.

After the Offer of 1927 was made, the Fidelity Union Trust Company, as Substituted Trustee under the will of Bernard M. Shanley, deceased, which was the holder of stock in the various companies, of a par value in excess of $2,500,000, proposed, over the protests of beneficiaries entitled to three-fourths of the estate (the representatives of the remaining fourth taking a neutral attitude because they had no interest in the estate other than to acquire funds to pay some debts) to accept Option A (the cash offer). Thereupon, the beneficiaries instituted a suit to enjoin the Fidelity Union Trust Company from accepting such offer. They were successful. The opinion of the Vice-Chancellor, Backes, is attached as an appendix to appellant's brief. We refer to this suit because of the reiterated statement in the appellant's brief to the effect that only one branch of the Shanley family is presumably opposing this merger. A reference to the opinion just referred to will show that all of the family, the only beneficiaries who

have a continuing interest in the estate and the quantity and character of its investments, have opposed, from the very beginning, the disposal of any of the securities of the leased companies owned by the estate. These facts, of course, appeared on the hearing of the motion for preliminary injunction.

When the merger agreement was subsequently proposed, it was, of course, apparent, (as the Public Service owned two-thirds and more of the outstanding stock of the leased companies in Group I), that the merger agreements would be adopted by the stockholders and the mergers consummated unless some steps were taken by independent and dissenting stockholders. The present bill was thereupon filed.

Upon an independent consideration of the situation existing at April 26, 1927, the Boards of Directors of these companies might well have reached the view that the stock was more valuable than in December, 1926. The Offer, followed by the decision in the Shanley suit, had focused attention upon and resulted in activity in these stocks. The market generally had improved. The quotation sheets in evidence show a rise in the market prices for these stocks, as well as other securities in that interval.

After a discussion before the court below on September 23, 1927, (at the threshold of an adjourned date for hearing of the case), the five leased companies in Group I took proceedings to amend their charters so as to bring about a literal sameness in the statement of their respective objects, in order to remove the legal objection to the merger on the ground of dissimilarity (Supplement to Amended Bill, Case, I-377).

Again the directors of the leased companies followed the lead of the Public Service. They

declared it advisable to amend. They again adopted the same Merger Agreement, as of October 25, 1927. They again determined that the stock in their companies should be converted into exactly the number of shares of Electric and Gas Preferred Stock previously determined in December, 1926.

After the hearing of the case, stockholders' meetings were held to vote upon the merger. It was adopted by a vote of more than two-thirds of the stockholders of each of the five companies; that is to say, by the Public Service (Second Supplement to Amended Bill, Case, I-435).

I. The Court of Chancery had jurisdiction to enjoin the merger.

It is now established that a merger may be enjoined at the instance of stockholders if it be unfair and inequitable.

The rule is peculiarly applicable to this case for several reasons.

1. The merger amounts to the transfer of all of the property, property rights and franchises of the lessor companies to the stockholder owning more than two-thirds of the stock. Unless the minority stockholders have this right of review they are excluded from the enterprise on terms fixed by the transferee of the corporate property, or may remain only on those terms, which amounts to the same thing.

2. The terms upon which the leases are being extinguished and the security and benefits thereof taken from the minority stockholders, are fixed by the lessee, it having maneuvered itself into the position of majority stockholder. Unless the

minority stockholders have this right of review, the lessee fixes its own price for a release from its perpetual obligations.

3. The directors of the leased companies are dominated by the transferee, and their adjudication as to the advisability of the merger and fairness of the proposed terms is not that of an independent, unbiased board.

It is not necessary to hold that the majority stockholders are trustees for the minority, although there is a considerable body of decisions to that effect.

Equity affords relief in all cases where the mutual relationship between parties having a common interest in the subject matter involves mutual trust and confidence. The theory of a constructive trust is that, while there is no actual trust relationship between the parties as such, equity regards the situation as calling for the same remedies applied in the case of an actual trust. The same may be said of many cases of resulting trust.

The rule that fiduciaries cannot unite the opposite characters of buyer and seller applies to "trustees, assignees, *and persons having a confidential character*" (By Lord Eldon, *Ex parte James,* 8 Ves. Jun. 337, 345; 32 Eng. Repr. 385, 388). And see 21 C. J. 113.

There is a relationship of trust and confidence between stockholders, to this extent at least, that the minority invests in the stock of a corporation subject to the exercise by the majority of certain powers over their common, that is, the corporate, affairs and property. While the majority has the power in the decision of matters affecting the election of directors and other internal affairs and

management of the corporation, the minority stockholders have trust and confidence that the majority will not exercise their powers in such a manner as to appropriate the property to themselves; at least unless under clear power and upon terms plainly fair and equitable, and "subject to those general principles of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities." Per Lindley, M. R., *Allen* v. *Gold Reefs, etc.* (1900), 1 Ch. 656, 671; 69 L. J. Ch. 266.

If the question before the stockholders, for instance, is whether the property be sold to a stranger on certain terms, that is a question of internal management (where such power exists). But the question here is the terms upon which the majority will sell the property to themselves. That is not an affair internal to the corporation, but draws the stockholders into direct controversy between themselves. There is a violation of the co-relationship involving trust and confidence, unless the terms are fair and equitable to that degree which will convince a disinterested judge.

This in effect shifts the burden of persuasion to the defendants.

We do not understand how this can be seriously questioned.

In *Warren* v. *Pim,* 66 N. J. Eq. 353, Justice Pitney said, at page 400:

> "It is said that stockholders, in exercising their voting rights, do not stand in a fiduciary relation to each other. * * * Nor can I concede that a stockholder, in voting, has a right to disregard entirely the interests of his fellow-stockholders. The ethical notion that underlies the maxim, *sic utere tuo ut alienum non laedas,* forbids."

In *Booth* v. *Land Filling Co.*, 68 N. J. Eq. 536, it was held by Vice Chancellor Garrison, as summarized in the third paragraph of the syllabus:

> "3. Where directors submit a contract in which they are personally interested to the stockholders, and they themselves, constituting the majority thereof, secure a majority vote in its favor, and they also constitute the majority of the directors who approve the contract, the terms of the contract, including the amount of compensation specified therein, are reviewable at the instance of the dissenting stockholders."

In *Lillard* v. *Oil, Paint and Drug Co.*, 70 N. J. Eq. 197, Vice Chancellor Emery said (at page 206):

> "In reference to the power of stockholders, the general rule is declared to be that where there is no statutory or other provision regulating the constitution and powers of the managing body, the majority of the stockholders must determine how its affairs are to be conducted, and to whom and under what restrictions the management of those affairs shall be entrusted. *Lind. Comp. (5th ed.) 298.* The exercise of this right of the majority of the stockholders, either to originally direct or to affirm a contract between the company and a director or directors personally interested in the contract, is not, however, absolute and unqualified, but is subject to a necessary qualification declared in *Northwest Transportation Co.* v. *Beatty, L. R. 12 App. 589 (Jud. Council, 1887)*, the leading English case, in which the general power of the stockholders was affirmed. This qualification is (*Northwest Transportation Co.* v. *Beatty, L. R. 12 App. 593, 594*) that the affirmance or adoption must not be brought about by unfair or improper means, and must not be illegal or fraudulent or oppressive to-

wards those stockholders who oppose it. As was said in a later case, *Menier* v. *Hooper's Telegraph Works, 9 Ch. App. 353 (1874)*, the majority of the shareholders, although they may deal with the assets of the company, cannot so deal with them as to divide the assets, more or less, between themselves, to the exclusion of the minority."

(At page 208):

"* * * however widely the powers of alteration may be given, either by the statute or articles, these powers must, in the words of Master of Rolls Lindley, in *Allen* v. *Gold Reefs of West Africa* (1900), *1 Ch. 656, 671,* 'be exercised subject to those general principles of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities. It must be exercised, not only in the manner required by law, but also *bona fide,* for the benefit of the company as a whole, and it must not be exceeded. These conditions are always implied and are seldom, if ever, expressed.' * * *"

In *Colgate* v. *U. S. Leather Company,* 73 N. J. Eq. 72, Vice Chancellor Emery applied the rule laid down by him in the Lillard case to a merger.

At page 88, he said:

"My conclusion in reference to this objection is that the consolidation agreement is not either absolutely void or voidable at the election of any stockholder merely for the reason that the directors making or controlling the agreement were the common directors of both the consolidating companies, or because the consolidation may be practically a sale to the Central company, the majority stockholder, but in view of the fact that the Central company controlled the making of the agreement, and will be the controlling stockholder on the adoption of the agreement, the

> question on this branch of the case, and in either aspect of it, is whether the terms of the agreement are such as will, more or less, substantially distribute or dispose of the assets of the United States company to the Central company, to the exclusion of the complainants and other objecting stockholders, or will distribute or dispose of them in such manner as to be either illegal, unfair or oppressive to the objecting stockholders."

The decree made by the Vice Chancellor at a subsequent stage in the proceedings was reversed by the Court of Errors and Appeals on other grounds at 75 N. J. Eq. 229.

> *Merriman* v. *National Zinc Corporation,*
> 82 N. J. Eq. 493.

This case, cited by defendants, involved a question of internal management, viz., the making of certain contracts relating to the business of the corporation.

The quotation from the opinion in the defendants' brief was followed by this sentence (page 496):

> "Nor can stockholders of a corporation who possess the major portion of its stock by force of their votes lawfully appropriate the property of the corporation for their own use in disregard of the rights of other stockholders."

In *Morse* v. *Metropolitan Steamship Company,* 87 N. J. Eq. 217, Vice Chancellor Lane, at page 221, voiced his approval of the ruling of Vice Chancellor Emery in the Lillard case and in the Colgate case, and said "That a majority of the stockholders of a corporation, no matter how large, has no right to divert to themselves assets

of the company to the detriment of its creditors and stockholders is, of course, settled."

His decree was modified in accordance with opinion of the Court of Errors at 88 N. J. Eq. 325.

In *Brugler* v. *United Shoe Machinery Company,* Vice Chancellor Lane, in an unreported oral opinion (June 4, 1917) said:

> "* * * There is but little difficulty with respect to the rules of law which must be applied. The statute gives the right to merge provided statutory requirements have been carried out. In this case they have. The courts, however, have held, that, notwithstanding the statutory provision, and the fact that if a stockholder is deprived of his right by improper action of his directors, there may be a suit at law, and the privilege given to him by the legislature of having his stock appraised, equity will intervene and prevent a merger if the scheme proposed appears to the court to be unfair. * * *"

In *Bingham* v. *Savings Investment & Trust Company,* 5 Adv. Rep. 1111, 138 Atl. 659, Vice Chancellor Backes said:

> "The objection that the merger is unfair and inequitable calls for careful judicial scrutiny of the plan, in view of the interests in the merger of interlocking directorates, and of interlocking interests of stockholders of the three concerns. The plan must be free from unfairness before the complainants can be put to their election of joining their associates or taking compensation in lieu."
>
> *Affirmed,* 6 A. R. 368.

In the Bingham case, however, the acquiring corporation was not a majority stockholder in the companies acquired, so that, in the last analysis, that case falls into a different class than this.

The New Jersey cases passing on the rights of stockholders in cases of merger, amendment, and the like, have usually involved the rights of preferred stockholders. Our courts have been careful to protect their priority of rank as against common stockholders—unless the disturbance of their priority is clearly warranted under the statute.

Pronick v. *Spirits Distributing Co.*, 58 N. J. Eq. 97;
Willcox v. *Trenton Potteries Co.*, 64 N. J. Eq. 173;
Colgate v. *U. S. Leather Co.*, 73 N. J. Eq. 72;
Bassett v. *U. S. Cast Iron Pipe, etc., Co.*, 74 N. J. Eq. 668; 75 N. J. Eq. 539;
Lazear v. *Amer. Steel Foundries*, 86 N. J. Eq. 21, 252;
Moran v. *U. S. Cast Iron Pipe, etc., Co.*, 95 N. J. Eq. 389; 96 N. J. Eq. 736;
General Investment Co. v. *Amer Hide & Leather Co.*, 97 N. J. Eq. 214, 230; 98 N. J. Eq. 326;
Windhurst v. *Central Leather Co.*, 5 A. R. 1316, 138 Atl. 772;
Lonsdale Secur. Corp. v. *Int. Merc. Marine Co.*, 5 A. R. 1617, 139 Atl. 50.

For convenience, we have abstracted important cases from other jurisdictions, and placed same in Appendix I, at the end of our Brief. Those cases we rely upon as persuasive discussions of the equitable principles involved in this case. A decision closely paralleling this case is *Boyd* v. *N. Y. & H. R. Co.*, 220 Fed. 174 (a copy of Judge Hough's opinion is quoted in Appendix I, *post*, p. 101 *et seq.*).

In that case the New York Central Railroad, which had leased the properties of the Harlem Railroad for a long term, and, as part of the rental, had agreed to pay a sum of money which would return to the stockholders certain dividends during the existence of the lease, was taking steps to merge the two companies. Minority stockholders of the Harlem filed a bill for injunction. Judge Hough, in the course of his opinion, said,

> "The reasons for demanding relief now are alleged to be that especially of late years the Central has bought Harlem stock, until it owns today 62 per cent. thereof. No more than 66⅔ per cent. is needed to carry through a consolidation under the laws of New York. Such merger would extinguish the lease which in effect pledged the Central's own property and earnings to satisfy the price of hiring, and leaves the Harlem free to take back its vastly appreciated estate if the price be not paid; and for such singularly desirable security would substitute mere participation in a united and more heavily incumbered property, where the much larger Central stock could always outvote the Harlem interest, and subject the present securely segregated Harlem property to the lien of mortgages demanded by the needs and ambitions of the Central." * * *
>
> "Consolidation would therefore mean not only an exchange of shares of one name for shares of another, or of a thing of one kind for another thing of the same kind, but would involve a complete destruction of investment in character and quality. Existing arrangements give to Harlem shares rights preferred over all Central stock in the earnings of the entire system now consolidated in control. After consolidation, Harlem shareholders might have more shares, but 'shares' would not mean the same thing, and the return thereon would necessarily be subject to greater and more numerous hazards than is now the case."

The cases cited by defendants, relating to questions of internal management, do not apply.

Colby v. *Equitable Trust Co.*, 124 App. Div. 262, 108 N. Y. Supp. 978.

The opinion at 192 N. Y. 535, 84 N. E. 1111, was upon questions certified to the Court of Appeals as to the validity and applicability of the merger statute and did not deal with the larger question of the fairness and equity of the merger.

This was not a case where a majority took over the property by virtue of the merger. It is true that there was one dominant stockholder in both banks. The plaintiffs in the Colby case were the holders of barely 1% of the outstanding stock.

In cases like the Bingham and Colby cases, the dispute as to the relative shares of the stockholders of the merging corporations in the new company is one involving peculiar difficulty, and in such cases it is proper that great weight be given to the conclusions reached by the stockholders, dealing more or less at arms' length and making their own bargain. Disputes in such cases do not readily lend themselves to judicial determination. But in this case the essential dispute is merely as to whether a non-callable stock of the "guaranteed" type, having a well-defined rank and security, may be converted into a redeemable stock having other characteristics and a different rank and security.

Schwab v. *Potter Company*, 194 N. Y. 409, 87 N. E. 670.

The matter quoted from the opinion was a preliminary observation. The court then proceeded to show that the case did not involve internal man-

agement, but did involve a violation of the rights of stockholders, and issued an injunction. The court said, in the course of the opinion—

> "Any minority stockholder who opposed the scheme was entitled to an injunction, even without alleging actual injury, or the certainty thereof in the future, for he is entitled to stand on his legal rights and may refuse to accept 'something better' in exchange. * * *"

Gamble v. *Queens County Water Company,* 123 N. Y. 91, 25 N. E. 201, 9 L. R. A. 527.

This case involved strictly a matter of internal management, namely, the consideration for which stock of the corporation should be issued. Furthermore, it should be noted that the proposition was approved by a majority of all of the stockholders other than the one stockholder from whom the property was being purchased for stock.

Jackson v. *Gardiner Investment Company,* 217 Fed. 350.

In this case the sale of the assets was not made to the majority stockholder (see 220 Fed. 297). Each stockholder was entitled to receive a *pro rata* share in the business of the purchasing company by accepting new stock.

One of the three judges dissented.

United States v. *Reading Company,* 295 Fed. 551.

This was a case involving a sale of a part of the corporate property by the board of directors and did not involve any alteration or conversion of the rights of stockholders.

We submit that cases of this type (involving internal management) are not apt citations upon an argument as to the rights of stockholders under amendments or consolidations involving a direct change in the contractual relations of the stockholders with the corporation and fellow stockholders. The distinction is inherent and important. The defendants might just as well cite any one of thousands of other cases holding that the board of directors of a corporation is vested with the management of its business affairs.

For this reason, we submit that *Armstrong* v. *Hayden,* 214 N. Y. S. 747, is bad law because it applies to the question of the legality of the modification of the stockholders' contract, irrelevant doctrines as to the grounds justifying a review of the discretionary powers of directors and/or stockholders in connection with mere business affairs. It is opposed to the established doctrine in New Jersey that a merger must be fair and equitable.

II. The terms of the merger are unfair and inequitable.

At the outset, we remark that the defendants rely, in support of their contentions, upon the testimony of gentlemen, who were responsible for the terms of the Offer of January, 1927,—*one* of the options of which, it will be recalled, was the exchange now sought to be forced on the dissenting stockholders through the merger. (They also rely upon the testimony of a Mr. Steel. Little, if any, weight can be given to his opinion, however, because, as he admitted, he "could not pass a cross-examination on the details" of the financial structure of the Public Service Electric and Gas Com-

pany. He had not read the leases; he did not know the amount of the obligations ahead of the guaranteed stock; he did not know how much bonds were ahead of these stocks or the equities in the properties over and above the stocks and bonds, etc. Case, II-247, 248). In the final analysis, the opinion of the defendants' witnesses was that the marketability of the securities which were to be given in exchange overweighed the perpetual dividend guaranty and priority of lien of the stocks of the leased companies. This was the viewpoint of the large banker, concerned with the issuance of securities, as opposed to that of the investor who desires a safe and permanent security. Opinion evidence can be of little service to the court. The fairness or unfairness of the merger must be determined by a consideration of all relevant factors. We shall not, therefore, take space to refer at length to argumentative testimony. We contend that the merger is unfair and inequitable for the following reasons:

A. *Respondents are compelled to accept a different and inferior type of security: stock for an obligation.*

The guaranteed stock which they now hold has *substantially all of the security of a bond.* It receives dividends at a fixed rate out of a fixed rental which the lessee is bound to pay. The obligation to pay rent is that of the Electric and Gas Company and also that of the Public Service Corporation, the original lessee.

We refer at times to the stocks of the leased companies as "guaranteed stocks." While the lessee does not in this case guarantee that the rentals will be paid out in dividends at a specified

rate, or paid directly to the stockholders by it, as in some cases, nevertheless these stocks fall within the general category of guaranteed stocks. The dividends are derived not from the operating income of the leased companies, fluctuating according to the results of operation, but out of a fixed sum which the lessee is obligated to pay as rental. While the dividend is not guaranteed, the source of the dividend is guaranteed. These stocks have been commonly referred to as guaranteed stocks in the Public Service Annual Reports.

The Preferred Stock of the Electric and Gas Company, on the other hand, is merely stock. The dividend right is not an absolute obligation. The payment of dividends is within the discretion of the Board of Directors.

The obligation of the lessee is strengthened and reinforced by its financial structure. Not only would the lessee, in case of default, be under the penalty of summary repossession of the leased property, but the provisions of its own Refunding Mortgage are such that any default under the leases, whether in the payment of rent or otherwise, would constitute a default under the Mortgage and entitle the bondholders to foreclose, so that the whole structure would fall to pieces.

In case of default in payment of rent, the lessor corporation could sue for the rent or take steps to repossess the property. In case of default in payment of preferred dividends, a preferred stockholder has no remedy except patience and no certainty that arrearages will be met.

The remedy of the lessor corporation by way of repossession of the property is a more drastic and effective remedy than foreclosure. Instead of a lien, these stocks hold the reversion as security. The rent is one of the underlying senior obliga-

tions which is likely to be paid even in case of receivership, in order to maintain the integrity of the property (Case, II-272).

The Preferred Stock is subject to the rights of general creditors as against the property of the Company, whether as a going concern or in a reorganization. The rights of the guaranteed stock in the leased properties are not subject to the rights of general creditors of the operating company, the lessee.

B. *The guaranteed stocks are now subject to only a relatively small amount of bonds, which are closed* (Bill, par. 101, Case, I-32; Ex. D 52, Case, III-605; Case II-110).

The obligations prior to the guaranteed stocks cannot be increased. The Preferred Stock, on the other hand, is subject to not only all of the funded indebtedness of the leased companies, but all of the mortgage indebtedness of the Electric and Gas Company, now outstanding in an amount considerably in excess of the funded debt of the leased companies. The Refunding Mortgage of the Electric and Gas Company *is open,* and bonds may be and will be from time to time issued thereunder in increasing aggregate amounts. Refunding Mortgage Bonds were outstanding on October 31, 1927, to the amount of $62,901,000 (Ex. D 52, Case, III-605).

C. *The guaranteed stock now outstanding is for all practical purposes itself closed.*

Theoretically it might be increased, but for the many years since the leases were made it has not been increased. The rent available for dividends thereon would not be affected and there would be no inducement to increase the stock.

The Refunding Mortgage provides that the Electric and Gas Company will vote its holdings of stock in the leased companies against such an increase.

On the other hand the amount of Preferred Stock has been substantially increased since the Electric and Gas Company was formed in 1924, and it has been largely increased in accordance with the provisions of the Offer in January, 1927, and it will be largely increased from time to time in the normal course of financing of the ever increasing requirements for capital (Case, II-217, 218). In other words, instead of a closed issue the stockholder is given stock *of an open issue.* Preferred Stock was outstanding on October 31, 1927, to the amount of $71,563,700 (Ex. D 52, (Case, III-605).

The holders of the guaranteed stock are now protected against increase of prior debt; and, practically, against increase in their own stock.

D. *The guaranteed stock has a senior underlying position and is entitled to the enormous benefit flowing from continued investment of additional capital in a junior position resulting in constantly increasing the margin of safety as to property values.*

This is a factor of safety which an investor in any such security takes into consideration in purchasing and holding same. He is also benefited by an increasing margin of safety as to income available to pay rentals. This results from the *steady and apparently limitless growth in the gross business and earning power* of the Electric and Gas Company.

It serves no purpose to review the figures in great detail. In briefest summary, we refer to the following:

The net income of the Public Service Corporation, the original lessee, increased from approximately $2,000,000 in 1910 to over $11,000,000 in 1926 (Exhibit C-4, Case, III-5).

The aggregate assets of that Corporation increased threefold from 1910 to 1926 (Exhibit C-4).

In the same time, the electric business, measured by the number of meters in service, increased over tenfold; the output sold per inhabitant increased nearly ninefold; the aggregate annual output increased over tenfold; the gross operating revenues increased over eightfold (Exhibit C-9, Case, III-11 *et seq.*).

The gas business increased about threefold in the same period (Exhibit C-9).

The income available for fixed charges, derived from electric business, increased nearly fivefold, and that derived from the gas business nearly doubled, in the same period (Exhibit C-7, Case, III-9; Exhibit C-18, Case, III-73).

The investment by the lessee in additions to and improvement upon properties of the companies in Group I only since the leases were made is stated in the Answer (Answer, par. 49, Case, I-308; Case, II-145) to aggregate $26,500,000, not including expenditures on properties of Newark Consolidated Gas Company or Gas Light Company of the City of New Brunswick. In the case of The Paterson and Passaic Gas & Electric Company, the stated amount ($11,500,000) is over 2¼ times the amount of its capital stock; in the case of Somerset, Union & Middlesex Lighting Co. the stated amount ($9,000,000) is over 8½ times the amount of its capital stock.

And these figures do not, of course, reflect any *appreciation* in the values of the original property or the additions thereto.

The total capital which has gone into extensions and betterments to the electric and gas properties (owned as well as leased) from 1903 to 1926, inclusive, is stated in Ex. C 9 (Case, III-11, 17), as—

Electric	$144,817,763
Gas	54,047,747

The rate at which new capital is poured into these properties has greatly increased in recent years.

The rentals have been paid ever since the leases were made. The maximum cash rental was reached in each case about 1910, and has since been continuously paid. The lessee has been able to pay the same during the period when its credit was not of the best; during the period when war conditions seriously affected its financial and operating ability, during a period immedately following the war, when new financing was costly; during the continued period of large expansion. It has surmounted these difficulties; its growth in business and resources and financial strength has been astonishing. Its financial structure is greatly improved by the merger of the Electric and the Gas Company and the United Electric Company in 1924. Among other things, by that merger, it eliminated the fixed charge of the rental under the United Electric Company's lease. Under the merger, the combined resources of the Electric and the Gas properties came behind the obligation to pay rent whereas theretofore the lessor companies had the obligation of the Electric Company for only a part of the rent and of the Gas Company for only a part of the rent.

The new and valuable Kearny generating station constructed by Public Service Electric Power Company was, in 1927, acquired by the Electric and Gas Company in fee, and the fixed charge for rental to the Electric Power Company eliminated and the securities of the Electric Power Company refunded to advantage.

In the fall of 1927 the Electric and Gas Company refunded its own 5½% bonds upon a 4.55 basis, one indicating that its credit is now of the highest (Case, II-142, 238).

These elements of security back of the guaranteed stocks have enhanced (Case, II-136, 228) and will continue in the future to enhance their intrinsic value.

The situation as to the Preferred Stock is otherwise. Whereas the lessee must continue to make additions to the leased properties for profitable operation, thus increasing the margin of safety back of the guaranteed stocks—there is no equal compulsion on the holder of the common stock to add to its investment back of the Preferred Stock.

With regard to earning power, and margin of safety as to income, any factor which tends to reduce the earning power of the capital now invested affects the holder of the Preferred Stock long before it affects the holder of the senior underlying security, whether it be an increase in the cost of material such as oil or coal or freight, or in labor costs, or a reduction in rates, or a relative decrease in the efficiency and economy resulting from the investment of new capital.

Such contingencies may not be realized. But the high degree of immunity from the effect of adverse business factors enjoyed by the guaranteed stocks is a material element in their value. It is elementary that the junior security must be the greater sufferer in case any adversity is experienced.

Any material reduction in net operating income cuts into the margin of safety for the junior security more deeply than that of the senior security.

E. *The Preferred Stock is redeemable, the guaranteed stock is not.*

The trend of security prices has been, and is likely to continue, to be upward.

The one type of security which above all others feels the full effect of increasing investment demand and lowering money rates is the stock or other obligation, like the guaranteed stocks in this case, which has no fixed maturity and is not redeemable. The price of any bond of an early maturity, is, of course, held down by the fact that it will mature and will be paid off at its face at a certain time. *The obligation which has no maturity, or a bond which has a very distant maturity, is not so affected.*

A preferred stock may rise in price as money rates come down, unless it is redeemable, as so many preferred stocks are. The Public Service Electric and Gas Company 6% Preferred Stock is redeemable within three years after issue at 110 (Bill, Ex. 1, 2, Case, I-64-89; Ex. D 6), a price already attained.

No matter how low money rates go, this stock cannot go more than a few points at the most above its redemption price. It is practically pegged at 110 (Case, II-198). The very factors which would otherwise drive the price up, cheap money and large investment demand, are the same factors which would move the issuing company to redeem the stock at its call price. The holder of the Preferred Stock at 110 knows that he will receive a return of about 5½% for three years, and that is all he can be sure of.

If, three years from now, preferred stocks of this quality were selling on a 5% basis instead of 5½%, this stock would probably be redeemed and the buyer at 110 would not have enjoyed any appreciation of his principal. He would not get the premium of 10 points paid for redemption. He would have to reinvest the same principal at a lower yield. If, however, this Preferred Stock, like the guaranteed stock, were not subject to redemption, this 6% Preferred Stock, if selling on a 5% basis, would sell for 120 instead of 110. A security yielding a perpetual fixed income, not *subject to call or redemption or payment at maturity, has an element of enormous value.*

The whole course of the security market during the last six or seven years demonstrates the great advantage of holding securities not subject to redemption. Hundreds of millions of securities have been redeemed to the advantage of the issuing company and the disadvantage of the holder, who has, at the best, received a premium upon redemption which has in most cases, been quite inadequate to compensate for the loss in yield upon reinvestment.

The conversion of the guaranteed stocks into the Preferred Stock, under the proposed merger, amounts to a conversion of the one and the purchase of the other at its redemption price, a price which can never appreciate, which is unsound from an investment viewpoint.

The learned Vice-Chancellor correctly held that the perpetual guaranteed stock held by respondents could not be converted into preferred stock redeemable at the option of the issuing company—a conversion of a perpetual interest into an interest terminable at the option of the corporation. Whether or not redeemable preferred stock could be issued upon a consolidation under other cir-

cumstances, as, for instance, in the case of the conversion of a preferred stock which was already redeemable, need not be argued in this case.

The correctness of this conclusion is not shaken by the power to issue preferred stock under the Corporation Act. The corporation also has power to issue common stock, but that does not under all circumstances provide a warrant for converting a preferred stock into a common stock.

It is hardly necessary to say that the appeal is from the decree, not from the opinion of the learned Vice-Chancellor. *Delker* v. *Freeholders,* 90 N. J. L. 473, 475. While his opinion rests, it seems to us, on impregnable ground, yet minds may differ in the reasoning leading to the same result. There are contentions, other than that particularly assigned by him, which may be urged against the merger; hence we must cover the whole ground in our argument.

If the result below was correct, even though the reasons assigned were erroneous, the decree will be affirmed.

4 C. J. 1132.

Sadler v. *Young,* 78 N. J. L. 594, 597.

F. *The guaranteed stock now has a vote for the election of directors. The Preferred Stock has none, except in case of default of dividends.*

The guaranteed stock has a vote on all other matters coming before the stockholders. The Preferred Stock has no vote on such matters as the increase of stock of the Electric and Gas Company, or, for that matter, on the reduction of the stock.

The preferred stockholder has *no voice in the financial policy* of the company. The Board of Directors is of course subject to the control of the

owner of all of the common stock—the Public Service Corporation. Upon a merger proposition, there is no vote by classes, and the common stock would vote about 94% of all the stock, according to the number of shares outstanding.

G. *The guaranteed stock is in a superior position in case of a dissolution.*

The *dissolution* of either the leased companies or the Electric and Gas Company is a remote contingency. Nevertheless one to be considered in weighing the respective values of the stocks. In the case of the Preferred Stock it, upon dissolution, receives par and accrued dividends, and no more. In the case of a holder, for instance, of one of the $5.00 guaranteed stocks, he receives under the merger .86 shares of Preferred Stock, so that the utmost he could receive upon dissolution, voluntary or involuntary, would be $86. On the other hand, the holder of the guaranteed stock is entitled, in the case of dissolution of a leased company, to his full pro-rata share of the equity in the values of his company, whatever the figure might be.

H. *The security of the leased companies' stocks rests not merely upon the financial strength, resources and earning power of the lessee, but to an important degree upon the value of the reversions.*

If the lessee should default, the lessor would have not only its right of action against the lessee—the property which it would have the right to repossess as its own is of great value. Not only is the possibility of default in the payment of rental exceedingly remote—that possibility is not disturbing because of the value inherent in the leased properties (Case, II-136).

Reference is made in the testimony to the territory of the leased companies. Within the territory is the leased property consisting of distributing systems. In the case of gas companies, there are several thousand miles of mains carrying gas through and under the streets into factories and houses, several hundred thousand meters installed measuring the gas, tanks, holders and the like. Through the territory of a leased electric company there extends a vast and intricate net work of conduits, poles, thousands of miles of wires, switching stations, sub-stations, transformers, several hundred thousand meters and the like. And, of great importance, these companies are invested with franchises under which these distributing systems extend under and over public streets, as well as private rights of way, permits, and the like.

The territory of the leased gas companies is practically coextensive with the gas business done by the Electric and Gas Company in the central, populous and growing section of the state served by the Public Service (Elizabeth is not served by it with gas). Only a few comparatively unimportant municipalities within the system lie outside of the territory of the leased gas companies; for instance, Morristown, Burlington and Princeton.

Of the electric territory, almost all was originally within leased territory. The lease of the United Electric Company included a very important part of this territory;—most of Hudson and Essex Counties, an important part of Union County, and parts of Morris and Bergen Counties. This territory is now owned territory, as a result of the consolidation in 1924. But this still leaves within leased territory, the vast growing territory in Bergen County, Paterson, Passaic, Trenton, Camden, Perth Amboy, New Brunswick,

and most of the remainder of the area served by the electric system outside of the territory formerly of the United Electric Company.

The leased companies own some, although not the major, generating plants.

The distributing systems owned by the leased companies are indispensable parts of the enterprise, and cannot be duplicated. Public Service, with its vast investment, depends upon the territory of the leased companies for the consumption of the gas and electricity generated in part in its large and very costly central stations.

The situation is not like that of a branch line or feeder of a railroad or trolley property, where the branch can often be lopped off without serious injury to the whole.

The appraised values of the leased properties are great.

In 1923 or 1924 all of the Electric and Gas properties were valued by Messrs. Dey and Zimmermann, engineers and specialists in the valuation of utility properties. Figures as summarized in the circular letters of 1924 (Exhibit C 12, Case, III-23) are as follows:

Electric and gas properties valued at		$245,000,000
Leased properties valued at (62%) over		$152,000,000
Securities of Leased Companies outstanding in hands of public (Bill, Exhibit 11, 12, Case, I-191, 194) (Exhibit D 52, Case, III-605)		
Bonds, about		$ 42,500,000
Stock, about	$38,000,000	
Equity in leased properties over and above bonds, about (nearly 300% of the par value of the stock)		$110,000,000

The net earnings from the leased properties *for 1923* can be determined from the Circulars (Ex. C 12, 13, Case, III-23, 33) as follows:

Net earnings of Company	$17,206,705
Equity of lessee in earnings	5,780,000
Net earnings of leased properties	$11,426,705
Rentals of Leased Companies	$ 4,822,551

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Net earnings of leased properties were therefore in *1923* about 2⅓ times the total rental.

The annual requirement for interest on the bonds of the leased companies was not over $2,325,000. Compare Bill, Exhibit 11, Case, I-191, and Exhibit D 52, Case, III-605. After payment of bond interest, the net earnings of leased properties available for dividends were therefore at least $9,100,000, approximately 3½ times the dividends aggregating about $2,525,000.

During 1924, 1925 and 1926, capital expended in extensions and betterments to electric and gas properties was as follows (Exhibit C 9, Case, III-11, 17):

	Electric	*Gas*	
1924	$23,881,885	$ 4,951,361	
1925	34,349,195	7,807,265	
1926	20,352,325	8,715,907	
Totals	$78,583,405	$21,474,533	
Grand Total			$100,057,938

Granting that a large portion of these additions is represented by the central operating units described in the testimony, more especially the electric generating stations (which, however, have value, in a broad sense, to the leased companies as the facilities provided for the operation of the leased companies) there is a large annual expenditure required for the extension of the distribution system, and necessarily a large portion of this additional expenditure has been made in and upon the leased properties.

I. *These guaranteed stocks are in substance and effect, as well secured as the mortgage bonds covering the leased properties.*

If this be so, the terms of the merger are inequitable. Those bonds sell on almost exactly the

same basis as the Electric and Gas Company Refunding Mortgage Bonds, that is, to yield slightly more than 4.50 (See Ex. D 32, Case, III-523).

It is true the bonds have a mortgage lien, but, in this structure, that is of relatively slight importance. True, the bonds of the leased companies are ahead of the stock of the leased companies, but in a number of cases in the system in which there are first and second mortgages on the leased companies, the second mortgage bonds sell on practically the same *basis* as the first mortgage bonds (Ex. D 32; Dec. 3, 1927).

The bonds and stocks of these leased companies are so well secured that their relative rank between themselves is of slight importance. They all have the benefit of the same security; that is, the intrinsic value of the leased properties, a position superior to the Refunding Mortgage Bonds as to the leased properties, and to the Preferred and common stock of the Electric and Gas Company.

Would the Public Service consider it fair and equitable to convert the bonds of these companies into Preferred Stock, on a 5.55 or any other basis? Where is the line of distinction between the bonds and the stock of the leased companies; so far as treatment by the lessee is concerned? The same rental pays both the interest on the bonds and the dividends on the stocks.

J. *We submit that the stock in the leased companies is secured as well as, or even better than the Refunding Mortgage Bonds of the Electric and Gas Company.*

The stock ranks ahead of those bonds as to the leased properties. The Refunding Mortgage

Bonds, even as to the property owned by the Electric and Gas Company, are subject, as to part of that property, to the underlying bonds of the United Electric Company, outstanding in the amount of about $18,000,000 (Ex. D. 52, Case III-605). The stock is closed. The bonds are open. The security back of the stock must and does tend steadily to increase. Whether the security for the bonds enhances depends upon the financial policy of the company, its determination of the amount of bonds to be issued in the future, and upon other factors affecting the value and earning power of the property as a whole. The stock has a more speedy and drastic remedy in case of default than the bondholders. A default under the Refunding Mortgage does not necessarily affect the position of the stock or payment of dividends thereon out of rentals; a default under the leases threatens the disintegration of the whole structure and practically compels receivership and foreclosure.

Other guaranteed stocks sell on a basis as low at 4.30. These stocks should sell upon as favorable a basis as the Refunding Mortgage Bonds (4.50) if the investing public were more fully informed as to the structure of the company and the values and earnings of the leased companies.

At this point, we present a summary of the comparative features of the guaranteed and the Preferred Stock under discussion:

SUMMARY.

	Leased Companies' Stock	*P. S. E. & Gas Co. Preferred*
Is there a fixed obligation to pay rent or dividends?	Yes	No
Is there an effective remedy in case of default in payment?	Yes	No
Are underlying liens "closed"?	Yes	No
Are these stock issues "closed"?	Yes	No
Are they superior in rank to the Refunding Mortgage Bonds as to any important property?	Yes	No
Are they subordinate to the Refunding Mortgage Bonds?	No	Yes
Are they subject to redemption?	No	Yes
Have they voting rights?	Yes	No
Is there a covenant in the Refunding Mortgage to pay rent or dividends?	Yes	No
What is the relative margin of safety both as to property values and income available to meet requirements?	Greater	
Which is claimed to have greater marketability		Greater
What is the annual return under the proposed merger in case of $5 dividend stock	$5.00	$5.16

K. *The loss of security, coupled with satisfactory yield, suffered by the guaranteed stockholders under the merger, is not compensated by the increase in immediate marketability.*

Defendants do not question the security of the guaranteed stock, but harp on the greater marketability of the Preferred Stock (Case, II-135, 193, 204, 232).

Guaranteed stocks are desired by discriminating and studious investors seeking a high degree of security combined with a satisfactory yield, such as wealthy private investors, trust estates with discretionary power of investment, and fire and casualty insurance and surety companies who are not restricted to bonds in their investments. The dividends are, of course, free of normal income tax, an especial advantage to corporate holders (as compared with bonds).

The financial witnesses for the defendants testify that a leasehold structure and leased company stocks are "antiquated." Much depends on the point of view. From the standpoint of the issuing company and its bankers, it is more desirable to erect a financial structure upon the foundation of ownership in fee.

But, from the standpoint of the holder of guaranteed stocks, the more antiquity the better. Such stocks are "seasoned".

Would the dividends on Preferred Stock have been secure in 1918-1921, when these utilities were struggling under war regulations, scarce and expensive fuel, disturbed labor conditions, sluggish adjustment of rates, scarcity of capital and poor credit? What would the marketability of Preferred Stock have been then? Even if dividends had been maintained, the holder of Preferred Stock would have seen then, and in subsequent

years, very large amounts of senior securities issued.

Guaranteed stocks are in demand, and are still being issued in some cases.

Under present conditions in the railroad field, a gradual integration of lines is taking place, and leases of important roads are being made in this rearrangement and drawing together of railroad systems. A common result is the creation of guaranteed stock or the conversion of existing ordinary stock into guaranteed stock.

The current reports of the Interstate Commerce Commission contain many references to leases passed upon or considered.

For instance, the lease of the important line of the Carolina, Clinchfield & Ohio to the Atlantic Coast Line and the Louisville and Nashville (90 I. C. C. 113); the lease of the Central Pacific to the Southern Pacific (76 I. C. C. 508).

The proposed unification of the Nickel Plate, Chesapeake and Ohio, Hocking Valley, Pere Marquette, and Erie, which would have created a railroad system with capital values of a billion dollars more or less, was to have been made through leases of the last named four companies (105 I. C. C. 425. See Appendix I, *post,* p. 110).

Guaranteed stocks have a long record and history of stability and safety. Preferred stocks are of more recent origin and acceptance. Preferred stock has neither the security of a bond or other obligation, nor the rights of common stock to full participation in earnings.

Popularity does not always measure merit of investment securities. Many of the best are unknown to the average investor. They are the senior underlying closed issues of railroads and utilities (Case, II-271) in the vaults of insurance companies, savings banks and trustees, who study

factors determining the value of securities and invest accordingly. Such securities may not be as "marketable" as others more appealing to the present speculative mood; but that is no justification for forcing the holder to accept a junior stock.

The witnesses look at the issue from differing viewpoints. The firm of Roosevelt & Son, of which Mr. Dick is a member, are not engaged in the wholesaling of securities. They are not a "house of issue". They analyze security values on their merits and advise their clientele in the purchase of investment securities.

Drexel & Company and Bonbright & Company are, principally, bankers on a large scale for large corporations. They advise such clients as to the best means of raising money, therefore with much regard to the salability of large lots of bonds or stock. They market those issues by grouping financial houses for the distribution of the securities to the investing public.

Organizations geared up to the selling and distribution of large quantities of fresh securities do not interest themselves to any great extent in the small transactions over the counter in stocks like these guaranteed stocks; and do not regard with much favor those investors who wish to hold securities, the existence of which in some degree interferes with their financial plans.

The testimony does not prove lack of marketability for these guaranteed stocks.

Mr. Loomis tells of some effort on the part of his house to sell some of these stocks, but that was at a time when the credit of the Public Service was not high, all security prices were depressed and conditions were quite different from those now prevailing (Case, II-220).

Mr. Gates mentions some effort on the part of the United Gas Improvement Company to dispose of its holdings. He does not tell us when or how or at what price it was proposed to sell the very large blocks held by that company (Case, II-170).

Mr. Rippel, although only a local dealer, was willing to risk several million dollars of his money to acquire the Shanley holdings in June, 1927, at a price materially above the Public Service offer of January (Exhibit C 2, 12/16/27, Case, III-364). This seems to give the quietus to the cry of non-salability.

Mr. Dick and Mr. Outwater both testified that the demand for these guaranteed stocks has exceeded the supply (Case, II-262, 310).

Other guaranteed stocks are sufficiently marketable to command high prices. See Exhibit C 1, 12/16/27, Case, III-363.

L. *The fact that the terms of the merger agreement are based on relative "market values" of the securities, does not remove objection to the fairness and equity of the compulsory conversion of one stock into another of lesser rank and security.*

The statute calls for a "conversion". This must imply that there be some equivalency in rank and type as between the stock converted and that into which it is converted. Mere comparative measurements of the two in terms of what they will bring in money, on a sale, alters the statutory process of "conversion" (a retention of the holder's prior interest in a changed form), to one of forced *sale* of that which is held and forced reinvestment in a different security. There is no support in the New Jersey cases for this construction.

This case calls for a determination of the rights and equities of the minority stockholders as against the majority stockholders on broad grounds. This is not an appraisal or condemnation case, or a tax case, in which, by statute or otherwise, the problem is the determination of a *market value,* and nothing else.

So we object to its decision on the basis of alleged market values.

Further, we object to the use of the Rippel and the Outwater "bid" prices as fixing a market price (we are referring to Mr. Rippel's quotation sheets, not to his bid for the Shanley stock in June, 1927). While Mr. Outwater is one of the respondents, the prices bid by him in his capacity as dealer do not of course bind all the respondents.

The reports are of course full of decisions upon what constitutes market value, in cases which do involve that question.

For instance, in *Phillips* v. *United States,* 12 Fed. (2d) 598, an income tax case, it is said (at page 601):

> "It is well settled that the fair market price or value of the property as of March 1, 1913, is a question of fact under all the circumstances of the case. No method of determining this value can be stated which will adequately meet all circumstances. The stock sales made from time to time are to be considered together with the nature and extent of the sales, and the circumstances under which they were made; hence forced sales, or sales of small lots, may often be no real indication of the value."

In that case, the court found that the sales on the Pittsburgh Stock Exchange, over a six months' period in 1913, of stock of the Pure Oil Company, a large corporation, did not represent

"in any true sense" the fair market value of the stock. The court was largely influenced by the fact that for the six months in question the percentage of average monthly sales on the Exchange to the total shares outstanding was 1.17%. That would, of course, make an annual percentage of 14.04%. A small turnover in comparison with the transactions in stocks active on the New York Stock Exchange.

In *Walter* v. *Duffy,* 287 Fed. 41, (C. C. A., 3rd Circ.), it was said (page 45):

> "It is obvious that Congress by the addition of the words 'fair market price,' certainly meant that not only must the market price be ascertained by sales, but that sales so made, the circumstances under which they were made, the subject matter of the sales, all the attendant circumstances, were to be considered to determine whether such sales served to evidence not alone a market sale, but the fair price which Congress said should be the statutory start or base from which subsequent 'gain derived' should be determined."

In *Virginia* v. *West Virginia,* 238 U. S. 202, 59 L. Ed. 1272, the United States Supreme Court said (as to quotations of a stock very infrequently dealt in):

> "In short, we have very infrequent transactions, of unknown significance, which fall short of furnishing a satisfactory indication of the value of the large block of stock held by the State.
>
> "The fact, however, that there was no sufficient proof of market value, was not an insuperable obstacle to the making of a fair valuation. It was clearly proper to introduce evidence tending to show the intrinsic value of the shares."

See also

Heiner v. *Crosby,* 12 Fed. (2d) 604, affirmed 24 Fed. (2d) 191.

In the instant case, note the extent of the turnover in the shares of these companies in the years 1925 and 1926 (back in 1919 and in 1920, when the prices were low, the turnover was still smaller). It appears from Exhibit D 36 (Case, III-526) that the annual turnover was as follows:

	1925	*1926*
Essex and Hudson Gas Company	5%	10.5%
Hudson County Gas Company	5.6%	12%
Paterson & Passaic Gas & Electric Company..	2%	3½%
Somerset, Union & Middlesex Lighting Company	4¼%	7%
New Brunswick Light, Heat & Power Company	6.6%	12.4%

The Offer of January, 1927, and the terms of this merger, are built up on the so-called market price, really Mr. Rippel's "bid", as of December, 1926 (90 for the 5% stock, 142 for the 8% stock, etc.). Mr. Rippel's bid represents merely the amount he as a dealer held himself out as willing to pay to the comparatively small number of stockholders who, at any time, might have wished to sell their stock for cash. These stocks were closely held, and little dealt in. This was not a free, open and active market attracting many buyers and sellers; it was a local market, not attracting buyers and sellers outside of a small territorial range; it was a quiet market, not advertised or known to many investors or even to

many dealers or brokers. It was not a broad market in which many and well informed investors buy and sell, registering truly and sensitively the composite judgment of the investing public as to intrinsic values. It really wasn't a *market.* Mr. Rippel's dealings, or Mr. Outwater's, were more in the nature of private transactions.

When the United Gas Improvement Company considered selling its holdings in the leased companies, whenever that may have been, it felt that the "market price" represented a great sacrifice as compared to the real value of the stocks. It was unwilling to sell its stock at the market, such as it was.

When Bonbright & Co. tried to distribute some of these stocks it was dissatisfied with the "market".

But when an offer to the stockholders is prepared and promulgated, this weak, narrow, local, inactive, unresponsive, uninformed "market" is made the basis of the Offer, and it is now made a justification for the terms of a compulsory merger.

And, as we said, the whole Offer is built around that market. The cash offered was the so-called market price. The amount of the Preferred Stock offered in exchange was apparently not arrived at by any comparison between the Preferred Stock and the guaranteed stock other than that of selling price. The same is true as to the offer of Public Service common.

The amount of the Preferred Stock or of the Public Service common offered was that amount which at their then respective market prices—in a free, active, open market, supported by powerful bankers—could be purchased with an amount of cash determined by the bid price for the guaran-

teed stock in the narrow, thin, inactive, quiet, uninformed local market.

The "market prices" for the guaranteed stocks afford no true and fair measure of their intrinsic value.

The reasons are indicated by the defendants' own witnesses. There was a small amount of stock available for trading. The stocks were not generally known. They had never been puffed or pushed by large banking houses. They were closely held. They were dealt in by small dealers over the counter in small quantities. They were not listed. Some study was necessary on the part of a purchaser to determine the extent of their security.

It is apparent from the quotation sheets placed in evidence by the defendants that there was a wide range between bid and asked prices. In such cases the bid prices are misleading. Those are the prices at which the few dealers in these stocks hold themselves out as ready to pay for the stock offered. It is perhaps true, as Mr. Van Middlesworth said, that the bid price is what the stock could be sold for; it is not the price at which the stock could be bought. Actual transactions in the stock no doubt in many cases were at a higher figure.

For these reasons it is unfair to compare the market prices for these guaranteed stocks on the one hand, where all conditions tended to undervaluation, with the market price of the Preferred Stock, which has all of the advantages tending to put that stock up to and hold it at its proper market price. The Preferred Stock is listed on the New York Stock Exchange, and has been issued and distributed under the auspices of large influential bankers with all their selling force behind it, and widely advertised by them as well as by the Public Service itself.

The course of prices of the guaranteed stocks is somewhat significant. After the Offer of January, 1927, was made and attention was attracted to these stocks in a measure which they had never before received, and after the decision was announced on the preliminary motion in the Shanley suit, the prices rose until the end of April. The merger agreement affecting the four companies in Group I was announced at the end of April. Prices then fell off markedly and have not recovered. No investor after that date could purchase these stocks with much regard to their own merit so long as the litigation over the merger should continue. The only thing he could be sure of receiving would be the proposed equivalent in the Preferred Stock, and the market price for that equivalent would dominate the price for the guaranteed stock.

The Offer of January, 1927, has little or no relevancy.

The fact that an offer, at the "market price", was made before the merger was proposed, does not afford ground for denying equitable relief. The respondents are investors. There is no reason why they should be prejudiced in the slightest by failure to accept an offer unsatisfactory to them. They had invested their funds on terms satisfactory to them. The acceptance of a cash offer might or might not have involved them in the payment of income taxes, whereas if they waited for fair terms under the merger agreement, converting their existing securities to some other proper equivalent, they would have had no income tax problem to face.

In case of acceptance of the cash offer, they would have had to meet the problem of reinvestment of the proceeds. What would the Shanley

Estate have done, for instance, with the proceeds of the sale of its large blocks of these stocks? That is an instance where the Trustee was entitled to retain these stocks as a satisfactory investment, although not legal investment for trust funds, whereas on repurchase they would have been confined to legal investments. It might be said they could buy guaranteed mortgages to yield 5½%, but that would have been but a temporary investment for a matter of a few years at the most.

Messrs. Roosevelt and Son were opposed to the offer on the ground that their clientele could not reinvest the proceeds to yield 5½% in any securities known to them without quite a loss either of security or income.

The problem of the investor who might take advantage of the marketability of the Preferred Stock to sell it and then attempted to reinvest the proceeds in another security as safe and permanent as the guaranteed stock, is concretely discussed by Mr. Dick in his testimony (Case, II-273-277), to which we invite attention. The witness showed that the market value of the Preferred Stock offered in exchange was about 20% short of the amount needed in order to secure the same income from a reinvestment in securities considered by him comparable with the guaranteed stock. (See Ex. C1—12/26/27, Case, III-363).

Mr. Loomis, when asked to cite one or two other securities available for reinvestment without loss of income, mentioned only other preferred stocks (Case, II-232).

Mr. Gates expressed confidence in his ability to suggest a reinvestment program, requesting the privilege of sending the list of suggestions with-

out being recalled to the stand, *but no such list was produced* (Case, II-197, 213).

The cash offer was accepted by comparatively few. It is not held open under the merger agreement, and for that reason alone, is of small moment.

The offer of Public Service common was no doubt attractive to larger holders who were in a position to accept a more speculative security. Of course, it could not be considered by the Trustee of the Shanley Estate or by other trustees, or by conservative investors, who, regardless of the attractiveness of a common stock junior to large issues of bonds and preferred stock, do not invest their funds in that type of security.

This offer was, of course, accepted by United Gas Improvement Company. That company is, in part at least, a holding company, and prior to the offer, owned "over 20%" of the common stock of Public Service Corporation (Case, II-96). It had large blocks of stock in Essex and Hudson Gas Company, Hudson County Gas Company and The Paterson and Passaic Gas and Electric Company (Case, II-155). These stocks were not interesting to it as a mere safe investment. Option C gave it an opportunity to largely increase its holding of common stock in Public Service Corporation and thereby attain what is undoubtedly a working control of Public Service Corporation (about 31%) (Case, II-155). The evidence shows other phases of close affiliation between that company and the Public Service.

Had it not been, however, for the concentration of these holdings of the guaranteed stocks in these three companies in the hands of U. G. I., plus fairly large holdings in friendly or associated hands, the Public Service would not have acquired the desired two-thirds of the stock in these three companies.

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It is no criterion of the fairness and equity of the terms of the merger that some holders of the guaranteed stock would realize a nominal profit on their investment. It is true that market prices for the guaranteed stocks have been lower in the past. That is true of all securities. That is true of the other Public Service securities. Also of any securities in which they might reinvest.

It is interesting to go a little farther back, say to 1913. In that year these stocks sold as high as (Ex. D 31, Case, III-522):

Essex & Hudson Gas Co.....	$136
Hudson County Gas Co.....	132
Paterson & Passaic Gas & Elec. Co.	90
Somerset Union & Middlesex Lighting Co.	74

With the enormous increase in the security since that date the stocks are entitled to a vastly higher rating today and should sell, as compared with 1913 prices, far and above the present offer. And they should continue to enhance in price in the future. Continual enhancement in security, and therefore in value, will be reflected in the market price.

The directors of these companies, in adopting the merger upon the basis of the least attractive of the three options, have not fairly measured the rights of the stockholders.

No amount of argument or testimony will change the conviction of the respondents that the Preferred Stock is a security of an essentially different type, that it is not an adequate equivalent for their present holding. Many of them would sell the Preferred Stock for that reason, and would be dissatisfied with the result of the reinvestment. To them the merger amounts to a forced sale.

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The statute contemplates that the stock of the merging companies shall be converted into stock or obligations of the consolidated corporation on a fair relative basis. Where a merger involves conversion of common stock, relative earning power and equity in surplus are primary bases for comparison. In the case of a preferred stock, upon a merger the same relative preferential status should be preserved. Where, as in this case, the stock is indirectly secured by an obligation, especially where that obligation is upon the part of the company into which the properties are being merged, the problem is one of relative security as to safety of principal and continuity and perpetuity of income.

If either by statute or agreement, mortgage bonds might be converted in case of a merger, their conversion into common stock could not be justified merely because at the moment the stock was selling for as much as the bonds.

This case is a stronger one for the complainants than the *Colgate* case, where there was involved a mere charge on the part of the discontinuing corporation on its own earnings in favor of one class of its own stockholders as against the junior class of stock, but Vice-Chancellor Emery did not permit the merger to be submitted to the stockholders until an agreement was framed which perpetuated the right of the preferred stockholder to enforce that charge against the continuing corporation.

He did not decide the case on relative market prices, although both the old and the new stocks were actively dealt in on the New York Stock Exchange, and although defendant strongly emphasized the advantage, marketwise, of the proposed conversion and supported its position by detailed evidence, including charts, as to relative market prices.

Nor is a comparison of market prices made the ultimate ground of decision in other cases cited in these briefs upon analogous questions.

The legislature did not intend that merger should be used as a means of buying out stockholders at market price, unless the stockholders should prefer a cash sale at the market price through the alternative remedy of appraisal.

To uphold defendants' arguments would place too much power in the hands of majority stockholders, for it would authorize the submission and consummation of a merger at the option of the majority on the basis of the market price prevailing at any time, regardless of depression or other adverse and perhaps temporary factors.

As stated in the case of *United States* v. *Reading Company,* 295 Fed. 551, quoted by defendants, intrinsic value and market value are not by any means the same and one does not establish the other. See also *Douglas* v. *Merceles,* 25 N. J. Eq. 144. Upon a merger, stockholders are entitled to have their stock converted on the basis of intrinsic value and security. The right to market value under the appraisal section is optional with the stockholder.

Defendants argue that it would be illegal for the Electric and Gas Company to give minority stockholders more than the value of their stock as measured by the alleged market prices. A merger is not the same as a purchase of the stock. The merger statute expressly permits the stock of the merging companies to be converted into obligations of the consolidated corporation. Where the underlying stock enjoys the security and benefits of the fixed rental which the continuing corporation, as lessee, is now obligated to pay, it would be appropriate that the stock be converted into obligations.

Furthermore, the merger statute permits the consolidating corporation to fix the amount of and provide for the issue of preferred stock based upon the property of the merging corporations (which, it is true, is at the present time subject to the leases), so that the issue of preferred stock is not limited in amount by mere comparison with the prevailing quotations for the stock of the underlying companies. The merger is much more than a mere purchase of stocks; it is an acquisition of property and franchises.

It is not necessary in this suit to determine the exact value in dollars of the guaranteed stocks, although Ex. C1—12/16/27 (Case, III-363), affords a comparative basis for such valuation.

M. *The adoption of the merger agreements by the directors is no adjudication of the fairness of the terms of the merger.*

The directors of the lessor companies are either officers or directors, or both, of the Public Service. Some are actively engaged in the management of the Public Service, the extension of its property and business. *Some are stockholders in the Public Service. None are now stockholders in the leased companies.* Others are bankers actively interested in the Public Service and its financial operations. The determination of the rights of the stockholders in the leased companies is to them comparatively incidental.

It is evident that the directors of the leased companies have been dominated by the Public Service viewpoint. One step after another has been taken by them to carry out the program for the acquisition of the properties of the leased companies by the Public Service and the extinction of the obligations of the Public Service as

lessee, on terms formulated by the Public Service and its bankers.

Even if the interlocking of the directorates and the self interest of the directors does not make the adoption of the merger voidable at the instance of stockholders (*Colgate* v. *U. S. Leather Company, supra*), at least that vitiates the determination by the directors as to the justice of the terms of the merger; it removes any presumption which might otherwise arise in favor of a proposition negotiated, formulated and approved by an active and unbiased board of directors (*Bingham* v. *Savings Investment & Trust Co.*, and other cases, *infra*).

It reduces the controversy to its simplest terms as one between two groups of stockholders;—the majority stockholder having the vote and using it to force upon the minority the price at which it, the majority stockholder, acquires the common property.

N. *The response to the Offer indicates no general approval by stockholders of the fairness of the offered exchange.*

In the case of the companies in Group II, in which the United Gas Improvement Company had no large holding which would swing the deal, the Offer has apparently been accepted only by the following percentage of stockholders (Ex. C 19, Case, III-77; D 52, Case, III-605):

	Option A. Preferred Stock	*Option B. or C. Cash or Public Service Common*	*Total*
South Jersey Gas, Electric & Traction Co. ...	2.66%	23.89%	26.55%
Gas & Electric Co. of Bergen County	15.57%	7.66%	23.23%
Newark Consolidated Gas Co.	3.88%	8.89%	12.77%
Ridgewood Gas Co.	3.3 %	14.1 %	17.4 %

In the case of companies in Group I, the acceptance of the Offer appears to be as follows (Answer, par. 46, 47, Ex. 7, Case, I-305, 306, 324; Case, II-156), stating the shares turned in by the United Gas Improvement Company separately:

	Option A	*By others than U. G. I. under Options B. or C.*	*Total*	*By U. G. I. under Option C.*	*Grand Total*
Essex & Hudson Gas Co.	8.99%	15.38%	24.37%	49.88%	74.25%
Hudson County Gas Co.	7.76%	18.36%	26.12%	50.38%	76.50%
Paterson & Passaic Gas & Elec. Co.	3.05%	9.17%	12.22%	64.83%	77.05% (a)
Somerset, Union & Middlesex Lighting Co.	4.96%	26.95%	31.91%	.....	31.91% (b)
New Brunswick Light, Heat & Power Co.	3.52%	59.87%	63.40%	.....	63.40%

(a) Public Service owned 5.39% of stock of Paterson & Passaic Gas & Elec. Co. before the Offer of January, 1927, was made (Ex. D 43, Case, III-535).

(b) Public Service owned 41.11% of stock of Somerset, Union & Middlesex Lighting Co. before the Offer of January, 1927, was made (Answer, Ex. 7, Case, I-324; Ex. D 43, Case, III-535).

Less than 50% in *number* of the stockholders accepted the Offer (Ex. D 42, Case, III-534).

In short, the desired two-thirds of the stock could not have been obtained by the Public Service, except for the large blocks of stock in the leased companies held by the U. G. I. (dominant stockholder in the Public Service) or, in the case of the Somerset, Union & Middlesex Lighting Co., by the Public Service itself.

There is still a not inconsiderable minority, aside from respondents, who have neither accepted the Offer nor voted in favor of the merger; also a number of stockholders, aside from respondents, who voted against the merger at the stockholders' meeting on Dec. 19, 1927 (see Point O).

O. *The vote of the stockholders at the meetings for the adoption or rejection of the Merger Agreement is no sanction by the stockholders in general, of the fairness and equity of the exchange.*

The stockholders' meetings to adopt or reject the Merger Agreement of October, 1927, were held on December 19, 1927. Its adoption was carried, of course, by the Public Service vote. The vote, analyzed, is as follows (Second Supplement to Amended Bill, Case, I-435):

	Essex & Hudson Gas Co.	*Hudson County Gas Co.*	*Paterson & Passaic Gas & E. Co.*	*Somerset, Union & Middlesex Lighting Co.*
IN FAVOR (No. of Shares)				
Public Service	48,287	80,625	41,245	7,932
Others	589	964	484	191
Total	48,876	81,589	41,729	8,123
AGAINST				
Respondents	5,604	9,282	4,630	1,257
Others	2,257	1,947	1,337	20
Total	7,861	11,229	5,967	1,277
NOT VOTING	8,263	12,182	2,304	1,100
Total outstanding stock	65,000	105,000	50,000	10,500

III. The Public Service, as lessee, is estopped to enforce by its own vote the adoption of a merger of the lessors except on demonstrably fair and equitable terms.

The result of the merger is to extinguish the almost perpetual obligations to the leased companies of the Public Service Corporation, as lessee, and the Electric and Gas Company as assignee—lessee. That extinguishment will result from their vote as stockholder of the lessor companies. Other stockholders of the lessor companies have invested therein on the strength of the obligation to be so extinguished, believing that

such obligation, secured by the reversionary interest, furnishes practically a perpetual source of dividends on their stock.

Public Service Electric and Gas Company is a party to the merger. The merger statute provides that the merged corporation shall be subject to all of the restrictions, disabilities and duties of each of the corporations merged; also that all the duties and liabilities of a merged corporation shall thenceforth attach to the consolidated corporation and may be enforced against it to the same extent as if such duties and liabilities had been incurred or contracted by it. Section 106, 107.

If the leases were with corporations other than the merging corporations, Public Service Electric and Gas Company would remain liable thereon. It extinguishes that liability because it runs to the corporations being merged into it. Although there may be no estoppel as such against a merger, equity and good conscience should estop the Public Service in this case from extinguishing its liability by its own vote merger except upon terms demonstrably and plainly fair and equitable to the minority stockholders.

See, especially,

Boyd v. *New York & H. R. Co.*, 220 Fed. 174 (Appendix I, p. 101).

In *Colgate* v. *U. S. Leather Co.*, 73 N. J. Eq. 72, 89, Vice Chancellor Emery held that only *stock* may be converted under the Merger Act; that an obligation in the nature of a debt may not be converted, but attaches to the consolidated corporation. Since the accrued dividends on the preferred stock of the U. S. Leather Company were, by its charter, a "charge" upon earnings in pri-

ority to the common stock, a merger of that company was enjoined because that "charge" was not recognized and preserved in the merger agreement. Yet that was not a debt, it was a mere right of the stockholder of the obligated company as against the junior class of stock therein.

In *U. S. Industrial Alcohol Co.* v. *Distilling Co.*, 89 N. J. Eq. 177, the Court of Errors affirmed a decree enjoining a dissolution until the dissolving company should provide a method to protect the rights of a holder of its guarantee.

The stockholders in this case are entitled to have an adequate equivalent for the security which now protects their investment. The Public Service, by uniting the dominant position of majority stockholder with that of lessee, should not, in equity, be permitted to relieve itself of its obligations as lessee.

IV. The respondents should not be forced into an appraisal of their stock.

An appraisal or appraisals would be uncertain in result, burdensome, protracted and expensive. Especially so in this case because of the large amount of stock involved and because of extreme difficulty in measuring accurately the "full market value" of these stocks. The defendants' witnesses testified that there is no active market for these stocks. In fact they say there is no market at all in the sense which bankers understand the term, which, we submit, is the sense in which the term is properly used in the appraisal statute. The market is "thin." A relatively small amount of stock is bought and sold over the counter (Exhibit D 36, D 37, Case III-526, 527; Case, II-137, 138, 169, 220, 233, 259, 294). There is a wide

range between the bid and asked price. The stock is not listed. It would be difficult to find the facts as to actual transactions in the stock. The market price of the stock at the date when the merger is consummated, if permitted, will not be a normal market and will not truly represent the full market value as of that date, because the long pendency of the merger and of the litigation will have driven out of the market the normal investment demand for the stock. The same is true, to a considerable degree, of the market prices prevailing during all or most of 1927. To go back of 1927 for evidence as to "full market value" would be distinctly unfair in case the merger were consummated in, say, June, 1929, because conditions will have materially changed.

One or more of the companies involved has its principal office in a county other than Essex County, and apparently proceedings would have to be brought in more than one county. Indeed, different proceedings would have to be brought affecting the different companies and it is possible that different appraisers might be appointed and inconsistent results arrived at in cases involving the same problems. It might be necessary to present the same testimony in each of several appraisal proceedings.

The statute requires the full market value to be ascertained regardless of any appreciation or depreciation in consequence of the merger (Section 108). It is clear, we think, that the market value has been depreciated by the merger. Certainly it has been affected, and it would be difficult to measure the extent of the appreciation or depreciation.

It might be deemed necessary to present testimony as to the valuations of the properties of the leased companies, and this would involve great

difficulties in the identification, enumeration and valuation of the various items of the properties of the lessor companies. The inquiry might also involve the construction of the leases, a problem not without difficulty in application to the now existent situation (Case, II-119).

The result of the appraisal would require the petitioning stockholders to reinvest very large amounts of money, possibly under unfavorable conditions.

The award would undoubtedly involve some of the petitioning stockholders in liability for a substantial federal income tax, whereas in case of a merger on fair and equitable terms the acceptance of the securities provided by the merger agreement would not involve them in such liability, as a merger is a tax-free reorganization under the federal income tax law (Section 112, Revenue Act of 1928).

The public interest does not require that an injunction against an unfair and inequitable merger be denied and that the stock be appraised.

It is argued that the public would benefit by the greater ease in financing this utility in case the leases be eliminated and the property of the leased companies acquired in fee, and that the future financing of the company would be less expensive. The witnesses for defendants did not tell us how much less the cost of financing would be, or present any testimony from which a conclusion can be drawn. Many railroads enjoying the highest credit hold some or much of their lines under leasehold, *e. g.,* New York Central R. R. and Pennsylvania R. R. (Case, II-184, 188, 192, 244, 274; III-363).

The Public Service now has no difficulty in financing at a low rate.

The improvement in its credit has been accomplished without the elimination of these leases. It is doubtful whether their elimination would affect the cost of financing under present conditions to a material degree. "The position would be a little stronger" (Gates; Case, II-200). The consolidation was not regarded as "essential", in 1924.

To what extent the public would benefit by rate reductions in case the financing were at a lower cost is doubtful. It is quite possible that in a rate case the Public Service would take the position that it was entitled to a given rate of return on the value of its property—hence that its ability to obtain a part of the capital invested in the property at a lower rate was a saving which inured to the benefit of the stockholders alone, not to the consuming public.

The proposed merger does not directly reduce the amount paid by the Electric & Gas Company, and indirectly paid by its customers, to the persons who have furnished the capital for the enterprise, that is, the amount paid out to investors in Preferred Stock dividends under the merger would be the same amount now paid out in rentals to the same persons as holders of the leased companies' stock.

However, even if this merger be consummated, it will not vest the Public Service with title to all of the leased companies, as the companies in Group II will still be out of the fold. Nor would it make the Refunding Mortgage Bonds a direct *first* lien on the properties (a principal factor in determining the rank and quality of the Bonds, and hence the cheapness at which they can be marketed). They would remain subject to the underlying bonds on the leased properties, about $42,500,000, and on merged properties, about $20,800,000 (Ex. D 52, Case, III-605).

There may be cases in which the public interest in the acquisition of utility property by merger should override the private property interests of small stockholders. If, *e. g.*, the merger were the medium for the acquisition of new property not theretofore operated by the absorbing company, the amalgamation of service in adjacent territory or of connecting links of railroads and the like.

For example:

> *N. Y., N. H. & H. R. R. Co.* v. *Offield*, 77 Conn. 417, 59 Atl. 510; 78 Conn. 1, 60 Atl. 740; affirmed 203 U. S. 372, 51 L. Ed. 231.

The sole question decided in this case was that the legislature had power to pass a statute under which a railroad might condemn shares of stock in a connecting leased railroad for the purpose of improving and more fully utilizing the latter.

The stockholders in that litigation held only two shares of the stock of the leased road. All of the other outstanding shares, 4,468 in number, were held by the N. Y., N. H. & H. R. R. Co., the lessee.

But in this case there is no operating advantage to be gained by the merger. The properties are now under the complete operation and control of the Public Service under leases for nine hundred years, or more. The existence of the leases has not resulted in the maintenance and upkeep of unnecessary plant for legal or technical reasons, the Public Service has exercised a free hand in the development of the leased properties, has placed new plants to the best advantage and has inter-connected the leased and owned properties without being in any practical way hampered by the provisions of the leases (Testimony, Messrs. Clark, Allegart, McCarter, *passim*).

In short, the Public Service acquires nothing in the way of plant or facilities by the merger—only the bare legal title to the reversionary interests therein, only the security for its obligations. *It discharges a lien without the consent of the holder.*

There is no financial or other emergency requiring the immediate consummation of this merger, no element of time running against the defendants.

The actual result of the merger is the readjustment of the relationship between the holders of the leased company stocks and the Public Service, against their will and to its advantage. As a readjustment of those relationships *inter sese* the case presents a problem in private rights, which should not wear the mask of public interest.

In any event the public interest does not require that complainants be ousted of their financial investment in the property. Of course the merger does not so provide, but contemplates that the investment shall remain, transmuted into a different type of security. It is no answer, therefore, to the complainants' contention that their investment should remain on equivalent and fair security, to say that complainants should be forced to take, as the result of an appraisal, cash in an amount which no one can forecast and which can be ascertained only after proceedings burdensome and expensive to both parties.

It is peculiarly inappropriate and inequitable that complainants should be forced to a cash appraisal against their will by their fellow-stockholder, when that fellow-stockholder is the lessee of the common property and the merger extinguishes on terms dictated by it its obligation as lessee, which now redounds to the security and

benefit of the minority stockholders. This would amount to a cancellation of the leases at the option of the lessor.

The question is not whether the complainants stand in the way of *a* merger, but whether they shall be forced into this merger *on these terms.*

Granting some remote benefit to the public in not perpetuating the leasehold structure, there is no public benefit in denying to the respondents an equivalent security.

Public interest does not require that their interests be sacrificed, that their security be weakened or that they be forced to accept unfair terms.

The existence of the statutory provisions for appraisal does not debar the right to equitable remedy.

Colgate v. *U. S. Leather Co.,* 73 N. J. Eq. 72, at p. 98:

> "In reference to the effect on these suits for injunction of the provisions of the law of April 10th, 1902 (P. L., p. 700), amending the Corporation Act of 1896 and providing that dissentient stockholders, in cases of merger or consolidation, may have their stock appraised, my conclusion is, that the directors are bound, under the Consolidation act, to propose an agreement which does not unfairly or inequitably impair the legal or equitable right of any preferred stockholder, and that such stockholder cannot be required to exercise any option of surrendering his stock on compensation, until he has had an opportunity of joining in the consolidation 'under terms and conditions' which, as to him, are legal and equitable. Any other construction or application of this act relating to proceedings for condemnation would leave it altogether in the power of the statutory majority of the stockholders to compel the sale of the stock of dissentient stockholders by the device of

imposing terms so illegal or inequitable that consent would be neither contemplated nor given."

Brugler v. *United Shoe Machinery Co.* (unreported);
Bingham v. *Savings Investment & Trust Co.*, 5 A. R. 1111, 138 Atl. 659 (affirmed 6 A. R. 368).

Other courts have held to the same effect.

Gen. Inv. Co. v. *Lake Shore & M. S. Ry. Co.*, 250 Fed. 160, 174;
Jones v. *Rhea*, 130 Va. 345, 107 S. E. 814;
Winfree v. *Riverside Cotton Mills*, 113 Va. 717, 75 S. E. 309;
Barnett v. *Phila. Market Co.*, 218 Pa. 649, 67 Atl. 912.

V. The attack on the motives and the standing of the respondents is without justification or legal relevancy.

The defendants have devoted a portion of their brief to impugning the motives of some of the respondents. Efforts to question the purposes of minority security holders who have the temerity to challenge the acts of a majority, no matter how arbitrary, are familiar to the Courts. The effort in this case was properly ignored by the Vice Chancellor.

There is no justification for the intimation by defendants that any of the respondents acquired the shares of stock which they held at the time of instituting this action simply for the purpose of obstructing or impeding the proposed merger. The evidence to the effect that they did not is direct and unqualified (Case, II-266, 310).

As to the Protective Committee it is clear that many depositors were stockholders prior to March 13, 1924, (Defendants' brief, p. 27; Ex. D 46, Case, III-584), and that a large majority were stockholders prior to January 10, 1927. There is no mystery with respect to the formation of the Protective Committee, as suggested by defendants. Roosevelt & Son, Outwater & Wells and Ingalls & Snyder are dealers in securities engaged to a large extent in finding, investigating and recommending suitable investments for their customers (Case, II-258). During a period of years they had advised numerous customers to purchase stocks of the lessor companies. Thereafter, a merger of such companies was proposed which threatened to deprive their customers of the stocks so purchased on terms which those firms considered unfair and inequitable. It was natural and proper that they should desire to protect those who had purchased such stocks on their recommendation. The normal method to accomplish this was by means of a protective committee. The members of such Committee consisted of representatives of the three firms above named, and of Mr. Evans R. Dick, the father of a partner in Roosevelt & Son, of Mr. Ernest Sturm, President of the Continental Fire Insurance Company, an investor in stocks of the lessor companies, and Mr. William C. Shanley, Jr., a beneficiary of the Shanley Estate (Case, II-268).

The uncontroverted testimony of the Chairman of the Protective Committee, Mr. W. Emlen Roosevelt (a banker of the highest reputation), is to the effect that the firm of Roosevelt & Son and the Protective Committee had no other motive or purpose than to protect the interests of the clients of those firms to whom stock of these lessor

companies had been sold and such other holders of the stocks as might desire to join with them with a view to the protection of their common interests (Case, II-313).

The Vice Chancellor brushed aside the attack on the motives of the complainants, and properly so, for this effort of defendants is both irrelevant to the merits and without justification on the record.

The Shanley Estate has held for many years a large amount of shares of companies in Group I. The faint attack on that respondent seems, in effect, directed at the decision of the learned Vice Chancellor in *Shanley* v. *Fidelity Union Trust Company,* a case in which these defendants have no interest.

Those who have purchased the stock after the announcement of the Plan of 1924 have not deliberately bought into a law suit.

The merger of these companies was not a dominant feature of that Plan and was not initiated until over two years after the main steps in the Plan had been carried out.

The Plan on this point stated as follows:

> "5. Further Consolidations.
>
> "An offer to the stockholders of certain other gas and electric companies leased to Corporation of the opportunity to exchange their stock for other securities, so that, eventually, these Companies also may be consolidated with Public Service Electric & Gas Company.
>
> "The holders of a large amount of these stocks have already expressed their desire to make this exchange. These consolidations are not an essential part of the plan, however, as the leases in question extend in practically all cases for terms upwards of nine hundred years" (Answer, Exhibit 1, Case I-310; Exhibit D 4, Case III-416).

The only leased company merged at that time (1924) was the United Electric Company of New Jersey.

This paragraph of the Plan did not even name the other gas and electric companies. The details of any such opportunity to stockholders of other companies were not even suggested. There was nothing in this brief paragraph warning an investor that he bought at his peril. It was not suggested that the Public Service would first acquire two-thirds of the stock of the leased companies and then force its own terms upon other stockholders.

Nor did purchasers of these stocks after January, 1927, estop themselves from objecting to an inequitable merger. Until the offer of January, 1927, was closed and the first merger agreement of April, 1927, was announced, purchasers had no reason to anticipate that the merger agreement would compel them to accept the least attractive of the three options.

Purchasers after January, 1927, acquired all of the rights of the stockholders from whom they purchased.

> *Allen* v. *Francisco Sugar Co.*, 92 N. J. Eq. 431, 435;
> *General Investment Co.* v. *Bethlehem Steel Corp.*, 87 N. J. Eq. 234, 236.

Respondents are entitled to the protection of their legal and equitable rights.

> *Hodge* v. *U. S. Steel Corp.*, 64 N. J. Eq. 111.

Even if there were ground for attack upon the motives of the original complainants, their weak-

ness would be cured by the admission as complainants of other parties not open to attack.

Carver v. *Southern Iron & Steel Co.*, 78 N. J. Eq. 81, 95.

VI. The merging corporations were organized to carry on dissimilar businesses.

Hence the companies lack power to merge. Corp. Act, Sec. 104.

If the amendments adopted by the leased companies during the pendency of this suit, or by any one of them, are not valid and effective, the purposes for which the merging corporations were organized are not similar (Bill, par. 131, Case, I-44; Supplement to Amended Bill, par. XVII, Case, I-386). See Amended Bill of Particulars, Case, I-370.

The purposes for which the various companies were organized and the way in which these purposes are ascertained (the various companies in many cases being the result of earlier mergers or consolidations) are set forth in the Appendix II, as are also the methods by, and the acts under, which they were organized.

Were the Amendments Invalid and Ineffective?

1. Essex and Hudson Gas Company:

This company was organized under the General Corporation Act of 1896. Its charter states that the objects, among others, are to manufacture, sell and distribute illuminating and fuel gas throughout the counties of Essex and Union and certain territory mentioned in the County of Hudson, and for such purposes to build and con-

struct such gas works as may be necessary to the business of the company. The foregoing is followed immediately by the qualifying clause (Bill, Ex. 13, Case, I-195; Ex. C 22, Case, III-80; Ex. D 16, D 17, Case, III-494-495):

> "the company, however, shall have no right to extend its business operations beyond the limits of the territory above described *without the unanimous consent of the stockholders of said company.*"

The attempted amendment declares its object to be

> "to furnish light, heat and power for domestic and public use in New Jersey."

And the amendment empowers the company to accomplish that object in language which contains no territorial limitation upon the exercise of either the object or the powers. Under the amendment the company is free from the charter restrictions. Stockholders who have invested in the stock of the company restricted as to expansion outside of the populous and active industrial territory mentioned in the charter, would have no standing under the amendment to question the extension of the business into any part of the State of New Jersey, however remote. Indeed the merger of this company into the Public Service Electric and Gas Company would seem to transmute the investment in the gas business in this territory into an investment in the business of furnishing light, heat and power through any medium in any part of the State.

The company cannot, by the intermediate step of an amendment by two-thirds, put itself beyond the restriction which required for its relaxation unanimous consent.

Thus, in *American Seating Co.* v. *Bullard,* 290 Fed. 896 (C. C. A., 6th Circ.), it was held that a sale of the entire assets of a New Jersey company, with the consent of two-thirds of the stockholders, was illegal, although an amendment had inserted into the charter a provision empowering a sale with the consent of two-thirds.

The charter restriction is clearly one of a contractual nature binding all stockholders. The amendment is beyond the powers of the corporation and stockholders. It is, therefore, null and void.

2. Hudson County Gas Company:

This company was formed by the consolidation of companies created either by special act of the legislature or, in one instance, under the Gas Companies Act of 1876.

Those companies were created for the sole purpose of manufacturing and supplying gas. No one of the constitutent companies had the power to change its objects by action of its stockholders so as to empower it to generate and distribute electrical energy, or to make other changes. Such power is, of course, entirely lacking in the special acts of incorporation and is not to be found in the Gas Companies Act.

If this company had the power to make such amendment with the consent of two-thirds of its stockholders (whether it could be made with unanimous consent we need not discuss), it is to be found only in Section 27 of the General Corporation Act of 1896, as from time to time amended.

Section 27 of that statute applies only to corporations "organized under this act".

The phrase "organized under this act" means a corporation which is constituted as such under

Section 10 of the act upon the making, recording and filing of the certificate of incorporation, made pursuant to Section 8 by persons associating themselves together under Section 6 for the purposes permitted under that section, and filed and recorded pursuant to Section 9.

Broadly and generally speaking, the Corporation Act of 1896, like that of 1875, is a fusion of several statutes distinct and separate in their origin, as well as, of course, many supplements and amendments which have from time to time been added thereto and worked into the general scheme.

Of the material embodied in the revised act, some in its origin applied to all corporations of this State, some to all corporations with specified exceptions, and some only to corporations organized under the Manufacturing Companies Acts of 1846 and 1849 or later organized under the Corporation Act of 1875, or the Corporation Act of 1896. This is still the application of various parts of the statute.

The construction of the statute is clarified by some examination into its history.

Going back to the Revision of 1846, we find: a separate and distinct act "to prevent frauds by incorporated companies" (which was itself a revision of an earlier statute). R. S. 129.

This was the forerunner of the provisions for the appointment of receivers and administration of the affairs of insolvent companies, etc., now found in Section 63 *et seq.* of the Act of 1896. The revision approved April 15, 1846, provided "that whenever any incorporated company in this state shall become insolvent, etc."

Again turning to the Revision of 1846, we find "an act concerning corporations", approved Feb.

14, 1848, relating to "every corporation". R. S. 136. This statute was the origin of Sections 1, 2, 3, 4, 5, 21 and 30 of the present act.

We also find in the Revision of 1846, "an act to prevent fraudulent elections by incorporated companies, and to facilitate proceedings against them", approved April 15, 1846. R. S. 139. Also a revision of an earlier statute.

This applied to all incorporated companies, or stock companies, at least. It is the origin of Sections 33 *et seq.* of the present act.

We also find in the Revision of 1846, "an act to authorize the establishment, and to prescribe the duties of manufacturing companies", approved February 25, 1846, providing for the organization of companies to carry on any branch of lawful manufacture. R. S. 142. This was the first general act for the formation in this manner (that is, other than by special statute) of corporations for either commercial or industrial purposes. This act was followed before long by other general acts for the organization of other classes of corporations. For example: Banks (P. L. 1850, p. 140); insurance companies (P. L. 1852, p. 159); telegraph companies (P. L. 1853, p. 304); gas companies (P. L. 1874, p. 124); water companies (P. L. 1876, p. 318; Rev. 1365); street railway companies (P. L. 1886, p. 185; Comp. Stat. 4998).

This act of 1846 contains the origin of sections 8, 9, 10, parts of section 1, sections 12, 13, 14, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 29, 48, 44, 46, 37, 53, and other provisions of the present act.

The Manufacturing Companies Act of 1846 was soon supplanted by Act of March 2, 1849, providing for the organization of companies "to carry on any kind of manufacturing, mining, mechanical, agricultural or chemical business, within this

State, and also for purposes of inland navigation.'' P. L. 1849, p. 300.

The Act of 1849 was, from time to time, amended so as to broaden the purposes for which corporations might be formed thereunder, until by supplement approved April 6, 1865, it was extended to permit the organization of companies ''for the purpose of carrying on any lawful business whatever.'' P. L. 1865, p. 913. In the revision of 1875 the provisions for organization of companies thereunder were carried into section 10 *et seq.* Revision, 179.

These earlier statutory provisions need not be examined in detail, but are cited to show the frame work of the present statute and that there have been hung upon that frame work provisions, some of which relate generally to all corporations (or with specified exceptions) and others only to the limited class of corporations organized under this statute itself.

This does indeed appear by examination of the statute itself. Without referring to all of the sections of the Act in which a line is drawn between all corporations with or without certain exceptions, and corporations organized under the Act, as the case may be, we refer to the following:

Sections 1 and 2 confer general powers on *every* corporation.

Section 17 provides for voting by proxies and the like, and that *every* corporation may determine, etc.

Section 20 provides that shares of stock in *every* corporation are personal property.

Other sections applying to all corporations are Sections 30, 33, 45, 53, 87, 110, 111.

On the other hand, Section 13 provides for the officers of every corporation *organized under this act.*

Section 17, as recently amended, provides for voting trusts in shares of any corporation *organized under this act.*

Section 18, as amended, provides for the creation of special classes of stock, for the redemption of stock, for the creation of convertible stock, for the creation of optional rights, by every corporation *organized under this act.*

Section 31 provides for voluntary dissolution by every corporation *organized under this act.*

Section 47 provides for discretionary dividends, inclusive of stock dividends, by the directors of every corporation *organized under this act,* and for the creation of a sinking fund for the retirement of preferred stocks.

Section 48 deals with payment for stock of any corporation *organized under this act.*

Section 120 provides for the issuance of stock without par value by every corporation *organized under this act.*

Section 27, which has been from time to time amended, so as to broaden the powers expressly therein contained, provides that every corporation *organized under this act* may "change the nature of its business, change, add to or diminish its objects or powers", etc., etc., including the extension of its corporate existence, increase and decrease of its stock, conversion of stock from one class into that of another, generally for the readjustment or reclassification of its stock, and also power "to alter or amend existing provisions for the regulation of the management and affairs of the corporation, and make such other amendment, change, or alteration as may be desired", by action of the directors with the approval of two-thirds of the stockholders.

The Legislature never intended that these broad powers might be freely exercised by various classes of companies organized under other or special acts, such as banks, insurance companies and companies exercising public franchises, such as gas companies, water companies, railroad companies and the like. If so, these other classes of companies could readily amend themselves out of many of the restrictions and regulatory provisions contained in the statutes under which they are incorporated.

State v. *Atlantic City R. R. Co.*, 77 N. J. L. 465 (E. & A.).

Nor did the Legislature intend that the provisions for the issuance of stock without par value in Section 120 or the provisions of Section 18 above mentioned, should apply to such other corporations.

If Section 27 had been intended to apply to all corporations, then there are a number of other Sections in the statute totally unnecessary, for instance:

Section 28, which does apply to other companies, whether organized under special acts of incorporation or general laws (excepting railroad or canal corporations), and permits them to increase or decrease their capital stock, change their name, change the par value of stock, change the location of their principal office, etc. The powers contained in Section 28 are within the general class of powers contained in Section 27, but are much narrower. Section 28 does *not include the power* to change the nature of the business or *change the objects* or powers of such corporations.

So also there are special provisions for the extension of the corporate existence of companies organized other than under the General Corporation Act, which would be unnecessary if Section 27 applied. Section 119 *et seq.*

The whole question is entirely clarified by the amendment approved March 7, 1927, of Section 118, which provides, among other things: "The term 'corporation organized under this act' or 'corporation created under this act' or 'corporation formed hereunder' wherever it occurs in this act, includes and is intended to include corporations organized under an act concerning corporations (Revision), approved April seventh, one thousand eight hundred and seventy-five, as well as corporations organized under the act to which this is a supplement" (P. L. 1927, p. 64).

Note also that Section 27 was amended in 1927 so as to remove any doubt as to whether the phrase "organized under this act" includes a corporation organized under the Corporation Act of 1875. This emphasizes the conclusion that a corporation organized under some other act is not within Section 27 (P. L., 1927, p. 62).

It has been the general policy of the legislature that corporations exercising public franchises (electric companies excepted) be organized under specific law containing various restrictive requirements inconsistent with the General Corporation Act. For instance, the provision of subdivision IV of Section 8, providing that the amount of capital stock with which a corporation commences business shall be $1,000, which is quite inconsistent with provisions in the railroad law, traction company law, and others, providing for a minimum capital, in some cases proportioned to the length of the line, as in the case of a railroad,

or to the population of the territory served, as in the case of a gas company (Comp. Stat. 3143, sec. 4).

It is almost trite to say that no one of the constituent companies of the Hudson County Gas Company was a corporation organized under the General Corporation Act of 1896, or under the Corporation Act of 1875, or, for that matter, the Manufacturing Companies Act of 1849 or 1846. No one of them could have exercised any power to change its objects under Section 27. Can the Hudson County Gas Company, formed by the consolidation, do so? Was it *organized* under the General Corporation Act? If it has the power to change its objects from the business of furnishing illuminating gas to that of furnishing steam or electricity, it also has the power, under Section 27, to change its objects to those of manufacturing cranberry jelly or promoting professional hockey.

If it is organized under the General Corporation Act of 1896, it apparently ceases to be subject to limitations, to which at least one of its constituent companies was subject under the Gas Companies Act, such as:

Number of directors, their residence (secs. 1, 5); pre-payment in part of capital in cash (sec. 2); amount of capital (sec. 4); publication of reports (sec. 13); Comp. Stat. 3142; Cum. Supp. 1808.

A gas company may exercise the general powers conferred by the Corporation Act of 1896 only so far as the same are appropriate to and not inconsistent with the provisions of the statute under which it was incorporated.

This company is not a corporation *organized* under the Act of 1896 within the meaning of Section 27 *merely because it was formed by the con-*

solidation of certain constituent companies, pursuant to provisions which are found in Section 104 *et seq.* of the General Corporation Act.

The new corporation, in the case of a consolidation, merely results from, or arises out of the pre-existent corporations. It is not *organized* under the Act.

Section 104 *et seq.* was itself originally a separate and distinct statute. Act approved March 8, 1893. P. L. 1893, page 121; General Statutes, page 991.

If Hudson County Gas Company had resulted from a consolidation, say in 1895, under the Act of 1893, no one would say it was a corporation organized under the Corporation Act of 1875.

The Act of 1893 was carried into the revision of 1896 along with many other separate statutes. It applies to any corporation of the state except railroad, insurance, banking, turnpike and canal companies.

Statutory water companies may consolidate under the provisions of this Section.

> *Gloucester Turnpike Co.* v. *American Pipe Co.,* 77 N. J. Eq. 471;
> *Plainfield Water Co.* v. *Plainfield,* 84 N. J. L. 634;
> *Bogert* v. *Hackensack Water Co.,* 3 Misc. 107.

That does not make the resulting company one *organized* under the Act of 1896, free and discharged of all the various statutory restrictions contained in the Water Company Act (Comp. Stat. 3635; Cum. Supp. 2053), such as: directors' qualifications, election (sec. 9); bonded indebtedness (pl. 648).

If the consolidated company is a corporation *organized under the Act of 1896* it may not exercise any franchise to lay its pipes and mains in the public streets and extend same.

Richards v. *Dover,* 61 N. J. L. 400, and cases cited in
State v. *Atlantic City, etc., R. R.,* 77 N. J. L. 465, at p. 479.

On the contrary the company does retain its franchise rights because it is the successor by consolidation of companies having franchises.

The conclusion is ineluctable that Hudson County Gas Company is not a corporation organized under the General Corporation Act, that it had no power to make the amendment attempted in October, 1927, and that the attempted amendment is null and void.

3. The Paterson and Passaic Gas and Electric Company:

4. Somerset, Union and Middlesex Lighting Company:

Both of these corporations resulted from the consolidation of other corporations, some of which were organized under the General Corporation Act and some of which were not. The companies not so organized were created by special statute, or were organized under the Gas Companies Act of 1876.

Therefore, a *part* of the constituency of these corporations prior to consolidation, being organized under the General Act of 1896 or of 1875, *had* the *power* to amend so as to change their objects, and the other *part* of the constituency *lacked* that power and could not change their objects.

In general, the preceding discussion applies to these two consolidated companies, subject to the difficulty arising out of the diversity of origin of the two corporate cells which united to form the new corporate organism.

What is the character of the resulting company?

If it be said that the new company is organized under the General Corporation Act because part of the corporate being was so organized, hence there is power to amend—it can just as fairly be said that the new company is not organized under the General Corporation Act because the other part of the corporate being was not so organized, hence there is no power to amend. It did not have such power and its disabilities follow and attach to the new corporate organism.

Certainly the statutory disabilities or duties of gas companies cannot be discarded by amendment made by a company formed by the consolidation of the gas company and some other company. It must continue its existence as a gas company and if the consolidated company were held to be organized under the General Corporation Act then it might amend its objects so as to escape the characteristics of its gaseous origin.

By such a consolidation does it escape the provisions regarding minimum capital, *supra?*

If by such consolidation it becomes a corporation *organized* under the General Corporation Act can it thereafter extend its mains and pipes in the public streets? Can it dig up the public streets for that purpose?

Richards v. *Dover,* 61 N. J. L. 400.

Public Service Corp. v. *DeGrote,* 70 N. J. Eq. 454, at p. 475:

> "It is settled that a corporation under the General Corporation Act cannot exercise the functions of a gas company, even by leave of the municipal authorities."

These four named merging companies lacked the power to amend their charters to produce similarity. Or, if any one lacked such power, leaving their purposes, in the eyes of the law, those declared by their original act or acts of incorporation, (see Appendix II), then there is dissimilarity of purpose; and the proposed merger is *ultra vires*.

VII. The decree should be affirmed.

Respectfully submitted,

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THOMAS G. HAIGHT,
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February, 1929.

APPENDIX I.

Digest of Cases.

Ervin v. *Oregon Ry. & Nav. Co.*, 27 Fed. 625.

This case dealt with a dissolution and a sale of the assets to the majority stockholders. The court said, p. 631:

> "When several persons have a common interest in property, equity will not allow one to appropriate it exclusively to himself, or to impair its value to the others. Community of interest involves mutual obligation. Persons occupying this relation towards each other are under an obligation to make the property or fund productive of the most that can be obtained from it for all who are interested in it; and those who seek to make a profit out of it at the expense of those whose rights in it are the same as their own are unfaithful to the relation they have assumed, and are guilty, at least, of constructive fraud. *Jackson* v. *Ludeling*, 21 Wall. 616, 622; Story, Eq. sec. 323."

Farmers' Loan & Trust Co. v. *New York & Northern Ry. Co.*, 150 N. Y. 410; 44 N. E. 1043.

In this case minority stockholders sought to stop the foreclosure of a mortgage where the majority of the bonds were held by the majority stockholder, and it was claimed that the foreclosure was not *bona fide*. In the course of the opinion the court said, p. 1048:

> "* * * where, as in this case, a majority of the stock is owned by a corporation or a combination of individuals, and it assumes the control of another company's business

> and affairs through its control of the officers and directors of the corporation, it would seem that, for all practical purposes, it becomes the corporation of which it holds a majority of stock, and assumes the same trust relation towards the minority stockholders that a corporation itself usually bears to its stockholders, and therefore, under such circumstances, the rule stated in the Sage Case and other similar cases applies to majority stockholders who control the affairs of the company, as well as to its directors or officers."

Mumford v. *Ecuador Development Co.*, 111 Fed. 639 (C. C. S. D. N. Y., 1901).

The plaintiff, a minority shareholder in the Ecuador Development Company, sought to set aside as fraudulent a contract between his company and the Ecuador Association which was a majority shareholder in the Development Company and asked that an accounting be had. By this contract substantially all of the property of the Development Company was transferred to the Association. The majority shareholders were in actual control of the corporation. The bill was held not demurrable. At page 643 the court said:

> "The rule deducible from all these cases is that although a majority may lawfully make a contract with the company such contract will be scrutinized with much greater care than if made with a third party, and unless it appears that it was made honestly and for an adequate consideration a court of equity will interpose to prevent such contract from being used oppressively and in violation of the rights of the minority. It matters not in what form these rights are invaded; it is the business of equity to penetrate through subterfuges and discover the actual transaction stripped of all disguises. If then it shall

appear, no matter what may be the machinery employed, that the majority have sold the corporate property to themselves for a wholly inadequate consideration a court of equity will grant relief to the minority who have thus been despoiled of their property."

Wheeler v. *Abilene Nat. Bank Bldg. Co. et al.*, 159 Fed. 391 (C. C. A., 8th Cir., 1908).

A minority shareholder was permitted to avoid a sale of all the corporate property to a person who owned the majority of the shares of stock. The sale had been approved by the board of directors and by the majority shareholders. The price was held to be inadequate, although the sale and purchase was made in good faith and the fair value paid. At page 393, Sanborn, Circuit Judge, said:

"The stockholders have a joint interest in the same property and in the same title. Community of interest in a common property or title imposes a community of duty and a mutual obligation to do nothing to impair either. It creates such a fiducial relation as makes it inequitable for any of those who thus share in the common property to do anything to or with it for their own profit, to the detriment of others who have the same rights. Jackson *v.* Ludeling, 21 Wall. 616, 622, 22 L. Ed. 492; Jones *v.* Missouri Edison Electric Co., 144 Fed. 765, 771; 75 C. C. A. 631, 637; Booker *v.* Crocker, 132 Fed. 7, 8, 65 C. C. A. 627, 628.

"The holder of the majority of the stock of a corporation has the power, by the election of biddable directors and by the vote of his stock, to do everything that the corporation can do. His power to control and direct the action of the corporation places him in its shoes, and constitutes him the actual, if not

the technical, trustee for the holders of the minority of the stock. He draws to himself and uses all the powers of the corporation. In effect he holds an irrevocable power of attorney from the minority stockholders to manage and to sell the property of the corporation, for himself and for them. . . . They can act and contract regarding the corporate property, they can preserve and protect their interests in it, only through him and through the courts.

"This devolution of unlimited power imposes on a single holder of the majority of the stock a correlative duty, the duty of a fiduciary or agent, to the holders of the minority of the stock, who can act only through him, the duty to exercise good faith, care, and diligence to make the property of the corporation produce the largest possible amount, to protect the interest of the holders of the minority of the stock, and to secure and pay over to them their just proportion of the income and of the proceeds of the corporate property. Any sale of the property of the corporation by him to himself for less than he could obtain for it from another, or any other act in his interest to the detriment of the holders of the minority of the stock, becomes a breach of duty and of trust, renders the sale or act voidable at the election of the minority stockholders, and invokes plenary relief from a court of chancery . . ."

"The reason for this rule is the detriment to the holders of the minority of the stock from such sales and transactions, and not the benefit the holder of the minority derives therefrom . . . It is the duty of the master of the corporation who sells its property to procure the highest possible price for it (Jackson *v.* Ludeling, 21 Wall. 616, 625, 22 L. Ed. 492); and, if he sells it to himself for less, the sale is voidable by the holders of the minority of the stock at their option, *although he paid the fair market value for it.*"

Jones v. *Missouri-Edison Electric Company*, 144 Fed. 765; 199 Fed. 64; 203 Fed. 945 (Certiorari denied 229 U. S. 615; 57 L. Ed. 1352).

Bill by minority stockholders of company designated as "Edison Company" to rescind and set aside a consolidation of that company with another company designated as "Union Company No. 1", which consolidation formed Union Company No. 2, or to charge upon the assets of the consolidated company the value of the stock of the minority in the Edison Company.

The ultimate facts as finally determined were: The stockholders of Union Company No. 1 wished to bring about a consolidation of the Edison Company therewith. With that in view, the requisite three-fifths of the stock of the Edison Company was acquired by the stockholders of Union Company No. 1 by purchase, deposit, etc.; then that group elected their nominees to the board of directors of the Edison Company; then a consolidation was effected of Edison Company and Union Company No. 1, the stockholders in both of those companies receiving for their stock a small payment in cash and stock in the consolidated company. The Circuit Court of Appeals finally found that the stock of the Edison Company was materially undervalued and the stock of Union Company No. 1 overvalued in the terms of the consolidation agreement. In other words, that the exchange of stock under the consolidation was unfair and inequitable to the minority stockholders of the Edison Company.

The opinions of the Circuit Court of Appeals are too lengthy for quotation. The court, in deciding the case, followed the reasoning of the Wheeler case, *supra*. A few quotations from the opinion indicate the rationale of the decision.

On demurrer—144 Fed. 765:

"The relation of a stockholder to his corporation, to its officers and to his co-stockholders is a relation of trust and confidence. . . .

"A combination of the holders of a majority or of three-fifths of the stock of a corporation to elect directors, to dictate their acts and the acts of the corporation for the purpose of carrying out a pre-determined plan places the holders of such stock in the shoes of the corporation and constitutes them actual, if not technical trustees for the holders of the minority of the stock. The devolution of power imposes correlative duty. The members of such a combination become in practical effect the corporation itself because they draw to themselves and use the powers of the corporation. In a sale of its property, in a consolidation of the corporation with another, in every act and contract of the corporation which they cause they make themselves the trustees and agents of the holders of the minority of the stock because it is only through them that the latter may act or contract regarding the corporate property or preserve or protect their interests in it. Such a majority of the holders of stock owe to the minority the duty to exercise good faith, care and diligence to make the property of the corporation in their charge produce the largest possible amount, to protect the interests of the holders of the minority of the stock and to secure and deliver to them their just proportion of the income and of the proceeds of the property. Any sale of the corporate property to themselves, any disposition by them of the corporation or of its property to deprive the minority holders of their just share of it or to get gain for themselves at the expense of the holders of the minority of the stock, becomes

a breach of duty and of trust which invokes plenary relief from a court of chancery'' (citing many cases).

Boyd et al. v. *New York & H. R. Co. et al.*, 220 Fed. 174.

''Hough, District Judge. The defendant railway corporations (hereinafter called, respectively, the 'Harlem' and the 'Central') are too well known to need description. The individual defendants are directors of both railways, and constitute a majority of each corporate board. The complainants are stockholders in the Harlem, * * *.

''The object of the bill is to enjoin a consolidation of the Harlem and Central; * * *.

''The legal propositions advanced by complainants as justifying their demand are: (1) That consolidation would violate the contractual rights of Harlem shareholders—rights secured by the written agreements under which the Central has long operated the Harlem properties as an integral part of the transportation system usually described as the 'New York Central Lines'. . . .

''The business reasons impelling complainants to prefer Harlem stock to that of any company formed by the union of Harlem with Central may be summarized from the allegations of the pleadings, thus:

''The Harlem owns a railroad from Forty-Second street, New York City, to Chatham, N. Y., with a branch from Melrose to Port Morris, where it meets the Central's track; and such ownership and junction existed in 1873.

"In that year the Central leased the Harlem for a term of centuries under a rental scheme which included a payment direct to Harlem shareholders, of so large an annual return that for each share of Harlem stock the Central * * * has publicly offered 3½ times its par value.

"The terms of the lease of 1873 also relieved the Harlem from the necessity of providing for the fixed charges on its bonded indebtedness, the burden of which has, by advance in values and diminution in interest rate, become trifling.

"By a supplementary agreement of 1882, ratified by the stockholders of both Central and Harlem, the two companies disabled themselves from changing the terms of rental during the period of demise, and, in 'order to secure the individaul interest' of each Harlem shareholder, every such holder was specifically authorized to 'prosecute such suits as may be necessary in the premises, to recover his proportionate part' of the stipulated rental, *i. e.*, the guaranteed dividend on Harlem shares; a dividend increased in 1898 by allotment to the Harlem shareholders of part of a saving in interest effected by a refunding of the company's bonded debt.

"The payment of annual returns on Harlem stock is peculiarly well secured, by the fact (so well known as to require no proof) that the transportation service of the New York Central Lines enters Manhattan Island, and enjoys the advantages of the Grand Central Station, by using the Harlem's right of way. The terminal facilities of 1873 have (as stated in the answers) been greatly enlarged by the Central's funds, but it still remains true that the property conveyed by the Harlem lease is of vast, though unascertained, value, and vital to the activities (as at present arranged) of the Central in the city of New York.

"The intrinsic value of Harlem's property is alleged to be 'not less than two hundred million dollars' over a bonded indebtedness of $12,000,000 only. This is denied; but an offer of 3½ times par for the stock (of which there is and can be but $10,000,000 par) proves an opinion of value on the part of the principal defendant consistent only with a security of return as nearly absolute as the possibilities of business, politics, invention, and war will permit. * * *

"The reasons for demanding relief now are alleged to be that especially of late years the Central has bought Harlem stock, until it owns today 62 per cent. thereof. No more than 66⅔ per cent. is needed to carry through a consolidation under the laws of New York. Such merger would extinguish the lease which in effect pledged the Central's own property and earnings to satisfy the price of hiring, and leaves the Harlem free to take back its vastly appreciated estate if the price be not paid; and for such singularly desirable security would substitute mere participation in a united and more heavily incumbered property, where the much larger Central stock could always outvote the Harlem interest, and subject the present securely segregated Harlem property to the lien of mortgages demanded by the needs and ambitions of the Central.

"As to whether consolidation is intended by the Central, the answers of the Harlem and the individual defendants profess ignorance; but the Central itself, while denying any purpose of presently acquiring absolute control of the Harlem's railroad properties, admits and asserts:

> 'That it has in view and is favorably disposed towards at some future time the uniting and vesting in one corporate entity of all the properties and franchises of the Central

> Company with those of the Harlem Company, demised by said lease, whether by consolidation or otherwise, and that it intends to exercise such rights as are incidental to the ownership of capital stock in said Harlem Company.'

"The answer then proceeds to argue that Central has spent so much money on Harlem's properties, and will be obliged to spend so much more, that:

> 'In order "to meet the public needs . . . the acquisition of as large a proportion of (Harlem's) capital stock as is reasonably practicable is in pursuance of a just and prudent policy on the part of this defendant." '

"The Central might as well have said plainly. 'We shall buy all the Harlem stock we can, and merge the companies as soon as we think best.'

* * * * * * *

(Page 181):

"There remains the inquiry whether the consolidation asserted as imminent in the bill, and admittedly desired by the Central, would be a violation of plaintiff's contractual rights, independently of the Sherman Act.

"The right to consolidate is merely permissive; it is no violation of any statute to contract against the exercise of such a right. Noyes' Intercorporate Relations, sections 18 and 24.

"There cannot be any public policy of the state of New York rendering it obligatory upon these corporations to unite; for the Central is a trustee by virtue of its control of Harlem stock, and the plaintiffs and other minority shareholders are its *cestuis que trustent.* Farmers' L. & T. Co. *v.* New York & Northern R. R., 150 N. Y. 410, 44 N. E. 1043, 34 L. R. A. 76, 55 Am. St. Rep. 689. Pos-

sibly minority shareholders who obstructed a public enterprise might have their property taken for the public good, by some proceeding in the nature of condemnation; but no such statutory remedy exists at present.

"The act authorizing consolidation (supra) requires that upon any merger the capital stock of the consolidated company shall not—

> 'exceed the sum of the capital stock of the corporations so consolidated at the par value thereof. Nor shall any bonds or other evidences of debt be issued as a consideration for, or in connection with, such consolidation.' Section 141.

"It follows that the only method, by which the superior value of Harlem as compared with Central stock can be maintained, is by giving to Central shareholders less than share for share, and by no method can Harlem stock (as represented by consolidated stock) be assured that preferred position which it now occupies.

"Under existing leases and contracts, the dividends or annual returns on Harlem shares must be paid before the Central shareholders can obtain anything, and, if this be not done, the system by which the Central obtains access to the Forty-second Street Station is disastrously dislocated.

"Consolidation would therefore mean not only an exchange of shares of one name for shares of another, or of a thing of one kind for another thing of the same kind, but would involve a complete destruction of investment in character and quality. Existing arrangements give to Harlem shares rights preferred over all Central stock in the earnings of the entire system now consolidated in control. After consolidation, Harlem shareholders might have more shares, but 'shares'

would not mean the same thing, and the return thereon would necessarily be subject to greater and more numerous hazards than is now the case.

"The agreement of May 15, 1882, is a sufficient justification to these plaintiffs for protecting their interests by direct suit, and the same document amounts to a lawful undertaking on the part of the Central always to pay to each and every shareholder in the Harlem that holder's proportion of the 'annual rent reserved by and to be paid under' the lease of 1873.

"Any possible form of consolidation now authorized by the statutes of New York must involve a breach of this contract on the part of the Central; for, whatever Harlem shareholders may get after merger, they can never get their share of the 'annual rent' reserved by the lease of 1873.

"It results that in my judgment the complainants' bill does set forth a cause of action, and that such cause of action is established by the answers to the extent of entitling complainants to the relief demanded in the third prayer of the bill, viz., that the Central and the Harlem and the said defendant directors be enjoined during the term of the lease of 1873 from taking any steps toward consolidating said companies, of merging the Harlem with any successor to the Central.

Hyams v. *Calumet & Hecla Mining Co.*,
221 Fed. 529 (C. C. A. 6th Cir. 1915).

The Calumet Company owned a majority, or controlled through proxies a majority, of the stock in certain other mining companies. The plaintiff was a minority shareholder in one of those companies. The Calumet Company planned to consolidate with these other companies. The stock of the new corporation was to be distributed to the shareholders of the participating corporations ac-

cording to values fixed upon the properties of the several corporations. After litigation, the proposed consolidation was abandoned. Then a scheme of inter-corporate operation and management was put forward. The plaintiff brought a representative suit to enjoin the proposed scheme, and to prevent further control by the Calumet. The lower court refused relief. Upon appeal this was reversed and the Calumet Company was enjoined from voting its stock or voting proxies in electing directors of the other companies who were also directors of the Calumet Company. At p. 537 the court said:

> ". . . ., the rule, ..., is fundamental that one in control of a majority of the stock and of the board of directors of a corporation occupies a fiduciary relation towards the minority stockholders, and is charged with the duty of exercising a high degree of good faith, care, and diligence for the protection of such minority interests. Every act in its own interest to the detriment of the holders of minority stock becomes a breach of duty and of trust, and entitles to plenary relief from a court of equity."

and at p. 542 the court said:

> "A consolidation is, however, distinctively a transaction of bargain and sale, involving not only the advisability of buying and selling, but compensation in each direction. The Calumet & Hecla was, in the transaction in question, both buyer and seller. Its president and vice president were large stockholders in the Calumet & Hecla, with comparatively small holdings in the subsidiary companies. In those circumstances, its relations toward the Tamarack and Isle Royale were necessarily adverse. It, however, so far as preliminary action by the board of directors is concerned, in effect fixed the compensation which

it was in part to pay for the properties to be acquired, as well as the price, the entire of which it was to receive, on the sale of its own property. It failed to consult other stockholders or directors of the controlled companies, or to employ independent engineers and accountants to formulate the plan itself, before its presentation to the boards of directors controlled by the Calumet & Hecla. The action of the boards of directors of the subordinate companies, and the predominant influence and success of the Calumet & Hecla would naturally go far toward securing the approval of stockholders, few of whom ever attended stockholders' meetings."

p. 543. "Breach of duty and abuse of fiduciary obligation do not necessarily involve 'intentional moral delinquency.' If the act amounts to what the law considers a breach of trust, a disregard of duty, it is sufficient. . . . A breach of trust by one occupying a fiduciary relation, even while in the exercise of a lawful power, 'is as fatal in equity to the resultant act or contract as the absence of the power.' "

Pennsylvania Canal Company v. *Brown*, 235 Fed. 669 (C. C. A. 3rd Cir. 1916).

The case involved the rights of bondholders of a subsidiary corporation under the terms of an agreement of long standing made by the majority stockholder; but the case also involved the equities arising out of the control of the property by the majority stockholder and sales of a portion of the property to the majority stockholder. In the course of the opinion, the court said (page 684):

"In support of the contention that the Railroad Company acquired from the Canal Company the plaintiff's security, without giving adequate consideration therefor, law is cited about which there can be no dispute. It

is, that where one corporation deals through another, which it privately owns and directs, and in effect makes a sale to itself, the burden of proving the fairness of the transaction and the adequacy of price devolves upon it. * * * So in a case like this, where a corporation owned and operated a property in its business of transportation, and changed the manner of its holding and the method of its operation by organizing another corporation, to which it conveyed the property, with which it co-operated in raising money on the property conveyed, and through which it thereafter indirectly conducted the same business which it had before conducted directly, that corporation is held to the strictest account and to the observance of the highest rectitude in its transactions with its subsidiary. In an ordinary transaction of purchase and sale between independent corporations, it is the interest and the right of the vendee to acquire the property at the lowest price possible, and of the vendor to sell it at the highest. No other considerations enter. But in a transaction of purchase and sale between interrelated corporations, where the control of one by the other is active and complete, and where the acting officers of the two are identical—in other words, where, as in this instance, the Railroad Company undertakes to deal in the double capacity of vendor and vendee with respect to property in which third parties have interests, and where the transaction is possible only by obtaining the consent of the representative of those equitably interested, who is one of its own officers, something more is required of the purchaser than to obtain the property on terms most advantageous to itself. A corporation in such a relation bears a duty to those whose security it is taking, to pay for it all that it is worth, and it makes the purchase at the peril of being called upon to prove the good faith of the transaction and the adequacy of the consideration."

Southern Pacific Co. v. *Bogert,* 250 U. S. 483, 63 L. Ed. 1099 (1919).

Majority stockholders consented to or brought about a reorganization and foreclosure sale, under which the property was sold to a new corporation wholly owned by the majority stockholder. The minority received no interest in the new corporation. This suit was for an accounting and establishment of a trust in the corporate property. The court said (page 487):

> "The rule of corporation law and of equity invoked is well settled and has been often applied. The majority has the right to control; but when it does so, it occupies a fiduciary relation toward the minority, as much so as the corporation itself or its officers and directors. If through that control a sale of the corporate property is made and the property acquired by the majority, the minority may not be excluded from a fair participation in the fruits of the sale."

Nickel Plate Unification, 105 Interstate Commerce Commission Reports, 425.

The Van Sweringens had control of the Nickel Plate Railroad. They and the Nickel Plate Railroad had a working control of the Chesapeake and Ohio and the Hocking Valley, and interests in but not control of the Erie and the Pere Marquette.

They organized a new Nickel Plate Railway, of which they would have retained control.

They proposed to unify the five railroads through the medium of leases by the Chesapeake and Ohio, the Hocking, the Erie, and the Pere Marquette, to the new Nickel Plate, and also to obtain fuller stock control of those four roads by the issuance of capital stock, preferred and/or

common stock, of the new Nickel Plate in various proportions to other stockholders of the four roads.

The proposed leases were to run for 999 years and were to embody the option on the part of the other stockholders to exchange their stock from time to time for the said stock of the new Nickel Plate.

The report does not set forth the proposed cash rental of the four roads, which would, of course, have been the source of dividends on what would, in effect, have become the guaranteed stock held by the non-assenting minority of the four roads.

The Commission approved the proposed lease and control from a transportation standpoint. It disapproved the applications from a financial standpoint.

The principal opposition came from an active stockholders' protective committee of the Chesapeake and Ohio. The following is from the majority opinion (at page 441):

> "The record leaves no doubt that the interests dominating the Chesapeake and Hocking, which as we have pointed out, are those controlling the Nickel Plate, used every weapon at their command to crush all opposition to their predetermined course of action, and that there was an utter lack of independent and impartial representation of all of the stockholders of the Chesapeake and Hocking when consideration was being given by their directors to approval of the plan and the terms of the proposed leases. * * *
>
> "Under any circumstances the burden is upon applicants to make an affirmative showing that the terms, conditions, and considerations of acquisitions and control are just and reasonable."

At page 445, the report further states:

> "With respect to the reasonableness of the proposed terms of stock exchange, the applicants state that 'those considerations, terms and conditions were not arrived at, nor could they have been arrived at, by the use of a mathematical formula. Nor may the justness and reasonableness thereof be made the subject of any process of exact demonstration.' But it is evident from the record that inadequate consideration was given to the terms from the viewpoint of the stockholders of the Chesapeake and Hocking. * * *
>
> "The boards of the Chesapeake and the Hocking appear to have acted as boards of ratification rather than authorization or direction with respect to these matters. * * *
>
> "Without going into further details it is sufficient to say that whatever test applicants have used in trying to sustain the predetermined ratios they have not sustained the burden of showing that the ratios are just and reasonable as between the stockholders of the respective lessor companies * * *"

It is apparent also that the Commission paid but slight attention to argument based upon the relative market prices for the stocks of the companies involved (p. 446). It is further said (p. 447):

> "The provisions of the leases dealing with the rights of nonassenting stockholders of the lessor companies, other than the Nickel Plate, appear to be designed to coerce all the stockholders into exchanging their stock for that of the new company upon the terms proposed. The options given them are largely illusory. That with reference to taking average market value is conceded to be unfair but we understand applicants are willing to make this 'fair value'. Resort to litigation to determine the value of stock is a poor remedy."

APPENDIX II.

Analysis of "purposes" of merging companies.

PUBLIC SERVICE ELECTRIC AND GAS COMPANY:

This corporation resulted from the consolidation in 1924 of Public Service Electric Company, Public Service Gas Company and United Electric Company (Bill, par. 53, 59, Case, I-15, 17; Bill, Ex. 1, Case, I-64; Ex. D 6, Case, III-468).

Later, in 1924, there were also merged into and with the Public Service Electric and Gas Company, the following seven companies:

1. Burlington Electric Light & Power Company,
2. Citizens Electric Light, Heat and Power Company,
3. Middlesex Electric Light and Power Company,
4. The Morristown Gas Light Company,
5. The Nichols Electric Light and Power Company of Nutley, N. J.,
6. The Princeton Light, Heat and Power Company,
7. Weehawken Contracting Company.

(Bill, par. 61, 194, Case, I-18, 54; Ex. C 69, Case, III-355; Ex. D 8, Case, III-478).

The Consolidation Agreements do not state the purposes for which the Electric and Gas Company was organized. It is admitted to have been organized for purposes consisting of the totality of the purposes for which its constituent companies were organized. We must, therefore, look to their charters.

PUBLIC SERVICE ELECTRIC COMPANY:

This company was incorporated under the General Corporation Act of 1896 (Bill, par. 166, Case, I-50).

Prior to the consolidation the charter of this company was amended to state the objects for which the company was formed to be

> "to furnish light, heat and power for domestic and public use in New Jersey",

with incidental powers, including particularly those appropriate to the generation and distribution of electrical energy (Amendment to Bill, Ex. 40, Case, I-232; Ex. C. 56, C. 57, Case, III-297-305).

PUBLIC SERVICE GAS COMPANY:

This company was organized by a special statute in 1873, under the name of The Oxy-Hydrogen Company of the United States. Its name was changed to Public Service Gas Company in 1909 (Bill, par. 165, Case, I-50; Ex. C 55, Case, III-291; Ex. D 15, Case, III-494). The dominant purpose of this company was the manufacture, use and sale of gas for illuminating, heating and any other purpose, within the State of New Jersey and elsewhere, and in addition to said objects, and in no wise in limitation of the same, to engage in and carry on any other business and to do any and all other things which may seem to the corporation capable of being carried on in connection with said objects.

UNITED ELECTRIC COMPANY OF NEW JERSEY:

This company was organized under the General Corporation Act of 1896 (Bill, par. 167, Case,

I-50). Prior to the consolidation its charter objects were restated so as to be identical with those of Public Service Electric Company (Amendment to Bill, Ex. 41, Case, I-363; Ex. C 58, C 59, Case, III-308, 315).

As to the other seven companies above named, the charters of most were amended to conform to the amended charter of the Public Service Electric Company, except those of:

The Morristown Gas Light Company, which had been incorporated as a gas light company by special statute in 1855 (Bill, par. 202, Case, I-55; Bill, Ex. 67, re-numbered Ex. 45, Case, I-275; Ex. C 63, Case, III-334); and

Burlington Electric Light and Power Company, incorporated under Corporation Act of 1875 to carry on the business of an electric company (Bill, par. 197, Case, I-55; Bill, Ex. 63, re-numbered Ex. 42, Case, I-267; Ex. C 60, Case, III-319).

The sum total of the purposes of Public Service Electric and Gas Company, therefore, seems to be

1. The furnishing of light, heat and power for domestic and public use in New Jersey;
2. Manufacture and sale of gas for illuminating, heating and other purposes;
3. The generation and distribution of electrical energy.

Essex and Hudson Gas Company:

The attempted amendment in October, 1927, restates its objects and purposes to be "to furnish light, heat and power for domestic and public use in New Jersey." The phraseology is that of the charters of Public Service Electric Company, United Electric Company and other companies above mentioned. The *powers,* as stated in the

amendment, follow in general language those in the amended charters of the Public Service Electric Company and United Electric Company except that the language includes, in the statement of powers, the generation and distribution, etc. of both *gas* and electrical energy (gas not being mentioned in the language used in the amended charters of Public Service Electric Company and United Electric Company) (Supplement to Bill, Ex. A, Case, I-391).

If, however, the amendment be ineffective, the purposes for which Essex and Hudson Gas Company was organized are much broader. They include, generally speaking, the business of

1. A gas company,
2. Dealing in property,
3. Acquisition and ownership of stock of other companies doing a public or private lighting business (which might include companies doing an electric business as well as doing a gas business) (Bill, Ex. 13, Case, I-195; Ex. C 22, Case, III-80; Ex. D. 16, D 17, Case, III-494, 495).

There should be borne in mind the distinction between a primary power to deal generally in property or to deal in stocks or other securities, and a secondary or incidental power so to do.

> *State* v. *Atlantic City etc. R. R.*, 77 N. J. L. 465 (E. & A.);
> *Colgate* v. *U. S. Leather Co.*, 75 N. J. Eq. 229, 238 (E. & A.).

This company would have, under its original charter, the general or primary power to engage in a course of dealing in properties or in stocks of other lighting companies.

These purposes of themselves, create a dissimilarity, as they are not among the purposes of Public Service Electric and Gas Company, Hudson County Gas Company (either under its original charter or under the attempted amendment), or, as to dealings in stocks, of the Paterson and Passaic Gas Company under its unamended charter, or under the attempted amendment of its charter, or of the Somerset, Union and Middlesex Lighting Company under the attempted amendment of its charter.

HUDSON COUNTY GAS COMPANY:

Under the attempted amendment of October, 1927, the objects and the powers are restated in language identical with that used in the attempted amendment of the charter of Essex and Hudson Gas Company (Supplement to Bill, Ex. B, Case, I-396).

Hudson County Gas Company was formed by the consolidation of the below mentioned five companies (Bill, par. 133, Case, I-45; Ex. C 29, Case, III-121), and in case the amendment be not valid and effective, we must, to find the original purposes of Hudson County Gas Company, recur to the charters of the constituent companies, which are as follows:

1. THE PEOPLES GAS LIGHT COMPANY OF JERSEY CITY, organized in 1868 under a special statute for the purpose, generally speaking, of the manufacture and sale of gas for lighting in defined territory (Bill, par. 134, Case, I-45; Bill, Ex. 14, Case, I-197; Ex. C 23, C 24, Case, III-87, 94).
2. THE JERSEY CITY GAS LIGHT COMPANY, organized in 1849 under a special statute for the same purposes as last mentioned com-

pany (Bill, par. 135, Case, I-45; Bill, Ex. 15, Case, I-199; Ex. C 25, Case, III-96).

3. The Consumers' Gas Company of Jersey City, organized in 1877 under the Gas Company Act of 1876 (Compiled Statutes 3142), for the purposes of the construction, maintenance and operation of gas works and the supply and distribution of illuminating gas in Jersey City (Bill, par. 136, Case, I-46; Bill, Ex. 16, Case, I-200; Ex. C 26, Case, III-101).
4. The Hudson Gas Light Company, organized in 1863 under a special statute, for the purpose of the manufacture and sale of gas for lighting in defined territory (Bill, par. 137, Case, I-46; Bill, Ex. 17, Case, I-201; Ex. C 27, Case, III-106).
5. The Bergen Point Gas Light Company (name changed to the Bayonne & Greenville Gas Light Company), organized in 1864 under a special statute, for the purpose generally stated, of the manufacture and sale of illuminating gas for lighting in defined territory (Bill, par. 138, Case, I-47; Bill, Ex. 18, Case, I-202; Ex. C 28, Case, III-113).

These companies were consolidated to form Hudson County Gas Company in 1899. Obviously its purposes as successor were confined to manufacture and sale of illuminating gas (with lawful incidental powers). Its unamended charter purposes are, therefore, dissimilar to each of the other four merging lessor companies, as unamended, as it lacks one or more of the various other broader powers to deal in property, stocks and the like, contained in their original charters.

The Paterson and Passaic Gas and Electric Company:

The attempted amendment states the objects and powers in the same language as used in the amendments of the Essex and Hudson Gas Company and Hudson County Gas Company (Supplement to Bill, Ex. C, Case, I-400).

If the amendment be not valid and effective, we must recur to the purposes of the constituent companies out of which this company was formed by successive consolidations (Bill, par. 140-148, Case, I-47, 48; Ex. C 39, Case, III-181).

It was formed in 1899 by the consolidation of:

1. The Peoples Gas Light Company of the City of Paterson, incorporated by special statute in 1874 (Bill, par. 141, Case, I-47; Bill, Ex. 20, Case, I-206; Ex. C 31, Case, III-139).
2. Paterson Gas Light Company, incorporated by special statute in 1825 (Bill, par. 142, Case, I-47; Bill, Ex. 21, Case, I-207; Ex. 32, Case, III-145).
3. The Edison Electric Illuminating Company of Paterson, organized in 1887 under the Corporation Act of 1875 (Bill, par. 143, Case, I-47; Bill, Ex. 22, Case, I-208; Ex. C 33, Case, III-150).
4. Passaic Lighting Company, formed in 1895 by the consolidation of (Bill, par. 144, Case, I-47; Bill, Ex. 23, Case, I-209; Ex. C 36, Case, III-167):
    a. The Passaic Gas Light Company, incorporated under special statute in 1857 (Bill, par. 145, Case, I-47; Bill, Ex. 24, Case, I-210; Ex. C 34, Case, III-153).
    b. The Passaic Electric Light, Heat and Power Company, incorporated in 1888

under the Corporation Act of 1875 (Bill, par. 146, Case, I-48; Bill, Ex. 25, Case, I-211; Ex. C 35, Case, III-163).

5. The Lodi Light, Heat and Power Company, incorporated in 1898 under the General Corporation Act of 1896 (Bill, par. 147, Case, I-48; Bill, Ex. 26, Case, I-213; Ex. C 37, Case, III-177).
6. The Passaic and Bergen Gas Company, incorporated in 1899 under the General Corporation Act of 1896 (Bill, par. 148, Case, I-48; Bill, Ex. 27, Case, I-214; Ex. C 38, Case, III-179).

The purposes of these constituent companies may be summarized as follows:

1. Gas: (See charters of Peoples Gas Light Company of the City of Paterson; Passaic Gas Light Company; Paterson Gas Light Company; Passaic Lighting Company; The Passaic Electric Light, Heat and Power Company; The Lodi Light, Heat and Power Company; The Passaic and Bergen Gas Company).
2. Electricity: (See charters of the Edison Electric Illuminating Company of Paterson; Passaic Lighting Co.; The Passaic Electric Light, Heat and Power Company; The Lodi Light, Heat and Power Company).
3. Steam: (See charter of Passaic Electric Light, Heat and Power Company).
4. General mercantile business in connection with other business: (See charter of the Passaic Electric Light, Heat and Power Company).
5. Dealings in property: (See charter of the Passaic Electric Light, Heat and Power Company).

In unamended condition the purposes of this company are dissimilar from those of all of the other merging companies in their unamended condition, as including broader purposes such as dealings in property not contained in one or more of the others, or the steam business, or the conduct of a general mercantile business in connection with other business, some or all of which are not found in the other cases; and because they do not include the purpose of dealings in stocks and securities contained in one or more of the other cases.

For the same reason the purposes of this company in unamended condition are dissimilar to those of Public Service Electric and Gas Company and the amended purposes (if the amendments be effective) of the other companies, because those lack the broad purposes of dealings in property and conduct of general mercantile business included among the purposes of this company.

SOMERSET, UNION AND MIDDLESEX LIGHTING COMPANY:

The attempted amendment uses the same language as in the three preceding cases (Supplement to Bill, Ex. D, Case, I-405).

If the amendment be not effective, we must recur to the charters of the constituent companies out of which, by successive consolidations, this company was formed (Bill, pars. 149-163, Case, I-48-50; Exs. C 45, C 54, Case, III-215, 286).

The company was formed in 1903 by the consolidation of,

1. PLAINFIELD GAS & ELECTRIC LIGHT COMPANY, incorporated in 1890 under the Corporation Act of 1875 (Bill, par. 150, Case, I-48; Bill, Ex. 28, Case, I-215; Ex. C 40, Case, III-198).

2. The Somerset Lighting Company, incorporated in 1893 under the Corporation Act of 1875 (Bill, par. 151, Case, I-48; Bill, Ex. 29, Case, I-217; Ex. C 41, Case, III-201). In 1898 there was merged into it (Bill, par. 152, Case, I-48; Ex. C 43, Case, III-206):

    a. The Somerset Gas Light Company, incorporated in 1898 under the Gas Companies Act of 1876 (Bill, par. 153, Case, I-48; Bill, Ex. 30, Case, I-218; Ex. C 42, Case, III-203).

3. Citizens Electric Company, incorporated in 1895 under the Corporation Act of 1875 (Bill, par. 154, Case, I-48; Bill, Ex. 31, Case, I-219; Ex. C 44, Case, III-212).

Later in 1903 there was merged into Somerset, Union and Middlesex Lighting Company (Bill, par. 155, Case, I-49; Ex. C 54, Case, III-286):

4. Central Electric Company, incorporated in 1900 under the Corporation Act of 1896 (Bill, par. 156, Case, I-49; Bill, Ex. 32, Case, I-221; Ex. C 46, Case, III-229). In 1900 there had been merged into that company (Bill, par. 157, Case, I-49; Ex. C 53, Case, III-246):

    a. The Raritan Electric Light and Power Co., Incorporated in 1890 under the Corporation Act of 1875 (Bill, par. 158, Case, I-49; Bill, Ex. 33, Case, I-223; Ex. C 47, Case, III-233).

    b. The Bound Brook Electric Light, Heat and Power Company, incorporated in 1893 under the Corporation Act of 1875 (Bill, par. 159, Case, I-49; Bill, Ex. 34, Case, I-224; Ex. C 48, Case, III-235).

c. The Dunellen Electric Light Company, incorporated in 1891 under the Corporation Act of 1875 (Bill, par. 160, Case, I-49; Bill, Ex. 35, Case, I-225; Ex. C 49, Case, III-237).

d. The Edison Electric Illuminating Company of New Brunswick, incorporated in 1885 under the Corporation Act of 1875 (Bill, par. 161, Case, I-49; Bill, Ex. 36, Case, I-226; Ex. C 50, Case, III-239).

e. Rahway Electric Company, incorporated in 1896 under the Corporation Act of 1875 (Bill, par. 162, Case, I-50; Bill, Ex. 37, Case, I-227; Ex. C 51, Case, III-242).

f. Middlesex Electric Company, incorporated in 1899 under the Corporation Act of 1896 (Bill, par. 163, Case, I-50; Bill, Ex. 38, Case, I-228; Ex. C 52, Case, III-244).

The purposes of Somerset, Union and Middlesex Lighting Company as successor to the above mentioned constituent companies may be summarized as:

1. Gas: (See charters of Plainfield Gas and Electric Light Company; The Somerset Lighting Company; The Somerset Gas Light Company).
2. Electricity: (See charters of Plainfield Gas and Electric Light Company; Somerset Lighting Company; Central Electric Company; Raritan Electric Light and Power Company; The Bound Brook Electric Light, Heat and Power Company; The Dunellen Electric Light Company; Edison Electric Illuminating Company of New Brunswick; Rahway Electric Company; Middlesex Electric Company).
3. Steam: (See charter of Plainfield Gas and Electric Light Company).

4. General mercantile business in connection with other business: (See charter of Plainfield Gas & Electric Light Company).
5. Dealings in property: (See charter of Plainfield Gas & Electric Light Company).
6. Light, Heat and Power: (See charter of Citizens Electric Company).
7. Dealings in stocks, bonds and securities: (See charter of Citizens Electric Company).

In unamended condition the purposes of this company contained one or more purposes absent from those of the other four companies in unamended condition. They include purposes broader than those of the Public Service Electric and Gas Company and of the other four companies in amended condition, if effect be given to the amendments.

New Brunswick Light, Heat and Power Company:

The amendment restates the objects and powers in the same language as in the other four cases (Supplement to Bill, Ex. E, Case I-409).

In unamended condition the purposes of this company may be summarized as (Bill, Ex. 19, Case, I-204).

1. Gas
2. Electricity
3. Dealings in property
4. Acquisition and ownership of stocks of other gas and/or electric companies.

This company was organized under the Corporation Act of 1896, and, therefore, had the power to amend its objects (Bill, par. 139, Case, I-46).

Complainants do not hold stock in this company.

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New Jersey Court of Errors and Appeals.

R. Irving Outwater, *et al.*,
Complainants-Appellees,

vs.

Public Service Corporation of New Jersey, *et al.*,
Defendants-Appellants.

On Appeal from Court of Chancery.

BRIEF FOR DEFENDANTS-APPELLANTS.

This is an appeal from a decree advised by Vice Chancellor Backes on the 27th of November, 1928, awarding an injunction to prevent the consummation of an agreement of merger which had been made by the directors of six companies parties thereto, and approved by the owners of more than two thirds of the stock of each of the companies, but not yet filed in the office of the Secretary of State. The principal reason given in the opinion of the Vice Chancellor for awarding the injunction is that the stock of the merged company offered in exchange for the stocks of the merging companies, has not the same security and permanance as an investment, although it was not shown that the stock of the merged company offered in exchange was not less valuable than the stocks to be received.

The complainants filed their bill on the 16th of June, 1927, to enjoin the merger of five electric and gas companies into Public Service Electric and Gas

Company. The names of the companies proposed to be merged are:

Essex & Hudson Gas Company,
Hudson County Gas Company,
The Paterson & Passaic Gas & Electric Company,
Somerset, Union & Middlesex Lighting Company,
New Brunswick Light, Heat & Power Company.

In April, prior to the filing of the bill, the directors of the several companies had made the agreement of merger, and called meetings of stockholders to take action upon it. The bill was filed before the stockholders' meetings were held, and a rule to show cause why an injunction should not be granted was issued with a stay. At the time when the agreement was made by the directors of the five companies proposed to be merged, their property was (and still is) held by the Electric and Gas Company under leases for terms of nine hundred years.

The complainants in the original bill were the brokerage firms of Outwater & Wells of Jersey City, and Roosevelt & Sons of New York. When the bill was filed Outwater & Wells were the holders of record of 50 shares of stock of Essex & Hudson Gas Company; 150 shares of stock of Hudson County Gas Company; and 124 shares of stock of The Paterson & Passaic Gas & Electric Company, State of Case, Vol. I, page 1. The complainants Roosevelt & Sons, at that time were the holders of record of 88 shares of stock of Somerset, Union & Middlesex Lighting Company, and they held no stock in any of the other five companies, *ib.* The stocks of all the companies proposed to be merged were of the par value of $100 each. The number of

shares of stock of each company outstanding at the time of the filing of the bill was, and still is, as follows:

	Shares
Essex & Hudson Gas Company...	65,000
Hudson County Gas Company...	105,000
The Paterson & Passaic Gas & Electric Company	50,000
Somerset, Union & Middlesex Lighting Company	10,500
New Brunswick Light, Heat & Power Company	4,000
Total	234,500

The total number of shares of the five companies held by the complainants when the bill was filed was 412, or approximately 17/100ths of one per cent. of the whole number of shares outstanding.

The charges in the bill upon which relief was prayed are in substance as follows:

1. The corporations, parties to the merger agreement, were not organized for the purpose of carrying on business of the same or similar nature.

2. The agreement was made by interlocking directors of the several corporations, and its terms are unfair and inequitable (Vol. I, pp. 60-61).

Subsequent to the filing of the bill Mary Regis Shanley and others, devisees under the will of Bernard M. Shanley, deceased, and as such devisees interested in the estate of said Bernard M. Shanley, which consisted in part of stock of four of said five companies, filed a petition for authority to intervene in this suit, and thereupon by order made on the 21st of June, 1927, said Mary Regis Shanley and others mentioned in said petition were admitted, and made parties complainant herein (Vol. I, pp. 325-332).

In July, 1927, Fidelity Union Trust Company as substituted trustee under the will of Bernard M. Shanley, deceased, and as such holders of stock in four of the five companies proposed to be merged into Public Service Electric and Gas Company filed a petition in this cause for instructions as to its duty in the matter of intervening, and upon the 6th day of September, 1927, an order was made directing said trust company, as such substituted trustee to intervene, and on its petition an order was made on the 10th of September, 1927, that said trustee be and it was admitted and made a party complainant in this cause (Vol. I, pp. 333-351).

Subsequently, in the month of October, 1927, W. Emlen Roosevelt and others, acting as a committee for certain stockholders in the five lessor companies whose stock by their solicitation had been deposited with them, were also admitted as parties complainant (Vol. I, pp. 352-356).

All of the five companies proposed to be merged into Public Service Electric and Gas Company were created by agreements of merger or consolidation made by pre-existing gas and electric companies. The complainants framed their bill upon the theory that the five companies so created had inherited the purposes of the pre-existing companies, and, consequently, if there was any purpose set forth in the charters or certificates of incorporation of those prior companies inconsistent with the purpose of Public Service Electric and Gas Company it would prevent the proposed merger. We think that is true. After the bill was filed, however, the complainants discovered that several of the charters and certificates of incorporation of the pre-existing companies upon which they had relied to prove purposes inconsistent with the purpose of the Electric and Gas Company, had been previously amended so as to remove the alleged inconsistencies. Thereupon the complainants amended their bill of com-

plaint by striking out 25 exhibits (being extracts of certificates of incorporation of pre-existing companies), annexed thereto, and otherwise amending the same, and added an extract from one certificate of incorporation not mentioned in the original bill (Vol. I, p. 357, &c.). The defendants filed an answer to the amended bill (*ib.* p. 368).

The case was not argued on the return of the order to show cause, but was set down by consent for final hearing. When the case came on for hearing the defendants asked the court to pause in order that they might amend the certificates of incorporation of the companies proposed to be merged so as to remove any purpose in those certificates alleged to be inconsistent with the purpose of Public Service Electric and Gas Company, and to modify the stay so as to permit the stockholders' meetings to be held. Their request was granted. Amendments of the certificates accordingly were made (Vol. I, pp. 391, 396, 400, 405 and 409).

On the 14th of December, 1927, the complainants filed an addition by way of supplement to their amended bill of complaint in which they denied the power of the companies that had made amendments to their certificates of incorporation to do so, and insisted that said amendments were illegal and void (Vol. I, p. 327, &c.).

On the same day when said addition by way of supplement was filed by the complainants, the defendants filed an answer thereto (Vol. I, p. 329, &c.).

The merger agreement, originally dated April 26, 1927, was re-executed by the directors of all the companies parties thereto under date of October 25, 1927, with no other change except in the date of the annual meeting of the merged company to conform to an amendment of the by-laws of the Electric and Gas Company, then recently made.

At the same time (October 25) meetings of stockholders of the companies were called to be held on the 21st of November, 1927, to adopt or reject the proposed agreement. The stockholders' meetings were adjourned until December 19, 1927, when the holders of more than two-thirds of the stocks of all classes of each of the companies, parties to the merger agreement, was voted in favor of its adoption.

On the 23rd of February, 1928, the complainants filed a second addition by way of supplement to their amended bill of complaint setting forth the result of the stockholders' meetings held on the 19th of December, 1927 (Vol. I, p. 435), and on the same day defendants answered said second addition by way of supplement admitting the allegations therein (Vol. I, page 439).

When this case came on for hearing before the Vice Chancellor a discussion arose as to the jurisdiction of the court to hear the same in view of the fact that meetings of stockholders to approve or reject the merger agreement had not been held. In the case of *Grausman* v. *Porto Rican-Amer. Tobacco Company,* 95 N. J. Eq. 223, the Court of Errors held distinctly, although the point was not raised by counsel, that before meetings of stockholders to approve or reject such an agreement have been held, the Court of Chancery has no jurisdiction to enjoin the consummation of the agreement. The Vice Chancellor, referring to the *Grausman* case, which had been mentioned in the discussion, stated:

> "My difficulty lies deeper than that. I must follow the direction of the Court of Appeals and the Court of Appeals says until the corporation has signified their intention of merging by holding an election, this court has no jurisdiction to pass upon the subject."

To that statement counsel for the defendants agreed (Vol. II, top of p. 21).

Counsel for the defendants insisted that the bill should be dismissed (Vol. II, pp. 22-23). Notwithstanding the expression of the Vice Chancellor just quoted, he determined to proceed with the hearing of the case, although admitting that if he should hear it he would have no power to decide it (p. 24).

On the 10th of January, 1927, Public Service Corporation of New Jersey and Public Service Electric and Gas Company made a proposition to the holders of the stocks of certain lessor companies, including the five companies proposed to be merged by the pending agreement, to acquire their stocks (Exhibit D-10 and Exhibit 8 annexed to the bill of complaint (Vol. I, p. 153). That proposition contained three offers for the stocks of the lessor companies: One in cash, and the others were either 6% preferred stock of Public Service Electric and Gas Company, or common stock of Public Service Corporation. Fidelity Union Trust Company, substituted trustee under the will of Bernard M. Shanley, thought favorably of the offer to exchange the stocks so held in trust for said 6% preferred stock, but some of the devisees under the will of Shanley were not in favor of doing so. Thereupon they filed a bill in the Court of Chancery to restrain the Trust Company from exchanging the stocks in which they were interested, in pursuance of the proposition, and applied to Vice-Chancellor Backes for a writ of injunction. The matter was heard and the Vice-Chancellor decided to award the writ. A copy of his opinion is hereto annexed. None of the defendants in this case were parties to that suit.

I.

Statement of the Case.

A few years ago it became necessary to make a radical change in the financial affairs of the large electric and gas companies in which Public Service Corporation of New Jersey is interested. The origin of the difficulty was described at length by Mr. McCarter, president of the Corporation, in his testimony, and the remedy provided was explained by him. It was also explained by Mr. Gates, a member of the banking firms of Drexel & Company of Philadelphia, and of J. P. Morgan & Company of New York, and by Mr. Loomis, a member of the banking house of Bonbright & Company, Inc., of New York (Vol. II, pp. 158, &c., and 214, &c.). A summary of the facts disclosed by the testimony, so far as they may be compressed within a few pages, is as follows:

Prior to 1903 many gas and electric companies and street railway companies operated by electricity had been organized in this state, and constructed their respective plants. The several properties involved in this case were located in the zone extending from the Hudson River, opposite New York, to the Delaware River, opposite Philadelphia, shown on the maps and explained by Mr. Clark and Mr. Allegaert (Vol. II, pp. 41 and 53, Exhibits D-1 and 2). The gas companies were engaged in a long established business, but it was believed that the use of electricity for lighting would prevent their growth, and probably diminish the extent of their operations. The electric, and electric street railway companies were comparatively new enterprises, still in their experimental

and undeveloped stage, and their securities were not attractive to prudent investors. As we are not concerned in this litigation with the street railway companies no further mention need be made of them except to say that their existence added to the financial difficulties in which the electric and gas companies became involved.

The original gas and electric companies were incorporated to construct and operate works in definite localities, generally each in a single municipality. Sometimes two or more gas or electric companies constructed works in the same municipality, and occasionally gas mains were laid by two or more companies in the same streets, as in the cities of Paterson, Jersey City, Elizabeth and Trenton. A generation ago such competition by utilities was encouraged under the impression that it would protect the public against excessive charges and inadequate service. Experience and study of the subject made it clear that competition by utilities is an economic waste, because of unnecessary expenditure of capital and excessive operating costs, and the sounder opinion came to prevail that gas and electricity and other necessities provided by utilities should be supplied for public use by a single utility in one or more municipalities wisely regulated by the state so as to prevent injustice. Further consideration and longer experience also made it plain that large utilities could render service on terms more favorable to the public, and more efficiently than small utility properties operating in separate localities. The outcome of experience was a complete change of opinion and public policy on the subject. Competition by utilities is not now regarded as desirable, and is not permitted where it can be avoided. Consolidation of utilities is now encouraged in cases where public necessities, such as gas and electricity, can be produced and distributed at lower cost by large units.

Since the beginning of the present century, and for some time before one of the means of doing away with wasteful competition, and substituting a few large utilities under a single management in place of many small ones was by leases of utilities to one another. At other times utilities were directly merged or consolidated, and this has been found to be the better plan for reasons that were explained by the witnesses, and will be considered further in the following pages.

All, or nearly all, of the primary utility companies in the territory mentioned had executed mortgages covering their properties securing long term bonds at the time when their initial works were constructed. Many of the mortgages had been closed, and so it became difficult and costly, if not impossible, for the companies to enlarge and extend their works as rapidly as required by the growth of the municipalities.

To provide a remedy for the situation that had developed in this state Public Service Corporation was formed May 6, 1903 with an authorized capital of $25,000,000, and began operations on the first of June following. The plan of the Corporation was to obtain a controlling interest in the principal utilities in the zone referred to by leases and stock ownership, and raise new capital sufficient to improve and extend the property of the utilities, and rearrange their financial affairs. One of the steps in the proceeding was to authorize an issue by the Corporation of $20,200,000 of perpetual interest bearing certificates to be exchanged for stock of the principal street railway and electric companies, and nearly all of the certificates were issued and exchanged for stock. The shares of stock received in exchange for certificates were deposited with Fidelity Trust Company, now Fidelity Union Trust Company of Newark, under an agreement to be held as security for the certificates.

It was supposed in 1903 that $10,000,000 in cash would be sufficient to accomplish the object of the Corporation, and that in a few years the utility companies would be in a satisfactory operating condition, and able thereafter to provide for their own finacial requirements as their properties should continue to grow. It turned out, however, that the $10,000,000 of cash, provided by the Corporation in 1903, was but a small fraction of the new capital that the utilities have required since that date.

In 1909 the Corporation issued a general mortgage to secure bonds to the amount of $50,000,000. Of that sum, bonds to the amount of $36,000,000 were issued and sold and the balance were pledged to secure the payment of notes issued by the Corporation. The surprising growth of the territory and new uses found for gas and electricity required capital expenditures that soon exhausted the proceeds of the bonds and notes, and a few years ago the requirements of the rapidly increasing population, and of manufacturers, and of the towns, made it necessary to prepare and adopt a large and comprehensive plan and policy that would enable the utilities to obtain new capital sufficient not only for the present—about $50,000,000 a year—but probably still larger amounts annually in the future.

In 1922 Mr. McCarter made a study of the situation and prepared a plan, which he hoped would overcome the difficulty. His plan was submitted to the great financial houses of Drexel & Company of Philadelphia, and J. P. Morgan & Company, and Bonbright & Company, of New York. Certainly he could not have found more capable advisers on the subject. The financiers made an elaborate and independent investigation and study of the whole matter (Vol. II, pp. 120, 160 and 216, &c.). They did not adopt the plan prepared by Mr. Mc-

Carter but prepared and recommended another in December 1923, which is now before the court, Exhibit D-4, and Exhibit 1 annexed to the answer. It was adopted by the companies and published in the month of March, 1924, in the leading newspapers of the country north of the Potomac and east of the Mississippi rivers, Exhibit D-38, and a copy mailed to every stockholder of record. No objection was made to it, and thereupon the companies proceeded in the following April to carry it out.

The first step in the proceedings to do so was to create Public Service Electric and Gas Company by consolidating Public Service Electric Company, Public Service Gas Company, and United Electric Company of New Jersey (then a lessor), and issue preferred stock of the consolidated company in exchange for the stock of United Electric Company of New Jersey on deposit with Fidelity Union Trust Company as part security for the perpetual interest bearing certificates.

The next step was the execution of a so-called self-refunding or open end mortgage on the property of the new company to provide for the cancellation of the $50,000,000 mortgage, made by the Corporation in 1909, and to authorize other bonds to be issued from time to time in series to obtain new capital and to avoid the difficulty that arose in 1909 and again in 1922.

The agreement to consolidate the three companies was made by their respective directors, dated April 8, 1924, and submitted to the Board of Public Utility Commissioners for consideration and approval, as required by the utility act. A public hearing was held by the Board on the 26th of April when the consolidation agreement, and the other features of the plan were explained at length by Mr. McCarter, Mr. Gates, and Mr. P. S. Young.

After full consideration the Board on May 22nd, approved the agreement, and made the petition for approval part of the order of approval (Exhibit 2, annexed to the answer). The petition for approval and testimony taken on the hearing are in evidence in this case (Exhibit D-5).

After the approval of the consolidation agreement by the Utility Board, and by the stockholders of the three companies, a draft of the mortgage by Public Service Electric and Gas Company that has been mentioned as part of the plan was made under date of August 1, 1924, and submitted to the Utility Board for approval. After hearing it was approved by the Board on the 24th of July, 1924 (Exhibit D-7, and Exhibit 3, annexed to the answer). The petition for approval of the mortgage was made part of the order. The preamble of the order states that, "The Board being satisfied, after investigation and due hearing, that the proposed issue of bonds is to be made in accordance with law, and the purpose of said issue being approved by the Board, &c." Then follows the approval. The amount of bonds approved was $31,834,000, bearing interest at 5½%. That was the amount of bonds that had been issued by the Corporation under its mortgage made in 1909, and sold to the public, and still outstanding in 1924. The remainder of the $50,000,000 of bonds authorized by that mortgage was held, partly in the sinking fund, the others had been pledged to secure notes of the Corporation. The Utility Board changed the plan in one particular, as to the rate of interest to be paid by the Corporation to the Electric and Gas Company (not now important), for the reason stated in its opinion at page 405 of Vol. 11 of P. U. Reports, and the companies accepted the alteration. The proceedings before the Utility Board on the hearing of the application to approve the mortgage of the Electric and Gas Company, are here in evidence (Exhibit D-7).

On approval of the mortgage bonds were issued by the Electric and Gas Company to the amount of $31,834,000, and transferred to the Corporation to be exchanged, or provide for payment, of the outstanding bonds for the same amount secured by the $50,000,000 mortgage, made by the Corporation in 1909. Ultimately all the bonds issued under that mortgage were retired, partly by exchange, and the rest were purchased by the sinking fund and cancelled, or paid in cash. Compensation was made by the Corporation to the Electric and Gas Company for the bonds of the latter company used in retiring the bonds of the Corporation. At the same time, preferred stock of Public Service Electric and Gas Company to the amount of $19,736,800 was issued and substituted for the same amount of stock of United Electric Company of New Jersey held by Fidelity Union Trust Company to secure the perpetual interest bearing certificates.

In the plan prepared by the bankers in 1923, and adopted and published by the companies in March, 1924, Exhibit D-4, it was stated that an offer would be made to the stockholders of certain other gas and electric companies (lessor companies including the five lessor companies involved in this suit) to exchange their stocks for other securities so that eventually those companies might be merged into Public Service Electric and Gas Company.

On the fifth of November, 1924, in pursuance of that provision of the plan, the directors of the following seven companies entered into an agreement to merge them into Public Service Electric and Gas Company:

Burlington Electric Light & Power Company
Citizens' Electric Light, Heat & Power Company
Middlesex Electric Light & Power Company
Morristown Gas Light Company

Nichols Electric Light & Power Company of Nutley, N. J.
Princeton Light, Heat & Power Company
Weehawken Contracting Company.

That agreement was also approved by the Utility Commission after hearing, by order dated November 20, 1924. Both the petition for approval and the agreement itself were made parts of the order (Exhibit D-8, and Exhibit 4, annexed to the Answer. Subsequently the stockholders of the companies approved the agreement and it was filed in the office of the Secretary of State.

The seven companies so merged had been held by Public Service Electric and Gas Company under leases, some of the leases having been held previously by Public Service Electric Company, others by Public Service Gas Company, and had passed to the Electric and Gas Company by the consolidation agreement dated April 8, 1924.

The execution of the plan to the extent indicated above was beneficial to all of the associated companies and to the public as well. It enabled the Electric and Gas Company to go forward with costly improvements that were much needed, and had been delayed for want of sufficient capital. Besides, the Company was able to make a substantial reduction in rates for electricity notwithstanding the immense expenditures for construction and increased cost of operation.

For a year or more following the merger of the seven companies into the Electric and Gas Company the officials of the several companies and the bankers made a study of the terms on which the companies still held under leases might fairly be merged into the Electric and Gas Company and so complete the execution of the plan published March 13, 1924, Exhibit D-4. The outcome of that study was the proposition, or rather three propositions,

presented to the holders of the stock of the lessor companies under date of January 10, 1927 (Exhibit D-10).

The offer so far as it relates to the five lessor companies, parties to the proposed merger agreement, is as follows:

(1) The holders of stock of Essex and Hudson Gas Company and Hudson County Gas Company, who have a present annual income of $8.00 a share, were offered (*a*) 1.37 shares of 6% preferred stock of Public Service Electric and Gas Company with an annual income of $8.22, for each share of their stock; (*b*) $142. per share in cash; or (*c*) 4.21 shares of common stock of Public Service Corporation of New Jersey, annual income, at $2. per share, $8.42.

(2) The holders of stock of New Brunswick Light, Heat and Power Company, and The Paterson and Passaic Gas and Electric Company, who have a present annual income of $5. per share, were offered (*a*) .86 of a share of 6% preferred stock of Public Service Electric and Gas Company, with an annual income of $5.16, for each share of their stock; (*b*) $90. per share in cash; or (*c*) 2.63 shares of common stock of Public Service Corporation of New Jersey, annual income, at $2. per share, $5.26.

(3) The holders of stock of Somerset, Union and Middlesex Lighting Company, who have a present annual income of $4. per share, were offered (*a*) .69 of a share of 6% preferred stock of Public Service Electric and Gas Company, with an annual income of $4.14, for each share of their stock; (*b*) $72. per share in cash; or (*c*) 2.10 shares of common stock of Public Service Corporation of New Jersey, annual income, at $2. per share, $4.20.

The market prices of the stocks of the five lessor companies, parties to the proposed merger agreement, for twelve months preceding the date of the

offer, as quoted and published in Outwater & Wells' quotation sheets, are as follows (Exhibit D-33):

	Essex and Hudson Gas Company	Hudson County Gas Company	The Paterson and Passaic Gas and Electric Company	Somerset, Union and Middlesex Lighting Company	New Brunswick Light, Heat and Power Company
Jan. 4, 1926.....	128	127	85	60	80
Feb. 1, "	128	127	85	60	80
Mar. 1, "	129	128	86	60	80
April 1, "	131	131	86	65	80
May 3, "	131	131	86	65	80
June 2, "	132	131	87	67	80
July 6, "	135	133	87	67	80
Aug. 2, "	134	134	88½	68	80
Sept. 7, "	134	134	88½	68	80
Oct. 4, "	135	135	91	70	86
Nov. 1, "	136	136	92	70	86
Dec. 1, "	138	138	92	71	86
Jan. 3, 1927.....	142	142	92½	71	86

It therefore appears that the cash offer in each instance considerably exceeded the average market prices of the stocks for twelve months prior to its date, and the market price of stock bought and sold daily in the market is the best, perhaps the only reliable evidence of its value.

The graph D-51 presents a comparison of the prices bid for the stocks of the five lessor companies, and the prices bid for the amount of preferred stock of Public Service Electric and Gas Company offered in exchange for the years 1924-1927.

The theory of the bill of complaint is that the Public Service interests, owning a controlling interest in the stocks of the lessor companies, have forced the plan on such of the other stockholders as have assented. That is entirely incorrect.

The following statement, taken from Exhibit D-43 and Exhibit 7 annexed to the answer, shows the number of shares of stock of the five lessor companies held by Public Service Corporation of New Jersey, and Public Service Electric and Gas Company when the offer was made, and the number of shares of the five lessor companies acquired in pursuance of the offer.

The following is a statement of the number of shares of stock of the five lessor companies, parties to the proposed merger agreement, namely, Essex and Hudson Gas Company, Hudson County Gas Company, New Brunswick Light, Heat and Power Company, The Paterson and Passaic Gas and Electric Company and Someret, Union and Middlesex Lighting Company, owned by Public Service Electric and Gas Company and by Public Service Corporation of New Jersey on January 10, 1927, when the offer was made. The initials of the companies are used:

	E. & H. Gas Co.	Hudson Co. Gas Co.	N. B. L. H. & P. Co.	The P. & P. G. & E. Co.	S. U. & M. L. Co.
P. S. E. & G. Co.	.....	.....	.....	2 697	4 224
P. S. C. of N. J.	.....	.....	1	.....	93
Total no. of shares of lessor companies outstanding Jan. 10, 1927	65 000	105 000	4 000	50 000	10 500

The following is a statement of the number of shares of stock of the five lessor companies acquired in pursuance of the offer dated January 10, 1927:

	E. & H. Gas Co.	Hudson Co. Gas Co.	N. B. L. H. & P. Co.	The P. & P. G. & E. Co.	S. U. & M. L. Co.
	48 265	80 351	2 728.8	38 529.08	3 260.68
Total no. of shares of lessor companies now held by P. S. E. & G. Co.	48 265	80 351	2 597	41 225.20	7 562
P. S. C. of N. J.	.....	.....	132.8	.88	15.68

By the foregoing figures it appears that when the offer was made the total number of shares outstanding of the five lessor companies was 234,500, and the number held by Public Service Corporation, and Public Service Electric and Gas Company was 7,015, or but 3% of the whole number.

Besides, the total holdings of stock in Public Service Corporation of New Jersey by directors of the lessor companies, who are also directors of Public Service Corporation of New Jersey, or of Public Service Electric and Gas Company, are 26,533 shares of common stock, and 4,505 shares of preferred stock of Public Service Corporation of New Jersey, out of 4,807,239 shares outstanding, or 645/1000th of 1 per cent. The said directors also hold 8 shares of common stock of Public Service Electric and Gas Company out of a total of 11,000,000 shares of common stock, and 1,600 shares of preferred stock of Public Service Electric and Gas Company out of 514,453 shares of preferred stock, or 14/1000ths of 1 per cent. (Vol. I, pp. 307-8).

The offer to the stockholders remained open until the 12th day of March, 1927. On the 26th of April following the directors of Public Service Electric and Gas Company, and of the five lessor companies, parties to this suit, executed an agreement to merge those lessor companies into Public Service Electric and Gas Company, and called meetings of the stockholders of the parties to the agreement to take action upon the same. The agreement was thereupon presented to the Board of Public Utility Commissioners for approval, and after investigation and public hearing it was approved on the 19th day of May, 1927, the Board reciting in its order that "the merger is to be made in accordance with law, and its purpose being approved by the Board". The proceedings before the Board on the hearing are in evidence. Exhibit D-12, and Exhibit 6 annexed to the answer.

The several steps described above in the proceeding to relieve the extremely serious and troublesome situation that existed six years ago, are as follows:

(*a*) Study of the problem and preparation of plan for relief by the bankers who have been mentioned—1922-3.

(*b*) Wide publication and distribution of the plan among stockholders of companies interested —March 1924 (Exhibit D-38).

(*c*) Making of consolidation agreement by directors of Public Service Electric Company, Public Service Gas Company, and United Electric Company of New Jersey—April 8, 1924.

(*d*) Application to Board of Public Utility Commissioners to approve the proposed agreement and public hearing by the Board when the agreement and the whole plan were explained fully—April 26, 1924.

(*e*) Approval of consolidation agreement by the Utility Board, after public hearing which involved consideration of the plan—May 22, 1924.

(*f*) Approval of consolidation agreement by the stockholders of the three companies—July 1924.

(*g*) Execution of first and refunding mortgage by Public Service Electric and Gas Company, dated August 1, 1924, approved by the Board of Public Utility Commissioners after hearing July 24, 1924.

(*h*) Exchange of stock of United Electric Company on deposit with Fidelity Union Trust Company to secure perpetual interest bearing certificates for a like amount of 7% preferred stock of Public Service Electric and Gas Company, and discharge of $50,000,000 mortgage, made by Public Service corporation in 1909—August 1, 1924.

(*i*) Merger of seven lessor companies into Public Service Electric and Gas Company, and approval of same by the Utility Board after hearing—November 1924.

(*j*) Offer to stockholders of lessor companies January 10, 1927, and acceptance of the same to the extent stated in Exhibit D-10, and Exhibit 7 annexed to the answer, and *supra* page 18.

(*k*) Preparation of pending merger agreement, and public hearing thereon by Utility Board on application for approval—April 28, 1927.

(*l*) Approval of merger agreement dated April 26, 1927 by the Utility Board—May 19, 1927.

Every important step in this proceeding has been taken publicly by gentlemen of the highest standing in the business world, after giving notice and full information to all interested parties, and with the approval, after hearings, of the Board of Public Utility Commissioners representing the public. It is the agreement so prepared that the decree under review proposes to annul.

The complainants did not accept any of the offers contained in the proposition of January 10, 1927, and now object to the terms set forth in the proposed merger agreement.

They charge that the offer of stock of Public Service Electric and Gas Company set forth in the pending merger agreement in exchange for stock of the complainants (which is the same as one of the three offers made January 10, 1927, Exhibit D-10) is unfair and inequitable to them. To support that charge they allege:

First, that they are satisfied with the stock of the lessor companies which they now hold, and fear that they could not make other investments as satisfactory to them in respect to security and income, for the amount of the value of the preferred

stock of Public Service Electric and Gas Company offered in exchange, and that they prefer to hold the stock which they now own rather than the 6% preferred stock offered in exchange by the pending merger agreement.

Second, the complainants declined to tell what they think their stock is worth (Vol. II, end of p. 321) and do not question the value of the 6% preferred stock of the Electric and Gas Company but insist apparently that the merger agreement is invalid because it does not offer in exchange for their stock obligations of the merged company exactly like the stock of the merging companies now outstanding; equality of value in their opinion is not sufficient. Such a doctrine, if established, would render it almost impossible to make a lawful agreement of merger or consolidation in any case.

Third, that the merger agreement, as already stated, was prepared by interlocking boards of directors, and, therefore, the presumption is that its terms are unfair and inequitable.

When the proceedings were undertaken in 1922-3 to prepare a new financial structure for the Electric and Gas Companies, there were twenty separate companies in existence. In 1924 eleven of that number by consolidation and merger were united with Public Service Electric and Gas Company. Five of the other companies are parties to the pending agreement, and are mentioned in this litigation as Group 1. The remaining four companies are called Group 2, and are not involved in this case.

II.

The Status of the Complainants.

The total holdings now represented by the complainants amount to 8.53% of the outstanding stock of the Essex and Hudson Gas Company; 8.84% of the outstanding stock of the Hudson County Gas Company; 9.26% of the outstanding stock of the Paterson and Passaic Gas and Electric Company, and 11.97% of the outstanding stock of the Somerset, Union and Middlesex Lighting Company (Exhibit D-41). The complainants do not own any stock of the New Brunswick Light, Heat and Power Company.

The evidence of Mr. Dick, the active representative of Roosevelt & Sons in this case, and the principal witness for the complainants, in apparent realization that their personal holdings are unimportant, is to the effect that their effort in the case is to protect clients who have bought stocks on their recommendation. It is significant, however, that Mr. Dick testified (Vol. II, p. 299):

> "Our appearance in this case is to protect the clients that have the Newark [Consolidated Gas Company] stock, South Jersey stock and Bergen County stock" [referring to the South Jersey Gas, Electric and Traction Company and the Gas and Electric Company of Bergen County]

none of which is involved in this litigation. Although pressed, Mr. Dick was unable to remember the name of a single client who had bought a share of the stock of the five lessor companies here involved upon their recommendation, and in whose interest he pretends this suit is prosecuted. The reason for this is obvious. Since the announce-

ment of the plan of March 13, 1924, as shown by Mr. Dick's testimony, his firm has made many purchases of the stocks of these five lessor companies, practically all of which have in the meantime been sold at a considerable profit. Exhibit D-31 shows that the highest price at which Hudson County Gas Company stock sold in 1923, before the announcement of the plan, was 112. It sold in 1926 at 142½. The lowest price at which it sold in 1923 was 105 and in 1926 it was 128. The highest price at which Essex and Hudson sold in 1923 was 115, and in 1926 it was 143. The lowest in 1923 was 108, and the lowest in 1926 was 128. The highest price at which Paterson and Passaic Gas and Electric Company sold in 1923 was 75, and in 1926 it was 93. The lowest price at which it sold in 1923 was 73, and in 1926 it was 84. The highest price at which Somerset, Union and Middlesex stock sold in 1923 was 60 and in 1926 it was 74. The lowest price at which it sold in 1923 was 50, and in 1926 it was 65. The highest price at which the New Brunswick Light, Heat and Power Company stock sold in 1923 was 75 and in 1926 it was 90. The lowest price at which it sold in 1923 was 70 and in 1926 it was 80.

The undisputed proof shows that from the date of the announcement of the plan there has been a permanent rise in the market value of these five stocks, and Roosevelt & Sons have made a profit by such increase.

The infinitesimal personal holdings of Outwater & Wells made it necessary for Mr. Outwater (Vol. II, p. 311) to produce Exhibit D-54, which shows the purchases and sales that have been made during the past six or seven years by his firm. The small residue held at the time of filing the bill demonstrates that they, too, were not averse to availing themselves of the increase in the market value of the stocks by making sales at the increased prices since the announcement of the plan in March, 1924.

It is also interesting to note that of all the purchases so made by Outwater and Wells, 184 out of 254 purchases of Hudson County Gas Company stock, 64 out of 77 purchases of Essex and Hudson Gas Company stock, 10 out of 13 purchases of Somerset, Union and Middlesex Lighting Company stock, 4 out of 6 purchases of New Brunswick Light, Heat and Power Company stock, and 18 out of 25 purchases of Paterson and Passaic Gas and Electric Company stock **were made subsequent to the announcement of the plan** (Exhibit D-54).

The proofs show that just prior to the filing of the bill a so-called Deposit Agreement (Exhibit D-44) was prepared by counsel for Roosevelt & Sons which should be studied. On page 302 of the evidence (Vol. II) Mr. Dick claims that the object of this agreement was:

"To unify opposition to the merger."

The quotations from the deposit agreement appearing in the cross-examination of Mr. Dick (p. 303, etc.), as well as in the agreement itself, indicate that the purpose was not to prevent the merger, but to secure to the signers of the deposit agreement a higher price for their stocks, not only in the five companies here concerned, but in all of the other lessor companies which the plan proposed to merge **and that the committee were authorized to charge the depositors of stocks of the five lessor companies for necessary expenses of the committee in connection with their efforts touching the lessor companies not parties to the merger agreement, and known as Group 2.**

The deposit agreement offers an attractive bait to the signers by assuring them that their dividends will be received during the term of the holding, and a limit is placed upon the expense that the deposi-

tors will in any event incur because of the activities of the committee.

It appears from Exhibit D-55, the letter of Roosevelt & Sons to John L. Kuser, that agents of that firm were visiting owners of stocks in both groups of lessor companies, and that the deposit of stocks in Group 2 (with which this suit has no concern) was sought:

> "So that if the Public Service wishes to simplify its balance sheet, and wishes to merge all nine companies, if they will display a reasonable attitude, we can make it possible for them to put through the entire merger."

Following this subtle suggestion the letter makes the further significant admission:

> "However, in view of the fact that this merger may be considered a constructive thing from several points of view, our people do not wish to find themselves in the position of obstructionists or blackmailers, and if a merger could be arranged on terms that were liberal and fair to them, we would not be inclined to stand in the way of such a plan." Exhibit D-54.

The letter further adds:

> "We have nothing definite on which we can go, but we have reason to believe that the Public Service may consider entering into negotiations with us on some basis covering the stock now deposited with the committee, and of course, in any event, we would have to deal for the best interests of the stock which the committee represents. * * * It therefore appeals to us as being entirely wise for stockholders in these *nine* subsidiary companies to deposit their stocks with the committee."

Two facts are outstanding from this letter (1) the claim that the real object of this suit is to prevent the merger because of the dissatisfaction that the

owners of stocks in the five lessor companies parties to the pending merger agreement have therewith, is incorrect; (2) that the signers who happen to own stocks in Group 2 were induced to deposit quite as much because of their hopes for the future with reference to prices to be obtained for the stocks in Group 2, as for a similar desire with reference to their holdings of the stocks in Group 1.

Exhibit D-46 is a list of the stockholders in Group 1 who have signed the deposit agreement, together with the dates the stock was acquired, and the number of shares they deposited. 4,642 shares of Hudson County Gas Company have been deposited. Of these, only 886 shares were acquired before the 13th of March, 1924, the date of the announcement of the plan, and 1,665 shares were acquired since the 10th of January, 1927, the time when the offer of purchase for the several stocks was promulgated. Of the Paterson and Passaic Gas and Electric Company, the holders of 1,216 shares have deposited, of which the holders of 1,070 acquired their stock since Jan. 10, 1927. None of this stock so deposited was acquired before the announcement of the plan March 13, 1924. Of the Somerset, Union and Middlesex Lighting Company, the total number of shares deposited is 981, of which 520 shares have been acquired since the announcement of the plan of January, 1927, and only 141 shares of the deposited stock were acquired before the 13th of March, 1924. Of the Essex and Hudson there seems to have been a total deposit of 3,103 shares, of which 968 shares were acquired after January 10, 1927, and only 626 shares before March 13, 1924. How many of the shares were obtained by urgent solicitation does not appear.

The Shanley Estate has a two-fold representation in the case. First, pursuant to the order of the Court of Chancery, the Fidelity Union Trust Com-

pany, as substituted executor and Trustee, filed its petition for instructions, and in obedience to the direction of the Court was admitted as a co-complainant.

The petition which the Fidelity Company filed shows that only a fraction of the beneficiaries of the estate have requested such intervention, and states that no such request to intervene has been received from parties entitled to

> "one-half of the income and, upon either the death or remarriage of Julia D. Shanley (the widow of Bernard M., the ancestor) two-thirds of the principal of said estate."

The same petition shows that the only persons who have requested such intervention, besides the widow of Bernard M. Shanley, are the widow and family of William C. Shanley, one of the sons of Bernard M., at least one of whom is under age. We speak of these facts not to under estimate the importance of having the interests of these young women and infant protected, but because of the fact that perhaps their judgment in the matter is not based upon an intelligent experience that would entitle their opinion to much weight.

It may be noted in passing that apparently all the interest of the deceased William C. Shanley, Jr., has been assigned to the Empire Trust Company of New York, as security, and that company does not join in the request for intervention. The officers of the Fidelity Company are people of judgment and experience, and their judgment is favorable to the merger.

It may further be noted that the late Bernard M. Shanley, the originator of this interest, and the investor in these stocks, by the terms of his will, manifested his desire that his estate should be managed and conducted by a trustee and not by his widow, or children who are now deceased, or their

children, or their children's husbands. Among those who have assented for a large block of stock are the trustees under the will of John F. Shanley, a brother of, and co-worker with Bernard M. Shanley.

It further appears from Exhibit D-41 that there are outstanding in the hands of the public, and not represented in this suit, a little over 16.71% of the stock of Essex and Hudson; 13.42% of the stock of Hudson County Gas; 8.24% of Paterson and Passaic Gas and Electric Company; 12.48% of the Somerset, Union and Middlesex Company and 31.83% of the New Brunswick Light, Heat and Power Company.

On page 156 of the testimony (Vol. II) Mr. Van Middlesworth gives the names of the holders of 500 shares or more who have deposited their stock, and who are disconnected with the Public Service interests. They include the Estate of Thomas Dolan 1000 shares Essex and Hudson; Louisa S. Holton, 500 shares, Charles W. Holton 510 shares; Estate of John F. Shanley 500 shares; Hudson County Gas, Estate of Thomas Dolan 4150 shares; Corn Exchange National Bank of Philadelphia 550 shares; George J. Roberts 500 shares; A. J. Weidenmeyer 617 shares; John G. Greenberg 500 shares; Charles W. Holwig 1000 shares; Grental, Lillienthal & Co. 750 shares; Fannie H. Williams 793 shares; the Regal Securities Corporation 1625 shares; of the Paterson and Passaic Company, Jennie Hobart 550 shares; Estate of Garret A. Hobart 1900 shares; of the Somerset, Union and Middlesex Company Mary G. Pope 500 shares; Augustus J. Brunson 800 shares; of the New Brunswick Light, Heat and Power Company, Eisele & King 929 shares. This list does not purport to include that large number of persons who hold less than 500 shares.

The record discloses as stated in the second supplemental bill (Vol. I, p. 438) that at the meeting held for the adoption of the articles of consoli-

dation dated originally April 26, 1927, and now dated October 25, 1927, there were voted for the merger 48,876 shares of Essex and Hudson Gas Company, 81,589 shares of Hudson County Gas Company, 41,729 shares of Paterson and Passaic Gas and Electric Company, 8,123 shares of Somerset, Union and Middlesex Lighting Company, and 3,082 shares of New Brunswick Light, Heat and Power Company stock, and there were voted against the merger 7,861 shares of Essex and Hudson Gas Company, 11,229 shares of Hudson County Gas Company, 5,967 shares of Paterson and Passaic Gas and Electric Company, 1,277 shares of Somerset, Union and Middlesex Lighting Company stock, and no shares of stock of the New Brunswick Light, Heat and Power Company.

This leaves of the stock of the Essex and Hudson 12.71%; of the Hudson County Gas 11.60%; of the Paterson and Passaic 4.61%; of the Somerset, Union and Middlesex 10.48%; and the New Brunswick Light, Heat and Power Company 22.95%, the owners of which have taken no steps whatever either to oppose or favor the merger.

The complainants contended in the court below that these owners must be classed as opponents of the scheme. This argument we submit, is untenable. They cannot, by the terms of section 108 of the General Corporation Act, in the event that the merger goes through, have their stock condemned because they have not dissented. In the event of the reversal of the decree in this cause all they can do is to exchange their stock, which they are evidently willing to do, and hence, they should, by their failure to dissent, really be classified among those favorable to the merger.

III.

Opinions of the courts relevant to the questions in this case.

Before taking up the testimony relating to the fairness of the pending agreement we think it advisable to remind the court of the settled rules of law on the subject.

The opinions of the courts in cases involving agreements made by interlocking directors, or by a director with the board of which he is a member, or in which it is alleged that the holders of the majority of the stock of a corporation have used their power unjustly, may be arranged into three classes:

1. Opinions in cases decided on demurrer, where the claims of the complainants or plaintiffs are generally overstated, but nevertheless must be taken as true for the time being;

2. Opinions in cases in which actual fraud or dishonesty is charged and proved; and

3. Opinions in cases based on what is called constructive fraud, that is, cases in which no injustice was intended, but in which nevertheless the proceeding may impair the equitable rights of parties concerned.

The issues in the third class of cases are simply honest differences of opinion of the parties as to their repective rights, and if the complainants are acting in good faith, this is such a case.

Courts in deciding cases on demurrer where actual fraud is charged, and in deciding cases in which actual fraud has been proven, sometimes severely condemn the transaction alleged or disclosed, and so a mass of opinions have been written

which are often quoted in arguing cases in which the issue is nothing more than an honest difference of opinion. Of course, opinions such as are rendered in classes 1 and 2 are irrelevant in this case, but when quoted extensively in discussing the third class of cases may create confusion, or prevent a clear view of the real quality of the transaction *sub judice.* There is no doubt at all about the rule governing the disposition of a case like this. It is stated in *Merriman* v. *National Zinc Corp.,* 82 N. J. Eq. 493, and tersely and clearly in the *Bingham* case, N. J. Adv. Reps., Vol. V, at page 1119 as follows:

> "The objection that the merger is unfair and inequitable calls for careful judicial scrutiny of the plan, in view of the interests in the merger of interlocking directorates, and of interlocking interests of stockholders of the three concerns. The plan must be free from unfairness before the complainants can be put to their election of joining their associates or taking compensation in lieu."

That case was affirmed, N. J. Adv. Reps., Vol. VI, page 368.

The rule has been stated very often before and is entirely settled. There was no occasion, therefore, for the complainants to quote irrelevant expressions of opinion rendered in cases where the facts were different, and called for or justified emphatic condemnation. Concurring fully with the statement of the law in the *Bingham* case quoted above, we will call attention only to opinions rendered in a few other cases on that point where the facts were closely similar to the facts in this case.

In considering the fairness of such a contract as the merger agreement, the courts examine the particular facts of each case instead of relying on general rules. Precedents in such cases are of little assistance, except so far as they are based on facts substantially the same. *Colby* v. *Equitable Trust Company,* 108 N. Y. Supp. 978, S. C. 124 N. Y. App.

Div. 262, and 192 N. Y. 535, is a case in which the facts were similar to the facts in the present case. We refer to it not only because of the similarity of its facts, but because the reasoning of the opinion evidently commended its conclusion to the Vice Chancellor in the *Bingham* case, N. J. Adv. Reps., Vol. V, at page 1122.

It appeared in the *Colby* case that he was a stockholder of the Equitable Trust Company of New York, and brought suit on behalf of himself and other stockholders to enjoin a proposed merger into that company of the Mercantile Trust Company, alleging that the proposed merger was illegal and unfair to him. There were interlocking directors in that case as in this. At the commencement of the suit an order was made restraining the companies from proceeding to carry out the proposed merger before final hearing. That order was taken to the appellate division of the supreme court of New York, and heard by Justices Patterson, McLaughlin, Laughlin, Clarke and Scott.

The proposed merger was attempted under a statute similar to ours providing for the merger and consolidation of corporations. One of the contentions of the plaintiff was that neither of the companies was organized under a statute that permitted consolidation. That point was decided against him.

Another objection to the validity of the proposed merger was that the legislature had no power to sanction the merger of a corporation against the protest of minority stockholders, unless the merger was lawful when the corporation was formed. In disposing of that point, the court said that subsequent legislation had conferred power on the companies to merge, and the legislature had the right to do so under its reserved power.

Again it was alleged that the merger could not be effected for the reason that about 65% of the stock

of the Mercantile Trust Company and 49% of the stock of the Equitable Company were held by the Equitable Life Assurance Society of the United States; that of the twenty directors who signed the merger agreement on behalf of the Equitable Company nine were also directors of the Mercantile Company, and that several of the officers and directors of the Equitable Society were also directors of the Mercantile Company. In disposing of that objection to the merger, the court said:

> "With such an intermingling of interests it is not only proper, but necessary, to scrutinize the proposed merger agreement with care for the purpose of ascertaining whether it is fair to the plaintiff or not, but in doing so *it must be borne in mind that it does not necessarily follow because there is such an intermingling of interests that the proposed agreement is void or so manifestly unjust as would justify a court of equity in interfering. Continental Ins. Co.* v. *N. Y. & H. R. Co.*, 187 N. Y. 225, 79 N. E. 1026; *Burden* v. *Burden*, 159 N. Y. 287, 54 N. E. 17. The proposed agreement is tentative only. The corporations are not bound in any way until it is adopted and ratified by two-thirds of the stockholders. It is, at most, a plan to be submitted to the stockholders for their action; and for this reason many of the authorities cited on the respondent's brief, in which directors have made contracts in which they have a personal interest, have no application" (p. 982). (Italics ours.)

It further appeared in the *Colby* case that the stock of the Equitable Trust Company, after the merger, would probably pay annual dividends of 48% on each share; that the stock of the company prior to the merger paid 25% on each share, and two shares of stock of the company in consummating the merger were to be exchanged for one share of new stock, so that after the merger the

holders of stock of the Equitable Company would receive 48% on each share of new stock instead of 50% on two shares of the old stock annually, and this was one of the points upon which it was sought to prevent the consummation of the agreement. The court, in disposing of the point, said:

> "The exchange of two shares of stock in a company earning 25 per cent. on each share, with much uncertainty as to its future earning power, for one share in a company which can reasonably be expected to earn 48 per cent. on each share, cannot be said to be such an unconscionable proposition as to justify a court of equity in interfering, and especially when the plan is approved by a very large majority of the stockholders of the Equitable Company. * * * After a careful consideration of the record," the Justice, writing the opinion, said, "I do not think it can be said that the proposed agreement is unfair to the plaintiff. It has been approved, as the statute requires, by the state superintendent of banks, and the fact is not disputed that the holders of over 27,000 shares of the Equitable Company's stock out of a total of 30,000 shares have signified their assent and approval of the merger. * * * [Pages 983 and 984.]
>
> "I know of no principal which justifies a court of equity in interfering with a large majority of the stockholders proceeding strictly in accordance with the statute simply because some of the minority stockholders think the proposed agreement is unsatisfactory or unfair. That question must necessarily under the statute be determined by the stockholders themselves, and, once their decision has been made, *in the absence of fraud or bad faith, or of facts clearly showing that the proposed acts will be oppressive or unfair to the corporation, the court cannot and ought not to interfere.* If it did so, it would, in effect, repeal the statute and subject the control of the majority to the will of the minority. * * * *It is not even suggested that there was any deception or concealment in arranging for the*

merger; on the contrary, it appears that the directors of the Equitable Company acted openly, and full information was given to its stockholders" (p. 985). (Italics ours.)

In the *Colby* case it was stated that: "ample provision is made under the statute authorizing the merger by which any stockholder who is unwilling to assent to the terms can obtain the value of his stock in cash" (p. 981). A similar provision exists in the laws of this state. The complainants, with an adequate remedy at law for their alleged grievance, should not be permitted to obstruct a proceeding that all others interested in the companies believe to be beneficial, not only to them, but to four-fifths of the people of the state. Every economy in operation effected by the defendants, and whatever they succeed in doing to strengthen their credit, and obtain capital on more favorable terms, inure to the benefit of the people to whom the companies render service—it is all taken into account when rates are fixed, either by the companies or by the Utility Board.

Nothing in the case at bar appears more clearly than that the plan does not benefit the Public Service interests except in an indirect way and all the benefit may be passed on to the public. Indeed, the Electric and Gas Company will have to pay a slightly larger return to the former holders of the lessor companies' stocks, than it would under old conditions have been compelled to pay. The defendants say and the complainants admit that the plan, so far as carried out, has effected a great improvement in the financial structure of the Electric and Gas Company. The defendants say, and it is obviously true, that the completion of the plan will largely increase the benefits already derived. In fact, the positive evidence of Messrs. McCarter, Gates, and Loomis to this effect, is absolutely undenied. Ease in the procurement of new capital,

for which there is a constant demand in the case of a company, situated as the Electric and Gas Company is, minimizes the initial and current expense of borrowing, and hence inures to the benefit of the public. It is the public interest that the complainants insist upon ignoring. They treat the case as if they were connected with an enterprise in which no one but the holders of the different securities in the enterprise is interested, and they proceed upon the hypothesis that any move by the Public Service is necessarily for its own benefit, and has no connection whatever with the interest that the public have, not only in the rates that they must pay, but in the prompt and efficient growth of the company to meet the ever increasing demands. We submit that the complainants have not only failed to cite, but cannot find a case that holds that the determination of the majority of the stockholders of a public utility company, required to serve the public under public supervision, at the lowest possible rate consistent with efficiency and a fair return upon investment, to accomplish this end, is indicative of any fraud whatsoever. All that the cases hold is that when a plan is put through by the vote of a majority of the stockholders of a corporation, which is not concurred in by a minority, the majority must show that their plan does not redound to their own personal advantage, at the expense of the minority, but is generally for the good of the corporation.

The merger of the five lessor companies into Public Service Electric and Gas Company is a matter that is within the power of the directors and stockholders of those companies. To accomplish that object all they had to do was to pursue the method prescribed by the general corporation act, and to act honestly. If in so acting they made an error in judgment, that fact would not authorize a court of equity to intervene by injunction, or otherwise.

The authorities define "constructive fraud" dif ferently, some insist that there must be a purpose or intent to deceive, or to inflict an injury. Without that element the transaction complained of, whatever it may be, if erroneous, is nothing but an error of judgment, *Corpus Juris,* Vol. 26, page 1061. We will not argue about it now further than to say that however constructive fraud may be defined it must include a *wrongful* act. There is no evidence in this case that attempts to show that any of the directors of the several corporations had any intention whatever to deceive or injure any of the lessor companies, or any of their stockholders. The evidence to the contrary is conclusive. Everything that was proposed or done in this matter from the beginning was proposed and done openly and in good faith with full notice to all parties interested, and under the supervision, and with the approval of the Board of Public Utility Commissioners. The conduct of all who acted for the companies in the matter involved in this suit, as disclosed by the proofs now before the court, repels any presumption of unfair dealing. Consequently the agreement cannot be annulled in equity. The testimony and exhibits contain a complete history of the whole transaction, including positive statements by the gentlemen who formulated the agreement that they had no intention of treating the complainants unjustly, and in fact they did not.

The law on this subject has been stated many times by courts of the highest authority. In *Schwab* v. *Potter Company,* 194 N. Y. 409, the court of appeals of that state, in deciding a case in which the complainant contended that "constructive fraud" must be inferred from the fact that the directors were interested in both sides of the transaction then in question, declared:

> *"It is well established that in the absence of fraud or bad faith courts have nothing to do*

> *with the internal management of business corporations * * * questions within the scope of the corporate powers which relate to the policy of administration, to the expediency of proposed measures, or to the consideration of contracts provided it is not so grossly inadequate as to be evidence of fraud, are beyond the province of the courts"* (p. 415. The italics are ours).

Although the law on this subject is familiar, we will quote another expression by the New York Court of Appeals, where the matter has been fully considered in several cases and decided. In *Gamble* v. *Queens County Water Company,* 123 N. Y. 91, a case in which a transaction between a director of the company and the company itself was involved, Judge Peckham writing the opinion, said:

> "I think that where the action of the majority *is plainly a fraud* upon, or, in other words, *is really oppressive* to the minority shareholders, and the directors or trustees have acted with and formed part of the majority, an action may be sustained by one of the minority shareholders suing in his own behalf and in that of all others coming in, etc., to enjoin the action contemplated, and in which action the corporation should be made a party defendant. It is not, however, every question of mere administration or of policy in which there is a difference of opinion among the shareholders that enables the minority to claim that the action of the majority is oppressive, and which justifies the minority in coming to a court of equity to obtain relief. Generally, the rule must be that in such cases the will of the majority shall govern. *The court would not be justified in interfering even in doubtful cases, where the action of the majority might be susceptible of different constructions.* To warrant the interposition of the court in favor of the minority shareholders in a corporation or joint-stock association, as against the contemplated action of the majority, where such

action is within the corporate powers, *a case must be out which plainly* shows that such action is so far opposed to the true interests of the corporation itself *as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that he must have acted with an intent to subserve some outside purpose*, regardless of the consequeces to the company, and in a manner inconsistent with its interests. Otherwise the court might be called upon to balance probabilities of profitable results to arise from the carrying out of the one or the other of different plans proposed by or on behalf of different shareholders in a corporation, and to decree the adoption of that line of policy which seemed to it to promise the best results, or at least to enjoin the carrying out of the opposite policy. *This is no business for any court to follow*" (pp. 98-9). (The italics are ours.)

A similar expression may be found in the *Bingham* case, N. J. Adv. Reps., Vol. V, at page 1122.

In March 1826 the effect of interlocking directors on the validity of a proposed consolidation agreement was considered again by the supreme court of New York in the case of *Armstrong* v. *Hayden,* 214 N. Y. Supp., 747. In the course of the opinion in that case the court said:

"In order to succeed on the trial of this action, it would be necessary for the plaintiff to establish, not only that the contemplated merger is an improvident one from the point of view of the stockholders of the Ray Company, but also, to employ the language of Judge Peckham in Gamble *v.* Queens County Water Co., 25 N. E. 201, 202, 123 N. Y., 91, at page 99 (9 L. R. A. 527): 'That such action is so far opposed to the true interests of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests, but that he must have acted with

> an intent to subserve some outside purpose, regardless of the consequences to the company and in a manner inconsistent with its interests.' * * * See, also, Flynn *v.* Brooklyn City Railroad Co., 53 N. E. 520, 158 N. Y. 493; Schwab *v.* E. G. Potter Co., 113 N. Y. S. 439, 129 App. Div. 36, affirmed 87 N. E. 670, 194 N. Y. 409; Colby *v.* Equitable Trust Co., *supra*" (p. 749).

Similar decisions were rendered in the cases of *Borg & Co.* v. *New Orleans City R. R. Co.,* 244 Fed. 617, and *Jackson* v. *Gardiner Inv. Co.,* 217 Fed. 350, and 220 Fed. 297. One of the most interesting and instructive authorities on the merger or consolidation of utility corporations is the case of *New York, New Haven & Hartford Railroad Co.* v. *Offield,* 59 Atl. 510, decided by the Supreme Court of Errors of Connecticut in 1904. Justice Simeon D. Baldwin wrote the unanimous opinion of the court. The law of the state of Connecticut authorized a railroad company, which had acquired more than three-fourths of the stock of another railroad company and could not agree with the holders of the outstanding stock for the purchase thereof, to condemn it on a finding that it would be for the public interest. The court held the statute to be within the power of the legislature. The case bears a very close analogy to the pending case. The company whose shares it was sought to condemn had been leased to the company which was seeking to condemn. Mr. Justice Baldwin discussed the questions involved in detail, and much of his opinion is pertinent and all of it is lucid.

That case was again before the Supreme Court of Errors of Connecticut (60 Atl. 740), and then went to the Supreme Court of the United States, *sub nom. Offield* v. *New York, N. H. & H. R. Co.,* 203 U. S., 372. Mr. Justice McKenna, speaking for a unanimous court, affirmed the judgment pronounced in the court below by Mr. Justice Baldwin. One of

the very important features of the opinion of the Supreme Court of the United States dealt with the question of the impairment of the contract evidenced by the lease. The court said:

> "The lease is for a period of ninety-nine years from July 1, 1892, at a rental of four per cent per annum upon the capital stock, together with the payment of taxes, assessments and interest upon the funded debt. Associated with this contention there is another more general to the effect that the statute impairs the contract rights of plaintiff in error as a stockholder of the New Haven and Derby Railroad Company. We do not find it necessary to give precise and separate discussion to these contentions. They seem to us to be but parts or incidents of the contention that the stock is sought for a private use. If they are not incidents of that they are answered and opposed by the case of Long Island Water Supply Co. *v.* Brooklyn, 166 U. S. 685. *Whatever value the lease gives the shares of stock will be represented in their appraisement*" (p. 378) (the italics are ours).

Each of the five lessor defendants in this case is "a mere shell" and "a ghost of a corporation", to use the words of Justice Baldwin in the Connecticut case. "Its survival can serve no useful purpose. Its extinction will facilitate and lessen the cost of the construction and improvements necessary to make the [demised premises] of which it is now the owner fulfill its office to the best effect".

A merger agreement, like the one now before the court, is simply a purchase by one corporation of the stocks of other corporations and issuing its obligations in payment. Such a transaction was defined in the case of *Bingham* v. *The Savings Investment and Trust Company of East Orange, and others,* N. J. Adv. Reps., Vol V, page 1111 as follows:

> "The merger, in effect, amounts to a purchase of the capital stock of the two other

> companies, their assets and franchises, and the issuing of capital stock [of the Savings Investment and Trust Company] in payment" (pages 1115-6).

If that be the true nature of a merger agreement, and we believe it is, the action of the defendants so far as it has proceeded is nothing more than an offer to the complainants to purchase their stock in the lessor companies. The negotiation in such a case may end in a sale or nothing may come of it. It is impossible to understand how an offer made in good faith to purchase property at or above its market value, which the owners are not willing to accept, is proof of fraud, or unfair dealing, **especially as the law provides a method by which the complainants can obtain all that their stock is worth.**

(Gen. Corp. Act, sec. 108).

It is true that the effect of carrying out the proposed merger would be to terminate the existence of the lessor companies, but as the court said in the *Bingham* case:

> "Destroying, the state has a care not to take away or destroy the stockholders investment, and safeguards it by providing compensation by appraisal at fair value."

And added:

> "In fine, with the compensation provision, there can be no longer any question as to the power of the state under the reserve power to repeal, alter or amend the charter of any corporation in any respect, if the change be in the public interest. This view was entertained by the New York supreme court, and affirmed by the court of appeals in *Colby* v. *Equitable Trust Co.*, 108 N. Y. Supp. 978; 192 N. Y. 535."

As was also said in the *Bingham* case:

> "In such circumstances, when neither fraud nor bad faith motivates the vast majority of

> stockholders which favors the merger, and the minority is not oppressed or wronged, a court of equity ought not to interfere. In guarding the rights of the minority care should be taken not to injure the interests of the majority. The principle that should govern the court is tersely stated by Judge Peckham, of the New York court of appeals, in *Gamble* v. *Queens County Water Co.*, 123 N. Y. 91 [quoted at pages 39-40, *supra*], and adopted in *Colby* v. *Equitable Trust Company, supra;* the latter a case of striking resemblance to this one (N. J. Adv. Reps., Vol. V, at page 1122, and *supra,* pages 32-36).

The directors of Public Service Electric and Gas Company had a right to make an offer for the stock of the five lessor companies and, with the consent of the directors of those companies, that offer could be made in the form of a merger agreement. The offer was subject to the approval of the stockholders of all of the companies, and could be nothing more than an offer unless the holders of two-thirds of the stock of all of the companies should approve it. The courts, however, have held that in such a case as this the offer must be fair. **What is a fair offer in such a draft of agreement, if made in good faith, is a matter of business judgment, and cannot be treated in equity as an illegal step in a proceeding to merge corporations in the manner authorized by law.** We think there is no case in the books holding otherwise; and we may say in passing that we do not know of a single case decided by the courts of this state in which a proposed merger or consolidation was prevented because of unfairness of the offer set forth in the agreement. In the *Colgate* case, 73 N. J. Eq., 72, Vice Chancellor Emery conceded that the majority of the stockholders are not trustees for the others, and that they have the right to act selfishly; that a consolidation agreement is not void or voidable merely for that reason, that the directors who prepared the agreement were the com-

mon directors of the consolidating companies, nor because the consolidation might be practically a sale of one or more companies to another, page 87. It is true in the *Colgate* case the Vice Chancellor enjoined the execution of the agreement, because he thought that the plan was inequitable in respect to the preferred stockholders. The opinion, however, indicates that the Vice Chancellor believed the rule to be that the unfairness of the plan must appear to the extent that there would be an inference of fraud. In that case a new plan was submitted, omitting the unfairness found by the Vice Chancellor, and it was then approved. Upon appeal, 75 N. J. Eq., 229, it was held that the merger could not take place because the corporations were not within the purview of the statute, and not because of the unfairness of the offer.

In considering the fairness of the offer in this case it is important to remember that the court is dealing with utility corporations, and that **a utility has no right to purchase property to be used in its business for more than its fair value, and include the excess paid over fair value in its rate base.** That is, a utility cannot compel the public to pay income on more than the fair value of the property used in serving the public, no matter what may have been paid for it. The gentlemen who formulated the pending merger agreement were fully aware of that sound rule of law, and prepared the agreement accordingly. In looking for a measure of value for the stock of the five lessor companies, they turned to its market price. It would not have been fair for them to have taken the prices that might have prevailed shortly before, during a panic or temporary depression in business, and they did not; nor would it have been fair or lawful for them to have taken higher prices than those current in a normal market at the time the offer was made. The stable market price of the stocks of the lessor com-

panies was certainly the most reliable, if not the only reliable measure of their value. The stocks were active enough in the market to furnish that measure of value. The price offered in the merger agreement, originally dated April 26, 1927 and subsequently dated October 25, 1927, that is, the value of the preferred stock of Public Service Electric and Gas Company to be given in exchange was above the market price of the stocks of the lessor companies, quoted in the price lists of Outwater & Wells at that time as shown on Exhibit D-51.

In the case of *Bingham* v. *The Savings Investment and Trust Company, and others, supra,* it was said, page 1121:

> "The things contemplated by the statute to be taken in exchange in merging going concerns is not assets for assets, but share for share of capital stock, *upon parity of value, and the measure of equality is the fair market value.*" (The italics are ours.)

The statute of this state providing for the exercise of the right of eminent domain, Comp. Stats. 2182, requires as a condition precedent to application for appointment of commissioners that an effort should be made to acquire the property by negotiation. Similar provisions may be found in the statutes of other states relating to eminent domain. In compliance with that condition, it has never been held that a party wishing to acquire property should do more than make an offer for it in good faith. There is no case in this state, nor have we found a case in any other state holding that the offer must be for the full amount that some one else thinks the property is worth. A utility acting in good faith desiring to acquire property, after failing to obtain it for a price that it is willing to pay, has a right to have the price fixed by condemnation. There has been very little litigation in this state on the subject of offers in such

matters. The principal cases are *Vail* v. *The Morris & Essex Railroad Company,* 21 N. J. L., 189, and *Darling* v. *Board of Chosen Freeholders,* 107 Atl., 854 (*per curiam*). There is nothing in this case to show that the offer for the stock of the lessor companies was not made in good faith. Consequently the Electric and Gas Company has a right, as well as the present owners, to have the value fixed by condemnation.

The complainants evidently rely on the fact that several gentlemen were members of more than one of the boards of directors of the companies that entered into the merger agreement as proof that it is illegal. We do not deny that the fact of interlocking directors *per se* casts the burden of proof on the defendants to show that the agreement is fair and equitable. **We think, however, that the rule is rendered inapplicable to this case, or its effect much modified, because the financial plan, of which the merger agreement is a part, was carefully prepared by three of the most eminent banking houses in the country, and every important step in the proceedings to carry it out was taken after ample notice to all of the stockholders of the parties to the agreement, and fully explained to the Board of Public Utility Commissioners at public hearings and approved** (*supra,* p. 21).

This is a case in which there is not the slightest trace of fraud in the sense of turpitude, or what the law defines as "actual fraud". There is no such charge in the bill of complaint, nor in the supplemental bills. In fact, the word does not appear anywhere in the case presented by the complainants. What they regard as proof of unfairness amounting to "constructive fraud", is a mere inference from the fact that the gentlemen, who were directors of more than one of the companies, parties to the merger agreement, held a trifling fraction of the stock of some of the companies (*supra,* p. 19).

In the brief submitted in the court below on behalf of Fidelity Union Trust Company, one of the complainants, its counsel candidly say at page 47:

> "We in no wise intend to reflect upon the integrity of the gentlemen who formulated the plan of doing away with the leasehold interests. On the contrary, we join in all that the defendant's brief said in regard to their honesty of purpose, and their business experience and ability."

The fact accurately stated from which the complainants seek to deduce "constructive fraud" is simply this: The directors of the six companies, parties to the merger agreement, holding a few shares of their stock, after exhaustive study and with the most competent advice, proposed to the stockholders of all of the companies to merge five of the lessor companies into Public Service Electric and Gas Company on terms that would give to the holders of stock of the lessor companies obligations (preferred stock) of the Electric and Gas Company equally secure as the stocks of the lessor companies, of at least equal market value, yielding larger return, and having much greater marketability. A minority of the stockholders would like to get more than the terms of the offer. This is not an instance of "constructive fraud". There is nothing unfair or inequitable about it. It is only a common difference of opinion as to the value of property, and there is an adequate method prescribed by law to settle it. The statute, providing for the merger of corporations, contemplates that contingency, and provides for it by giving to the dissatisfied stockholders a right to have the value of their stock ascertained by impartial appraisers appointed by the circuit court.

IV.

Testimony relating to the preparation of the merger agreement and value of the stocks proposed to be exchanged.

It is perfectly clear by uncontradicted testimony that the pending agreement of merger was prepared deliberately and fairly after thorough investigation by the most eminent financiers in the country.

Mr. McCarter in his testimony gave a full account of the origin of Public Service Corporation, and of the lessor companies in which the Corporation is concerned, and of their activities since June 1, 1903. It was considered proper to do so because it explained the situation that came about seven years ago, and the necessity for a reorganization of the financial structure of the companies, and for adopting a comprehensive policy for the future. He made several tentative plans himself while studying the situation in 1922-3, "which, upon completion were submitted to our board and to our bankers and found not to be satisfactory" (Vol. II, p. 117). The bankers referred to were Drexel & Company of Philadelphia, and J. P. Morgan & Company, and Bonbright & Company of New York. Thereupon, Mr. McCarter continued:

> "We asked these gentlemen, or the representatives of these gentlemen, to study our problem and to present a plan—a comprehensive plan of financing these companies, to us" (*ib.*).

Continuing on page 120, Mr. McCarter said:

> "The bankers took a protracted period for the consideration of this problem, and in the end produced the plan which they recommended —jointly recommended. This plan was

> thoroughly gone into by all of us charged with the responsibility of the management and received our approval, and was infinitely better and more far reaching and comprehensive than any of my inadequate attempts had been to produce the same results. It was then submitted in detail to the board of directors of all these constituent companies, and later to the board—the larger board of the Public Service itself, and was, in time, approved by everybody. It is to provide a plan whereby funds in larger amounts, indeed [needed] to meet present day conditions could, not for a space of a few years only, but perpetually be provided to keep pace with the growth of the property and with the development of the state. We foresaw that the development of the state was going to be abnormal due to its geographical position, abutting the two great cities of New York and Philadelphia, and that facilities already undertaken, such as the construction of the Delaware bridge from Philadelphia to Camden and of the Holland Tunnel from New York to Jersey City, were going to make abnormal what was already a large normal development."

He thereupon explained the terms of the plan at length, and added:

> "I want to say right here that in addition to the public weal, which I have always regarded as uppermost in this whole transaction, I have always regarded myself as the representative of every security on this property, underlying bond, perpetuity certificates, preferred stock, common stock, guaranteed stock and every other security upon this property, and as much a part of my obligation to see that each and every one of those security holders were properly treated as it certainly was to see that the common stock of the Corporation was properly treated. Again we consulted the bankers as to what would be a fair basis to offer for the acquisition of these stocks, and after conference and study between us all, the plan known as the plan of last January was arrived at" (p. 123).

Mr. McCarter then explained why the plan for acquiring the stocks of the lessor companies involved in this litigation was three-fold:

> "First, an offer of cash at an amount in excess of the then market values of those stocks; second, an equivalent offering, or an offering of six percent preferred stock of this new company [Public Service Electric and Gas Company], which already had a fine status in the financial world, and now has a better one; or, third, for those disposed to be in a more speculative turn of mind, to convert into the common stock of the Public Service Corporation at a figure approximating the then market value of Public Service common. We thought in addition to facilitating the financial reorganization of this enormous aggregation, that we were doing these underlying shareholders a favor, because these underlying stocks were narrowly held, had a very restricted market; while they had an income bearing value they had very little real standing in the financial market in the state and none in the New York market" (pp. 123 and 124).

Speaking of the benefits to be derived by the company, Mr. McCarter, referring to the self-refunding mortgage that had been made in 1924 by the Public Service Electric and Gas Company, said:

> "The credit of the company will be enormously improved for future operating if this becomes practically a flat first mortgage upon all of the property of the companies rather than a mortgage—a first mortgage upon a small portion of the property and the balance upon leaseholds" (pp. 127-8).

He was then asked on cross-examination:

> "Q. Now, a leasehold of nine hundred years has been so treated by you and, in fact, is substantially, to all intents and purposes, a conveyance, isn't it?
>
> "A. Not so in the judgment of bankers.

"Q. It has been so treated of later years to be that, has it not?

"A. We do own the property, have owned the property, by leases for nine hundred years and we regard it as practically perpetual control of it, but when you go to bankers to offer securities you find you haven't as good reception if you go with mortgage on leaseholds, no matter how long the leasehold is, as if you come with the fee of the property" (p. 128).

It is true, as Mr. McCarter explained, that it was not absolutely necessary that all of the lessor companies should be merged into the Electric and Gas Company, but the more of the leasehold estates that can be turned into estates in fee, the stronger will be the foundation of the company for its financial operations.

"They" [the bankers, he said], "never have wavered in their judgment that it was highly an essential part of the plan to enable the plan to work out to its full fruition" (p. 128).

Mr. Thomas S. Gates, a member of the firm of Drexel & Company of Philadelphia, and J. P. Morgan & Company of New York, who participated in the preparation of the plan in 1923, which has been already carried out to a considerable extent, referring to the preparation of the plan, said (p. 160):

"By reason of the fact that the general mortgage bond of the Public Service Corporation was a five percent bond, and was a closed issue, the power of the company to extend had really passed." [That mortgage contained provisions prohibiting the underlying companies from increasing their bonded debt]. "The problem", Mr. Gates continued, "was to find a way by the study of the corporation and its integral parts to make possible the financing requirements which its growth demanded, and with that in mind we made an intensive study covering quite a period of time of the whole structure of

> the corporation and its constituent companies, * * *. As a result of that study all of us brought out this plan which was discussed by us as bankers with our partners and by holders of the bonds themselves, particularly the large holders, to whom we had to—whose support we would need in making the exchanges, and after we had reached a conclusion that it was possible to free the company from the restrictions it then labored under by making the exchange of the general mortgage bonds which were then outstanding for a new bond secured by a first mortgage on the gas and electric properties, which would be then merged into a new company, we went forward with the plan."

Mr. Gates then referred to the plan which had previously been prepared by Mr. McCarter, and stated that the committee did not adopt it but **"made an independent study of the structure of Public Service and its constituent companies in detail."**

He was then asked (p. 162):

> "Q. Did you at the time consider the position of the holders of the stock of the underlying companies and bear in mind what that [their] position was and did you feel that the offer that was made to them under the plan was fair and equitable to them—the lessor companies—the stockholders of the lessor companies?
>
> "A. You were talking about the plan which was then made?
>
> "The Court: Yes.
>
> "Q. The plan that was finally adopted.
>
> "A. Oh yes, we did indeed.
>
> "Q. What have you to say upon the question of the fairness of the alternative propositions that were made to the stockholders of the lessor companies, of that plan?
>
> "A. I think now and I thought then, sir, that it was an eminently fair plan to those stockholders, and——" interrupted.

Mr. Gates then proceeded to give his reasons for his opinion, saying that:

> "One of the important elements in that plan was to change the underlying lease structure to an owned structure. * * * That would make possible a modern plan of financing, upon better terms than the leased, the old leased structure would do."

It was necessary he said, in the beginning to merge the United Electric Company with Public Service Electric Company and the Public Service Gas Company (creating the Electric and Gas Company), which was done in 1924.

> "By doing the latter [merging the lessor companies] we increased the amount of the owned property of that whole structure and got away from all leased structure which we had found from our own experience, in all the securities which we had to sell for the Public Service Corporation, had led to embarrassments and explanations and details which investors of course had the right to know and had difficulty in understanding" (p. 164).

Mr. Gates then related his experience as a banker attempting to sell securities, stocks and bonds, having leasehold security, rather than what he called the security of owned property.

He stated that he had had difficulty personally in selling some of the underlying stocks of other companies by reason of the fact that they were stocks of leased properties.

At page 166 he was asked:

> "Have you any other reasons to give for your view that the exchange is a fair and equitable exchange that is offered under this merger" [referring to the merger agreement involved in this case].
>
> "A. Yes sir, the consideration that was given to the plan of exchange this last year was the result of a study of the situation ever since

1924. We have had in mind always the making of an offer which would be a fair offer, because we represented both sides, you might say, of the problem, so far as we were concerned as bankers, we, on our part, who were in trust companies and estates, the Dolan estate for instance has been mentioned, was one of them, would, of course, exchange, and would naturally receive [accept] only a fair offer, if we were going to make it to them, and we, therefore, had the interests of the holders of stock of these companies quite as much at heart as we had the operation from the standpoint of the Public Service Corporation, to whom, from a Public standpoint, it was obviously better in the interest of those financing their service, to have this accomplished. The matter was therefore studied in great detail."

Mr. Gates then said that:

"A study was made of the holders, with a view of ascertaining what type of offer, or what types of offer might in one form or another be acceptable to them. Some might prefer cash; some might care to have stock, or some might care to have stock of the Corporation, Public Service Corporation itself.

"Q. So the plan was evolved of making the three offers?

"A. Yes, sir, and it was felt that on any one of the three offers the Public Service Corporation was leaning over backward in endeavoring to—in an excessive fairness to make what would appeal and what probably could not be refused by the holders" (p. 167).

Mr. Gates also spoke of the advantages of having a security with a ready market with "owned property" to protect it, over securities with a limited market and a lien on leaseholds only. It is his opinion, and it is obviously true, that securities based on absolute ownership of property are not only more readily saleable, but can be utilized in making loans to better advantage (p. 169). He

stated that those advantages were reflected in the value of the stock or bonds. The stocks of the lessor companies are not listed on the New York Stock Exchange, and there has been no considerable sale of them in the past fifteen or twenty years. Mr. Dick, who has been in Wall Street since 1903, had never heard of them until 1923 (p. 277).

Mr. Gates said further (p. 169):

> "There has been a very limited market [for the stocks of the lessor companies], and from time to time we have experienced that. I remember very well when an effort was made to sell quite a large block of the two gas company stocks and there was practically no method of selling them whatever" in large amounts. (He referred to the Essex and Hudson and Hudson County Gas Companies.)

At page 170, Mr. Gates said:

> "The Public Service Gas and Electric preferred stock is known all over the world, and what it has back of it; the company whose security it is, is known. * * * represents of course the activities of that company in the gas and electric field throughout the entire state, which represents again in value, not only the value of these leased properties, which form part of that structure, but also properties of its own, which have been built up as a result of the sale of its securities. The underlying stocks on the other hand meet a sales resistance, because the purchaser understands that they are only a part of a system, which, if you please, could not specifically, perhaps, again ever be operated as a part, or as a whole. The times have grown past that. * * * There is a practical difficulty in finding people who care to buy stocks of a company that is a part of a thing. That is very real."

He then recalled the fact that in order to raise money to build the Kearny super-power plant some years ago, it was necessary to form a separate com-

pany owning the property in fee. Subsequently that property was leased to Public Service Electric Company (p. 171). It has since been acquired by the Electric and Gas Company in fee.

Again Mr. Gates said (p. 172):

> "The stocks of the lessor companies, as a type of Public Service, or Public Utility investment security, have been found not to be popular. I mean apart from the marketability, that they are not liked, they are not popular generally, people don't understand them and will not buy them and this variety of financial structure really is antiquated. Other companies have sought to get rid of their leased structure by mergers or consolidations or otherwise and so present to the purchaser of their securities a type of security which can be exchanged very quickly and which after a while becomes known as a type which will sell."

Referring to the preferred stock of Public Service Electric and Gas Company, which the proposed merger agreement offers for the stock of the lessor companies, he said:

> "I think it is one of the best securities in the world. * * * I think it is a splendid security; none better" (p. 173).

Again he said:

> "The nearer you get to a direct first mortgage, the cheaper your money is. The more you have it confused by lease arrangements, the dearer it is."

And added:

> "I think all modern methods of financing are tending to a simplification of its foundation. The Reading Railroad did it when it split up, under the decree of the Court. It merged a lot of those companies together to get rid of this very thing."

Mr. Loomis is a member of the firm of Bonbright & Company, having previously been its counsel. The firm of Bonbright & Company specializes in electric power and light securities, and has offices in all of the largest cities in the country. He participated in the study of the financial difficulty in which the so-called Public Service group of corporations became involved in 1922, and also took part in the preparation of the plan to overcome it. He was asked (p. 215):

> "Q. Without going into the details I will ask you if the plan that was finally adopted, which included the merger of these—the proposed merger of these companies was, in your judgment a fair and equitable plan?"

And he replied:

> "It certainly was."

He was asked, "Will you give your reasons for that conclusion?" and was requested to state his reasons in his own way. Then follows a terse and lucid description of the situation in 1922, and the remedy provided, and the reasons for it.

Referring to the stock of Public Service Corporation, which he called the "parent company", he said:

> "The securities of this company—the stock of this company was unknown practically out of this state, and in attempting to find a nationally wide market for this security we met with a great deal of difficulty, and one of the reasons was due to the fact that the structure of the entire organization was so complicated that an investor who tried to understand the whole thing was exhausted, and finally said he would rather buy something that had a simpler structure, and it was with that thought in mind that we broached the problem of the reorganization in 1924" (p. 216).

Mr. Loomis made a study of the financial requirements of the company for the ensuing ten years, and found that for the years 1926, 1927, 1928 and 1929 at least fifty million dollars a year would be required for improvements (*ib.*).

> "That amount", he said, "was based on the experience of similar companies throughout the United States" (*ib.*).
>
> "The problem", he said, "was how to remove the fifty million dollar mortgage, and how to simplify the structure so that vast additional sums of money which would have to be raised from year to year could be raised at a lower and lower cost to the company, because we realized that it is just as much the province of a financial adviser to try to advise on reducing the cost of money as it is for the engineer to advise on reducing the operating cost, and we could see that if the needed money, over a period of years was to run into two or three hundred million dollars, a one per cent. difference in the interest rate on that sum of money would be an enormous item, and for this company to be able to reduce its rate from time to time it was essential that that money be obtained at lower and lower prices. With those things in mind we broached the problem of the reorganization of 1924."

In considering this subject it should be remembered that the Public Service Electric and Gas Company must be in a position where it can sell its securities, in large amounts, not only at present when there is a ready market, but in times of financial stringency, which often occur, when it is difficult to sell securities of the highest grade at a price approximating their value.

Continuing, Mr. Loomis said:

> "By that time [1923] it had been an established practice in the power and light industry that the ideal company should have approximately sixty percent of bonds, twenty percent of preferred stock and the balance in common

stock and the company for their future was attempting to approach that ideal. In turn the large investors, the insurance companies and institutions were becoming accustomed to that type of security, and they were looking askance at securities that were different from that standard type. We saw that it was possible to bring such a situation about, over a period of years, with this company, if the gas and electric companies were merged into one large operating unit and that operating unit issued a bond which would ultimately be a first mortgage bond issue, but the issue had to start out as a first and refunding issue; there would then be secondly a certain amount of preferred stock and thirdly there would be a vast amount of money invested in the property by the parent company, the Public Service Corporation, which would be represented by its holdings of the common stock. To bring this about involved preparing a plan that was equitable and fair to all the different types of security holders, because if any one security were preferred to the other securities, the other securities would not come along under the plan, and the whole plan would fail" (p. 218).

"Nevertheless", Mr. Loomis said, "even at the present time the situation is still complicated by these leasehold situations, and this company does not at the present time command as high a price for its securities as other power and light companies that have a completely simple structure. It is our belief that as this plan is consummated that condition will be changed, and that there will be no company in the United States commanding a better credit than this company" (p. 219).

He then spoke of the difficulties encountered in selling bonds and stock on favorable terms when their security depended upon leasehold estates (p. 220). He also said:

"that it was so difficult to explain to a purchaser who was not already familiar with the corporate structure, that he preferred to buy something else".

Referring to the part of the plan now involved in this suit, he said:

> "In 1927, this year, the same committee considered this second step in the plan of 1924, and that was to prepare an equitable basis to be offered to the holders of the lessor stocks to unite with the Public Service Electric and Gas Company so that in the final analysis this company would become a simple, clear-cut, operating, public utility company, and we gave weight to three factors, in particular, that I can remember being discussed, the relative securities, the relative yield—returns—and the relative marketability. Marketability meant the relative ease of finding purchasers, and that meant a security was more marketable if there were many purchasers throughout the United States that were familiar with the security, even though they had not bought it, compared to a security that was not well known. In regard to the relative security between the preferred stock of the Public Service Electric and Gas Company and the lessor stocks, our organization could see no practical difference in their securities, they both seemed to us so secure that the other considerations were the things we devoted most of our time to" (p. 221):

Continuing, Mr. Loomis said:

> "We were led to this belief by a study of the power and light industry which shows at the present time that there are no preferred stocks of any power and light company in this country that does a business of more than a million dollars a year that is in default, and we are further enabled to judge the relative likelihood of default in an industry where there are no defaults to our knowledge at the present time. This preferred stock is not like an ordinary preferred stock. It is far better because of the enormous amount of money invested in this company by the parent company. That is to say all of the obligations of this company including its bond interest, its rental, its

preferred stock dividend requirement, are all relatively small compared to its earnings. A large part of its earnings are available for payment on the common stock of the parent corporation. * * * The third point was the relative marketability. There could be no possible question, it seems to us, on that point, that the security that was being offered was far more marketable. The type of this security was perfectly clear cut; it did not require a lawyer to examine the terms of any indenture. It was a first preferred stock of the Public Service Electric and Gas Company and the Public Service Electric and Gas Company owns in fee colossally valuable property, it owns the big generating stations, and as the years would come and go we could see under the policy that was being carried out that it would own more and more permanently and in fee. That the stock was listed on the New York stock exchange, that alone does not count for much unless it is well known by many purchasers. The thing that weighed most with us was that it was already owned by many large important investors, insurance companies, institutions, educational institutions, and, owning such stock, it is far more easy to sell to those institutions additional amounts, if they are already familiar with it. It seemed to us, therefore, that the offer was eminently fair between the two types of securities, as I said, and it was those considerations that led me to make the statement that in my opinion the offer is fair and equitable" (p. 222).

The testimony of Messrs. McCarter, Gates and Loomis, as to the fairness of the offer for the stock of the lessor companies, set forth in the merger agreement, is corroborated by five charts offered in evidence together, and marked Exhibit D-51. Those charts show that from the time when the first instalment of the 6% preferred stock of the Electric and Gas Company was issued down to December, 1927, the market prices of the stocks of the lessor

companies have run closely together with the market price of the exchangeable amount of Electric and Gas Company stock as provided in the merger agreement. **Certainly there has been no such variation in the prices or value of the stocks of the lessor companies, and of Public Service Electric and Gas Company, and there was no such difference in value when the offer was made as would justify an inference that the merger agreement was not made in perfect good faith.** The five charts marked Exhibit D-49 show the range of prices of the stocks of the lessor companies from 1913 to 1926, inclusive. The chart marked Exhibit D-50 shows the range of prices of those stocks from January 1st to December 1st, 1927.

We have quoted the testimony of Messrs. McCarter, Gates and Loomis at length, because they are thoroughly familiar with this whole subject, and fully qualified to express reliable opinions about it. And there is another reason for calling attention distinctly to their testimony. It utterly dissipates any suspicion that the plan, or any part of it, was prepared with any intent or purpose to do the slightest injustice to any one. On the contrary, the gentlemen who prepared, and those who adopted the plan believed, and the facts sustain their belief, that it was fair, and they supposed it would be satisfactory to the holders of the stocks of the lessor companies. The holders of more than two-thirds of the stock of fourteen of the lessor companies have approved the plan—nine of the companies have already been merged into the Electric and Gas Company, and the owners of more than two-thirds of the stock of five other lessor companies, parties to this suit, have voted their stock in favor of consummating the merger agreement involved in this case. With these facts in view, it is perfectly clear that there is nothing in this case to justify or sustain the decree awarding a writ of

injunction. Besides the authorities we have cited the controlling rule of law in such a case was stated in *Merriman* v. *National Zinc Corp., supra,* as follows:

> "There can be no doubt of the right of this court to relieve against the operation of fraudulent action of a board of directors of a corporation, at the instance of a single stockholder, in the absence of intervening rights of third parties.
>
> **"The operative force of any action by a board of directors of a corporation is necessarily found in its quality as an honest exercise of the legitimate functions of office; the supervisory and remedial powers of this court exist only for the purpose of insuring the honest exercise of such official powers and cannot be extended further. In matters of business management within the powers of the board its judgment, if honestly exercised, must control, and not the judgment of this court.**
>
> "Direct interest of members of the board of directors in a contract made by the board may render such contract voidable as a contract made by a trustee with himself touching the property of his *cestui que trust,* and gross inadequacy of consideration may afford a badge of fraud; but no justification can be found for the assumption that the members of a board have not exercised their honest judgment in behalf of the corporation represented by them because private interests of members of the board, which are wholly unconnected with the contract authorized by the board, may be enhanced by the action taken" (p. 494). (Italics ours.)

Mr. Steel also testified as to the fairness of the offer contained in the merger agreement (Vol. II, p. 245). He was formerly associated with the firm of Graham, Parsons & Company, bankers, with offices in Philadelphia and New York, and had been engaged in the investment banking business, and distribution of securities for all of his business life.

He is now retired. He stated that he was only familiar with the Public Service group of corporations generally, having obtained his information in the course of his business as a banker. No one could become familiar with all the details of the affairs of those companies without a prolonged and minute study of their history and present status. He said that he had dealt in the securities of those companies nearly all the time that he was in business, and in that way obtained his knowledge of the situation. He stated that he was familiar with the plan that has been spoken of in general, and said:

> "I considered the thing from the point of view of the security holders—the security holders of these so-called leased company stocks, and the general situation, as to whether it is a fair proposal or not, sir. I have not studied it in the technical and legal detail that a person in active business would" (p. 246).

He said that his study and investigation had been such and sufficient to enable him to give an opinion on the fairness of the merger agreement, and in reply to the question:

> "What is that opinion?"

he said:

> "My opinion is that it is an entirely fair proposition—fair plan of exchange for the security holders,"

and when asked for his reasons, he replied

> "In looking at it from the point of view of a security holder, of the three elements which my experience as an investment banker led me to find was necessary, that is, the question of security, which primarily means the assurance of the principal, in the second place marketability, which means the ability to sell it promptly, to know for what you are going to

sell it, which carries with it its availability as collateral, and many other issues in addition to that, and thirdly, income or the rate of return on the investment."

He stated that he had no present connection in any official capacity with Public Service Corporation or any of its allied interests. That personally he had never owned any of the securities of the Public Service companies, but had been interested as a trustee in dealing in them while associated with Graham & Parsons. He said:

> "They were very limited inasmuch as we were not particularly enthusiastic about them in comparison with other securities of the corporation—I am speaking of all—I am not speaking of any one issue of the securities."

His testimony illustrates the difficulty even for an intelligent banker to find out the actual status of the stocks and bonds of the lessor companies, and that difficulty, no doubt, accounts for the limited market of which the witnesses spoke. He had to depend considerably on the manuals, published from time to time, for whatever information he could gain and from casual dealing in the securities. That difficulty shows the advantages of a security based upon a simple structure and widely dealt in. It was impossible for him to tell—as it would be for anyone—without prolonged examination to find out exactly the relative security of the stock of the lessor companies, and of the lessee companies, and also the priority of the lien of guaranteed stock over bonds. He was asked:

> "Did your determination that the offer was a fair one depend in its final analysis upon the fact that the electric and gas company stocks would command a more ready market than the stock of the lessor companies?" and he replied that it was not his sole reason, "because I not only believe that it would command a

> very much greater marketability, but that I believed to all practical purposes the security was as good" (p. 252).

He repeated that the banking house with which he was associated had only dealt in the securities of the lessor companies in a very limited way, saying that:

> "We had never been particularly interested in them because they are an almost unknown situation and were too difficult to explain to customers what they were."

On the same page he said:

> "I have known at times in the past it was almost impossible to sell these underlying stocks, * * *."

He stated that he had known of conditions in the market when in endeavoring to dispose of these lessor company stocks for clients, it was found that the market was non-existent (p. 253).

V.

Testimony on the part of the complainants.

In support of their contention the complainants called no witnesses except four of the complainants, Messrs. Dick, Outwater, Roosevelt and Shanley. Only two of those witnesses, Mr. Dick and Mr. Outwater, testified as to the reasonableness of the terms of the merger.

Mr. Dick was the only witness who testified for the complainants at length as to the reasonableness of the offer contained in the proposed merger agreement. Mr. Outwater's testimony on that subject was expressed in a very few words. He said

that he thought the security of the stocks of the lessor companies that the clients of Outwater & Wells had was better than either of the two plans by which it was proposed to exchange stock (Vol. II, p. 310). He was talking about the offer made on January 10th, 1927 (Exhibit D-10).

Mr. Dick objects to the proposed merger because he thinks the stocks of the underlying companies when the merger agreement was made were worth more than their market price, although there was, and had been for a long time, normal and stable market prices by which their value could be determined, and that is the only reliable guide to their value. Mr. Dick was asked more than once by what means or measure he would estimate the value of the stock in excess of its normal market price, and he could give no answer, except to talk about underlying stocks of a few railroad companies. Nor did he inform us what right the Electric and Gas Company—a public utility—had to issue obligations for more than the fair market price for the stocks of the lessor companies in order to carry out the agreement.

Mr. Roosevelt, in his testimony, referred to a certain class of investors who were interested in security and return rather than marketability, and was asked:

> "Q. Mr. Roosevelt, those people to whom you have just referred constitute a part of the great buying public, do they not?" and answered, "Yes, sir."
>
> "Q. And of course that influence is reflected more or less in the market price of the securities that are bought and sold?
>
> "A. Yes, sir" (p. 314).

There is mystery about the organization of the so-called protective committee. Mr. Dick availed himself of every opportunity he had to say that

the committee was formed for the purpose of protecting the clients of Roosevelt & Sons who had invested in the stocks of the lessor companies. Several times he was asked to name a single one of those clients who had requested or authorized Roosevelt & Sons to undertake to protect their interests in the matter and he could not mention one (pp. 299 and 300).

The real reason why the committee was formed was disclosed on the cross-examination of Mr. Dick, when his attention was called to several provisions of the agreement providing for depositing the stocks of the lessor companies with Roosevelt & Sons, which required the payment of two dollars a share for 8% stocks, one dollar and twenty-five cents a share for the 5% stocks, one dollar a share for the 4% stocks, and fifty cents a share for the 2% stocks (Paragraph (6), Exhibit D-44).

He said that in 1924 when the first merger agreement was made, "We were not protecting clients in 1924" (p. 282). Probably it had not occurred to him at that time that there was a chance for a committee to make money by volunteering to protect the interests of parties who had never solicited their protection. He was asked, "When do you say you took hold, protecting your clients?" and he replied, "After the plan of 1927 was announced" (p. 298).

It appears that on January 12th, 1927, two days after the present plan to merge the lessor companies was promulgated, Roosevelt & Sons bought one hundred shares of stock of The Paterson and Passaic Gas and Electric Company; on January 14th, they bought ten shares more; on January 18th, seven shares more; on May 5th, twenty-five shares; May 6th, thirteen shares; May 9th, two hundred forty-seven shares; and at or about the same date, ten shares more (p. 287).

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He was asked.

> "You purchased during the year 1927 all the shares of stock your company ever owned in the Hudson County Gas Company, didn't you?"

and replied:

> "I think that is correct." (*ib.*)

Mr. Dick also told of the purchase of stock of the Somerset, Union & Middlesex Lighting Company on January 17th and 18th, and February 10th, 1927.

The deposit agreement provides that:

> "The committee may in its absolute discretion charge its expenses to any one or more of the several stocks deposited hereunder, whether or not such expenses shall be incurred in connection with the lessor corporations to the stock of which such expenses or any part thereof shall be charged" (Paragraph (6), Exhibit D-44).

It also appears that Mr. Slater, an employee of Roosevelt & Sons, was sent out to solicit depositors, others were solicited by letters, notably one to John L. Kuser of Trenton. The deposit agreement also contains the following provision:

> "The following percentages of the amount by which the sum of money or the value as determined by the committee of any property received, receivable, recovered or offered in settlement, payment or exchange for any of the respective stocks of the lessor corporations exceeds the amount of cash heretofore offered therefor respectively, namely, in the case of the eight percent stock, ten percent of such excess over a hundred and forty two dollars per share ($142.00), in the case of each of the five percent stocks, twelve and a half percent of such excess over $90.00 per share; in the case of the four percent stock, twelve and a

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half percent of such excess over $72.00 per share, and in the case of the two percent stock, twenty percent of such excess over $36.00 per share" (Paragraph (6), Exhibit D-44).

VI.

There are important differences between leasehold estates and estates in fee held by a utility corporation.

It will be clear upon a moment's reflection that a utility corporation, constantly needing large amounts of new capital to provide for the necessities of the inhabitants of many large and rapidly growing municipalities could obtain such capital on more favorable terms if it had an indefeasible title in fee to the property constituting its plant and indispensable to the business it carries on, and to the service it renders. There is a substantial difference that careful investors understand and appreciate, between a lease for a long term, say nine hundred years, and a deed of conveyance of property expressly in fee. The title conveyed by a lease for nine hundred years, whatever it may be called, is defeasible for several reasons, none of which exists in the case of a conveyance expressly in fee. If we turn to any one of the leases in evidence in this case, it will be seen that they contain conditions and covenants which, if violated, would work a forfeiture and termination of the leasehold estate.

There are a number of important provisions in the leases in question that have been overlooked by the complainants, which indicate that the respective rights and obligations of the lessors and lessees are not plain and simple, and fully justify the views so ably expressed by Mr. Loomis, to the effect that

prudent counsel of large corporate investors are wary of loans based upon leaseholds of long terms.

We will call attention first to the lease of Essex and Hudson Gas Company to Public Service Corporation of New Jersey dated June 1, 1903, Exhibit D-18, and now held by Public Service Electric and Gas Company, as lessee. The FIFTH paragraph provides that:

> "The lessee covenants that it will, during the continuance of this lease, pay, satisfy, and discharge as the same shall accrue, all taxes, rates, imposts, duties, charges, licenses and assessments, general and special, ordinary and extraordinary, of every nature and description, which may be lawfully imposed or assessed during the continuance of this lease in any way upon the lessor with reference to its capital stock or property, contracts, rights, privileges or franchises hereby demised, or upon the rental herein reserved, or upon all dividends declared during the continuance of this lease upon the capital stock of the lessor; and also all sums of money which the lessor may now be or may hereafter become liable to pay by law, contract or otherwise, for the possession, enjoyment or perpetuation of any of its rights, powers, privileges or franchises; said payments to be made as the same become due, to the officer or other person entitled by law to receive the same; and in the event that said lessee shall fail to make any such payments when the same become due, the lessor may at any time thereafter make such payments and recover the amount of such payments, with interest thereon from the date thereof, from the lessee, without prejudice to any right secured to the lessor by this lease for breach of any covenants thereof; * * *."

In the same paragraph the lessee covenants to assume all the contracts and other obligations and to pay all the outstanding indebtedness of the lessor, shown by its books and records, except the

principal of the bonded indebtedness, and also covenants to assume and pay all the liabilities of the lessor for injuries or damages to persons or property, as the same shall be established, and to defend at its own expense all actions brought against the lessor, on account of claims for such liabilities.

The SIXTH paragraph provides that:

> "The lessee covenants that during the continuance of this lease, it will, in good faith, and to the best of its ability, operate at its own risk and expense, the lessor's gas works and plants, and furnish all apparatus and equipment in substitution for, and in addition to, that hereby demised, which may be necessary or proper to such operation, and will carry on, preserve and extend the business heretofore carried on by the lessor, in such manner as at all times to meet the demands of the public service, and to promote the interests of and preserve the franchises vested in the lessor; * * *."

The THIRTEENTH paragraph provides that:

> "The lessee shall cause the property, from time to time, subject to this lease, to be insured, at the expense of the lessee, against loss or damage by fire, in good and solvent companies in the manner and to the extent provided in said lease from the Newark Consolidated Gas Company, and to the extent that the property of gas companies is usually insured; such insurance to be taken in the name of the lessee, and the proceeds thereof, when received by the lessee, to be placed in a separate fund, and to be applied by the lessee solely to the rebuilding, replacement or repair of the property damaged or destroyed, whenever necessary to the operation of the leased property, or when not so necessary, then to other extensions, betterments and renewals of property subject to this lease; * * *. The lessee will at all times

comply with the insurance clause contained in any existing mortgage upon the demised property, or any renewal thereof."

The fourteenth paragraph provides for refunding the bonds outstanding upon the property of the lessor, and limits the amount of any new issue to the then present issue "except by consent of the parties hereto".

In the FIFTEENTH paragraph it is provided that:

"In case the lessee shall default in the payment of any sum required to be paid under this lease, or shall fail to perform any other covenant or condition contained herein, and such default shall continue for the space of thirty (30) days after notice and demand by the lessor to make such payment or perform such condition or covenant, the lessor shall have the right, at its option, to terminate this lease, and it may, upon notice of its election so to do, re-enter upon the demised premises, or any part thereof, in the name of the whole, and the same have and possess as of its former estate; together with all the additions and extensions made thereto, and franchises acquired in connection therewith, by the lessee, as contemplated herein, and may expel the lessee and those claiming under it therefrom, without prejudice to its right of action for payment or damages to which the lessor may be entitled under this lease for or on account of any such default or defaults."

We will quote a few additional covenants and conditions in the leases:

In the THIRD paragraph of the lease from the Somerset, Union and Middlesex Lighting Company to Public Service Corporation of New Jersey, it is provided:

"It is hereby understood and agreed that if at any time the title to the entire electric plant

> of the lessor in the City of Plainfield shall cease to remain vested in the lessor, then and in that event, the lessee shall, at any time within six months thereafter, have the option of submitting to arbitration the question of whether an equitable decrease should not be made in the amount of the rental to be paid hereunder; this question, and the amount of such decrease, if any, shall be determined by a board of three arbitrators, to be chosen * * *" in manner provided.

On page 10 of the same lease is a provision to the effect that in the event that:

> "There shall be an interference with the right to operate, maintain and extend any part of the plant leased or mentioned in the schedule, or should such right determine before the expiration of the term and not be extended upon the present terms, then the lessee shall, at any time within six months thereafter, at its option, submit to arbitration the question whether an equitable decrease should not be made in the amount of rental hereunder."

The TENTH paragraph provides that the lessee

> "Shall have the right to add to, remove, alter, change, improve, replace, abandon, or sell and convey any part of the property or franchises hereby demised, in accordance with its best judgment, from time to time, provided that it be not done in violation of any mortgage now existing thereon, or any renewal thereof; and provided that if the lessee shall sell or convey any property or franchise subject to any such mortgage or renewal, it shall apply the proceeds thereof only in the manner set forth in such mortgage, to the extent that shall be required thereby and any surplus or the proceeds of the sale of any property not subject to mortgage shall be applied solely for betterments to or extensions of the demised property," etc.

The FOURTEENTH paragraph provides a return and surrender to the lessor, at the termination of the lease of the demised premises

> "except as the same may have been sold, conveyed, altered, changed, abandoned, removed or replaced in accordance with the terms of this instrument. If this lease shall be terminated on account of default by the lessor, or for any cause not within the control of the lessee, the lessor shall upon such termination pay to the lessee the actual amount which it has expended in extensions and betterments to the plant of the lessor, over and above the amount provided for such expenditures from the proceeds of the bonds."

The same provision is found in the 14th clause of the lease to the Public Service Corporation from the Gas Light Company of the City of New Brunswick, and by later provision in that lease the terms lessor and lessee are extended to the assigns of either.

The lease of the Paterson and Passaic Company contains very indefinite and unsatisfactory terms with reference to the respective rights and obligations of the lessor and lessee, particularly as to expansion and extension. Similar indefinite provisions are found in the ninth and tenth clauses of the lease from the Essex and Hudson Company, and the 12th clause is important in that it provides for a refunding and reissue of bonds of Newark Consolidated Gas Co. outstanding and secured by a mortgage upon the property, at as low a rate as is practicable, and the lessee covenants to pay interest upon the bonds, which in no event shall be higher than 5 per cent. and that a new issue shall not be greater than the present issue, *except by the consent of the lessee.* There is no direct covenant to pay the principal of the bonds.

Again, in the contract between the Newark Consolidated Gas Company, the United Gas Improve-

ment Company and the Essex and Hudson Gas Company, dated December 1, 1898, Exhibit D-29, we find that the fourth clause permits the addition to, removal, alteration, change, improvement, repair, replacement or abandonment of any part of the plants, provided the same be not done in violation of any one of the mortgages securing any issue of bonds, and provided that the United Gas Improvement Company shall sell or dispose of any of the real or personal property then or thereafter owned by the Newark Consolidated Gas Company, which is subject to the mortgages alluded to, which the second party is authorized from time to time to do. The proceeds of any such sale shall be preserved by the United Gas Improvement Company as a separate fund, to be applied only to the maintenance, extension, improvement, alteration or change of said plants, mains, services, meters, machinery, apparatus, fixtures, &c., and the acquisition of new property, real and personal, *except when and as otherwise consented to by the Board of Directors of said Newark Consolidated Gas Company.*

The foregoing provisions have presented themselves upon a quite cursory examination of these documents, and indicate, we think, very plainly that there is a substantial basis for the idea (1) that conservative and criticial investors are, and will be slow to accept large issues based upon provisions as indefinite, variant and perhaps, even dangerous, as are the foregoing, and (2) that the remedies of the lessor at the expiration of the lease, either for forfeiture or by termination, are indefinite and difficult specifically to characterize.

We can imagine no more fruitful field for litigation than under existing conditions would be open and likely to arise between these lessors and the Electric and Gas Company as to what were legitimate expenses and betterments under the terms

of the leases and what were independent investments in which the lessor had no interest whatever. The claim of the complainants that upon forfeiture the lessors would have a right to an apportionment of the product of the large Kearny and Harrison plants that have been built and paid for and are owned by independent companies, is, we submit, meticulous and so indefinite that nothing but litigation could result from the assertion of any such idea. How vain, therefore, and unworthy of acceptance is the contention that the lessors, in the event of the termination of the leases, have a much more ready and effective remedy than the right of foreclosure that would arise in the event that the Electric and Gas Company should default on its bonds. It must be remembered that in none of the leases is there an obligation or covenant on the part of the lessee to pay the principal of the underlying bonds. The complainants are compelled to spell out such obligation from the provisions of the large refunding mortgage made by the Electric and Gas Company. This provision could only be availed of by bondholders and not by the lessor companies.

VII.

The terms of the refunding mortgage of the Electric and Gas Company.

The mortgage is Exhibit D-7 and the Court's attention is particularly directed to Section 4 (Vol. III, p. 469) to ascertain the careful provisions that are made and safeguards provided before any additional bonds may be issued. The Company is confined to the issuance of such additional bonds for the purpose of enabling it to satisfy obligations incurred or to reimburse itself for expenditures

made to satisfy obligations incurred for the purpose of acquiring and making additions or improvements thereinafter more fully defined for use by the company in connection with the primary purpose of its business, and for the acquiring of the shares of the lessor companies. Section 6 (Vol. III, p. 471) very briefly defines and limits exactly what shall be additions and improvements, and the most stringent provisions exist with reference to the concurrence in and certification by the Trustees of the nature and extent of such improvements before bonds to pay therefor are sanctioned. In a word, the greatest care in the drafting of the mortgage has been made to see to it that a *quid pro quo* and more shall exist for every additional bond thereafter to be issued, and there is no ground whatever for the claim that there is the slightest danger of an increase of the bonded indebtedness, except in the case of a much larger increase in the value of the property mortgaged. These provisions are all along the line of modern financing. They are such as are sanctioned by careful counsel of large investors, and our attention has yet to be called to a single instance where they have been either purposely or otherwise so abused as that an undue proportion of later issues has been permitted.

VIII.

The security of the stocks.

No one questions the security of the stocks of the lessor companies held by the complainants and others, and that under the terms of the leases, the holders thereof will for an indefinite period receive an income at the rate of either 8%, 5% or 4% varying with the different companies. It is not to be overlooked that at the time these leases were made

the rent fixed was very much less, and gradually increased until 1910, when the highest amount was attained. For example, in the Hudson County Gas, the rental fixed was from $210,000 minimum a year, to $840,000, or a percentage of from 2% to 8%; with the Essex and Hudson the rental fixed was from $227,500 minimum a year, to $520,000, or a percentage of from 3½% to 8%; in the Paterson and Passaic Gas and Electric Company, the rental fixed was from $75,000 minimum a year to $250,000, or a percentage of from 1½% to 5%; in the Somerset, Union and Middlesex Company, the rental fixed was from $10,500 minimum a year, to $42,000, or a percentage of 1% to 4%, and in the New Brunswick Light, Heat and Power Company, the rental fixed was from $8,000 minimum a year to $20,000, or a percentage of from 2% to 5%.

There is no evidence to enlighten us with reference to the market value of these underlying stocks, previous to 1913. Exhibit D-31, however, gives the high and low figures for every year from 1913 to 1927, and an examination of that Exhibit will show that never, during that period, has the value been anything like as high as since the promulgation of the plan, and most of the time it was very much lower.

The faith which the lessors and lessee respectively enjoyed in the future of those companies, as manifested by the ascending rate of rental provided, has been, as the complainants freely admit, more than justified. There is not the slightest chance, should the leases continue, that the rental will not be paid, nor is there anything in the case to justify a conclusion different from that which the complainants entertain and express, that the prospects for the growth of the electric and gas business are "limitless". Under the intelligent management of this Company a system of unification and co-operation between the different plants has been established,

and arrangements made with other companies within and without the limits of the state, by which not only is the cost of production greatly reduced, but economy has resulted and will hereafter further result in the capital investment, because of the co-ordination of super power connections with other companies, making further expansion of local plants to supply peak demands no longer necessary. The result has been a substantial decrease in electric rates, and the effectuation of the greatest economy by the location of the plants at tidewater. The consequence is that the past and the future are both secure, and the complainants unite with the defendants in the optimistic views they entertain with reference to the future of this business. Apparently Mr. Loomis did not exaggerate when he stated that the Electric and Gas Company occupies a unique position in this country.

Should misfortune come, and the Electric and Gas Company be unable to meet its obligations as they now exist, and as necessarily increasing to meet the increasing demands, then, so great would be the catastrophe that it would necessarily default in the rentals also. In other words, one cannot imagine a catastrophe so great as to reduce the net income of the Electric and Gas Company below a figure enabling it to pay the dividends on its preferred stock, without involving also so complete a collapse as that the rentals would also fail.

It is therefore useless to dwell at length upon the inherent security of the holders of these lessor company stocks. They certainly are on the ground floor, but the superstructure is so strong that the holders of preferred stock are practically just as secure. The value and income producing features of the property are so high that either one of the securities is absolutely beyond question, and any advantage arising from the seniority alone of the stocks is practically and really negligible. The

holder of a first mortgage of $50,000 upon the Prudential Building in Newark is practically no better off than the holder of a second mortgage thereon for the same amount. The equity in the value of the property, over and above both, is so great that a comparison between the two would be futile.

Nor is it true that the stock of the lessor companies is practically closed, any more than, as we have seen, is the underlying mortgage indebtedness. There is no prohibition in the leases against the increase of the stock of the lessor companies. On the other hand, the complainants, we think improperly, talked about the unlimited power to increase the stock of the Electric and Gas Company and characterized such a possibility as a "dilution" of the stock. Of course, no such increase can occur without an equivalent accretion in the assets of the company, and the use of the term "dilution" is therefore, quite improper.

IX.

The complainants are not entitled to more than the market value of their stock, nor to an offer for their stock in excess of its value in the honest opinion of the directors of the companies.

One of the reasons advanced by Mr. Dick for organizing the so-called protective committee was, as he said, "To unify the opposition".

> "Q. To what? A. To this merger. Q. On the ground that they were entirely satisfied to hold the stock? A. Exactly. Q. For no other purpose whatever? A. None whatsoever" (Vol. II, p. 302).

A party holding stock of a corporation who is satisfied with his investment, and is unwilling to

concur in a proposed merger unless he can get more than his stock is worth is in an untenable position. That fact certainly is no reason why the merger should be prevented.

All that the complainants are entitled to is an offer of the fair value of their stock, which they may accept or not. If it has a stable market value, that is its fair value. That offer was made both in the proposed merger agreement, and by the circular dated January 10, 1927. There was then and is now such a market value. The complainants evidently want more for their stock than its fair value determined by the only reliable test, namely, its value as determined by sales in a normal market. The complainants are seeking to exact what they say is the intrinsic value of their stock, not its market value. This is shown by the testimony of Mr. Dick and by the deposit agreement issued by the Roosevelt Committee. Stockholders who deposit their stock under that agreement put themselves entirely in the power of the committee. No witness on the part of the complainants has undertaken to tell us what the intrinsic value of their stock is, and how much, if any, it differs from the market value.

The position which the complainants seem to have taken is entirely inconsistent with the case of *United States* v. *Reading Co.,* 295 Fed., 551, and cases therein cited. In that case it appeared that the Central Railroad Company had been directed to sell its stock of the Lehigh and Wilkes-Barre Coal Company in pursuance of a decree of a Federal Court. There were five bids for the stock differing considerably on their face (p. 553). The Central Company accepted the bid of the so-called Reynolds Syndicate, and in subsequent litigation two questions arose, (1) whether the bid of the Reynolds Syndicate was in fact most advantageous for the Central Company to accept, and (2) whether the

directors of the Central Company had acted in good faith. There evidently was a contention that the intrinsic value of the stock was greater than its market value. In dealing with that question, the court said:

> "There are two kinds of value, intrinsic and market. The price realized was not the highest intrinsic value placed upon it by Mr. Richards. But there is often a wide difference between intrinsic value and market value. *So great is this difference that intrinsic value is not admissible in evidence as indicating what a commodity should sell for at a specified time under particular circumstances, if bona fide market value can be established. 'The intrinsic value of a stock is not only not an infallible guide to its price in the market, but is, in fact, no guide at all.'* Douglas *v.* Merceles, 25 N. J. Eq. 144; Trust & Savings Co. *v.* Home Lumber Co., 118 Mo. 447, 24 S. W. 129; Henry *v.* North American Railway Construction Co., 158 Fed. 79, 85 C. C. A. 409. This was a large sale, and at the time it was being negotiated the money market was high, taxation was increasing, strikes were imminent, and government control and regulation of coal mines were being agitated. These made the task of the directors difficult. The bids of these five large corporations, informed and enlightened by men of experience and the best experts obtainable, are remarkably close together. Fraud has not been proved, and the price was not so inadequate, if inadequate at all, as to be a badge of fraud. The directors acted in good faith and used their best judgment, and in the absence of fraud the court will not substitute its judgment for that of the directors. Venner *v.* Southern Pacific Co. (C. C. A.) 279 Fed. 832; Merriman *v.* National Zinc Corporation, 82 N. J. Eq. 493, 89 Atl. 764. These bids were evidence of fair market value, and, having accepted the bid which they considered the highest and most satisfactory, we cannot say that the price was inadequate" (pp. 554-5).

In dealing with the question of good faith, the court said:

> "Unless the sale was attended by collusion or corruption, neither previous nor present association invalidates it. * * *
>
> "The burden of establishing that the sale of the stock was not made in good faith, for its fair market value, to the highest bidder, was upon the petitioners, and in our opinion they have not borne that burden. We are satisfied that in the opinion of the committee and the directors of the Railroad Company they sold the property for its fair market value at the time and under the circumstances to the highest and most 'satisfactory' bidder" (pp. 557-8).

X.

The Opinion of the Vice-Chancellor.

The real ground of the Vice Chancellor's opinion is the fact that the preferred stock to be offered to the stockholders of the merging companies is not necessarily permanent stock, but by its terms redeemable after three years, at ten points above par. The view of the Vice Chancellor is that this redeemability of the stock of the complainants takes away their

> "right of permanent participation in the merged company relatively as they enjoy that right in the merging companies. The contingency of elimination after three years is unfair, and the right to exercise the option at that time given by the merger agreement is oppressive and inequitable * * * The complainants' companies are about to be absorbed, and the minority stockholders face the possibility, if not the probability of being cast into the discard."

No authority or precedent is cited by the Vice Chancellor in support of this view. It is, so far as we know, the first assertion of any such doctrine, and with deference, we contend that it finds no support in the language of the Merger Act, nor in the authorities both of the Court of Chancery and of this Court construing that act.

The statute authorizes the directors of corporations proposing to merge or consolidate, "to enter into a joint agreement prescribing the terms and conditions thereof, the mode of carrying the same into effect * * * and the manner of converting the capital stock of each of said merging or consolidating corporations into the stock or obligations of such new or consolidated corporation * * *" No limitation is made upon the character, either of the "stock or obligations" to be offered. The obligation may be, therefore, in the form of a bond, a promissory note or other promise to pay, and touching them, in order to be consistent, the Vice Chancellor, page 325, says:

> "Fairness in mergers dictates that when obligations are given in exchange for stocks of the character here involved, they at least should bear a corresponding permanent investment value—for instance as the perpetual interest bearing certificates of the Electric and Gas Company, or like obligations. Otherwise, a merger would be a simple medium for a compulsory sale, and that is not permissible."

We submit there is no foundation whatever for this view concerning the character of obligations that may be offered in exchange under the Act. Had the Legislature intended any such thing, it would, and could have said so. On the contrary, it used the general term "obligations" and under that right, countless mergers of large companies have been accomplished, where obligations, maturing within a fixed period, have been issued in exchange

for stock, without a suggestion as to legal impropriety.

The authority is to offer "the stock" of the new or consolidated company and the phraseology of the statute has remained the same since the present merging act was passed in 1893 (Chap. LXVII). At the time of its passage the present Section 18 of the Corporation Act provided that stock might be either common or preferred, and also could be made redeemable, and read "which preferred stock shall at no time exceed two-thirds of the actual capital paid in *and may be made subject to redemption at par at a fixed time to be expressed in the certificate thereof* * * *."

This clause remained in this form until Chapter 110 of the Laws of 1901, when it was changed to its present form, namely, "and such preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof at a price not less than par." It is our contention that the merger agreement under consideration in proposing a conversion of the capital stock of the merging companies into "the stock" of the merged or consolidated corporation, has statutory sanction for making the offered stock to be either preferred or common, having or not having voting powers, and such other restrictions or qualifications as shall be stated, *including the right to offer preferred stock redeemable after three years at a price not less than par.* We further contend that the words "at a price not less than par" bestow the right to make the stock redeemable at a price above par.

> "Every corporation organized under this Act shall have power to create two or more kinds of stock, in such classes with such designations, preferences and voting powers or restrictions or qualifications thereof as shall be stated and expressed in the certificate of incorporation, or any certificate of amendment thereof

> * * * and any such preferred stocks may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than par, and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon dividends at such rates and on such conditions as shall be stated * * * not exceeding eight per centum per annum."

It is our contention that the merger agreement in proposing a conversion of the capital stock of the merging companies into "the stock" of the merged or consolidated corporation, has statutory sanction for making the offered stock to be either preferred or common, having or not having voting powers, and such other restrictions or qualifications as shall be stated, including the right to offer preferred stock redeemable after three years, at a price not less than par. We further contend that the words "at a price not less than par" bestow the right to make the stock redeemable at a price above par. Vice-Chancellor Lane in *General Investment Company* v. *Bethlehem Steel Company,* 88 N. J. Equity 237, 241, expressly so held. As Vice Chancellor Lane subsequently pointed out in *Hitchcock* v. *American Pipe & Construction Company,* 89 N. J. Equity 440, 445, his opinion just alluded to was appealed from, and an application for a stay denied by this Court.

The question was also considered by this Court in *General Investment Company* v. *American Hide & Leather Company* (98 Eq. 326) where Chief Justice Gummere, speaking for the majority of this Court said, with reference to Section 18 and the language "preferred stock may, if desired, be made subject to redemption at any time after three years from the issue thereof, at a price not less than par":

> "The fixing of a minimum price connotes a maximum, the amount of which the Legislature designedly left to the discretion of the corporation."

The concurring opinion of Judge White in the same case says:

> "The only prohibition on the subject is that the corporation cannot make its preferred stock retirable at less than par. Inferentially, of course, this means that it may make it retirable at more than par, as well as at par."

Inasmuch as the Vice Chancellor (p. 327) correctly holds that the company by consolidation comes into existence as a new corporation, under the Corporation Act of 1896, the provisions of Section 18 above referred to, are applicable to the stock of the consolidated company.

The views and expressions of the Vice Chancellor entirely overlook the practical effect of a merger or consolidation. If permanent participation must be guaranteed, and securities offered in exchange must have as long life as the existing stock, the statute providing for merger and consolidation of corporations has not only, by a consistent and continued practice for over a quarter of a century been misconstrued and misapplied, but it would be practically inoperative, except possibly in a very few cases. There would be no hardship or injustice to the holders of the stocks of the lessor companies by following the law as it is written. It was so written when the stocks held by the complainants were issued, and it is still the law. It is part of the terms upon which the stocks of the complainants are held, and have always been held. *Allen* v. *Francisco,* 92 N. J. Equity 435; *In re Interborough Consolidated Corp.* 277 Federal 455. When the complainants acquired their stock, they took it subject to the provisions of the Merger Act, and if they deem the provisions for exchange in the merger agreement unsatisfactory, they have the resort to a condemnation of their stock, and an ascertainment of its value and payment therefor in cash.

As shown by Justice Depue in *American Pig Iron*

Storage Company v. *State Board of Assessors,* 56 N. J. Law 389, 392, a share of stock represents the right which its owner has in the management and profits of the corporation. There is no inherent right—certainly in review of the provisions of Section 18—to continue a stockholder for any given time. The charter may provide for an indeterminate or unlimited corporate life, but before the time for the expiration of the charter is reached, it may be either dissolved, its stock retired or its charter extended. By the express terms of the statute, preferred stock may be made redeemable at any time after three years from its issue.

We take issue with the contention of the Vice Chancellor that the large vote at the stockholders' meeting held on the 19th of December, when the proposed merger agreement was ratified, has no bearing. This vote was as follows:

Company	In Favor	Against	Not Voting
Essex & Hudson.....	75.18%	12.09%	12.71%
Hudson County.....	77.69%	10.69%	11.60%
Paterson & Passaic.....	83.48%	11.93%	4.60%
Somerset, Union & Middlesex.	77.35%	12.16%	10.47%

Why such vote was any less "independent" than was the fact in the *Bingham case,* N. J. Adv. Reps., Vol. V, p. 1111, or the *Berger case,* 63 N. J. Equity 809, we fail to see. The Vice Chancellor's mind seems to have retained the impression gained at the time he first read Section 74 of the original bill of complaint and granted the temporary restraint, that large portions of the stocks of these companies were at the time of the offer of January 10, 1927, owned either by the Public Service Corporation, or the Electric & Gas Company. This, as has already appeared (*supra,* 23) was entirely untrue. He evidently has been unable to rid himself of the impression gathered from the perusal of Section 123 of the bill, that the directors of the lessor companies are holders of large blocks of stock in either the Public

Service Corporation, or the Electric & Gas Company, and that their personal interest is in these two companies, rather than in the lessor companies. Section XVI of the Supplemental bill (Vol. I, p. 386) repeats this charge, and Section 126 of the original bill further alleges:

> "(*a*) the merger is not designed, in good faith, for the common benefit of the whole body of stockholders of the several lessor companies and for the benefit of said companies, but is designed by the lessee company to accomplish the acquisition by it of the valuable properties and franchises of the lessor companies on terms formulated by it and forced upon the lessor companies by its control and domination thereof;" Vol. I, page 40.

This, as we have shown, is entirely unsupported by the evidence, and is untrue, *supra,* pages 49, &c.

Again, the opposition is in size much less than appears on the face of the papers. The interest of Outwater & Wells and Roosevelt & Son is so small as to be negligible. The interest of the holders represented by the Protective Committee was not admitted until the 25th of October 1927, the effort being apparently to corral, by the enticement of the Deposit Agreement, as many as possible, and we deem it of some significance that a very large part of this class of stockholders acquired their stock after the promulgation of the Plan (Exhibit D 46, Vol. III, pp. 584, &c.).

Company	Total Shares Deposited
Hudson County Gas.....	4642
There were acquired before the 13th of March 1924, 886 shares, and since the 10th of January 1927,— 1665 shares.	
Paterson & Passaic.....	1216
Of which 1070 were acquired since January 10, 1927, and none before March, 1924.	

Company	Total Shares Deposited
Somerset, Union & Middlesex.....	981
520 shares acquired since the announcement of the Plan of January 1927; 141 shares acquired before March 13, 1924.	
Essex & Hudson.....	3103
Owned before March 13, 1924—626 shares; acquired after January 10, 1927—968.	

The facts in the matter of the Shanley estate are confined to the widow of Bernard M. Shanley and the widow of William C. Shanley, and two sons and three daughters of William C. Shanley, one of whom is an infant. The petition for the admission as party complainants of some of the Shanley devisees shows that the interest of William C. Shanley, deceased, a son of Bernard M. Shanley, the original holder and representative of one-third interest, was assigned during the lifetime of William C. Shanley to the Empire Trust Company of New York, as security for the payment of bonds issued by the J. R. Shanley Estate Company, a corporation holding by assignment the interest of J. R. Shanley, another son of Bernard M. Shanley. The Guaranty Trust Company of New York is trustee of the interest of the Estate of Bernard M. Shanley, now owned by J. R. Shanley Estate Company. Neither the Empire Trust Company nor The Guaranty Trust Company has manifested the slightest disapproval of the merger agreement.

The Vice-Chancellor's opinion entirely ignores the important sequence of evidence heretofore specifically alluded to which commenced with the announcement of the plan on March 13th, 1924, of which plan, as Mr. McCarter in his evidence states (Vol. II, p. 127, line 20), the proposed merger here in issue was an essential part, and ignores the fact that at that time Public Service Corporation and

Public Service Electric and Gas Company practically owned none of the stocks of the lessor companies and the purchases thereof which they subsequently made were based upon offers therefor which were so favorable that a large majority of the holders of the stock of the five merged companies were glad to avail themselves thereof. These sales were entirely voluntary on the part of the vendors, and realized prices higher than the stocks had theretofore ever enjoyed. There is not a word to indicate that the Public Service Corporation, or the Electric & Gas Company "put it over" the stockholders, as the Vice-Chancellor states (Vol. II, p. 320, line 27).

It is conceded that so long as the Electric & Gas Company continues in business, it will be required, in order to meet the constantly growing demands of an ever increasing consuming body, to borrow money, and anything that conduces to ease and economy in so doing, is necessarily for the interest of the consumer in keeping down rates. This public interest, the Vice Chancellor entirely ignores, but there is not one word in the case to indicate that any other motive than the foregoing prompted the directors of the Electric & Gas Company and their skillful advisors. The stock that is offered in exchange is a little in excess in principal amount and in income over that of, or that can be earned by, the holdings of the complainants. While it is true that the offered stock will be subordinate in lien to a large bond issue, yet Exhibit D 52 shows that the net earnings of the Electric & Gas Company are 4⅓ times the amount necessary to pay dividends on its 6% and 7% cumulative preferred stock, and that the electric business is just beginning to develop with surprising rapidity. From the same exhibit it appears that the Electric and Gas Company has an annual gross revenue of over $80,000,000. Its balance sheet shows current assets of slightly more than $27,000,000, as against current liabilities of

slightly less than $12,500,000. The company also has reserves of over $39,000,000, a surplus of over $13,000,000 and $114,700,000 of common stock junior to the 6% and 7% cumulative preferred stocks. *This demonstrates the absolute security and value of the 6% preferred stock offered by the merger agreement.*

It must be remembered, that a very large majority of intelligent stockholders—from 75% to 83%—recognized the force of this view by the vote they have taken, and they thereby indicated their realization that the stock of a company, whose management has an eye to the public weal, and is not regardless thereof, is in the long run a more stable, satisfactory and profitable investment than the stock of a utility company that is blind to these things; and the 11% or 12% who think differently so far from charging actual fraud admit that they in no wise intend to reflect upon the integrity of the gentlemen who formulated the plan for doing away with the leasehold interests. Indeed, counsel for Fidelity Union Trust Co. said in their brief in the lower court:

> "On the contrary, we join in all that the defendant's brief states in regard to their honesty of purpose and their business experience and ability."

We most earnestly contend, in view of this concession, that unless the proposed merger is *ultra vires,* the Court cannot interfere. See *Colby* v. *Equitable Trust Company,* hereinbefore cited, and *Schwab* v. *E. G. Potter Co.,* 194 New York 409, 87 N. E. Reporter 670 (*supra,* p. 38).

The attitude of the complainants, ignores all these matters and contents itself with the selfish view that either for sentimental or other reasons, the holders are entirely satisfied with the *status quo* and do not desire a change. Or as the Vice Chancellor puts it (Vol. II, p. 321, line 38), they do not care to part with their holdings.

The Vice Chancellor, in his opinion hereto annexed, on the application of some of the Shanley devisees, took the position that a Trustee of an Estate has no right to exercise its judgment in matters of this kind, but must blindly follow the wishes of the beneficiaries, regardless of their age, business experience or judgment. Now, we contend all these sentimental and selfish ideas should be eliminated. The legal rule is that the courts in applying the rule of fairness and equitableness inquire properly as to whether the terms of the merger, broadly considered, and with due regard to the public interest, under all the circumstances, offer to the stockholders a fair equivalent for their stock. On the other hand, they recognize the fact that few people think alike. Some are timid, eccentric, ignorant or sentimental, and hence the Court comprehensively studies a plan of this kind to find any evidence of fraud, or unfairness and inequitableness that amounts to fraud. Obviously as was held in the *Bingham case,* the stockholder cannot insist upon having an identical security, nor can he insist upon having a security that possesses every characteristic of the one which by the merger he will surrender. Some room for difference of opinion must exist, or else there would be no need for the provision authorizing a condemnation of the stock. The Court in deciding a question of law or equity cannot be influenced by personal idiosyncrasies of stockholders.

XI.

Conclusion.

This is a matter of importance, and it is affected with a large public interest. Indeed, the interest of more than four-fifths of the inhabitants of this state will be affected by the outcome of this litigation, not only at present and in the near future, but for many years to come. More than six years

ago the gentlemen responsible for the management and development of the large electric and gas properties in this state foresaw the necessity of making adequate provision to raise capital so as to provide for the rapid increase in population and growth of industries between the Hudson and the Delaware. The capital requirements amount to as much as $50,000,000 a year. They studied the problem themselves, and solicited and obtained the assistance of the most competent financial advisors in the country, who made an independent and exhaustive study of the situation. They saw and realized the importance of uniting the electric and gas companies and placing their financial structure on a foundation of bed rock. The outcome of their study was a plan which has been partly carried out with gratifying results. Eleven of the twenty separate electric and gas companies, including nine lessor companies, were united with the Electric and Gas Company in 1924. Enormous amounts of new capital have been obtained and expended in making extensions of the property of the Electric and Gas Company, and rates have been reduced. Nine electric and gas lessor companies still remain outside. It is the opinion of the officials of the companies and of their financial advisors that additional benefits will be derived by merging the other lessor companies still outstanding with the Electric and Gas Company. The letter sent by the Roosevelt Committee to John L. Kuser under date of September 22, 1927, Exhibit D-54, concurs in that opinion as follows:

> "In view of the fact that this merger may be considered a constructive thing from several points of view, our people do not wish to find themselves in the position of obstructionists or blackmailers, and if a merger could be arranged on terms that were liberal and fair to them, we would not be inclined to stand in the way of such a plan."

Their position and purpose could be stated in fewer words. It is proposed now to merge five of the lessor companies, and the owners of more than two-thirds of their stock are willing to do so.

It appears to be the opinion of the complainants that what they consider their interests, rather than their legal rights, should be the controlling influence in the decision of this case. They do not seem to realize that they are holders of stock in public utility corporations and that their stock, as well as the corporations themselves, is subject to control in the public interest. We concede, of course, that the complainants are entitled to an offer of the fair value, that is, the normal market price of their stock before they can be required to resort to condemnation proceedings, and they have had such an offer. The market quotations published by the complainants themselves prove it. They do not deny it in their testimony. The highest financial authorities, after exhaustive study, declare that the offer set forth in the proposed merger agreement is fair. The good faith of those who made the offer is not questioned. The courts agree without dissent that under such circumstances equity should let the law take its course. If the complainants are dissatisfied with the proposed terms for exchanging their stock they can obtain all that it is worth by the method provided by law.

FRANK BERGEN,
Solicitor for and of counsel
with defendants.

ROBERT H. MCCARTER,
EDMUND W. WAKELEE,
WLLIAM H. SPEER,
of Counsel.

January, 1929.

Appendix

IN CHANCERY OF NEW JERSEY

Between
ESTATE OF BERNARD SHANLEY,
Complainant,
and
FIDELITY UNION TRUST COMPANY,
Defendant.

Opinion.

For complainant, MR. THOMAS G. HAIGHT
For defendant, MR. LOUIS HOOD

Bernard Shanley, deceased, left his estate in trust for his widow and three children during the widow's lifetime, the principal to be divided among the children at her death. The Fidelity Union Trust Company is the substituted trustee, appointed by this court. Two millions and more dollars of the securities of the estate are in capital stock of gas companies, leased to the Public Service Co., upon rentals that assure substantial dividends. The Public Service Co. holds a controlling interest of the capital stock of most of these companies and intends to merge them into the Public Service Co., obviously, to get rid of the leases, and to that end has offered to the stockholders of the gas companies, in exchange for their shares, certain securities of the Public Service Co., or to purchase them outright at figures fixed by the Public Service Co. The Fidelity Union Trust Co., the trustee, threatens to sell the Shanley stock. More than two-thirds in interest of the Shanley Estate object. They do not want their securities disturbed—at all events, not at the prices

offered. Some of the directors of the Fidelity Union Trust Co., who favor the sale, are also directors of the Public Service Co. The Trust Company is its financial agent. Upon the filing of the bill a restraint issued and the Trust Company was ordered to show cause why it should not be restrained until final hearing from making the sale. After argument, Vice Chancellor Backes stated:

The Court: Our trustee is not possessed of an independent and impartial judgment as to the advisability of selling the stock and, if it be advisable, at what price. A half dozen or more members of its board of directors are directors of the Public Service Co. They represent both buyer and seller. As stockholders of the Public Service Co. they have a pecuniary interest in the sale. It may be slight, but that is unimportant. They are our trustees and the law demands of trustees the utmost fidelity. It does not tolerate personal dealing with the trust estate nor permit the making of a penny's profit. The rule is grounded in sound morals and is reflected in the supplicating words of the Lord's prayer "Lead us not into temptation." This is not an imputation upon the motives of the directorate of our trustee, but a simple statement of an elemental doctrine of the obligations of trustees. Further, these directors of our trustee owe a corresponding duty of loyalty to the Public Service Co., of which they are also trustees—directors are trustees. A trustee cannot serve two masters, with sharply conflicting interests, equally well. It has been tried before. It cannot be done. A simple illustration: The directors of our trustee are in conscience bound to consider only the welfare of our wards and strive for the best price obtainable; as directors of the Public Service Co. their duty is no less to secure the most favorable terms. The true balance is infinite. Trustees are not privileged to experiment with it. In the dilemma in which it found itself the

course open to our trustee was to apply to the court for instructions, not to compel our wards to appeal for protection.

Now as to the merits: Our wards complain that the sale of their stock and the conversion into money, even though the price be fair, will result in great pecuniary loss to them through the cost of reinvestment; the profit income tax to be paid to the Federal Government, and the likely depreciation in income on the new investments; and also that the character of their securities will suffer in the reinvestment. Our trustee answers, that the market for the stock is presently favorable, the offer is advantageous, and that it is better that our wards' securities be diversified; that it is unwise to carry too many eggs in the same basket. To this our wards reply that they do not want a market; that their securities were the investments of their testator, are gilt edge and difficult to duplicate; that they are content and want them retained. Our trustee should not be unmindful that the securities belong to our wards, not to our trustee, and that their wish should be our trustee's command. And our trustee is advised that is the court's command until the final hearing.

Our trustee expresses fear of liability to our infant wards unless the bid be accepted, and offers to refrain from selling if indemnified. Our trustee, apparently, is not alarmed over liability for selling the stock against the protest of a large majority of our wards, and without indemnity against personal loss. The stand is inconsistent. The trustee may shift the responsibility to the court by asking instructions.

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New Jersey Court of Errors and Appeals

Between

R. Irving Outwater, *et al.*,
Complainants-Appellees,

and

Public Service Corporation of
New Jersey, *et al.*,
Defendants-Appellants.

On Appeal
from Court of
Chancery.

BRIEF ON BEHALF OF FIDELITY UNION TRUST COMPANY AS SUBSTITUTED TRUSTEE OF THE ESTATE OF BERNARD M. SHANLEY, DECEASED, AN INTERVENING COMPLAINANT.

Preliminary Statement.

For convenience the five lessor companies sought to be merged into the Public Service Electric & Gas Company will be referred to as the "Group 1 Companies"; the Public Service Electric & Gas Company as the "Electric & Gas Company"; the lessor companies not now proposed to be merged as the "Group 2 Companies"; the United Electric Company as the "United Company"; and the Public Service Corporation as "Public Service".

The outcome of the suit is of importance to the beneficiaries of the Shanley Estate as its holding of shares in four of the five Group 1 Companies is a very substantial one. It owns 2,361, or about 3.6% of the 65,000 authorized and outstanding shares of the Essex & Hudson Gas Company,

4,370, or about 4.2% of the 105,000 authorized and outstanding shares of the Hudson County Gas Company,

3,279, or about 6.5% of the 50,000 authorized and outstanding shares of the Paterson & Passaic Gas & Electric Company,

188, or about 1.8% of the 10,500 authorized and outstanding shares of the Somerset, Union and Middlesex Lighting Company.

It owns no shares in the New Brunswick Light, Heat & Power Company. All of such shares are of the par value of $100. The total par value of those held by the Estate is $1,019,800 and the market price thereof at the time of the institution of this suit was approximately $1,308,113. The annual dividends on these shares alone from the stipulated rentals payable under the leases of the Group 1 Companies aggregate $70,995.

Counsel for the other appellees (the original and other intervening complainants) will doubtless reply to the attack in appellants' brief as to the alleged improper motives of their clients in attempting to enjoin the proposed merger. No such challenge is or could properly be made as to either the standing or motive of the Trustee for the Shanley Estate as all of its substantial stock holdings in four of the five Group 1 Companies were acquired in good faith many years before the merger plan was initiated.

Nor is there any warrant for appellants' contention that prior to the institution of this suit the Trustee of the Shanley Estate regarded the proposed merger as equitable and fair to the minority stockholders in the Group 1 Companies. The facts as to this are as follows:

In January, 1927, a voluntary offer was made by Public Service and the Electric and Gas Company to all such minority stockholders to give them in exchange for their holdings in the Group

1 Companies at their option (1) shares in said 6% redeemable preferred stock of the Electric & Gas Company, or (2) cash, or (3) common stock of Public Service (Case, Vol. 1, p. 153). A very large percentage of the total assets of the trust consisted of shares in the Group 1 Companies. This, coupled with the fact that large blocks of such shares were then difficult of being readily marketed except at a substantial sacrifice, (Case, Vol. II., pp. 137, 169-170, 266) caused the Trustee to regard this offer favorably (Case, Vol. II, p. 133). Some of the Estate's beneficiaries were opposed to this course and enjoined the Trustee from accepting any of the three options contained in such offer by a suit in equity for that purpose. This proceeding is referred to in the record in this suit as "the Shanley suit" and the opinion therein is appended to appellants' brief. By referring thereto it will readily be seen that the Chancery Court's view was merely that as several of the members of the Trustee's Board of Directors were also Directors of Public Service the Trustee was not in an impartial position to decide whether such offer should be accepted or rejected, and that consequently it should be enjoined from accepting the same, and authorized to seek that Court's instructions in the premises. Before this could be done the offer expired. Public Service having by means of the acceptance of such offer by other stockholders of the Group 1 Companies acquired control thereof, a merger agreement identical except as to date with the one now under review was proposed and this suit to enjoin its consummation was promptly instituted. The sole security offered by such merger agreement for shares in the Group 1 Companies were shares of the 6% redeemable preferred stock of the Electric & Gas Company. In conformity with the principle of the decision in "the Shanley suit" the Trustee there-

upon sought the directions of the Court of Chancery in the premises and was directed to intervene in this suit. Appellants are in error in stating as they do at page 7 of their brief that the Trustee "thought favorably of the offer to exchange the stocks so held in trust for said 6% preferred stock", and again at page 28 thereof that the judgment of the officers of the Fidelity Company "is favorable to the merger". Their willingness to accept such optional offer in nowise so indicates, and, in fact, they never considered accepting other than the cash option contained in that offer.

Nor does the record bear out the intimation carried in appellants' brief that the merger agreement under review is one which had been proposed years before it was presented and never objected to prior to the institution of this suit, and one which the appellants therefore had reason to believe the minority stockholders would accept. The "plan" adopted by Public Service in March, 1924, and then published and mailed to the stockholders contemplated only "an offer to the stockholders of certain other gas and electric companies leased to Corporation of the opportunity to exchange their stocks for other securities, so that, eventually, these Companies also may be consolidated with Public Service Electric and Gas Company". The plan further states that "these consolidations are not an essential part of the plan, however, as the leases in question extend in practically all cases for the terms upwards of 900 years."

This offer came in January, 1927, in the form just stated. It was withdrawn March 12, 1927. The first merger agreement was dated April 26, 1927, and this suit instituted on June 16, 1927.

In view of the full review of facts contained in the brief on behalf of the appellants and which will no doubt be included in the brief on behalf

of the other appellees, no general restatement thereof is necessary herein. We shall therefore limit this brief, as we did in the Court below, to a review of the principles of law controlling the case and a discussion of their application to its outstanding facts.

This we believe will be sufficient to convince the Court that the Appellants have not successfully borne the burden of showing that the terms of the merger agreement are fair and equitable to the minority stockholders in the Group 1 Companies, which burden under the circumstances surrounding the making of the proposed merger is clearly on the Appellants.

THE PRINCIPLES OF LAW INVOLVED.

A.

Notwithstanding the statute authorizing the merger of corporations, including its provisions for appraising and paying the value of the shares of dissentient stockholders, the Court of Chancery had the power to and properly did enjoin the proposed merger as unfair and inequitable to the appellees.

The appellants rely solely upon sections 104 to 109 of the General Corporation Act as authority for the proposed merger. The provisions of these sections are well known to the Court and need not here be reviewed.

In *Colgate* v. *United States Leather Company*, 73 N. J. Eq. 72, 98, Vice-Chancellor Emery said:

> "My conclusion is, that the directors are bound, under the Consolidation Act, to pro-

> pose an agreement which does not unfairly or inequitably impair the legal or equitable right of any (preferred) stockholder, and that such stockholder cannot be required to exercise any option of surrendering his stock on compensation, until he has had an opportunity of joining in the consolidation 'under terms and conditions' which, as to him, are legal and equitable. Any other construction or application of this Act relating to proceedings for condemnation would leave it altogether in the power of the statutory majority of the stockholders to compel the sale of the stock of dissentient stockholders by the device of imposing terms so illegal or inequitable that consent would be neither contemplated nor given. For the same reason no effect can be given to the offer, by stipulation filed in the cases and made by the answers, to give the same compensation as on liquidation."

The reversal of the decree in the *Colgate* case was upon a ground in nowise affecting the correctness of the principle thus enunciated by the learned Vice-Chancellor; 75 N. J. Eq. 229.

The same test was applied in the first of the *United Shoe Machinery Company* merger cases, 84 N. J. Eq. 276, affirmed on opinion below, 85 N. J. Eq. 209, and the *American Malt Corporation* merger case, 2 Public Utility Reports, 401, affirmed by the Supreme Court and this Court, 86 N. J. L. 668.

In the subsequent *United Shoe Machinery Company* merger case, Vice-Chancellor Lane, in his unreported opinion, said:

> "The Courts, however, have held, that, notwithstanding the statutory provision, and the fact that if a stockholder is deprived of his right by improper action of his directors, there may be a suit at law, and the privilege given to him by the Legislature of having his stock appraised, equity will intervene and

> prevent a merger if the scheme proposed appears to the Court to be unfair."
>
> *Brugler* v. *United Shoe Machinery Co.* (1917).

The same rule was tersely stated by Vice-Chancellor Backes in his recent decision in *Bingham* v. *Savings Investment & Trust Co.*, 138 Atl. Rep. 659 (not officially reported), in these words:

> "The plan must be free from unfairness before the complainants can be put to their election of joining their associates or taking compensation in lieu."

Unanimously affirmed, VI N. J. Adv. Rep. 368.

That the Court of Chancery can and should enjoin a merger that is unfair or inequitable to a stockholder affected thereby is admitted by appellants at page 32 of their brief where they include this last quotation. The beneficiaries of the Shanley Estate, being wards of the Court, it will for their protection undoubtedly require abundant proof that the merger plan under review will work no injury to them.

B.

The community of interest of the interlocking directorates, and the interlocking interests of the majority stockholders in the companies proposed to be merged, impose upon the appellants the burden of demonstrating that the merger plan is fair and equitable to the appellees as minority stockholders.

It is firmly established in this State that where dealings between two or more corporations having common directors are involved, or where the majority stockholders seek to impose their will

upon the minority, any interested stockholder has the right to subject the transaction to the scrutiny of a Court of Equity and place upon the directors or stockholders concerned the burden of justifying the transaction. *Ellerman* v. *Chicago Junction Railways Co.*, 49 N. J. Eq. 217, 232; *Robotham* v. *Prudential Insurance Co.*, 64 N. J. Eq. 673, 709; *United States Steel Corp.* v. *Hodge*, 64 N. J. Eq. 807, 817; *Lillard* v. *The Oil, Paint & Drug Co.*, 70 N. J. Eq. 197; *Colgate* v. *United States Leather Co.*, 73 N. J. Eq. 72, 87; *Hyams* v. *Old Dominion Copper Mining & Smelting Co.*, 82 N. J. Eq. 507, 515.

A common statement of this uniform rule is to the effect that the burden is on the majority stockholders and the interlocking directors to show that the transaction is in all respects a fair and reasonable one as respects the minority stockholders. *Stebbins* v. *Michigan Wheelbarrow & Truck Co.*, 212 Fed. 19, 27; *Ross* v. *Quinnesec Iron Mining Co.*, 227 Fed. 337, 343.

In *Geddes* v. *Anaconda Mining Co.*, 254 U. S. 590, 599 (1920), the same rule was stated in these words:

> "The relation of directors to corporations is of such a fiduciary nature that transactions between boards having common members are regarded as jealously by the law as are personal dealings between a director and his corporation, and where the fairness of such transactions is challenged the burden is upon those who would maintain them to show their entire fairness and where a sale is involved the full adequacy of the consideration. Especially is this true where a common director is dominating in influence or in character. This court has been consistently emphatic in the application of this rule, which, it has declared, is founded in soundest morality, and we now add in the soundest business policy."

This salutary principle was applied by Vice-Chancellor Backes with the full approval of this Court in *Bingham* v. *Savings Investment & Trust Co., supra,* where he said:

> "The objection that the merger is unfair and inequitable calls for careful judicial scrutiny of the plan, in view of the interests in the merger of interlocking directorates, and of interlocking interests of stockholders of the three concerns."

As the appellants' brief admits at page 32 thereof, "The rule has been stated very often before and is entirely settled". Again at page 47 thereof it is said: "We do not deny that the fact of interlocking directors *per se* casts the burden of proof on the defendants to show that the agreement is fair and equitable".

The pleadings and proofs make it clear that at the time of the adoption of the merger agreement Public Service through controlling stock ownership dominated not only the Electric & Gas Company but each of the Group 1 Companies proposed to be merged into it. The fact, emphasized in appellants' brief, that a year or so before the merger agreement was adopted, and prior to the exchange of securities effected under its voluntary offer of January 10, 1927, Public Service and its directors owned or controlled but a small stock interest in the Group 1 Companies is entirely irrelevant. The completeness of such control at the time of action upon the merger agreement is evidenced by the two following tables of interlocking directorates and stock ownerships respectively:

Interlocking Directorates.

Public Service Corporation	*Public Service Elec. & Gas Co.*	*Essex & Hudson Gas Co.*	*Hudson County Gas Co.*	*Paterson & Passaic Gas & Elec. Co.*	*Somerset Union & Middlesex Lighting Co.*	*New Brunswick Light H. & P. Co.*	*Holds Office in Public Service Elec. & Gas Co.*
rid Baird, Jr.							
nk Bergen							
nuel T. Bodine	Samuel T. Bodine	Samuel T. Bodine	Samuel T. Bodine	Samuel T. Bodine		Samuel T. Bodine	
mas S. Gates	Thomas S. Gates	Thomas S. Gates	Thomas S. Gates	Thomas S. Gates		Thomas S. Gates	
Horace Harding							
. C. Heppenheimer							
ret A. Hobart							
hony R. Kuser	Anthony R. Kuser	Anthony R. Kuser	Anthony R. Kuser	Anthony R. Kuser		Anthony R. Kuser	
red L. Loomis	Alfred L. Loomis						
mas N. McCarter	Thomas N. McCarter	Thomas N. McCarter	Thomas N. McCarter	Thomas N. McCarter		Thomas N. McCarter	President
l H. McCarter	Uzal H. McCarter	Uzal H. McCarter	Uzal H. McCarter	Uzal H. McCarter		Uzal H. McCarter	
liam Scheerer							
liam H. Speer							
hur W. Thompson	Arthur W. Thompson	Arthur W. Thompson	Arthur W. Thompson	Arthur W. Thompson		Arthur W. Thompson	
l Thompson							
don K. Thorne	Landon K. Thorne						
mund W. Wakelee	Edmund W. Wakelee	Edmund W. Wakelee	Edmund W. Wakelee	Edmund W. Wakelee		Edmund W. Wakelee	Vice-President
cy S. Young	Percy S. Young	Percy S. Young	Percy S. Young	Percy S. Young	Percy S. Young	Percy S. Young	Vice-President
		Charles M. Breder	Charles M. Breder	Charles M. Breder			Secretary
					Augustus J. Brunson		
					Harry B. MacDonald		
					William H. Pope		
					T. W. VanMiddlesworth		Treasurer

STOCK VOTE ON MERGER AGREEMENT.

	Essex & Hudson Gas Co.	*Hudson County Gas Co.*	*Paterson & Passaic Gas & E. Co.*	*Somerset, Union & Middlesex Lighting Co.*
IN FAVOR				
(No. of Shares)				
Public Service	48,287	80,625	41,245	7,932
Others	589	964	484	191
Total	48,876	81,589	41,729	8,123
AGAINST				
Complainants	5,604	9,282	4,630	1,257
Others	2,257	1,947	1,337	20
Total	7,861	11,229	5,967	1,277
NOT VOTING	8,263	12,182	2,304	1,100
Total outstanding stock	65,000	105,000	50,000	10,500

This latter table shows that in the case of the four Group 1 Companies in which this appellee is a stockholder, not less than 97.6% of the total number of votes of the stockholders of each of such companies in favor of the merger agreement were cast by the Public Service and the Electric & Gas Company, and that they also then similarly voted upwards of 74% of the total outstanding stock of each of these four Group 1 Companies.

This vote was taken December 19, 1927 (2nd Supp. to Amended Bill, Case Vol. I, p. 436). Exhibit D-41 (Case, Vol. III, p. 533) shows that six days prior thereto the ownership of the Public Service Company and the Electric & Gas Company in the shares of the five Group 1 Companies was as follows: New Brunswick Light, Heat & Power Company, 68.17%, Essex & Hudson Gas Company, 74.74%; Somerset Union & Middlesex Lighting Company, 75.54%, Hudson County Gas Company, 77.73% and Paterson & Passaic Gas & Electric Company, 82.49%. As the owner of all of the common stock of the Electric & Gas Company except shares thereof held to qualify direc-

tors, this being the only class of stock having voting powers (Ex. 2 attached to Bill of Complaint, Case Vol. I, p. 86), the Public Service Company voted practically all of this stock for the merger (Second Supplement to Amended Bill of Complaint, Case Vol. I, p. 438).

The shares of the four Group 1 Companies in which this appellee is interested that were not voted by Public Service or the Electric & Gas Company in favor of the plan were voted as follows:

Essex & Hudson Gas Company:
In favor, 589; against, 7861.

Hudson County Gas Company:
In favor, 964; against, 11,229.

Paterson & Passaic Gas & Electric Company:
In favor, 484; against, 5,967.

Somerset Union & Middlesex Lighting Company:

In favor, 191; against, 1,277.

Leaving out of the picture the appellees' shares, these other votes were as follows:

Essex & Hudson Gas Company:
In favor, 589; against, 2257.

Hudson County Gas Company:
In favor, 964; against, 1947.

Paterson & Passaic Gas & Light Company:
In favor, 484; against, 1337.

Somerset Union & Middlesex Lighting Company:
In favor, 191; against, 20.

(Case, Vol. I, p. 438.)

It will be seen that the situation presented is entirely unlike that existing in *Berger* v. *United*

States Steel Co., 63 N. J. E. 809, and the *Bingham* case, *supra*, in the former of which this Court said, at page 812:

> "In presence of the fact that over ninety-nine per cent. of all the stockholders in attendance at the meeting, personally or by proxy, voted in favor of the resolution, it cannot reasonably be expected that the Court is impressed with the belief that the complainant will suffer any substantial injury by the consummation of the scheme."

In those and other like familiar cases, the great body of independent stockholders favored and had voted for the transaction and only a negligible percentage both in number and amount opposed its consummation. Here a large proportion in interest of the independent stockholders—those who will be irreparably injured if the appellants' plan is unfair—both inclusive and exclusive of the appellees are opposed to the present merger agreement and have voted against it. This uncommon situation places an unusual burden on the appellants to demonstrate that the transaction, which except for the powers of a Court of Equity they would absolutely control, will work no injustice to those who challenge its fairness as to them.

Admittedly the sole purpose of the merger is to do away with the leases of the properties and franchises of the Group 1 Companies originally made to Public Service and since transferred to and assumed by its most important subsidiary, the Electric & Gas Company. Public Service desires to have these leasehold interests replaced by a fee ownership in that subsidiary because this would simplify its capital structure and consequently benefit it in the financing of its future capital requirements. In formulating the terms of the merger and voting for it Public Service

stood in the position of both seller and buyer. Its interest was of necessity adverse to that of the minority stockholders in the Group 1 Companies who did not want the leases terminated.

Unless, therefore, the appellants have succeeded in demonstrating that their plan is fair and equitable to these minority stockholders, the decree below should be affirmed.

C.

The appellees' rights are in no wise affected by the Public Utility Board's approval of the merger agreement.

In the merger suit of *American Malt Corp.* v. *Board of Public Utility Commissioners,* 86 N. J. L. 668, Mr. Justice Swayze said with the unanimous concurrence of this Court:

> "Their approval would not prevent action by the Court of Chancery", it being a "mere step in administrative procedure which is subject to control by the Courts."

The reason given for a similar holding by the Supreme Court of New York in *Westchester Fire Insurance Co.* v. *Syracuse, etc., R. R. Co.,* 161 N. Y. S. 759, 764 (reversed on another point, 183 N. Y. S. 602), was that "the Public Service Commission is constituted not to protect the rights of stockholders as between themselves but to protect the rights of the public". At most, such action by the Utility Board can be regarded only as an expression of its opinion that the proposed merger would not be inimical to the public interest.

D.

No showing that may have been made by the appellants that the proposed merger is in the public interest authorizes the "condemnation" of the appellees' shares in the Group 1 Companies.

It cannot properly be denied that a State which has conferred upon a corporation franchises to be used in the public interest, may not also confer upon it the right to acquire through the exercise of power of eminent domain shares in another corporation where such acquisition is in the public interest. *Offield* v. *N. Y., N. H. and Hartford Railroad Co.,* 203 U. S. 372, a case cited by appellants, was a direct proceeding for such purpose in which this power was upheld. This is also the view expressed, but only by way of dictum, by this Court in *Black* v. *Delaware & Raritan Canal Co.,* 24 N. J. Eq. 455, 468.

It is fundamental law, however, that such a power can only be conferred by express and unequivocal legislation, and is never to be implied. *Lewis on Eminent Domain* (3rd Ed.), Vol. 1, p. 679, Sec. 371; *Corpus Juris,* Vol. 20, p. 533, Sec. 23; *Central Railroad Co. v. Hudson Terminal Railway Co.,* 46 N. J. L. 289, 293; *Board of Education of Ringwood* v. *North Jersey District Water Supply Commission* (N. J. Sup. Ct. 1926), 132 Atl. 83, 84.

In our opinion, Sections 104 to 109 of the Corporation Act, containing as they do, the only statutory provisions under which the merger is sought to be effected, is clearly not such legislation. This is indicated by the fact that both the power to merge and the procedure to be adopted are identical in the case of corporations having "the right

to exercise any franchise for public use", and in the case of "corporations which do not have the right to exercise any franchise for public use". In the former instance, it is Section 108, and in the latter Section 108(a) which gives to a dissenting stockholder the right to apply to the Circuit Court for the appointment of appraisers to appraise the full market value of his stock and to obtain payment of such appraised value. These sections merely confer upon every stockholder a remedy that is cumulative to his prior and primary one of preventing the merger unless its terms are in all respects fair and equitable to him.

The distinction between a condemnation statute and one of the character under which the merger agreement in question has been put forward, is clearly pointed out in *Noyes on Intercorporate Relations* (2nd Ed.), at p. 98, where this able author said:

> "The legislature has power to authorize the consolidation of railroad and other *quasi-public* corporations, without the unanimous consent of their stockholders, when it makes provision for appraising and paying for the stock of dissenting stockholders. This power is entirely unaffected by the constitutional prohibition against impairing the obligations of contracts and is based upon the sovereign power of eminent domain. Corporate shares, as well as all other property, are subject to the paramount necessities of the State for the promotion of public interests. Accordingly, in exceptional instances, statutes have been passed, for the promotion of railroad and similar consolidations, providing, under varying conditions, that the stock of dissenting minority stockholders may be appraised and condemned, and such statutes have been held to be constitutional. Statutes of this character are, however, strictly construed, and it has been held that authority to condemn the shares of dissentient stockholders for the pur-

> poses of consolidation does not warrant the taking of such shares for the purposes of a lease.
>
> "These statutes must be distinguished from the provisions in modern consolidation acts authorizing as a condition of consolidation an appraisal of, and payment for, the stock of objecting stockholders. It is not the purpose of these provisions to authorize the condemnation of stock in order to quiet opposition. Consolidation statutes containing them do not require unanimous stockholders' consent nor can such provisions be made available to obtain the required consent. Their design is to afford the dissenting stockholder an additional remedy,—to give him the privilege of selling out instead of embarking in the new enterprise."

The same distinction is made in the unanimous decision of this Court in *New Jersey & Hudson River Railway Co.* v. *American Electrical Works,* 82 N. J. L. 391. There a corporate stockholder in one of two street railway companies that were sought to be merged applied to the Circuit Court for the appointment of appraisers to appraise the market value of its shares. The company in which such petitioner held such shares certioraried the appointing order upon the ground that the statutory requirements had not been complied with. The Supreme Court affirmed the order of the Circuit Court, and its judgment was on appeal affirmed. In his opinion, speaking for this Court, Mr. Justice Pitney said, at pages 396 and 398:

> "It seems to us improper to construe such a proceeding as that which is now under review with the strictness that would be appropriate in a penal action, or even in a proceeding for the condemnation of property. This proceeding does not, in our view, partake of the nature of either of these. * * *

> "The scheme of the act is to provide a simple and prompt remedy for what otherwise might be a serious injustice to the minority stockholders. The majority, in interest, in availing themselves of the privilege conferred by the act to make a consolidation of companies, agree in advance to make compensation to the dissenters in accordance with the decision of appraisers, when the same shall be confirmed by the court. The proceeding is not like an ordinary action at law—much less like a penal action or a proceeding for taking property without the consent of the owner. It is a conventional arrangement, somewhat analogous to that provided by our 'Act for regulating references and determining controversies by arbitration' (Gen. Stat. p. 69). * * *
>
> "The remedy afforded by Section 23 of the Traction Act is not only voluntary as between the parties but is highly beneficial."

The legislation there under review (P. L. 1893, p. 302) related solely to street railway companies exercising public franchises and is certainly more akin to a condemnation statute than either Section 108 or 108(a) of the General Corporation Act under which the present merger is attempted. For it gave the consolidated corporation the election either (1) to pay to the dissenting stockholders the amount of damages resulting to him from the consolidation or (2) to compel him to transfer his stock to it upon the payment to him of its appraised value. Under either Section 108 or Section 108(a) of the General Corporation Act, the consolidated corporation has no such election and is obliged to pay the appraised value of the stock.

This view as to the nature of these appraisal sections may not be in entire harmony with the one expressed by Vice-Chancellor Backes in the *Bingham* case, *supra,* where he speaks of the pro-

ceeding as being "in the nature of an exercise of the power of eminent domain" and cites the *American Electrical Works* case from which we have just quoted, and *Black* v. *Delaware & Raritan Canal Co.* as authority therefor. But the learned Vice-Chancellor refused to enjoin the bank merger there under review only because he found that it was fair and equitable to the stockholders of the three banks involved saying, as we have seen, "The plan must be free from unfairness before the complainants can be put to their election of joining their associates or taking compensation in lieu."

This Court will also doubtless have in mind that in affirming the decree in the *Bingham* case, *supra,* it did so without reference to the public interest, and because it likewise found that instead of destroying vested rights of the stockholders in the Savings Investment & Trust Company it would inure to their benefit and result in the issuance to them of additional shares "equal in value to the stock held by them respectively."

The "public interest" so insistently urged in appellants' brief as requiring the Court's approval of the merger, has, therefore, no real bearing upon the case. The situation is no different from what it would be if the Companies proposed to be merged were each a corporation engaged in a commercial enterprise in nowise serving any public interest. The merger should, therefore, not be permitted unless its terms are fair and equitable to the complainants.

E.

The test to be applied in determining the fairness or unfairness of the plan is whether it offers to the appellees shares in the Electric and Gas Company equal in value to their present holdings in the Group 1 Companies.

The foregoing statement is in effect the holding in the *Bingham* case, *supra,* where the learned Vice-Chancellor said:

> "The things contemplated by the statute to be taken in exchange, in merging going concerns, is not assets for assets, but share for share of capital stock, upon parity of value, and the measure of equality is the fair market value."

The same test was applied in the *American Malting Company* and *United Shoe Machinery Company* merger cases, *supra.* In his unreported opinion in *Brugler* v. *United Shoe Machinery Company, supra,* Vice-Chancellor Lane said:

> "The question is what is the market value, what is the real value of the holdings of the complainants, and what is the real value of the thing offered in return. It cannot be said that the statutory scheme contemplated that there should be given to the stockholders of the merged corporation a security identical in character with that which they held. They must be given something which is equal in value to it, or which may fairly be said is equal in value to it."

"Equal in value" is the definition used by this Court in the *Bingham* case, VI N. J. Adv. Rep., p. 371.

Throughout appellants' brief the claim is made that the parity of value of the shares involved in

this suit is to be tested solely by their respective current market prices at the time as of which the comparison is made. All else, it is said, must be shut out of view by the Court in determining whether "equality of value" in truth exists. This argument is pressed to the point of in effect claiming that if as of the time of the comparison a share of one of the Group 1 Companies and of the 6% preferred stock of the Electric and Gas Company each had a current market price of $100 they must be equal in value, and this even if the market for the former was a poor and limited one and for the latter a broad and excellent one. It is claimed that the evidence shows that on the basis of exchange offered by the merger agreement such a parity exists and therefore despite all else the plan is fair and equitable. We are unable to share in this view, and on the contrary, say that of necessity various elements enter into the determination of the real value of shares of any corporation. And where, as here, exceptional conditions exist in the case of one or more, or all, of the corporations proposed to be merged these must all be given their due weight in determining the "equality of value" of the securities of one of such corporations offered in exchange for those of another thereof.

Perhaps as accurate a statement as to how the fair value of corporate shares should be determined is the one recently made by the Court of Chancery of Delaware, in *Bodell* v. *General Gas & Electric Corporation,* 132 Atl. 442, 450, where it is said:

> It "should be fixed in the light of all legitimate considerations, such as appraised and sale value of assets, book values, market values of outstanding shares, present and probable earning power, market conditions, size of the issue, reputation of the corporation, and such exceptional considerations as honest

> and fair minded men might properly take into account. It would be hazardous to venture an examination of all of the possible considerations which directors might take into account in fixing a price which will be fair * * *. Whether in a given case they have fixed such price is a question which must be determined in the light of the particular conditions surrounding the transaction."

In our view whether upon the exchange of shares provided for by the merger agreement the Shanley Estate will under the exceptional conditions involved receive shares that are "equal in value" to its present holdings depends upon the result of applying all of the following factors to these respective stock issues:

1. Their inherently different nature and quality.

2. Their comparative security or safety.

3. Their relative rate of current yield.

4. Their relative marketability.

5. Their current market prices.

6. Their probable further increase in market price.

7. Their relative proportional interest in corporate assets.

8. The probable permanency of the two investments.

Consideration will therefore now be given in turn to each of these factors in the belief that this will be helpful to the Court in determining whether the merger plan is in fact fair and equitable to the wards of the Court, for whom this appellee is trustee.

1.

The inherently different nature and quality of the respective issues.

These of necessity must be pointed out in some detail in considering the other factors just referred to as determinative of the real value of the shares which the plan offers this appellee in lieu of those which it now has. We will therefore here define the difference between the two issues only in the most general way.

The Shanley Estate now has an underlying security on the properties and franchises making up a large and important part of the entire Public Service system. The companies owning such properties and franchises have only a comparatively small amount of stock outstanding, which, as a practical matter, can never be increased. This appellee holds a substantial part of these shares. They constitute as good a security as the only one which underlies them, viz., the comparatively small amount of bonds of the Group 1 Companies secured entirely by closed mortgages. Except for such bonds, these companies have no other indebtedness, secured or unsecured. As a practical matter the payment of a definite rate of return on the shares of each of these companies is now, as a result of the lease of its properties and franchises to the Public Service and the assumption thereof by the Electric & Gas Company, absolutely guaranteed. In fact, appellants at page 80 of their brief say: "There is not the slightest chance, should the leases continue, that the rental will not be paid". The safety of the hundreds of millions of dollars invested in the securities of the last named companies is dependent upon such rates of return being permanently

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paid to the Shanley Estate upon its shares in the Group 1 Companies.

The security proposed to be given in exchange is of an entirely different kind. It consists of shares in a class of preferred stock of the Electric & Gas Company, all of whose stock is in every respect, junior, in priority, to the shares of each of the Group 1 Companies. This preferred stock is also subject to the priority of bond issues of the Electric & Gas Company which may be unlimited in amount and to the claims of all of its secured and unsecured creditors. Unlike the shares in the Group 1 Companies it has no voting rights except in the case of default in dividends, and upon dissolution can only receive par and accrued and unpaid dividends. It is redeemable at the option of the Electric & Gas Company at any time after three years from date of issue, and is the only stock of that company which is subject to this disadvantage.

The disparity which thus exists between *the kind and quality* of the securities which the appellees have and that of the security which the merger plan seeks to compel them to accept in lieu thereof, is in itself so great and so much to their disadvantage as to require that the consummation of the plan should be enjoined, unless this disadvantage is clearly offset by the other factors above-mentioned and remaining to be discussed. This, as we shall hereinafter show, is not the fact.

On the factor of disparity of quality of investment, *Boyd* v. *N. Y. & Harlem R. Co.,* 220 Fed. 174 (So. Dist. N. Y. 1915), is the authority most closely in point. To this case the appellants gave much consideration in their brief below, although not referring to it in their brief here. The Court enjoined a threatened merger in that case upon the ground of such disparity. The property of the New York and Harlem River Railroad Company

had been leased to the New York Central in 1873 for "a term of centuries". The leased property constituted the New York Central's gateway to New York, including the Grand Central Terminal at 42nd Street. The consolidation project had not proceeded to a point of fixing the basis of the exchange of securities. In enjoining its further prosecution, Hough, D. J., said at pages 177 and 181:

> "The intrinsic value of Harlem's property is alleged to be 'not less than two hundred million dollars' over a bonded indebtedness of $12,000,000 only. This is denied; but an offer of 3½ times par for the stock (of which there is and can be but $10,000,000 par) proves an opinion of value on the part of the principal defendant consistent only with a security of return as nearly absolute as the possibilities of business, politics, invention, and war will permit. * * * The act authorizing consolidation (*supra*) requires that upon any merger the capital stock of the consolidated company shall not—'exceed the sum of the capital stock of the corporations so consolidated at the par value thereof. Nor shall any bonds or other evidences of debt be issued as a consideration for, or in connection with, such consolidation.'
>
> "It follows that the only method, by which the superior value of Harlem as compared with Central stock can be maintained, is by giving to Central shareholders less than share for share, and by no method can Harlem stock (as represented by consolidated stock) be assured that preferred position which it now occupies.
>
> "Under existing leases and contracts, the dividends or annual returns on Harlem shares must be paid before the Central shareholders can obtain anything, and, if this be not done, the system by which the Central obtains access to the Forty-Second Street Station is disastrously dislocated.
>
> "Consolidation would therefore mean not only an exchange of shares of one name for

> shares of another, or of a thing of one kind for another thing of the same kind, but would involve a complete destruction of investment in character and quality. Existing arrangements give to Harlem shares rights preferred over all Central stock in the earnings of the entire system now consolidated in control. After consolidation, Harlem shareholders might have more shares, but 'shares' would not mean the same thing, and the return thereon would necessarily be subject to greater and more numerous hazards than is now the case.''

Borg & Co. v. *New Orleans City R. Co., et al.*, 244 Fed. 617 (Dist. Ct. E. D. La., 1917), is also a pertinent authority. It involved a consolidation of the companies constituting the street railway system of the City of New Orleans, one of which was a lessor company. The facts, in so far as they appear in the reported opinion, are as follows: The New Orleans Railway & Light Company, a street railway and holding company, owned nearly all the stock (97% to 100%) of six other street railway companies and operated the property of the New Orleans City Railway Company under a lease running to December 31, 1955, paying in lieu of rent $50,000 semi-annually to be distributed as dividends on the common stock, and $62,500 to be distributed as dividends on the preferred stock of the New Orleans City Railway Company, the lessor. It was proposed to consolidate these seven street railway companies, constituting together the street railway system of New Orleans. The consolidation agreement provided for an exchange of the stock of the constitutent companies for the stock of the consolidated company. The plaintiffs, owning shares of stock of the lessor company, filed a bill for an injunction to prevent the execution of the agreement and prayed that it be declared null and void. Although the Court concluded that

on all the facts "it is a reasonable presumption that the stock offered to the plaintiffs will have equally as much market value as the stock they now own" it determined "to retain jurisdiction to enforce equality of exchange" and retained the bill for the purpose of granting such relief as the nature of the case might require within a reasonable time. While it has not been practicable to follow that course in the present case it may be, as hereinafter indicated, that a merger agreement with terms that should not be objectionable to the appellants and yet be fairer to the appellees might well be proposed.

2.

The comparative security or safety of the respective issues.

(a) The Group 1 Company Stocks.

To appreciate the unusual safety of the present investment of this Appellee it is necessary to consider the intrinsic great worth of the properties and franchises of the Group 1 Companies. This requires initially a statement as to the territory originally served by them when the leases were made, and as to the territory now served by the Electric & Gas Company in its vast business.

Territory served.

At the time that the property and franchises of these companies were leased to Public Service they supplied at least the greater part of the gas used for illumination, heat and power purposes in the Counties of Essex, Hudson, Passaic, Bergen, Somerset, Union and Middlesex. They also supplied a large part of the electricity used for the same purposes in Passaic, Bergen, Somerset,

Union and Middlesex Counties. The United Company furnished the electric light, heat and power used in Essex and Hudson Counties, and to some extent in Union County and Morris County. The South Jersey Gas, Electric Light & Traction Company, the most important of the Group 2 Companies, furnished the greater part of the gas and electric light, heat and power used in the territory lying between Trenton and Camden, and in both of such cities. Speaking generally, the Group 1 Companies were largely supplying the gas, electric light, heat and power used in the portion of the State lying between New Brunswick on the south and Paterson on the north, except in Essex and Hudson Counties, where the electric business was conducted by the United Company, and the municipalities from New Brunswick south to Camden were being supplied both gas and electricity by the South Jersey Gas, Electric Light & Traction Company. Each of the companies operated entirely separate from the others and its gas or electricity was obtained from its own works.

Public Service was incorporated in 1903. Its organization and business structure has been principally built up by leasing for nine hundred years or longer the properties and franchises of the Group 1 and Group 2 Companies and the United Company. The leases of the four of the Group 1 Companies in which the Shanley Estate holds shares were all made in 1903, as was also the lease of the South Jersey Gas, Electric Light & Traction Company. The lease from the United Company was secured in 1908 and those from the other Group 2 Companies not later than 1910.

As the result of the making of these leases and the business policy uniformly carried out and developed by Public Service, the properties, franchises and services of all of the lessor companies have been and are now welded into one great

business and system of furnishing electric and gas light, heat and power throughout the whole of the above described territory, largely to the exclusion of other electric and gas companies. The territory thus occupied has the great advantage of lying directly between the cities of New York and Philadelphia, much of it being within what is known as the Metropolitan District. It includes such important cities as Newark, Jersey City, Paterson, Passaic, Elizabeth, New Brunswick, Trenton and Camden. Within its limits are from 80 to 85% of the entire population of the State, as well as a large percentage of its industries. (Testimony, Messrs. Clark, Allegart & McCarter, Case, Vol. II, pp. 41-45, 54-56, 112).

Capital Stock.

The total par value of the authorized and outstanding capital stock of the five Group 1 Companies is only $23,450,000. In the case of each company there is only one class of common stock. Its property and franchises can not be sold without the consent of all of its stockholders. If any such sale is made at a price in excess of its bonded indebtedness they will receive the remainder thereof. If the company is dissolved they will receive the entire proceeds of its net assets. The shares of none of the companies are redeemable. As will shortly appear, the stock of these companies can as a practical matter never be increased or be subjected to the priority of any other stock.

Liens or debts prior to the stock.

The total bonded indebtedness of the Group 1 Companies is less than $30,000,000 (Ex. D-52 Case, Vol. III, p. 608). This can never be increased while the leases are in force. In each case it is secured entirely by closed mortgages. Neither

of the companies has any other secured indebtedness nor any unsecured indebtedness.

Additional safety resulting from the making of the leases.

The lease made by each of the Group 1 Companies afforded the holders of its shares the following protection to their investment therein, in addition to that afforded by their equity in its properties and franchises over and above its bonded indebtedness:

(a) A secured and definite rate of return thereon during the continuance of the lease, which was in effect one in perpetuity.

(b) The obligation of the lessee to pay all interest on the existing bonded indebtedness of the lessor, or that incurred in extending or refunding the same.

(c) The obligation of the lessee during the continuance of the lease to pay all taxes and assessments levied upon the lessor with reference to its capital stock, property, contracts, rights, powers, privileges or franchises, or upon the rental reserved by the lease or upon all dividends declared during its continuance, as well as all sums which the lessor might be liable to pay for the possession, enjoyment or perpetuation of any of its rights, powers, privileges or franchises.

(d) The assumption by the lessee of all obligations of the lessor except its bonded indebtedness.

(e) The lessee's obligation to operate at its own risk the lessor's works and plant, to furnish all apparatus and equipment which might be necessary or proper for such operation, to carry on, preserve and expand the business of the lessor in such manner *as at all times to meet the demands of the public service* and to promote the interests and preserve the franchises vested in the lessor.

(f) The lessee's obligation to renew, repair and replace the leased property, *to extend and expand the same with increase of profitable demand for public service;* to stimulate such increase and to make all necessary extensions, additions, alterations, improvements, renewals and betterments which might be necessary or proper.

(g) All lands, structures, improvements, betterments and renewals so added to or made upon the demised premises were to become the property of the lessor.

(h) During the period of the lease neither the demised property nor franchises could be additionally burdened with any bonds.

(i) If any of the demised property was sold, the proceeds thereof could only be used as required by the terms of the existing mortgages and for the betterment or extension of the demised property.

(j) The lessor was to be saved harmless from all expense arising from the maintenance or operation of the demised property and in the event of any litigation.

(k) The lessee was obligated to keep the demised property fully insured for the benefit of the lessor.

(l) At the expiration or earlier termination of the lease the demised premises and franchises, and all improvements, additions and extensions thereto, and all property, rights, privileges and franchises acquired by the lessee in connection or for use therewith, were to become the property of the lessor.

(m) In case of default of any covenant or condition of the lease, the lessor had the right to terminate it and re-enter upon the demised premises.

(Exhibits 3 to 7 annexed to Bill of Complaint; Case, Vol. I, pp. 90 to 152.)

The maximum rate of rental provided for in each of the leases has long since been reached, and

will continue as long as the leases do. This was intended to be and is sufficient to pay the following annual dividend rates on all of the outstanding shares of the respective Group 1 Companies:

Essex & Hudson Gas Company and Hudson County Gas Company, 8%; Paterson & Passaic Gas & Electric Company and New Brunswick Light, Heat & Power Company, 5%; Somerset, Union & Middlesex Lighting Company, 4%.

The aggregate of these maximum rentals annually is only $1,672,000. Both Public Service and the Electric & Gas Company are obligated to always pay them in full and promptly. It appears from Ex. C-4 (Case, Vol. III, p. 5) that the net income of Public Service for the first eight months of 1927 was upwards of $6,000,000. It further appears from Ex. C-6 (Case, Vol. III, p. 8) that for the twelve months ended August 31, 1927, the net income of the Electric & Gas Company, which has assumed the obligation of the leases, was upwards of $16,000,000. It is not questioned that if the merger is not consummated the dividends payable out of such rentals will continue to be paid, and Mr. McCarter in his evidence frankly admitted this (Case, Vol. II, p. 136).

The appellants' brief (p. 79) states the situation thus:

> "No one questions the security of the stocks of the lessor companies held by the complainants and others, and that under the terms of the leases, the holders thereof will for an indefinite period receive an income at the rate of either 8%, 5% or 4% varying with the different companies."

Additional safety resulting from the assumption of the leases by the Electric & Gas Company and the covenants in its refunding mortgage.

In 1924 by means of mergers and assignments the Electric & Gas Company, the most important of the subsidiaries of Public Service, and which

conducts all of the above-mentioned business, assumed the latter's obligations under the leases. In the same year the Electric & Gas Company executed a refunding mortgage under which it may issue bonds without limit as to amount and payable at any time on or before October 1, 2124. In this mortgage it covenanted to exercise all its right to preserve all franchises of each of the lessor companies necessary to the proper conduct of its business; to pay or cause to be paid all rents and to perform all obligations imposed on the lessee by the leases and to permit no default to occur thereunder; not to make or permit to be made any modification of any of the leases which will operate to shorten the duration of its term; to promptly pay or cause to be paid all bonds, coupons or other obligations secured by any mortgage having a lien on the property of any of the lessor companies; to perform or cause to be performed all obligations imposed by such mortgages and permit no default to occur thereunder; and to exercise all its power as stockholder in and as lessee from each of the lessor companies to prevent the creation of any mortgage or other encumbrance against any of their respective properties (except for refunding purposes), or any increase of their respective authorized or issued capital stock. Under such mortgage, bonds aggregating $62,901,000 are already outstanding (Ex. D-52; Case, Vol. III, p. 605). In addition to this amount a further offering of such bonds was made on December 1st, 1927 (Ex. C-14; Case, Vol. III, p. 47).

While the appellants point out that these covenants are only made for the benefit of and enforcible by the holders of such bonds, it is not questioned that they add greatly to the safety of this appellee's present securities. As the learned Vice-Chancellor found, "With this double undertaking the payment of dividends on the leasor companies' stock is assured beyond peradventure.

This security excels in priority all the outstanding obligations of either company (Public Service and Electric and Gas Company)'' (Case, Vol. II, p. 322).

Additional safety resulting from the growth of the business and the standing of Public Service and the Electric & Gas Company.

The rentals have always been paid promptly notwithstanding any financial difficulties that may have been encountered by Public Service or any of its affiliated companies whether due to the war, their needs for immense additional capital resulting from the fabulous growth of the business, or otherwise. Since Public Service was organized its gas business has compounded at the rate of 6% per annum. It has doubled many times. The growth of the electric business has been even greater. In 1904 the total number of kilowatt hours sold was between 42,000,000 and 43,000,000 while by 1926 that figure had jumped to 1,092,000,000 (*McCarter* Case, Vol. II, pp. 107, 115). There has been expended upwards of $26,000,000 in improvements upon the properties of three of the Group 1 Companies alone and approximately $200,000,000 upon the electric and gas properties of all the lessor companies (Case, Vol. II, p. 145). Their properties have been tied in by connecting mains and lines and are operated as inseparable and indispensable parts of a single public utility system regarded as one of the most advantageously located and strongest in the country.

Its splendid credit is abundantly evidenced by its ability to issue bonds at low rates of interest and to refund them at lower rates in obtaining the money needed to provide the additional capital which has enabled it to keep pace with the growing opportunities of the business. The Electric & Gas Company has recently called for payment $40,000,000 of its 5½% bonds and is refunding

them on practically a 4½% basis (Case, Vol. II, p. 142). Public Service and the Electric & Gas Company according to their balance sheets have outstanding bonds, preferred stock and common stock of an aggregate value substantially in excess of four hundred millions of dollars (Ex. C-2 Case, Vol. III, p. 3; D-52 Case, Vol. III, p. 605).

The credit of the system and the safety of all of these securities requires that the rentals reserved to each of the lessor companies should always be paid as any default in such payment would permit the lessors to forfeit the leaseholds and re-enter upon the demised properties and franchises. As part of what would thus revert to them there would be all of the improvements, additions and extensions made to the properties and all property, rights, privileges and franchises acquired by the lessee in connection or for use therewith (*supra*, p. 31). These franchises constitute those which the Electric & Gas Company has the right to exercise in much of the territory it serves, and no proof can be required as to their immense value. Mr. McCarter testifies that the growth of the business has added greatly to the value of the properties of the lessor companies; that this value is very much greater than their outstanding bonds and that the position of the shares of the Group 1 Companies from a practical standpoint is somewhat the same as a bond (Case, Vol. II, pp. 135-137). In the almost inconceivable contingency of a default in the payment of the rentals the lessors would come into possession of properties and franchises of a value that would make the holdings of their shareholders of a far greater worth than can ever be the 6% preferred stock redeemable at $110 per share which the merger plan offers them.

In view of all this the absolute safety of the investment which the stockholders of the Group 1 Companies now have is unquestioned.

(b) The 6% Shares of the Electric & Gas Company.

Unlike the shares of the Group 1 Companies, the 1925 series, 6% preferred stock of the Electric & Gas Company has the following characteristics:

It is subject to the prior lien of the refunding mortgage of the Electric & Gas Company which permits bonds to be issued thereunder without limit as to amount, and under which there are already outstanding upwards of $62,000,000 of bonds, and others now in process of being issued. It is subject to the rights of all secured and unsecured creditors. $51,000,000 of this class of preferred stock, of which $100,000,000 has been authorized, is already in the hands of the public. This is part of the $130,000,000 of the presently authorized preferred stock. One of the other classes thereof is $10,000,000 of 6½% stock, none of which has yet been issued. The remaining class is a 7% preferred stock, of which $20,000,000 thus far authorized is outstanding (Ex. C-2, attached to Bill of Complaint, Case, Vol. I, p. 86; and Ex. D-52, Case, Vol. III, p. 605). The need of the Electric & Gas Company for very large amounts of additional capital for years to come, estimated at about $50,000,000 per annum and emphasized in the defendants' testimony makes it more than likely that its preferred stock will be largely increased. It is also possible that additional classes of preferred stock having priority as to both dividends and upon dissolution over the existing preferred stock will be created, although the right to do this may be limited by charter provision (Bill of Complaint, p. 89; Case, Vol. I, p. 89). On the question of increasing any of the existing classes of stock or of creating one or more additional classes of preferred stock the holders of the 6% preferred stock will have no say as it has no

vote except in the case of a default in dividends thereon, which is not likely to occur. The charter expressly deprives the preferred stock of any voting power except in the case of such default. It is also deprived of the right to subscribe for, purchase or receive any part of any new or additional issue of stock, preferred or common, whether now or hereafter authorized, or any bonds, debentures or other securities convertible into stock. In the remote contingency of dissolution, it can receive only par and accrued and unpaid dividends, no matter how large the net assets may then prove to be. Of the three classes of preferred stock already authorized, only that offered the appellees is redeemable. This may be redeemed after three years from the date of issue at $110 and accrued and unpaid dividends. The market value of a share thereof can, therefore, never exceed such redemption price by more than a dollar or two at most (Mr. Gates, Case, Vol. II, p. 198; Mr. Loomis, Case, Vol. II, p. 229).

In weighing the safety of the two investments the Court will, of course, give consideration to the conflicting evidence of the bankers testifying with regard thereto.

Mr. Gates, of J. P. Morgan & Company and the Drexel Company, who is a Director in Public Service, says that the security of the 6% preferred stock appeals to him as being better than that of the shares of the Group 1 Companies (Case, Vol. II, pp. 178-179). Mr. Loomis, of Bonbright & Company, the largest banking house specializing in power and light securities, and also a Director in Public Service, says that "in regard to the relative security between the preferred stock of the Public Service Electric & Gas Company and the lessor stocks, our organization could see no practical difference" (Case, Vol. II, p. 221). The fact that each of these witnesses is a director in Pub-

lic Service and was so at the time of the formation of the merger agreement, although not mentioned in appellants' brief, is of course significant.

We deem it unnecessary to refer to the testimony of Mr. Steel, offered as an expert by the appellants, as it is clearly of no value.

Mr. Dick, a member of the investment banking firm of Roosevelt & Sons, of New York, appellees herein, who are large dealers in investment securities (Case, Vol. II, pp. 257-258), testifying for the complainants, regards the 6% preferred stock as a security of a distinctly lower degree of safety than the stock of the lessor companies (Case, Vol. II, pp. 265-266). He characterizes the 6% preferred stock as "high grade preferred stock", a security which he regards as "of the third grade", and the shares of the lessor companies as securities of the "first grade" (Case, Vol. II, pp. 270-272). At page 277, he says: "If our clients accept the preferred stock they are taking a substantial loss in security".

Undoubtedly each of the gentlemen to whose evidence we have referred is eminently qualified to express a reliable judgment on the subject of the comparative safety of the two investments, but as directors in Public Service and as the representatives of its bankers the views of Messrs. Gates and Loomis must unconsciously reflect their natural desire to have the merger put through on the terms which their testimony shows they had such an important part in fixing. Dealing as their firms frequently do in vast quantities of modern preferred stocks, and with comparative infrequency in shares having the characteristics of those of the lessor companies, it is also only natural that they should regard securities of the former class as being as safe as those of the latter class, and particularly so in the case of the Public Service system, in the great success of

which they have had such an important part. It is also possible that the judgment of Mr. Dick is influenced by the opposition of himself and his associates to the plan.

Under these circumstances, it seems to us that the Court will have to reach its decision as to the comparative safety of the two investments largely from the fact rather than the opinion evidence in the case, and that if it does so it must find that the shares of the Group 1 Companies are underlying securities on a parity with amply secured first mortgage bonds, and therefore a safer investment than the preferred stock of the Electric & Gas Company.

3.

The relative rate of current yield of the two investments.

As fixed by the merger agreement this will be at a slightly higher rate on the 6% preferred stock of the Electric & Gas Company than on the shares of the Group 1 Companies. A holder of one share of the latter who now annually receives $8, $5, or $4 will instead receive $8.22, $5.16, or $4.14 (Case, Vol. II, p. 199). The current return on his investment will be thus slightly increased. But current yield alone is never a safe guide as to the wisdom of making any investment, or a change in one already made. It is the rate of return which can be depended upon for a reasonable time in the future that is the important thing when considering yield. The redeemable feature of the 6% preferred stock makes it probable that those who accept it in exchange for their Group 1 shares, will in a few years at most be required to invest the proceeds of its redemption on a yield basis less favorable than their Group 1 securities now gives them.

4.

The relative marketability of the two investments.

Throughout the presentation of their case appellants stressed the superior marketability of the 6% preferred stock of the Electric & Gas Company over the shares of the Group 1 Companies. Messrs. Gates and Loomis in particular portrayed the existence of a narrow, limited and uncertain market for the latter and a broad, open and certain market for the former. On the cross-examination of these witnesses it in fact developed that in fixing upon the terms of the merger agreement they gave controlling weight to this factor in reaching the conclusion that the proposed exchange of shares thereby offered the stockholders in the Group 1 Companies was fair to them. At pages 192 and 193 of Vol. II of the State of Case it will be seen that Mr. Gates, who had a prominent part in the formulation of the merger agreement, admits that its fairness to the appellees comes down largely to the relative marketability of the two sets of securities. At page 232 Mr. Loomis, who gave much consideration in the working out of the plan as to its fairness to all parties in interest, says that he was "very largely influenced by the superior marketability of the Electric & Gas Company stock to the lessor companies' stocks" and that this was really "the determining feature" in his conclusion that the plan was fair to the owners of this latter stock.

The difficulties which these gentlemen state are encountered in trying to sell stocks like those of the Group 1 Companies are pointed out principally by Mr. Gates in Vol. II of the State of Case, at pages 164-167, 169-171 and 193, and Mr. Loomis at pages 221, 235, 239 and 242. They say

as follows: the stocks of lessor companies generally are little known, and by reason of this sell frequently on a cheaper basis than those of lessee companies; there is a practical banking difficulty in handling such stocks as they are not generally accepted as collateral for loans in the banking world; they meet a sales resistance because the purchaser understands that they cover only a part of a system which if segregated could perhaps not again be operated as a whole; such stocks don't attract people and they won't buy them because they are an antiquated form of security; bankers and brokers find it much easier to interest investors in purchasing preferred stocks of public utility systems which are listed on an exchange and either already known or easily understandable; investors nowadays are inclined to let marketability outweigh security and yield, with the result that there is not and is not likely to be a broad and open market for one desiring to dispose of such shares. Speaking particularly of the Group 1 Companies' stocks these experienced bankers emphasize the difficulty of making investors understand just what security they constitute. On the other hand, they point out that the Electric & Gas Company is well-known throughout the country as a state-wide and successful public utility operating in a populous and peculiarly favorable field, whose shares are listed on the New York Stock Exchange, and that for them there is always a ready and wide market.

The testimony for the appellees on the same subject presents an entirely different view. Mr. Dick says that since his firm first commenced to deal in lessor stocks of the Public Service system in 1923 or 1924 the demand for them has always been greater than the supply (Case, Vol. II, p. 262); that the narrow market for them which existed in earlier years had been due to the fact

that they were "unknown to dealers largely and unknown to buying institutions"; that the growth of the assets behind them has been so great and is gaining so fast and the popularity of public utility companies is increasing so that the time is not very far away when these stocks will enjoy a market comparable with the highest guaranteed stocks of railroad corporations which now sell on a better basis (Case, Vol. II, p. 264). Many investors, he says, are concerned rather slightly with marketability. "We find the first requirement of all is security; second is the highest yield obtainable with security, and the third is marketability. That does not mean to say that certain institutions like banks, who like quick assets, do not pay any great regard to marketability, but the private investor or the institution who buy for income is concerned primarily with the security and yield" (Case, Vol. II, pp. 264-265). He also points out that the fact that shares of stock are free from normal income tax makes them attractive to corporations like insurance companies because it saves them the 13½% tax under the existing Federal Income Tax law which they would have to bear in case they invested in bonds (Case, Vol. II, p. 265).

Mr. Outwater, an appellee, who has been a member of a firm of dealers in stocks and bonds in Jersey City since 1896, and as such engaged generally in dealing in New Jersey securities (Case, Vol. II, p. 309) says, "We always had more of a demand for these stocks than we could secure —we couldn't secure stock enough in most cases * * *. We were always looking for these stocks and would like to have bought more and could have sold more had we been able to secure them" (Case, Vol. II, pp. 310-311).

Mr. Emlen Roosevelt, the senior partner of Roosevelt & Sons, says there is a large class of

investors who give greater weight to the security and return than to the marketability of a security; that in the case of permanent investors security and return are most important factors, and that there is a proportionately large class of these investors (Case, Vol. II, pp. 313-314).

In attempting to reconcile these conflicting views from a study of the evidence we have reached these conclusions:

There is a radically different market for the two sets of securities. Until recent years at least there has been a narrow market for the Group 1 Companies' stocks because they were not well-known in New Jersey and practically unknown outside of New Jersey. This was partly due to the fact that the owners thereof were generally satisfied to retain them because they regarded them as constituting a safe investment yielding a satisfactory return. The character of the market for these shares has made it difficult to dispose of them at their real worth. As a result of the growth and prosperity of the Public Service system this market has now substantially improved and the further growth and popularity of the system will in the future almost certainly afford the holders of the Group 1 Companies' shares an opportunity to dispose of them at a price more nearly representative of their unusual worth and safety. However, the market for these shares will never be as broad and active as the one for the 6% preferred stock, if for no other reason than that the number of shares of the Group 1 Companies' stocks that will come on the market are negligible as compared with those of the Electric & Gas Company. Brokers and bankers always want to deal in securities of which there is a large floating supply. In this way profits can be more readily and frequently realized by them and their clientele is afforded a wide and ready market for

their securities. The market for the 6% preferred stock is broader and more favorable in realization of value than that existing for the shares of the Group 1 Companies. Whatever this difference "in market" in favor of the 6% preferred stock may be, it is not in itself sufficient to offset the disadvantages of the plan to this complainant, particularly the redemption feature of the 6% preferred stock.

5.

The respective current market prices of the two issues.

Appellants' brief makes clear the real ground of their contention that their plan is fair to the minority stockholders. This is not, as might naturally be inferred from the testimony of Messrs. Gates and Loomis that the superior marketability of the 6% preferred stock produced this result. On the contrary it is that all that is required to make the plan fair to all parties in interest is that it shall result in parity in current market prices of the securities offered to be exchanged thereunder for those already held. This the appellants argue is alone determinative of the fairness of any merger agreement. In effect they say that as a practical matter the 6% preferred stock is as good a security as that which this appellee now has, but that even were the contrary true objection cannot lawfully be made to the plan on this score because it works out an equality in current market prices. For instance, on page 45 of appellants' brief it is stated that, "In looking for a measure of value for the stock of the five lessor companies, they turned to its market price". And at the very conclusion of their brief (p. 97) it is said, "We concede, of course, that the complain-

ants are entitled to an offer of the fair value, that is, the normal market price of their stock before they can be required to resort to condemnation proceedings, and they have had such an offer."

The basis for this entire contention is that Exhibit D-51 (Case, Vol. III, p. 600), which it is said corroborates the testimony of Messrs. McCarter, Gates and Loomis, shows that "from the time when the first installment of the 6% preferred stock of the Electric & Gas Company was issued down to December, 1927, the market prices of the stocks of the lessor companies have run closely together with the market price of the exchangeable amount of Electric & Gas Company's stock as provided in the merger agreement" (appellants' brief, pp. 62-63).

It should be noted, however, that Exhibit D-51 shows Outwater & Wells' "bid" price, which in the case of securities like those of the Group 1 Companies is frequently no more reliable *indicia* of current market price than is the higher "asked" price. A comparison of the Rippel price list for 1927 (Ex. D-32), which is based on range of sales, with Outwater & Wells' "bid" price list for the same year (Ex. D-33) shows, as might be expected, that the average price at which sales of the Group 1 Companies' stocks were actually made during that time was in excess of the bid price.

However, accepting such statement from appellants' brief as true, the evidence already adverted to with regard to the inherent difference in the two sets of securities and the radical difference in the character of the markets therefor, when considered in connection with the additional testimony of appellants' witnesses about to be referred to, shows that current market price is not the only evidence which the Court should consider in determining whether the plan under review is in fact fair to the minority stockholders. It already

appears that their holdings although in the form of shares have many of the qualities of bonds of closed issues and that the market therefor is more restricted and quite different from the broad one that obtains for the 6% preferred stock. Appellants' witnesses insist that the limited market which they say exists for the Group 1 Companies' stocks presents difficulties in effecting sales thereof, and insuperable difficulties in disposing of substantial blocks thereof without a substantial sacrifice in value.

At page 124 of Vol. II of the State of Case Mr. McCarter after stating that "these underlying stocks were narrowly held, had a very restricted market," added that "they had very little real standing in the financial market in the State and none in the New York market." At page 135 he describes them as "good securities of a non-negotiable character," and at page 137 speaking of his own holdings thereof he says "I got rid of them because I couldn't do anything with them; the bank didn't want them—they were narrow."

Mr. Gates, at pages 169 and 170, said that there had been no "considerable sale for these securities in the past 15 or 20 years * * *. There has been a very limited market and from time to time we have experienced that. I remember very well when an effort was made to sell quite a large block of the two gas company stocks and there was practically no method of selling them whatever." He says that when the United Gas & Improvement Company was considering selling their stock in the Essex and Hudson and Hudson County Gas Companies "they found they could only sell it at such a sacrifice as to make it utterly out of the question; there is no real market for the stock, and it is a very difficult stock to sell, very." On cross-examination at page 193 he says he has known of other instances where it has been impos-

sible to sell stocks of the Group 1 companies except at a sacrifice, and at page 205 he says "they would not have a wide market in any event, that they are not the type to get it."

Mr. Loomis, beginning at page 266, tells of his firm having from time to time bought amounts of these securities and trying to resell them to its customers, saying "We didn't have very great success with them" because of "such a poor market."

With this evidence in mind in connection with the more general testimony of the appellants' experts as to the great difference in the markets for the two sets of securities, it is impossible to accept as correct the statement appearing on pages 45-46 of appellants' brief that "The stable market price of the stocks of the lessor companies was certainly the most reliable, if not the only reliable measure of their value. The stocks were active enough in the market to furnish that measure of value."

The argument upon which the appellants thus principally, if not entirely, rest their case, is not sound because the evidence discloses that the respective markets for the securities held by this appellee and for those offered it in exchange therefor, are not of the same character, as the former does not produce the same full measure in market price as the latter. It is the appellants themselves who say this. The authorities they rely on for their insistment that where there is a current market price for a security, that alone fixes its value, such as *United States* v. *Reading Co.*, 295 Fed. 551, and the cases therein cited, are neither controlling nor pertinent. Such cases dealt with only one security or several securities of the same kind for which there was one market, while here there are two totally different kinds of securities each of which has a market not only

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separate from that of the other but one of such markets is less favorable than the other. The appellants' brief cites no authorities dealing with such a situation where "equality in value" was being tested, nor have we been able to find such.

The quotation from the opinion of the Court of Chancery in the *Bingham* case, *supra,* appearing on page 46 of the appellants' brief, where the phrase "the measure of equality is the fair market value" is italicized, cannot be given the effect for which the appellants contend. There the same market existed for the shares of each of the three banks.

If authorities dealing with a market for any one security or set of securities of the same kind are to be considered, then we submit that the following cases which dealt with shares having a limited market should be followed.

In *Phillips* v. *United States* (Dist. Ct. W. D. of Pa., 1926) 12 Fed. (2nd Series) 598, it was held that sales on the Pittsburgh Stock Exchange over a six months' period in 1913 of stock of the Pure Oil Company are "an inadequate gauge of the fair market value of the stock, failing to properly reflect the fair market value of the assets of the corporation". The Court said:

> "It is well settled that the fair market price or value of the property as of March 1, 1913, is a question of fact under all the circumstances of the case. No method of determining this value can be stated which will adequately meet all circumstances. The stock sales made from time to time are to be considered together with the nature and extent of the sales, and the circumstances under which they are made; hence forced sales, or sales of small lots, may often be no real indication of the value. The test is the fair market value."

In *Walter* v. *Duffy* (C. C. A., 3rd Cir., 1923) 287 Fed. 41, Judge Buffington held that the sales

of stock of the Prudential Insurance Company which had been made in the local market in no sense reflected the "fair market price" of that stock within the meaning of the Federal Revenue Act of 1913. In so holding the Court said:

> "Now, what is the market price? What is the fair market price of the statute? We say 'fair' since every word used by Congress must be given due effect in the construction of this widely applicable statute, for obviously, while a stock might be bought and sold—and so marketed—and might thus be said to evidence some market price, yet it is obvious that Congress by the addition of the words 'fair market price', certainly meant that not only must the market price be ascertained by sales, but that sales so made, the circumstances under which they were made, the subject-matter of the sales, all the attendant circumstances, were to be considered to determine whether such sales served to evidence not alone a market sale, but the fair price which Congress said should be the statutory start or base from which subsequent 'gain derived' should be determined.
>
> "We start, then, with the fact that we are here dealing with the existence of a market, and a market price evidenced by sales in such market; so that our first and basic inquiry is whether there actually was a market for the sale of this insurance stock. Now, market implies the existence of supply and demand, for without the existence of either factor no market value is shown. Standing alone, offers to sell, with no takers, or offers to buy, with no sellers, show no such concurring willing action of buyer and seller as is involved where a market is made by buyers and sellers who by their respective sales and purchases make a market price which the law takes as evidence of value. Now, in the case before us, we have a situation where we think the existence of a fair determinative, evidential market for this particular stock did not exist."

The United States Treasury Department has, of course, had large experience in determining the fair market value of property on March 1, 1913 for income tax purposes. We submit that the following definition of such value contained in Article 1561 of Regulations 62 is accurate and applicable in this case:

> "What the fair market value of the property was on March 1, 1913, is a question of fact to be established by any evidence which will reasonably and adequately make it appear. In the case of property traded in on public exchanges, evidence of actual sales at or about March 1, 1913, or other basic date, affords evidence of value, but it must not be regarded as conclusive. The nature and extent of the sales and the circumstances under which they were made should be considered."

Nor are we able to accept as well founded the appellants' claim that the evidence establishes that the element of current market price has really been applied to the merger agreement under consideration. The evidence makes the following clear:

Prior to formulating the merger agreement the Electric & Gas Company under date of January 10, 1927 joined in an undertaking to obtain at least a two-thirds stock ownership in each of the Group 1 Companies. Their stockholders were offered three options, one of cash, one of 6% Electric & Gas Company redeemable preferred stock, and one of Public Service common stock. Whichever of the three a shareholder in any of the Group 1 Companies exercised the result was the same. If he took either of the stocks offered him he had securities which at the time had substantially the same market price as those he surrendered. If he took cash he obtained the then

market price of his stock. Of these three options only the one to take the 6% redeemable preferred stock became a term of the first merger plan, which bore date April 26, 1927. In the interim there had been a substantial increase in the market prices of the Group 1 Companies' stocks. The 8% stocks increased from 142 to 153, the 5% from 92 to 95 and the 4% stock from 72 to 76.

It is intimated that this was due to the decision in the Shanley case. Whether it was or not, such increase in price was ignored in that merger agreement, as was also the increase of about five points which had occurred in the market price of the 6% preferred stock during the same time. The same fractional schedule of shares was used in the merger agreement as in the voluntary offer thus made several months earlier,—1.37, .86 and .69 shares of the 6% preferred stock were still offered in exchange for 1 share of the 8%, 5% and 4% lessor company stocks respectively.

Because of the institution of this suit and the resultant amendment of charters, the merger agreement of April 26, 1927 was seven months later replaced by another, identical except in its date, which was October 25, 1927. In the meantime there had been a substantial recession from the peak prices for the Group 1 Company stocks reached in the latter part of April, the 8%, 5% and 4% stocks then selling at about 146, 92 and 71 respectively. But the market price of the 6% preferred stock had continued to increase and was then about 107 as it was in April (Ex. D-32 and Ex. D-33). But both such decrease and increase were again ignored and the same fractional schedule of shares used in the new merger agreement.

In the first agreement this schedule was less favorable to this appellee than was the option offered it in January, 1927, to take the 6% pre-

ferred stock, but it was more favorable to it in the second merger agreement than in the first and slightly more favorable than in the case of the January offer.

In pointing this out we in nowise intend to reflect upon the integrity of the gentlemen who formulated the plan of doing away with the leasehold interests. On the contrary, we join in all that the appellants' brief says with regard to their entire honesty of purpose and their business experience and ability. But the fact remains that after once fixing upon the fractional schedule of comparative market prices used as the basis of all three of the options contained in the voluntary offer of January, 1927, the appellants at all times thereafter exactly adhered to it and incorporated it in each of the merger agreements quite without regard to the market prices prevailing when these respective agreements were formulated. Although this may have proved favorable to this appellee, and although it makes no contention that in a transaction of such magnitude as the formulation of a merger agreement that would be fair to all parties in interest the appellants could be expected to take into consideration daily, weekly or perhaps even monthly fluctuations in market prices, the evidence shows conclusively that current market price as applied by them should not be regarded as the sole test of the fairness of the present merger plan.

6.

The probable further increase in the market price of each investment.

As appears from the following table prepared from Exhibits D-31 and D-32, the market price of the stocks in each of the five Group 1 Companies

has increased each year since 1920. In each case the increase has been steady and substantial:

	1920	1921	1922	1923	1924	1925	1926	1927
Hudson County Gas Company								
High	95	100	114	112	122	130	142½	153
Low	85	85	98	105	107	119	128	142
Last	85	98	110	107	119	128	142	151
Essex and Hudson Gas Company								
High	105	105	115	115	124	131	143	153
Low	95	95	100	108	108	120	128	142
Last	95	100	112	110	120	128	142	152
The Paterson & Passaic Gas and Electric Company								
High	80	65	80	75	81	86	93	96
Low	65	65	65	73	73	80	84	90
Last	65	65	75	73	80	84	93	96
Somerset, Union and Middlesex Lighting Company								
High	65	55	65	60	65	70	74	76
Low	55	50	55	50	50	65	65	71
Last	55	55	58	50	65	65	72	74
New Brunswick Light, Heat and Power Company								
High	70	60	70	75	80	84	90	96
Low	60	60	60	70	70	80	80	90
Last	60	60	70	70	75	80	90	96

The reasons for this increase have already been sufficiently explained. No one questions that the Public Service electric and gas system is likely to increase and expand profitably in the years to come, with resultant further increase in value of the Group 1 Company shares if they continue in existence. All of the evidence bears out this view. The immense amount of additional capital that will be required in such expansion is estimated by appellants' officers and bankers at $50,000,000 a year, and such expenditures must increase the market value of the underlying securities which this appellee has if it continues to hold them. The demands of the conservative element of the investing public made up not only of individuals but financial institutions, insurance companies and

investment trusts, interested primarily in safety of investment, is certain to be reflected in the market value of these shares as they become better known.

In the case of the 6% preferred stock the situation is different. At the time of the hearing its market price was from $108. to $109. (Ex. D-32, D-33). While as the date for the payment of a dividend approaches this is reflected in the market price it can never go more than a point or two above the redemption value of $110. Mr. Gates says "It might go up to $111. or $112., for instance, whatever the—that would depend on how long it would take to call it and the likelihood of it being called, also the pressure for money, and frequently you take an advance half of the dividend, if you please, and add it to the market price" (Case, Vol. II, p. 198). Speaking of the redemption privilege, Mr. Loomis says "It means that above a price of $110. the yield cannot go" (Case, Vol. II, p. 229). Universal experience with callable preferred stocks bears this out.

We submit that the appellants have not borne the burden that is upon them to show that the plan in this respect is fair to this appellee, and that the evidence shows that it is not.

7.

The relative proportionate interest in assets.

This appellee now holds 10,198 out of 230,500 shares of common stock of four of the Group 1 Companies, or about 4.4% thereof. If it exchanges under the merger agreement it will have 12,171 shares of Electric & Gas Company stock, the total number of which now outstanding is not less than 12,190,637. Some of these are preferred and others common, the latter being stock without par

value, carried on the Public Service Balance Sheet as of October 31, 1927, at $100. per share (Ex. D-52, Case, Vol. III, p. 605). On such an exchange this complainant would have about 1.7% of the preferred stock and about .1% of the total outstanding shares of the Electric & Gas Company.

It is common knowledge that a method frequently employed in determining the value of corporate shares is to ascertain their proportionate interest in the total net assets of the company. No doubt this would have to be done as to the Group 1 Companies in the case of any of their stockholders who refuse to make the exchange and apply to have the market value of their shares determined on appraisal and paid them. But the evidence in this case does not permit of this being done now even roughly, for the record discloses nothing either as to the book value or market value of the net assets of the Group 1 Companies as a whole or of any one of them. In the case of the Electric & Gas Company this is not important as its preferred stock is redeemable at $110. and it can only receive par on dissolution. The intrinsic value of a share of any of the Group 1 Companies, however, undoubtedly largely exceeds its par and is perhaps several times that amount. Mr. Young's testimony shows that while the Paterson & Passaic Gas & Electric Company has only $5,000,000. of stock outstanding $11,500,000. has been expended in the way of extensions, additions, improvements and betterments to its property since its lease was made. In the case of the Somerset, Union & Middlesex Lighting Company the amount so expended has been $9,000,000. and the par value of the outstanding stock is only $1,050,000 (Case, Vol. II, p. 145). Although the intrinsic worth of this appellee's shares may not determine their value, it

constitutes an important factor to be considered in ascertaining their value, particularly because of the "market" situation already reviewed. It was, therefore, part of the burden, which under all of the circumstances of this case the appellants must bear, to produce evidence on this subject. Having failed to do this the Court is without the complete proof which it must have before it can say that the plan is fair to the minority stockholders.

8.

The probable permanency of the two investments.

Unless the merger is permitted the appellees hold securities which, practically speaking, have no maturity date. They and their transferees will be able to continue their investment as long as they desire. The 6% preferred stock of the Electric & Gas Company is, however, redeemable at any time after three years from the date of issue. If this appellee exchanges its holdings for this stock it will as soon as it is called cease to have any participation in the successful enterprise in which it now has a profitable part.

The advantage of a callable preferred stock is all in favor of the company issuing it, as it has the sole election whether it shall be called, and if so when. Mr. Loomis after pointing out that preferred stocks of public utility companies are generally made redeemable, says that the reason for this "is to preserve the freedom of action of the corporation to take advantage of the development of the industry * * *. It, in our opinion, is merely a further protection to the corporation from getting into a position where it could not move because of the non-callability feature of the security." The primary purpose is to enable the

company "to refinance when it deems advisable or necessary to do so * * * on a lower basis" (Case, Vol. II, pp. 230-231).

Having in mind the Electric & Gas Company's necessity each year for many millions of additional capital, one can see that it is almost certain to call this stock for redemption within a few years at most. It will have an inducement to do so whenever after the three year period money market conditions are favorable to such action. The opportunity to redeem a security costing it 6% with the proceeds of a new issue of redeemable preferred stock at a lower rate, or a bond issue at an even more favorable rate, will from a proper business standpoint then be irresistible. The payment of ten points above par for exercising this privilege will be no hindrance, for in a few years this premium will be offset, and eventually it will be saved many times over.

If this appellee instead of exchanging elects to accept the appraised value of its holdings in the Group 1 Companies its investment will terminate as soon as its shares can be appraised. If it elects to exchange there is no certainty that it can retain the securities it will receive for longer than three years, and every likelihood that it will not be able to do so for much longer than that time. Mr. Dick in his testimony brought out facts and figures showing that it could not now reinvest in an equally sound security yielding the same rate of income (Case, Vol. II, pp. 266, 277). Neither Mr. Gates nor Mr. Loomis were able to disprove this. If we speculate as to how this will be when the preferred stock is redeemed, there is no reason to believe that this loss in income will be less rather than greater than it would at present market prices.

One voluntarily acquiring redeemable preferred stock cannot complain of its redemption, but this

is not the situation of the minority stockholders. Their present securities participate in the prosperity of a great public utility system. The leases contemplated that this would be the case for in terms they require the lessee and its assigns to extend and expand the works, plants and other property of the lessor "with increase of profitable demand * * * and to stimulate such increase" and "to carry on, preserve and extend the business theretofore carried on by the lessor in such manner as at all times to meet the demands of the public service and to promote the interests of and preserve the franchises vested in the lessor". This was part of the bargain made with the stockholders of each of the Group 1 Companies by Public Service when in 1903 it leased the properties and franchises of these respective companies for 900 years. The "increase of profitable demand" —"the demands of the public service" which the parties then foresaw have now happened. The situation has now changed only in the very way then anticipated. The appellants, therefore, cannot properly claim that the appellees are not warranted in resisting an effort to place them in a position where they may no longer be able to enjoy the benefit of their original investment. They should not against their consent be compelled to exchange their present position for one that will permit of their being forced out of participation in the enterprise at any time after three years.

If the public interest now or in the future really requires that the lessor companies be completely assimilated in Public Service it must be assumed that none of their minority stockholders would oppose an effort to bring about this result upon terms that were fair to them. If they did neither the Court of Chancery nor this Court would aid them. But the present plan is not fair to the

minority stockholders if for no other reason than that its normal development will in a few years at most deprive them of their present profitable investment.

That no necessity exists for this is apparent. *The 6% preferred stock which the merger agreement alone offers the appellees is the only class of capital stock of the Electric & Gas Company that is redeemable.* It already has two other classes of preferred stock and common stock. One class thereof is 7% non-redeemable preferred stock. Although it would have to be increased if shares thereof were to be offered in exchange this could be readily done. Some of this class of non-redeemable stock is already outstanding in the hands of the public. Another class thereof is 6½% non-redeemable preferred stock. There is $10,000,000. of this authorized, but none of it issued. Another class thereof consists of 20,000,000 shares of non-redeemable non-par common stock, of which 11,475,000 shares are outstanding. Public Service itself owns all of this common stock except directors' qualifying shares. It has full voting rights. No reason is given why shareholders in the Group 1 Companies are not offered shares of one or more of these classes and thus afforded an opportunity to remain as stockholders in the Electric & Gas Company as long as they desire, which is a right they have in their present companies.

It may be that Public Service regards it necessary either in its own interest or that of the public that it retain ownership of all of the voting stock, but it has not said so. Nor has it made any explanation of why the merger plan does not afford the minority stockholders in the Group 1 Companies the opportunity to receive in exchange for their holdings shares of the 7% non-redeemable preferred stock which were issued to the

United Company share for share for its 5% stock when that company was merged into the Electric & Gas Company (McCarter, Case, Vol. II, pp. 134-136). In the absence of evidence to the contrary the only inference that can be drawn is that the Public Service desires to reserve the right to exclude the minority Group 1 Company stockholders from further participation in the enterprise as soon as it can do so, and that when the opportunity offers it will avail itself of it. Any plan which makes this possible is unfair.

Beling v. *American Tobacco Company,* 72 N. J. Eq. 32, has pertinent application to the factor of value now under discussion. There Vice-Chancellor Pitney reviewed the consolidation of the original American Tobacco Company into the present company of that name. The merger agreement offered for the 8% preferred stock of the old corporation, 6% bonds of the new corporation maturing in 1940, this being the date when the corporate existence of the old corporation would expire according to the terms of its charter. Such bonds were to be issued to the holders of preferred stock in the proportion of $13,333 of face value of bonds to $10,000 of face value of stock, thus as the opinion shows giving them a better security, with no loss of income and the certainty of receiving 133% of the par value of their shares on dissolution. The following quotation from Vice-Chancellor Pitney's opinion holding the terms of the merger to be fair, shows that he regarded the right which it thus gave the complainants to continue in the enterprise as an important factor in making it so. He said:

> "So that complainant had the option to receive for his certificate of stock 6% bonds maturing at the time that his certificate of stock, so to speak, would have matured, which would produce him precisely the same income that

> his preferred stock, under the most favorable circumstances, could have produced him, and insured him at its maturity one-third more than its face value. Further, as appears by an examination of the consolidation agreement, the security for its payment would have been much better than that for the payment of dividends on his certificate of stock. * * * I am satisfied that the allotment of bonds to the complainant or his predecessor in ownership was a fair equivalent for his stock."

On pages 87-88 of their brief appellants point out that Section 18 of the General Corporation Act authorizes the creation of preferred stock subject to redemption at any time after three years from the issue thereof at a price not less than par. They then state it to be their contention that the merger agreement, therefore, has statutory sanction in offering the minority stockholders either preferred or common stock with or without voting powers or preferred stock redeemable after three years at a price not less than par. Their theory is that inasmuch as the current market price of the redeemable preferred stock which the merger agreement offers the minority stockholders is equivalent to the current market price of the securities they hold in the Group 1 Companies, the agreement is immune from judicial restraint unless it is *ultra vires.* We find it impossible to either share this view or to believe that Section 18 has any bearing upon the question of whether the terms of the merger are fair and equitable to the minority stockholders, which apart from any question of *ultra vires* is the sole test of whether its consummation should be enjoined under the rule adopted by Vice-Chancellor Emery in the *Colgate* case, 73 N. J. Eq. 72, and established by this Court in the *American Malt Corporation* case, 86 N. J. L. 668, and *United Shoe Machinery Company* case, 84

N. J. Eq. 276; 85 N. J. Eq. 290. In each of these three earlier cases the merger was enjoined notwithstanding the very securities it offered the minority stockholders were authorized by the Corporation Act. The learned Vice-Chancellor in applying the principle of these decisions to the case at bar demonstrated the fallacy of appellants' argument in the following portions of his opinion:

> "* * * The complainants' resistance and their contention that they ought not to be compelled to exchange their first lien securities for gilt edged second lien security is not without appeal, and were the decision to rest here there would be some embarrassment in squaring the merger with fairness. But there is a more serious inequity; the preferred stock lacks permanency. It is redeemable within three years at the option of the Electric and Gas Company. Thus the merger, in effect, is nothing less than a forced sale by the majority stockholders to itself at a price fixed by it and payable at its pleasure. The preferred stock is but the equivalent of a six percent promissory note payable in three years at the option of the buyer. The merger legislation countenances no such perversion of the contractual obligations of stockholders *inter sese*. Continued membership, until dissolution, is an inherent property right in corporate existence. * * * The contingency of elimination after three years is unfair and the right to exercise the option at that time, given by the merger agreement, is oppressive and inequitable. The unlikelihood of the option being exercised, as suggested by the company, is purely speculative and the burden of anxiety is not to be put upon the complainants. If money should become cheap and the Public Service could float a new issue at an appreciably profitable lower percentage of interest, redemption would undoubtedly follow, consistently with its past policy of good business.

"The redemption feature at $110 offers no adequate compensation, for the complainants would be obliged to reinvest their capital at a correspondingly low rate of return, and besides suffer loss of interest pending reinvestment. It is true, the complainants would encounter the same disadvantages if their stocks were appraised under the compensation provision of the statute, but that is presently subordinate for, before the Electric & Gas Company may resort or the complainants be driven to that extreme measure the fairness of the merger must be vindicated (*Colgate* v. *U. S. Leather Co., supra*), and it would then be available to the Electric & Gas Company only if non-voting stockholders dissented therefrom or refused or neglected to convert their stocks. * * * It is not overlooked that under the merger act the merger agreement may provide for 'converting the capital stock of each of said merging or consolidating corporations into the stock or *obligations* of such new or consolidated corporation', thus implying that obligations may be given in exchange. Here, obligations are not offered and the question does not directly arise. On the contrary, the exchange for the preferred stock may later become an obligation of the complainants to take. The offer amounts to that. However, fairness in mergers dictates, that when obligations are given in exchange for stocks of the character here involved, they at least should bear a corresponding permanent investment value, such, for instance, as the Perpetual Interest Bearing Certificates of the Electric & Gas Co. or like obligations, otherwise a merger would be a simple medium for a compulsory sale; and that is not permissible" (Case, Vol. II, pp. 322-325).

F.

Whether the consummation of the merger plan should be enjoined depends upon its fairness and not the ability or honesty of those responsible for its terms.

The following are extracts from appellants' brief:

> "What is a fair offer in such a draft of agreement, if made in good faith is a matter of business judgment, and cannot be treated in equity as an illegal step in a proceeding to merge corporations in the manner authorized by law" (p. 44).
>
> "The merger of the five lessor companies into Public Service Electric and Gas Company is a matter that is within the power of the directors and stockholders of those companies. To accomplish that object all they had to do was to pursue the method prescribed by the general corporation act, and to act honestly. If in so acting they made an error in judgment, that fact would not authorize a court of equity to intervene by injunction, or otherwise" (p. 37).
>
> "The conduct of all who acted for the companies in the matter involved in this suit, as disclosed by the proofs now before the Court, repels any presumption of unfair dealing. Consequently the agreement cannot be annulled in equity" (p. 38).

As already made clear the appellants' motives are not challenged. We concede their honesty of purpose and also that the officers and bankers of Public Service are men of great ability with large experience in corporate mergers. These are not, however, the issues in this suit. Apart from the question raised as to the power to merge at all, the issue herein is whether the plan is fair and equitable. The fact that the appellants believed

that it was when it was made, and still believe so after considering the opposition that has been made to it, cannot change this issue or affect the decision thereon. The subject matter of this suit is not one of internal business administration, but whether vested rights will be impaired and lessened if what is attempted to be done is permitted to be done. If so, no matter how honest the intent, a court of equity will not permit it to be carried out.

G.

No showing has been made of public interest requiring the consummation of the merger agreement.

In the general plan of refinancing put forward by Public Service in 1924 for a simplification of its capital structure it was expressly stated that an eventual consolidation of some of the lessors into the Electric & Gas Company might be subsequently undertaken but that such consolidations were not an essential part of the plan (Exhibit I Annexed to Answer; Case, Vol. I, p. 312). In respect to the lack of necessity for such consolidation there has been no change. Page 52 of the appellants' brief carries this statement:

> "It is true, as Mr. McCarter explained, that it was not absolutely necessary that all of the lessor companies should be merged into the Electric & Gas Company, but the more of the leasehold estates that can be turned into estates in fee, the stronger will be the foundation of the company for its financial operations."

That it would be convenient to Public Service to have the leases abrogated is not denied. Nor is it denied that to some extent, although probably

not a very large one, it would facilitate the financing of its capital requirements. But this is as far as the evidence goes, and this is not enough to warrant the approval by the Court of a plan which the appellants have not demonstrated to be fair to the minority stockholders, and which the evidence in fact shows to be unfair to them in the respects we have indicated.

H.

As to the dissimilarities in the charter objects of some of the companies proposed to be merged.

In the Court below counsel for the other appellees argued that the charter powers of the Group 1 Companies differed not only with those of the Electric and Gas Company but also with each other, and that under the rule of the *Colgate* case, 75 N. J. E. 229, the consummation of the merger should be enjoined as *ultra vires* although in other respects unassailable. The learned Vice-Chancellor refused to adopt this view, placing his decision solely upon the unfairness of the merger plan. Even if such refusal was erroneous we do not deem it to the best interest of the Shanley Estate to urge the Court to enjoin the merger on the ground that the power to merge upon any terms does not exist.

The time may come, even in the not distant future, when it may be unfortunate for the minority stockholders in the Group 1 Companies if by reason of the decree made herein it has been finally determined that their companies can never be consolidated with the Electric & Gas Company, no matter how advantageous this might be to such stockholders. Only a negligible portion of the nine hundred years for which each of the leases was made has now expired. The history of the

progress and development of the electric and gas industry during this comparatively brief period seems to make it possible if not probable that even before the trusts created by the will of Bernard M. Shanley are terminated it may be in the unmistakable interest of the Public Service to propose a merger of all of the lessor companies upon terms that none of their stockholders should refuse. The public interest may in the future also require this. The question of the power of these companies to merge on any terms is necessarily fraught with importance to others as well as to the parties involved directly in this suit.

We believe that the interest of all of the appellees as well as the public interest will best be served and protected through the entry of a decree herein the effect of which will be not to permanently shut the door against any merger, no matter how beneficial to the appellees, the Public Service or the public, but by the affirmance of the decree below enjoining the consummation of the present merger plan upon the ground that its terms are unfair and inequitable to the appellees. That under the evidence it is so, particularly in that it seeks to compel the appellees to accept redeemable stock in the Electric & Gas Company in lieu of their present permanent underlying securities, seems so clear that on behalf of the Shanley Estate, and for the reasons just stated, we feel it our duty to base its objection to the proposed merger solely on the ground of unfairness to it.

Respectfully submitted,

Louis Hood,
Frederic J. Faulks,
Of Counsel.

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New Jersey Court of Errors and Appeals.

R. Irving Outwater, *et al.*,
Complainants-Appellees,

vs.

Public Service Corporation of New Jersey, *et al.*,
Defendants-Appellants.

On Appeal from Court of Chancery.

APPELLANTS' BRIEF IN REPLY.

We received the brief of the Fidelity Union Trust Company on Monday evening, the 4th instant, and the brief of the other appellees in proof form on the morning of the 5th. As the case is likely to come on for hearing in a few days, we do not have a full opportunity to examine the appellees' briefs and prepare and print a reply, and consequently can only comment, within the time at our disposal, on a few of the subjects discussed.

I.

The companies have power to merge.

The appellees, in paragraph 131 of their bill, charge that the corporations, parties to the proposed merger agreement, were not organized for the purpose of carrying on business of the same or a similar nature and, therefore, the proposed merger would be *ultra vires,* illegal and void. The bill, however, does not state in what particular

the companies were not organized for the purpose of carrying on business of the same or a similar nature, but states that the greater number of them were formed by the consolidation of predecessor corporations, some of which in turn had been formed by consolidation of other corporations, and that the existing companies had succeeded to and are possessed of all rights, powers, etc. of the predecessor companies. The bill further states that the kinds of business for which the companies were formed can be determined by the terms and provisions of the certificates of incorporation, or special acts of incorporation, under or by which the predecessors of the present companies were incorporated, and the statements therein contained of the objects and purposes for which such primary corporations were formed. We have already called attention to the fact that the certificates of incorporation of five of the companies, parties to the merger agreement, were amended during the month of October 1927, so as to remove any doubt as to the similarity of the objects and purposes for which the companies were formed. We do not understand that any question is made now as to the similarity of the purposes of the companies as expressed in their amended certificates of incorporation, but it is insisted that the amendments were made in order that the companies might be in a position to enter into an agreement of merger.

The power to merge or consolidate is statutory. The first statute in this state permitting corporations to merge or consolidate was enacted in 1883, P. L., page 242. It was limited in its scope by permitting only corporations authorized to establish store-houses, piers or docks, or to maintain yards and buildings for the accommodation of live stock to consolidate. We refer to it simply as the beginning of the statutory law of this state on the subject of mergers and consolidations.

The second statute on that subject was enacted in 1888, P. L., page 441. It extended the right to merge or consolidate to corporations formed for the purpose of improving lands, constructing and operating hotels, carrying on the business of innkeeper, transporting goods, etc.

The third statute was enacted in 1892, P. L., page 403, to permit gas and electric light companies in cities of the second class to consolidate.

The following year, another act was passed permitting "any two or more corporations organized or to be organized under any law or laws of this state for the purpose of carrying on any kind of business of the same or similar nature to merge or consolidate into a single corporation." P. L. of 1893, at page 121. Here, it will be observed, the legislature for the first time permitted corporations generally to consolidate.

In 1894, P. L., page 36, a statute was passed validating defective action taken under the act of 1892.

In 1896, P. L., page 309, the general corporation statutes of this state were thoroughly revised, and in section 104 of that act, P. L., page 309, it was provided (as in 1893) that—"Any two or more corporations organized or to be organized under any law or laws of this state for the purpose of carrying on any kind of business of the same or a similar nature may merge or consolidate into a single corporation." All of the reported cases in this state on the subject of merger and consolidation are constructions of the statutes of 1893 and 1896.

The revised statutes of 1911 (Compiled Statutes) included the statutes of 1892, 1894 and 1896. It is settled, however, that the re-enactment of a law in a revision does not *ipso facto* in any respect change the efficacy of such law. *Knight* v. *Freeholders of Ocean,* 49 N. J. L., 485.

Whatever the effect of the inclusion of the acts

of 1893 and 1896 in the revision of 1911 might have been, it was entirely dissipated by the enactment in 1918, P. L., page 1013, of a revision of section 104 of the general corporation law of 1896. That act of 1918 contains *a repealer of all inconsistent laws.* And since this statute of 1918 revises the whole subject matter of merger and consolidation of corporations, it was evidently intended as a substitute for all pre-existing statutes on that subject and furnished the rule for all corporations except those expressly excluded. This principle was distinctly stated in the cases of *Roche* v. *Jersey City,* 40 N. J. L., 257; *Camden* v. *Varney,* 63 N. J. L., 325; *De Ginther* v. *New Jersey Home, &c.,* 58 N. J. L., 354, and *Murdock* v. *City of Memphis,* 20 Wall., 617.

All of the corporations involved in the proposed merger were created by consolidation agreements subsequent to the passage of the revision of the general corporations laws in 1896. It is, however, unimportant whether the power to consolidate existed when the companies, parties to the proposed merger agreement, were formed or not, because it is entirely settled that the legislature can confer that power on corporations, and it may be exercised in the manner provided by law, although at the time when the corporations were created, no power to consolidate existed. *Bingham* case, V. N. J. Adv. Reps, 1111, affirmed Vol. VI N. J. Adv. Reps, 368. *Greenwood* v. *Union Freight Co.,* 105 U. S. 13. *Polk* v. *Mut. Reserve,* 207 U. S. 310; *Pearsall* v. *Great Northern,* 161 U. S. 646.

Gas and electric companies are engaged in the same or a similar business, that is, their objects are the same. Gas companies furnish gas for light, heat and power; electric companies furnish electricity for the same purposes. In the case of *People ex rel.*

Municipal Gas Company of Albany v. *Rice,* 138 N. Y., 151, it was said:

> "The business of a gas company and that of an electric light company is of the same general character within the meaning of the statute" (p. 158).

The language of the statute of New York was that corporations "carrying on any kind of business of the same or of a similar nature" might consolidate. The rule, as stated in Thompson on Corporations, vol. 7, section 8220, is as follows:

> "Under a statute providing for the consolidation of two corporations of the same nature and covering the same territory, two water works companies supplying water to the same district may be lawfully consolidated; *and so may a gas company and an electric light company.*"

It is perfectly manifest from the use of the two words "same" and "similar" in our statute, that similar was intended to extend the power to consolidate to corporations that are not identically the same in all respects, but such as are pursuing the same general objects.

The first definition of "similar" in the Standard dictionary is as follows:

> "Bearing resemblance to something else; being like in quality, nature, degree, *purpose,* or other characteristics, but not the same or identical."

The first definition of "similar" in Webster's dictionary is:

> "Nearly corresponding; resembling in many respects; somewhat alike; having a general likeness."

In the case of *Mitchell* v. *McCullough,* 12 Ohio Circuit Court, 763, 764, it was said:

> "Accurately speaking, similar does not mean the same; in fact, it would mean that while it resembled, it was not the same."

In *State* v. *Weston,* 29 Montana, 125, 132, also reported in 74 Pac., 415, in defining similar it was said:

> "It does not mean identical in form and substance; but having characteristics in common."

In the case of *Colgate* v. *United States Leather Co.,* 75 N. J. Eq., 229, this subject was considered, and it was held that the corporations involved in that litigation were not engaged in the same or similar business. (There were other questions in the case concerning interests of stockholders that are not pertinent at present.) It was held, and no doubt rightly, that the power of corporations to consolidate must be determined not by the business actually carried on, but by what they are authorized to do by their charters or certificates of incorporation. It is sufficient here to note the fact that the court found that the primary object of the United States Leather Company was—

> "the manufacture and sale of leather, lumber and belting, including the acquisition of lands and other property necessary to or convenient in connection with that manufacture, and, in general, the engagement in any and all lawful business necessary or convenient in connection with the business of manufacturing and selling leather, lumber and belting, and also, to the extent necessary or convenient in connection with the business of the company already mentioned, to purchase, acquire, &c., shares of stock of any other company created under the laws of this or any other state or country, and to purchase securities or evi-

> dences of debt created by any other corporation. From this language it is clear that the primary object of this company is the manufacture and sale of leather, lumber and belting, and that the other objects mentioned are but incidental" (page 236).

The certificate of incorporation of the Central Leather Company, the other corporation involved in the proposed consolidation, stated numerous objects for which it had been incorporated, which are set out at length in the report of the case (p. 237). After reciting those objects the court said:

> "To say nothing of the incidental powers, it is plain that the principal objects and purposes of the Central company are much more extensive than those of the United States company" (page 238).

And then the court stated the particulars in which the objects of the two companies differed; showing clearly that there was a palpable dissimilarity between their objects and purposes.

The statute of 1892 expressly authorizing gas and electric companies in second class cities to consolidate was a legislative declaration that the businesses of gas and electric companies are of a similar kind and may be properly consolidated. Then came the act of 1893, which permitted corporations formed under any law of this state for the purpose of carrying on business of the same or a similar kind to merge or consolidate. Since 1893 a large number of consolidations of gas and electric companies have been accomplished in municipalities of all classes in this state, and the legality or propriety of such consolidation has never been questioned, either by the administrative officers of the state or in any judicial proceeding. This contemporaneous and subsequent exposition of the meaning of the statute must be taken, under a well

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established rule of construction, to be cogent evidence of the true meaning of the act of 1893.

It may be added that consolidation agreements which were looked upon with disfavor by the public a decade or more ago are now often not only recommended, but urged, by public authorities, realizing the advantages thereby derived. Indeed, the federal government seriously proposes to compel the steam railroads throughout the country to merge into five or six systems.

II.

The companies have power to amend their certificates of incorporation and have done so lawfully.

The merger agreement in question in this case was originally made under date of April 26, 1927, but not voted on by the stockholders. Subsequently, when the appellees in their bill charged that the companies were not authorized to do the same or similar business, a thorough examination was made of the charters and certificates of incorporation of the companies and their predecessors, and thereupon it was thought prudent to amend the certificates of five of the companies, parties to the merger agreement, so that there could be no doubt as to similarity of the business that they were authorized to carry on. The amendments were made in October, 1927, and immediately afterwards the directors entered into a new agreement dated October 25th, and it was approved on the 19th day of December by the holders of more than two-thirds of the stock of all of the companies. We do not understand that any question is made now as to the similarity of the purposes of the companies as expressed in their amended certificates. It is stated,

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however, in subdivision (e) of paragraph XVII of the first supplemental bill of complaint that there was no necessity for, or advantage to be gained by amending the certificates of incorporation. It was also charged that those amendments are a mere formal compliance with the law for the purpose of furthering and carrying into effect the design of Public Service Corporation and Public Service Electric and Gas Company to vest ownership of the properties of the lessor companies into the Electric and Gas Company, and to extinguish the obligations of the latter under the leases, by means of the proposed merger, and therefore it is charged that the amendments and alterations in the objects and purposes of the said lessor companies cannot be given effect in a court of equity as against the claims of the appellees. That allegation in the first supplemental bill was distinctly denied in the answer, and no proof was offered by the complainants to support it. No authority is cited by the complainants, and in our opinion, none can be found holding that the amendments, for any reason alleged in the supplemental bill, are illegal or can be disregarded by this court. The fact is that the amendments were made in strict compliance with the forms of law, and have been filed in the office of the secretary of state, and now constitute parts of the certificates of incorporation of the companies.

One of the objections presented by the appellees relates to the power of the Essex and Hudson Gas Company to amend its certificate of incorporation so as to make a change in its objects and purposes, and to extend the territory in which the company might operate under its original certificate, which contained a provision that the company "shall have no right to extend its business operations beyond the limits of the territory above described [namely, the town of Harrison, the Township of Kearny, and

the Borough of East Newark, in the County of Hudson] without the unanimous consent of the stockholders of said company". In answer to this contention we respectfully submit:

FIRST: Since the certificate of amendment has been filed in the office of the secretary of state, the attorney general is the only one who can object to its validity, and he must act by *quo warranto.* The appellees, if they desired to insist on their objections to the amendments, should have attempted to prevent the filing of the certificates of amendment. Having failed to do so, they have lost their opportunity to object in this court.

In the case of *Stout* v. *Zulick,* 48 N. J. L., 599, the Court of Errors said:

> "Where it is shown that there is a charter or a law under which a corporation with the powers assumed might lawfully be incorporated, and there is a colorable compliance with the requirements of the charter or law, and a user of the rights claimed under the charter or law, the existence of a corporation *de facto* is established. *Methodist Church* v. *Pickett,* 19 N. Y. 482; *Buffalo and Allegheny R. R. Co.* v. *Cary,* 26 N. Y. 75. And it is entirely settled that the corporate existence of such corporation *de facto* cannot be inquired into collaterally. It is, as to all who contract with it, to be assumed to be a corporation *de jure.* The legality of its corporate existence may be inquired into by the state, but not by anyone else. And this is as true where the corporation is formed under a general law as it is where the corporate existence is claimed under a special charter. *Cochran* v. *Arnold,* 58 Penna. St. 399; *Eaton* v. *Aspinwall,* 19 N. Y., 119." pp. 601 and 602.

And in the case of *Vanneman* v. *Young,* 52 N. J. L., 403, it appeared that a certificate of incorporation had been recorded in the county clerk's

office in Gloucester County on November 9th, 1886, but not filed in the office of the secretary of state until the 17th of August, 1887. The company, however, functioned in the meantime. In considering the status of the corporation between those dates, the Court of Errors quoted and adopted the following expression from one of the cases mentioned in its opinion:

> " 'Where the law authorizes a corporation, and there is an effort in good faith to organize a corporation under the law, and thereupon, as a result of such effort, corporate functions are assumed and exercised, the organization becomes a corporation *de facto,* and, as a general rule, the legal existence of such a corporation cannot be inquired into collaterally, although some of the legal formalities may not have been complied with. Ordinarily, such an inquiry can only be made in a direct proceeding brought in the name of the state. * * * No private person having dealings with a *de facto* corporation can be permitted to say that it is not, also, a corporation, *de jure.' Hasselman* v. *United States Mortgage Co.,* 97 Ind. 365; *North* v. *State,* 107 *Id.* 356, 5 West Rep. 535; *Stout* v. *Zulick,* 19 Vroom 599," pp. 404 and 405.

Again in the case of *National Docks R. R. Co.* v. *Central R. R. Co.,* 32 N. J. Eq., 755, it was charged in the bill filed for an injunction, that the corporation had been formed under the general railroad law to transport freight and passengers as a public utility, but, in fact, it was designed to be only the means of providing the National Storage Company with transportation for its merchandise across the Central Railroad to the depots of the Storage Company, and hence the company had been incorporated merely for private purposes. An injunction was awarded by the Chancellor, but his decision was

unanimously reversed by the Court of Errors. After reciting the reasons for injunction alleged in the bill, the Court of Errors said:

> "These reasons, if they have any force, go directly to the legality of the organization of the railway company. If they should prevent the exercise by the company of the powers which the general railroad law confers upon corporations created under it, it is because the company should not have been created in the mode and for the purposes in and for which it has been organized, and should be disbanded. It is not denied that every formal requirement of that law has been complied with, and that, to all external appearance, this company is a corporation by virtue of its provisions, but it is claimed that, the motives and purposes of its corporators being what they are, they have usurped a corporate existence which the law did not authorize them to assume, and hence, while they may retain the form, they cannot exercise the functions of a corporation. Not because this corporation threatens to assail any rights of the complainants, which, if lawfully organized, it would not be permitted to invade, but because it is a corporation *de facto* merely, and not *de jure,* does the Chancellor prevent it from doing what only a legal corporation may do.
>
> "An inquiry and judgment of this nature are, we think, beyond the powers of the Court of Chancery, at least in a suit between private parties" (pp. 759 and 760).

This Court has repeatedly rendered similar decisions, holding that a corporation organized under the forms of law cannot be destroyed by a decree of the Court of Chancery, and, of course, the same rule applies to amendments made in compliance with forms of law to charters or certificates of incorporation previously filed. *The Elizabethtown Gas Light Company* v. *Green,* 46 N. J. Eq., 118,

affirmed 49 *ib.*, 329; *Jersey City Gas Co.* v. *Dwight*, 29 N. J. Eq., 242.

There is not a word of evidence in this case that the amendments of the certificates were not made in good faith, and in strict conformity to the law authorizing amendments to certificates of incorporation to be made.

SECOND: If the Essex and Hudson Gas Company could not transact business outside of the territory mentioned in its certificate of incorporation without unanimous consent of its stockholders, that limitation still exists. All that the amendment did in that particular was to permit the company to carry on business outside of the territory mentioned in its certificate of incorporation, provided it should get the unanimous consent of its stockholders, precisely as it could have done before the amendment was made (See p. 21, *post*).

THIRD: If there is any basis for the objection, the complainant's remedy is by injunction to prevent the Essex and Hudson Gas Company from carrying on business outside of the territory mentioned in its original certificate, whenever the company attempts or seriously threatens to do so. There is no such effort or threat now pending. Some of the authorities on this subject are: *Cook on Corporations* 8th Ed., Vol. 1, p. 595, Sec. 187; also Vol. 2, p, 1672, Sec. 502; *Allen, et al* v. *White, et al.*, 171 N. W., 52; *Woodruff* v. *Columbus Inv. Co.*, 68 S. E., 1103.

FOURTH: On the first day of June, 1903, the Essex and Hudson Gas Company leased all its property and franchises, except its franchise to be a corporation, and books and cash, bills, notes and accounts receivable for the term of 900 years to Public Service Corporation of New Jersey Exhibit D-18, which, in turn, assigned the lease to Public

Service Gas Company Exhibit D-18, and by the consolidation agreement of 1924 it passed to Public Service Electric and Gas Company. The lessee and its assignees had, and have power to carry on business within and outside of the territory mentioned in the certificate of incorporation of Essex and Hudson Gas Company, and that company having by lease parted with all of its franchises, except it franchise to be a corporation, can not during the term of the lease (900 years) carry on business anywhere. The lease has been in existence for more than twenty-six years, and its validity has never been questioned, and is not questioned in this case.

The appellees argue in their brief at some length that section 28 of the general corporation act does not authorize the parties to the merger agreement to amend their certificates of incorporation so as to change the nature and objects of their business. We think it does. That section provides that:

> "Any corporation of this state, *whether organized under a special act of incorporation* or under general laws * * *" may amend in certain particulars, and
>
> "any corporation may, in the same manner, relinquish one or more branches of its business, or extend its business to such branches as might have been inserted in its original certificate of incorporation."

This section first appeared in the revision of 1896 of the corporation act. Section 27, had existed since 1846, in a much narrower form and had from time to time been amended. See *Dill on Corporations*, 5th Edition, 1911, pages 100, 106-107. Judge Dill is quite right in the statement (*Id.*, p. 107) that this section (*i. e.*, Section 28) as amended:

> "is intended clearly to cover corporations organized under other acts than the act of 1875 or the revision of 1896."

We think that the construction that the appellees give to the language of section 28 permitting by amendment, a corporation

> "To relinquish one or more branches of its business or extend its business to such branches as might have been inserted in its original certificate of incorporation,"

is entirely too narrow.

Their brief states that section 28 does not include the power to change the nature of the business or change the objects or purposes of corporations. Either the word "branches" as here used means branches or departments of business which may be extended, enlarged, or increased in number by amendment, or it simply means branch offices. It cannot mean the latter because there never has been any requirement of a specification of the location of branch offices in charters or certificates of incorporation, and we feel confident that the legislature, as Judge Dill says, intended by the language used in section 28, to bestow upon corporations, other than those organized under the general corporation acts of 1875 and 1896, including specially chartered corporations, the general powers of amendment, including provisions restricting or broadening the nature and objects of their business. Of course, we must remember that section 27, in its present form, has been frequently amended since 1896, when section 28 was first enacted, and many of the additions to section 27, since 1896, have not been incorporated in section 28.

But it is not important in this case whether the power to amend the certificates of incorporation of the parties to the proposed merger agreement, so as to change the nature of their business or add to their objects, is conferred by section 28 of the general corporation act or not, for the reason that **all of the five lessor companies that amended their certificates of incorporation in October 1927 were or-**

ganized by consolidation agreements made under authority of the general corporation act since the revision of that act in 1896. By the fact of consolidation a new corporation was formed in each case, whose powers and rights were fixed and measured by the articles of consolidation, and by the general corporation act itself. That act provides in section 106 that:

> "Upon making and perfecting the said agreement and act of merger or consolidation, and filing the same in the office of the secretary of state, the several corporations shall be one corporation, by the name provided in said agreement (in case a new corporation shall be created thereby), or by the name of the consolidated corporation into which said other contracting corporation or corporations shall be so merged or consolidated, as the case may be, and possessing all the rights, privileges, powers and franchises, as well of a public as of a private nature, and being subject to all of the restrictions, dissabilities and duties of each of such corporations so merged or consolidated, except as altered by the provisions of this act."

Section 5 of the general corporation act declares that:

> **"this act and all amendments thereof shall be a part of the charter of every corporation heretofore or hereafter formed hereunder, except so far as the same are inapplicable and in-appropriate to the objects of such corporation."**

These provisions of the general corporation act distinctly confer upon corporations formed by merger or consolidation agreements the power to amend their certificates of incorporation under section 27, precisely as if the corporations so formed had been originally formed under that act.

It is perfectly clear that when two or more corporations enter into a consolidation agreement

under authority of the general corporation act of this state, the corporation so created inherits all the rights, powers, privileges, duties and obligations of the pre-existing corporations no matter under what laws they may have been formed, *Plainfield-Union Water Company* v. *Plainfield,* 84 N. J. L., 634, and obtains all the additional powers conferred by the general corporation act itself on corporations organized under that act in so far as they are applicable and appropriate to the objects of the new corporation. The power to amend, conferred by section 27, is applicable and appropriate to the five lessor corporations, parties to the proposed merger agreement, **because they were all organized under the general corporation act.**

In the case of *Shields* v. *Ohio,* 95 U. S. 319, the effect of a consolidation agreement under a statute permitting consolidation similar to, in fact identical with, the provisions of sections 104-7 of our general corporaton act, was considered. The statute of Ohio provided just as ours does, that:

> "such new corporation shall possess all the powers, rights, and franchises conferred upon such two or more corporations by the several acts incorporating the same, or relating thereto respectively, and shall be subject to all the duties imposed by such acts, so far as the same may be consistent with the provisions of this act" (p. 321).

The third section of the Ohio statute stated that a corporation created by a consolidation agreement

> "shall be deemed and taken to be one corporation, possessing within the state all the rights, privileges, and franchises, and subject to all the restrictions, liabilities, and duties, of such corporations of this state so consolidated" (*ib.*).

It will be noticed that the language of the Ohio statute in this respect also is identical with ours.

The court then proceeded to consider the legal status and character of the new corporation formed by a consolidation agreement, saying:

> "The legislature had provided for the consolidation. In each case, before it took place, the original companies existed and were independent of each other. It could not occur without their consent. The consolidated company had then no existence. It could have none while the original corporations subsisted. All —the old and the new—could not coexist. It was a condition precedent to the existence of the new corporation that the old ones should first surrender their vitality and submit to dissolution. That being done, *eo instanti* the new corporation came into existence.
>
> "When the consolidation was completed, the old corporations were destroyed, a new one was created, and its powers were 'granted' to it, in all respects, in the view of the law, as if the old companies had never existed, and neither of them had ever enjoyed the franchises so conferred. The same legislative will created and endowed the new corporation. It did one as much as the other. In this respect, there is no ground for any distinction.
>
> "These views are sustained by several well-considered cases exactly in point. One of them embodies the unanimous judgment of this court. *Clearwater* v. *Meredith,* 1 Wall. 25; *McMahan* v. *Morrison,* 16 Ind. 172; *The State of Ohio* v. *Sherman,* 22 Ohio St. 411; *Shields* v. *The State of Ohio,* 26 *id.* 86" (pp. 322, 323, 324).

In Rose's Notes on U. S. Reports, revised edition, Vol. 9, p. 952, annotating *Shields* v. *Ohio,* there are many cases, federal and state referred to, holding that:

> "consolidation works dissolution of constituents, and the new company derives all its power from the act authorizing it."

This is undoubtedly the settled rule of law, and is controlling in all cases except where the statute authorizing consolidation, either expressly or by necessary implication, preserves the existence of the constituent companies to a limited extent, or for some particular purpose.

The Supreme Court has repeatedly affirmed the doctrine of *Shields* v. *Ohio.* See *Keokuk etc. R. R. Co.* v. *Missouri,* 152 U. S., 301; *St. Louis Ry. Co.* v *Berry,* 113 U. S., 465; *R. R. Co.* v. *Georgia,* 98 U. S. 359, 362 and 363; *Cook on Corporations,* 8th Edition, Vol. V, section 897; *Fletcher Cyclopedia Corporations,* Vol. 7, page 8343, section 4703; *Thompson on Corporations,* 3rd Edition, Vol. 8, sections 6015-6.

Page 364 of the opinion in the *Georgia* case, referring to the two pre-existing railroad companies, the court said:

> "Each set of stockholders is shorn of the power which, as a body, it had before. Its action is controlled by a power outside of itself. To illustrate: The stockholders of the Savannah and Albany Railroad Company could not, after consolidation, have exercised any of the powers or franchises they had prior to their consolidation with the stockholders of the Atlantic and Gulf Railroad Company. They could not have built their road or controlled its management. They could not, therefore, have performed the duties which by their original charter were imposed upon them. Those duties could only have been performed by another organization, composed partly of themselves and partly of others. Their powers, their franchises, and their privileges were therefore gone, no longer capable of exercise or enjoyment. Gone where? Into the new organization, the consolidated company, which exists alone by virtue of the legislature grant, and which has all its powers, facilities, and privileges by virtue of the consolidation act. What, then, was left of the

> old companies? Apparently nothing. They must have passed out of existence, and the new company must have succeeded to their rights and duties. But the new company comes into existence under a fresh grant. Not only its being, but its powers, its franchises, and immunities, are grants of the legislature which gave it its existence."

This Court, in the recent case of *Bingham* v. *Savings Investment and Trust Company,* Adv. Rep. Vol. VI, page 368, mentioned the fact that the Savings Investment and Trust Company, although organized under an act passed in 1885, had amended its articles of incorporation under a statute passed in 1899, providing for the organization of trust companies, and pursuant to the authority conferred by that act, so as to include all the rights, privileges, and powers conferred upon trust companies by it.

> "This", the court said, "in our opinion amounted to a practical reorganization of the corporation under the revision of 1899, and so brought it within the scope of the subsequent merger act of 1925", which enabled trust companies to merge or consolidate (p. 370).

In that case Bingham had contended that when the Savings Investment and Trust Company was organized in 1885 there was no statute in force authorizing a merger by that company, and that the act of 1925 providing for the merger of trust companies did not apply.

Counsel for appellees, in their brief on the matter of the amendments to the charters, cite *Lazear* v. *American Steel Foundries,* 86 N. J. Eq. 21,252. The quotation is a singularly inept and unfortunate one. The case is stated in the syllabus, 86 N. J. Eq. 21, as follows:

> "On January 3d, 1908, it was resolved by the board of directors of a corporation that it was

> advisable to change and decrease defendant's capital, consisting of preferred and common stock, to one class and kind without distinction or preference between any of the shares, and that the certificate of incorporation should be amended accordingly, and the formal proceeding was consummated in June, 1908, and was on its face regular. Its validity was not questioned or attacked at any time during its progress, nor was it questioned directly or indirectly until April 8th, 1911, unsuccessfully elsewhere. The complainants did not then attack it directly, but insisted, as they do here, that it did not affect them. They allowed nearly three years to elapse after the filing of the amended certificate before they took even that action.—Held, that the complainants by their delay forfeited the right to raise the question that they were exempted by contract from the operation of the proceedings, especially in view of the doubt thereby thrown over the three million of debentures issued on the faith of the scheme of retirement, which operated equally upon all holders of stock."

It is clear therefore that the case is no authority for and has no bearing upon the right of stockholders to question in chancery the validity and effect of an amendment after it was made and filed. Stevens, *V. C.*, at page 23 distinctly points out that no relief by way of setting aside the amendment was prayed, but that on the contrary it was distinctly disavowed. He says: "The position of the complainants is this: * * * We do not ask that the proceedings, so far as it respects the assenting stockholders, be adjudged *ultra vires, or that it be set aside.*" And on page 25 he points out as an objection to the relief sought that "it would * * * disregard the charter as amended."

This opinion of Stevens, *V. C.*, was adopted on appeal by the Court of Errors and Appeals, 86 Eq. 252. Justices Garrison and Parker, and Judges White and Gardner joined in a dissenting opinion

written by Garrison, *J.*, which has a direct bearing on this case. He says, at page 253:

> "If the complainant did not care to surrender his preferred stock there was nothing for him to do but to hold on to it. He did not attack the scheme, and did not care to, he simply gave to it its legal effect. * * * The complainant is today as much a preferred stockholder as he ever was, and his contract as such has not been and cannot be altered either by the proposed scheme of exchange or by the voluntary acceptance of it by other preferred stockholders."

So in the case *sub judice.* The limitation in the charter of the business operations of the company to a limited geographical area, unless enlarged by unanimous consent of the stockholders, is no conference of power: it is merely a contract between the stockholders *inter sese,* evidenced by the charter.

If appellees' contention that the amendment neither did nor could enlarge the sphere of the business operations is sound, then the amendment was ineffectual to produce, and did not produce this result, and the contract remains unimpaired. If the company shall attempt to carry its business operations outside the limited domain, then a court of equity will give effect to the contract and enjoin the company from violating it. The contract *as such* has not been and cannot be altered, either by the scheme of amendment or by the voluntary acceptance of it by other stockholders.

III.

The principal cases on which the appellees seem to rely.

The appellees evidently rely on the case of *Boyd* v. *New York and Harlem Railroad Company,* 220 Fed., 174. The facts in that case, and the law of New York in force applicable to the controversy at the time it was decided are so widely different from the facts of this case, and the controlling rules of law of this state, that the *Boyd* case is not an authority supporting the contention of the appellees. In that case it appeared that a bill had been filed by the stockholders of the New York and Harlem Railroad Company to prevent a proposed consolidation between that Company and the New York Central. The case was heard on motion by the complainants under Equity Rule 29, for determination of certain points of law arising on pleadings. It appeared in the pleadings that the New York and Harlem Railroad Company owned the valuable Grand Central Terminal in New York City, and the approach thereto, and had leased the property in 1873 to the New York Central, for a given rent. It further appeared that the two companies, by an agreement dated May 15, 1882, had disabled themselves from changing the terms of rental during the period of demise, and

"in order to secure the individual interest"

of each Harlem shareholder, every such holder was specifically authorized in the agreement to "prosecute such suits as might be necessary in the premises to recover his proportionate part". Thus in effect making the stockholders parties to the agreement.

Judge Hough, upon the face of the papers held that the standing of the complainants was good to prevent the consolidation, giving the following reason:

> "The agreement of May 15, 1882, is a sufficient justification to these plaintiffs for protecting their interests by direct suit, and the same document amounts to a lawful undertaking on the part of the Central always to pay to each and every shareholder in the Harlem that holder's porportion of the 'annual rent reserved by and to be paid under' the lease of 1873.
>
> *"Any possible form of consolidation now authorized by the statutes of New York must involve a breach of this contract on the part of the Central; for, whatever Harlem shareholders may get after merger, they can never get their share of the 'annual rent' reserved by the lease of 1873"*, page 182.

On page 181 of the report of the case it is said:

> "There cannot be any public policy of the state of New York rendering it obligatory upon these corporations to unite; for the Central is trustee by virtue of its control of Harlem stock, and the plaintiffs and other minority shareholders are its *cestuis que trustent.* Farmers' L. & T. Co. *v.* N. Y. & Northern R. R., 150 N. Y. 410. *Possibly minority shareholders who obstructed a public enterprise might have their property taken for the public good, by some proceeding in the nature of condemnation; but no such remedy exists at present."* (Italics ours.)

It is clear that if such remedy had existed, the case would have come directly within the authority of the case of *Offield* v. *New York N. H. & H. R. R. Co.,* 59 Atl. Rep., 510, 60 Atl. Rep., 740; 203 U. S. 372, where the rule was laid down that contract rights are subject to condemnation, and that shares of stock also may be condemned for public use upon

just compensation being made. It will be observed, from the quotation above, that Judge Hough pointed out distinctly that if there were minority stockholders who were obstructing a public enterprise, and whose property could be taken for the public use under a procedure in the nature of condemnation, it might have led to a different result, but he points out that no such statutory remedy existed in New York at the time of the decision.

There is a still greater dissimilarity between the *Boyd* case and this. The act authorizing consolidation in the state of New York at that time recited in the opinion required that upon any merger the capital stock of the consolidated company should not

> "exceed the sum of the capital stock of the corporations so consolidated at the par value thereof. Nor should any bonds or other evidences of debt be issued as a consideration for, or in connection with, such consolidation."

Judge Hough, who wrote the opinion, pointed out that inasmuch as the New York Central had tried to purchase the stock of the Harlem company by an offer of three and one-half times par for the stock, and inasmuch as the value thereof was claimed by the Harlem stockholders to be very much greater than the offer, there existed no method by which the superior value of the Harlem as compared with the Central stock could be ascertained, nor indeed any method by which a basis of exchange could be adopted which would enable this disparity of value to be equalized.

It is obvious that if the capital stock of the consolidated company could not exceed the sum of the capital stock of the constituent corporations *at the par value thereof,* and no bonds or other evidences of debt could be issued as a consideration for, or in connection with such consolidation, it would be

impossible to accomplish the consolidation as proposed.

In the present case (1) there is a condemnation statute, (2) there is no statute requiring issuance of share for share and prohibiting a merger if the capital stock of the parties to the merger or consolidation agreement shall exceed the capital stock of the corporation created by such agreement at the par value thereof. There is no contract with stockholders individually outside the terms of the leases. The leases are made with the lessor companies, and not with their stockholders. In the *Boyd* case a remedy to enforce the contract was provided for the stockholders individually.

Perhaps it will be well to mention the effect of the language of the supplementary agreement of 1882, as explained by Judge Hough:

> "By a supplementary agreement of 1882, ratified by the stockholders of both Central and Harlem, the two companies disabled themselves from changing the terms of rental during the period of demise, and, in 'order to secure the individual interest' of each Harlem shareholder, every such holder was specifically authorized to 'prosecute such suits as may be necessary in the premises, to recover his proportionate part' of the stipulated rental, *i. e.*, the guaranteed dividend on Harlem shares; a dividend increased in 1898 by allotment to the Harlem shareholders of part of a saving in interest effected by a refunding of the company's bonded debt" (page 176).

It should not escape observation that one of the grounds of attack in the *Boyd* case was that

> "Such consolidation, by producing legal unity of two railways in addition to the present centralized control, would be a violation of the 'Sherman Act'. And (3) even the existing control of the Harlem by the Central, though based upon contracts made long before the passage

> of the 'Sherman Act', became unlawful when that statute sprang into existence, and is today a violation of federal law."

A considerable part of the opinion in the *Boyd* case was taken up with a discussion of these two grounds, and the result was reached that the Sherman Act was measurably applicable, but that obviously much evidence would be necessary to ascertain whether the facts would warrant any decision based on that Act.

Judge Hough said that if the complainants would elect to abandon the Sherman Act as a basis of action, a final decree for permanent injunction as sought in the third prayer would be forthwith granted. The third prayer was based on the charge that the consolidation asserted as imminent would be a violation of the complainants' contractural rights independent of the Sherman Act. It would seem to follow, therefore, that the phase of the case which dealt with the Sherman Act is dissociated from that which dealt with the violation of the plaintiffs' contractual rights, and that the decision of the court to the effect that if complainants would elect to abandon the Sherman Act as a basis of action, a final decree for permanent injunction as sought in the third prayer would be forthwith granted, makes it clear that the contractual rights of the parties as evidenced by the supplementary agreement of 1882, and the inability of the consolidated company to do justice by the agreement to the rights of the minority stockholders, owing to the lack of machinery for condemnation of their stock, and to their inability to admeasure the value of the stock because the act authorizing consolidation contained a provision limiting capitalization of the consolidated company, so as to make it impossible to carry out such a bargain as would be necessary to effect the consolidation, were the

grounds upon which the court proceeded, and were the basis of its decision.

American Seating Co. v. *Bullard,* 290 Fed. 896, is one of a class of cases relied on by the appellees. That case involved a single question, *i. e.:* Whether the directors and majority stockholders of a corporation, not insolvent, could transfer all the corporate assets to another corporation in exchange for stock in the latter corporation without violating the rights of non-consenting minority stockholders of the transferring corporation.

In order to accomplish this transfer an amendment of the charter of the company was made upon due notice in writing with the consent of the holders of more than two-thirds of each class of its capital stock. The court very properly held that the law is settled without apparent conflict that neither the directors nor a majority of the stockholders of a solvent going corporation have power to sell all its property and assets, thereby disabling itself from achieving the objects of its creation, against the dissent of a single stockholder.

The fact which differentiates that case from the merger now under consideration was stated by Judge Westenhaver on page 900 of the report of the case. He said, "In no case so far as we can find, have the nonconsenting minority been compelled to accept stock in a new corporation, in the absence of some statute in force when they became stockholders, expressly conferring that authority."

In order to avoid this difficulty, it was contended that section 27 and other provisions of the New Jersey Corporation Law in force when the American School Furniture Company (the selling company and a New Jersey corporation) was organized, and when the transfer was made, confer the power to amend the charter, so as to authorize a sale and transfer by the owners of two-thirds of the stock, and to accept and receive payment in capital stock

of the purchasing corporation. It was held that this contention could not be sustained, since there was nothing in the law when the company was created that could be read into its charter, and consequently become a part of the contract between the stockholders *inter sese,* which would warrant the sale and transfer of all the corporate assets, and to attempt to interpolate the same into the charter by an amendment would violate the contract between the stockholders and with the corporation.

In the present case the charters of all the companies parties to the merger agreement were obtained under a law which authorized their consolidation or merger with other companies carrying on the same or a similar business. Each person who became a stockholder in any one of the six constituent companies became thereby a party to the original compact. He bought a share in that compact as well as in the property. *Allen* v. *Francisco Sugar Co.,* 92 N. J. Eq. 435. Or to use the language of Mayer, Circuit Judge, in *In re Interborough Consolidated Corporation,* 277 Federal Reporter 457, "In the case at bar, claimant acquired her stock after the statute authorizing consolidation of corporations had been enacted. She thus held her stock with the advantages and burdens of the statute, and the statute was read into the contract between her and the corporation. The difference in status between one who acquires stock prior to the existence of such a statute and one who acquires stock subsequent to its enactment is well illustrated in *Clearwater* v. *Meredith,* 1 Wall. 25, 40, 17 L. Ed. 604, and *Nugent* v. *Supervisors of Putnam Co.,* 19 Wall. 242, 22 L. Ed. 83. See also *Town of East Lincoln* v. *Charles Davenport,* 94 U. S. 801, 24 L. Ed. 322; *Township of New Buffalo* v. *Cambria Iron Co.,* 105 U. S. 73, 26 L. Ed. 1024; *Livingston County* v. *Bank of Portsmouth,* 128 U. S. 102, 32 L. Ed. 359."

It is not necessary to discuss the question, on which the courts differ, whether the rights of stockholders vary according to the laws in force when they *purchase* stock in a corporation, because the power and right to merge existed when all of the six companies parties to the merger agreement were organized.

Judge Mayer goes on to point out that when the Interborough Company was organized, and at the time when the claimant acquired her interest in the preferred stock therein, section 8 of the Business Corporation Law of New York provided for the consolidation of the corporation with another corporation organized for similar purposes and objects, by the approval of the holders of two-thirds of the outstanding stock, Section 9 of that law provided the remedy for the dissenting stockholder, to wit, a proceeding to have the value of his stock appraised by judicial action, and for the payment to him of the value ascertained.

Fletcher in his Cyclopedia of Corporations, volume II, 1924 Supplement, section 4685, says: "A person who acquires stock after the passage of a statute permitting consolidation with the consent of the holders of a specified per cent of the stock takes it subject to the provisions of the statute, which become a part of his contract with the corporation," and cites the *Interborough* case in support of the statement.

We are aware that *Allen* v. *Francisco Sugar Co., supra,* is authority for the proposition that "A corporation chartered prior [to the act concerning leases of property] could not so lease its property and franchises against the objection of a stockholder, even though such stockholder acquired his stock after the passage of that act," but the opinions in *Allen* v. *Francisco Sugar Co.* and in the *Interborough* case agree that if the right to consolidate existed at the time a charter was obtained, it is

to be read into and become a part of the charter, and all persons who take their stock in such companies take it subject to that right which enters into and becomes a part of the contract between the corporation and the stockholders and between the stockholders *inter sese.*

The above statement is fully supported by the case of *General Investment Co.* v. *American Hide and Leather Co.,* 98 N. J. Eq. 338, where it is said, "It was a part of their contract with the corporation and with the other stockholders, both common and preferred, that the corporation should have all the powers given it by the legislation in existence when the corporation was organized, unless those powers were expressly surrendered in some particular respect by the articles of incorporation themselves." See also *Berger* v. *U. S. Steel Corp.,* 63 N. J. Eq. 813.

When the six companies parties to the merger agreement were formed by merger and consolidation agreements under the General Corporation Act, they acquired the powers indicated by the fifth section of that act, viz: "that this act and all its amendments shall be a part of the charter of every corporation heretofore or hereafter formed under it, except so far as the same are inapplicable and inappropriate to the objects of such corporation." To use the language of the *Berger* case, "The complainant, therefore has no vested right to retain her shares in opposition to any lawful method provided for retiring them. Nor, under the provisions of our Corporation act, can any just basis be found for the assertion that her vested rights as a stockholder are impaired by the purchase by the corporation of its own shares of stock." In other words when the five lessor companies were created by consolidation agreements new corporations were formed under the general corporation act. The 27th and

28th sections of that act authorized the amendments to the certificates of incorporation that have been made. Those amendments are now parts of the charters of the companies, and also parts of the contracts between the corporations and their stockholders, and between the stockholders *inter sese.* Moreover the right of the directors and stockholders to make the amendments was a part of the contracts *inter sese.* The purpose for which the amendments were made is entirely lawful and justifiable. They are not against but are in line with public policy.

Another view which has received judicial confirmation is that in the exercise of the reserved power of amendment the legislature has a more extensive power where the charter to be amended is that of a corporation carrying on a business affected with a public interest than it has in the case of a private corporation merely. If it is to the interest of the people of the state, as it undoubtedly is, to have consolidations and mergers of utility corporations take place so that the public may be more adequately and more cheaply served with electricity and gas, and other necessities, it follows inevitably that legislation permitting amendments of the charters of such companies to be made is in furtherance of their powers and objects and should be liberally construed. *Pearsall* v. *Great Northern R. R. Co.,* 161 U. S. 646; *German Alliance Ins. Co.* v. *Kansas,* 233 U. S. 389.

IV.

The Rippel Letter.

Shortly before the testimony in this case was closed the appellees offered a letter written by J. S. Rippel to Joseph Kahrs, counsel for the Shanley Estate, offering to purchase the holdings of the estate in the five lessor companies, as well as in other companies, at a higher price than was mentioned in the offer made January 10, 1927. That letter purports to have been sent in reply to a written inquiry by Mr. Kahrs. There is a mystery about the correspondence that the appellees did not attempt to clear up. The letter of Mr. Rippel is dated June 6, 1927. On the 4th day of June preceding Rippel & Company issued a price list, Exhibit D-32, showing that the market prices of the stocks mentioned in his letter were substantially the same as the offer made in January. The same is true of the current price list dated June 1st of the appellees, Outwater & Wells, Exhibit D-33. The prices were somewhat higher on the 1st of May, and lower on the 1st of August last. See Exhibit D-51.

The letter of Mr. Rippel is so palpably illegal as evidence that the Vice-Chancellor promptly sustained an objection to its admission, but subsequently let it in "for what it is worth" (page 315, vol. II). That it is worth nothing seems to be entirely clear. It was an offer to buy all or none of a group of stocks on condition that if all could not be obtained, none would be taken. It was made during the pendency of the Shanley suit and probably was an effort to settle or compromise it. That it was useless as evidence of market value is shown by the contemporaneous declaration by Rippel & Company in current price lists of the market prices

of the stocks. It was, therefore, not evidence of market value but rather of value for a particular use. It would be easy to prove almost anything if such a letter could be admitted in evidence, and allowed to have any influence. There is abundant authority holding that Rippel's letter is not legal evidence.

The law on this subject iseems to be thoroughly settled. In *Burr Jones on Evidence,* volume one, section 166, the learned author says:

> "Clearly evidence should not be received to prove what offers have been made to sell, or what prices have been asked or refused."

This rule finds full expression in the cited cases. *Spring Valley Works* v. *Drinkhouse,* 92 Cal. 528; *Lehmicke* v. *Railroad Co.,* 19 Minn., 464; *Davis* v. *Charles River R. R. Co.,* 11 Cush., 506; *Winnissimett Co.* v. *Grueby,* 111 Mass., 543; *Sherlock* v. *Railroad Co.,* 130 Ill. 403. In *Montclair Rlwy. Co.* v. *Benson,* 36 N. J. L., 557, this Court put the stamp of disapproval on such testimony and gave the reason therefor. Van Syckel, *J.,* speaking for the unanimous court, said:

> "In some cases financial disturbances depress, and in others speculative movements appreciate values, and wherever fluctuation exists the attempt at comparison between different points of time would not only furnish an unsafe guide, but introduce new issues to determine whether there had been a rise or a fall, and the extent of it. The evidence overruled would have introduced other collateral issues, and if admitted, would have entitled the plaintiffs to show that the adjoining owner was under some pressure to sell, or that there was some circumstance which influenced him to offer his property below its actual worth" (p. 558).

It is true that these cases are addressed to the subject of offers to sell rather than to offers to buy,

and that a more liberal rule exists in the former than in the latter case, but the reasoning employed in the *Montclair Ry Co.* case is equally conclusive whether applied to an offer to buy or an offer to sell.

There seems to be an unbroken current of authority to the effect that evidence of isolated offers is not admissible (22 C. J. 187, section 150). In *Texas* v. *Randle,* 44 S. W., 603, it was held that a mere unaccepted offer cannot be shown as evidence of value, and quoted in support thereof 3 Sedgwick on Damages, eighth edition, section 1299. It was also held in *Hammond* v. *Decker,* 102 S. W., 453, that evidence of isolated sales or offers to sell were not admissible on an issue as to the market value of personal property. In *Waldrop* v. *Goltzman,* 202 S. W., 335, the language of the court was:

> "It has been held that evidence of isolated sales or offers to sell are not admissible to establish market value" (p. 337).

and cited *Hammond* v. *Decker, supra.* The court then proceeded to say:

> "Likewise, offers to purchase at a certain price are not admissible."

We will call attention to other cases on this subject; *Morril* v. *Bentley,* 130 N. W. Rep. 734; *Stanley* v. *Sumrell,* 163 S. W. Rep., 697; *Swank* v. *Elwert,* 105 Pac. Rep., 907.

Quite a full collection of the authorities to the effect that "an offer to buy at a certain price" is not competent evidence of value will be found in *Morril* v. *Bentley, supra.* In that case the court said:

> "The only evidence offered by the plaintiff as to the value of the stock was the testimony of a witness, who said that it had no market value, and that he knew nothing about its value farther than the fact that he had been offered a certain amount per share by Chicago

> brokers. In so far as his knowledge of the value of the stock was based solely on the offers that he had received for it, we think there was an entire failure of proof. It is not competent to prove value by offers made by prospective purchasers alone. While an offer to sell may in some cases be an indication of value, we know of no cases holding that an offer to buy at a certain price is competent evidence of value. The general rule seems to be directly the reverse. *Drury* vs. *Rlwy. Co.,* 127 Mass. 571; *Watson* vs. *Milwaukee R. R.,* 15 N. W. 468; *City* vs. *Harland,* 34 Pac. (Cal.) 224; *Illinois Central* vs. *LeBlanc,* 21 So. 748; *Rlwy. Co.* v. *Pearson,* 35 Cal. 247; *Rlwy. Transfer Co.* v. *Gluck,* 48 N. W. 194; *Stewart* v. *James,* 95 N. W. 778; *Rlwy. Co.* vs. *Cleary,* 11 Am. St. Rep. 913, 17 Atl. 468. Many other cases announcing the same rule might be cited, but it seems unnecessary. This court has held that the actual price for which a commodity has been sold may be shown on the question of value, but we have never gone so far as to hold mere offers on the part of a prospective purchaser competent. Such a rule would open the door for the introduction of easily manufactured proof and would be exceedingly dangerous. We are unwilling to adopt it."

In *Stanley* v. *Sumrell,* 163 S. W. (Tex.) 700, it was held that:

> "evidence of an unaccepted offer for the corn in question or other corn was also inadmissible on the question of its market value."

Another interesting case is *Wallace* v. *First National Bank of Clovis,* 246 S. W., 737. In *Swank* v. *Elwert,* 105 Pac. (Ore.) 907, it was held that to accompany an offer with a condition, such as an offer for a certain use, is not evidence of market value, but of value for a particular use. In the case *sub judice* an offer to buy the stock probably to settle a suit pending between other parties than those to the present suit is evidence, not of its

market value, but of its value for some specific purpose. This is demonstrated by the fact already mentioned that Rippel & Company, at the very time the letter was written, put out evidence of the actual market value of the stocks. It is trite to say that if evidence of offers to buy property are admissible at all, it is solely upon the ground that they would tend to throw some light on its market value, but when as here the offer was made for some specific purpose, and at the same time, for the benefit of their customers who are purchasers in the open market, Rippel & Company quoted in their prices current lower market prices of all the stocks which make up the lot for which he made an offer to purchase *in toto,* it is obvious that Rippel did not consider the special offer to purchase for a particular purpose to be a statement of the market value of the stock, but only of its value for that purpose, and subject to the conditions attached thereto.

In *Whelan* v. *Lynch,* 60 N. Y., 469, it is said:

> "A price current list published in a newspaper is not competent evidence of market value without proof as to the sources from which the information therein was obtained, or whether the quotations of prices were from actual sales or otherwise. The credit to be given the paper list depends upon some extrinsic proof which cannot be determined by the publication itself" (syllabus).
>
> See also *Alling* v. *Weissman,* 59 Atl. 419.

In *Peninsular Naval Stores Co.* v. *State,* 93 S. E., 159, no question of *offer was involved.* The court said:

> "Market value is the price established by *public sales in the way of ordinary business,* as of merchandise. *Sloan* v. *Baird,* 162 N. Y. 327; *Murray* v. *Stanton,* 99 Mass. 345, 348. The market price of a commodity is the actual

> price at which it is *commonly* sold. The price may be fixed by sales *in the market* at or about that time. If no sales can be shown on the day, due recourse may be had to sales before or after that day and for that inquiry a reasonable range is allowed" (p. 161; italics ours).

This case is cited because it emphasizes the importance and indispensability of the presence of the factors which have been hereinbefore referred to, *i. e.,* (1) that the sale shall be a public sale, (2) that it shall be in the way of ordinary business, (3) that it shall mirror the price at which the article is *commonly* sold, (4) that the price should be fixed *in a market.*

So in *Douglas* v. *Merceles,* 25 N. J. Eq., 144, the Chancellor said:

> "The market price of a commodity is the actual price at which it is commonly sold. That price may be fixed by sales in market at or about the time. If no sales can be shown on the precise day, recourse may be had to sales before or after the day, and for that inquiry a reasonable range in point of time is allowable. *Dana* v. *Fiedler,* 12 N. Y., 40; *Beach* v. *Raritan and Del. Bay R. R. Co.,* 37 N. Y., 457. There had been no sales before this date. There were none at that time; but there were some after it. It appears that, from the 1st of November, 1867, until December, 1870, the value of the stock in the market did not materially fluctuate. There is, therefore, no injustice to the complainant in taking the market prices between those dates as a criterion" (p. 147).

It is furthermore settled that even when proof of *sales* themselves is offered, it must appear that they were made in the *usual and customary* manner, in order to be evidence of market value, and it is settled that

> "Where prices in an open market are properly shown by authentic publications or trade bul-

> letins which are generally accepted by dealers in such markets, the testimony of a dealer as to individual transactions in such markets is inadmissible."

Fahey v. *Updike,* 166 N. W., 622. The prices current are competent evidence of market value, especially when accredited by the party against whom they are offered. *Ray* v. *Mo. Ry. Co.,* 133 Pac. 847; *Western Wood Co.* v. *Hart,* 20 S. W., 131. In *Weigel* v. *E. L. Co.,* 194 N. W., 113, it was held that individual sales are not competent evidence to show value at a well-established market in absence of proof that sales were made at a price then prevailing.

It is thus apparent that if exceptional *sales* are not evidence, *a fortiori* mere offers to sell are not. The case of *Grover* v. *Simmons,* 129 S. E., 779, is in point. It was there held that

> "value cannot be established by proof that the owner of property or his agent was offered a certain price therefor at a time and upon an occasion entirely dissociated from the transaction under consideration. The repetition by the witness of the language used in the offer is at most only the statement of one not under oath, of his unsworn opinion as to the matter of value,—mere hearsay, and of no probative value."

The case of *Wolff* v. *Cohen,* 210 N. Y. Supp., 472, is authority for the proposition that market value cannot be shown or established by an isolated offer. And *Cook* v. *First Natl. Bank,* 236 Pac., 883, holds that

> "testimony of a broker to the effect that he has a customer who is willing to pay a certain price for an oil rig, and the testimony of the prospective customer that he was ready, willing and able to pay the price named by the broker, is incompetent to prove the market value thereof."

In the case *sub judice* market value has been established not only by the introduction of prices current, but the market value thus established has the additional incontrovertible quality of being the prices current which had been put forth by the appellees in this suit, and were therefore admissions, and as such entitled to the very highest consideration and acceptance by the court as against those who put them out. The market value thus established by the appellees and also by the prices current of Mr. Rippel cannot be disestablished, under the above authorities, by showing a single isolated offer, not in the ordinary course of business, nor one purporting to show the prices commonly accepted among traders or the public, and subject to the condition that all the stock which was sought to be purchased must be furnished or that none would be taken, that the sale was not and did not purport to be in the market, and that it did not look to a public sale in the way of ordinary business, but rather to a private sale for a specific purpose connected with a suit then pending between other parties than those here involved and looking to its compromise.

In dealing with the question of good faith, the court said:

> "Unless the sale was attended by collusion or corruption, neither previous nor present association invalidates it. * * *
>
> "The burden of establishing that the sale of the stock was not made in good faith, for its fair market value, to the highest bidder, was upon the petitioners, and in our opinion they have not borne that burden. We are satisfied that in the opinion of the committee and the directors of the Railroad Company they sold the property for its fair market value at the time and under the circumstances to the highest and most 'satisfactory' bidder" (pp. 557-8).

In the brief for Outwater & Wells, page 55, reference is made to the case of *Walter* v. *Duffy,* 287 Fed. Rep. 41, apparently for the purpose of showing that some other evidence besides market price may be received to ascertain the value of stock. That case related to stock of the Prudential Insurance Company of Newark, which was closely held. It was desired to ascertain the value of the stock on March 1, 1913, for income tax purposes. There were sales in 1912 to September, 1913, ranging from $205. to $262.50 per share. The court held that the jury might take those facts into consideration in determining the fair market value as of March 1, 1913. The court also said that in sales of such stock as that of the Prudential Insurance Company all the elements or factors that make actual or intrinsic values are to be taken into account. In the present case there were numerous sales of the stocks of the companies, parties to the proposed merger agreement, and price lists were issued at least monthly showing the variations in prices, if any. There was no other evidence as to the value of the stocks of the appellees. In fact, they refused to state what they considered the value to be other than that disclosed by the market prices, and counsel for Outwater & Wells and Roosevelt & Son stated in their brief in the court below that "it is not necessary in this suit to determine the exact value in dollars of the guaranteed stocks. Complainants have not set a price on their stock, and do not wish to". On page 289 of Vol. II, Mr. Dick was asked:

> "Does the market value as evidenced by the the sales of these securities from 1917 or 1918 down to the present time, closing at 1926, because that is as far as the exhibit goes, have any weight in your fixing upon the value of the securities?" And replied, "None whatsoever."

Consequently, the only evidence in the case of value of the stocks is market prices, and upon that subject Judge Buffington said in the case of *Walter* v. *Duffy:*

> "Evidence of intrinsic value is not resorted to when fair market value is evidenced by sales."

That evidence we have, and the appellees refused to offer other evidence, if any existed, as to the value of their stocks, and are not in a position now to object to having the market value taken as the true value.

V.

Conclusion.

Much of the prolonged discussion in the briefs for the appellees is irrelevant to any debatable question in this case. Counsel seem by their bill and supplemental bills and briefs to be struggling to find a cause of action instead of presenting a cause of action.

We respectfully submit that a consideration of the record and briefs will lead to the following conclusions:

The directors and stockholders of the several companies, parties to the merger agreement, have legal authority to effect the merger as proposed, provided they proceed according to law.

The only objection that seems to be seriously urged in the briefs for the appellees is that the terms on which it is proposed to exchange the stocks of the merging companies for the stock of the merged company are unfair and inequitable.

We insist that the only legal test of the fairness of the terms of exchange is the value of the respective stocks. The only proof of value in the case is their market value. There is no other evidence as to the value of the stocks of the respective

companies, except that they are all perfectly safe investments, as shown by the financial condition and earnings of the companies. The proposed exchange is equivalent to exchanging a Liberty bond for a Victory bond issued by the Federal Government.

The contention of the appellees intimated in their testimony and briefs that they would be willing to consent to a merger of the companies provided they could get more than their stocks are worth by any legal test that can be applied to ascertain their value, is untenable. Public Service Electric and Gas Company has no legal right to give to the stockholders of the merging companies more than their stocks are worth (Case, Vol. III, p. 646).

All parties agree that the merger agreement was prepared after elaborate investigation by thoroughly competent and honest men. Appellants' opening brief, pages 49, &c. The court will not substitute its judgment as to the fairness of the agreement for the judgment of the directors of the several companies acting honestly in the absence of actual fraud or such manifest unfairness that either actual or constructive fraud may be inferred from it. There is no proof of actual fraud in this case, and no evidence from which constructive fraud or unfairness can be inferred.

In the brief submitted by counsel for the Fidelity Union Trust Company it is said:

> "As already made clear the appellants' motives are not challenged. We concede their honesty of purpose and also that the officers and bankers of Public Service are men of great ability with large experience in corporate mergers."

To set aside the agreement, the court must substitute its judgment on a business matter for the

honest judgment of those who framed the agreement. This, as the decisions say, "is no business for the courts". See *Gamble* case quoted on page 40 of appellants' opening brief, and *Bingham* case quoted *ib.* end of page 43-4, and *Colby* case *ib.* pages 34 and 35.

It is conceded by counsel for Outwater & Wells, and Roosevelt & Son that if the amendments to the certificates of incorporation made in October, 1927 are valid, the purposes of the companies are now the same or similar, and hence the objection to the agreement based on the alleged dissimilarity of purposes falls to the ground. In their brief, page 81, it is said:

> "If the amendments adopted by the leased companies during the pendency of this suit, or by any one of them, are not valid and effective, the purposes for which the merging corporations were organized are not similar."

The argument of counsel for Outwater & Wells and Roosevelt & Son in their brief fails utterly to show that the companies had no power to amend their certificates of incorporation, and no one pretends that the proceedings to do so were in any particular irregular.

The difference in the priority and nature of the stocks proposed to be exchanged is equalized in the market price, and therefore is not a valid objection to the consummation of the agreement.

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