Hon. John W. Van Ness, Chairman  
Public Service Commission of Indiana  
401 State House  
Indianapolis 4, Indiana  

Dear Mr. Van Ness:

This is written in answer to your letter of recent date in which you requested an Official Opinion concerning statutory fees for stock transactions, which letter reads as follows:

"The Public Service Commission of Indiana respectfully requests an Official Opinion concerning the charge of statutory fees, under Burns' Indiana Statutes, Section 54-511, for a utility seeking authority for a common stock split.

"In the case before the Commission, Kokomo Gas and Fuel Company is requesting authority to issue new certificates of stock, representing in the aggregate 111,600 shares of common stock without par value in the place of its presently outstanding common stock in the amount of 55,800 shares.

"The Commission would like to know whether or not there should be a statutory fee in this type of transaction, and if so, whether or not the fee should be on the full 111,600 shares or merely on the additional 55,800 outstanding shares."

The provisions of the statute in question [Acts of 1913, Ch. 76, Secs. 88 to 96, as amended and as found in Burns' (1951 Repl.), Section 54-501 et seq.], first prohibit the issuance "for any purposes connected with or relating to any part of its business" by any public utility of "any stocks" or "certificates of stock" to an amount exceeding that which is reasonably necessary for the purposes for which such issue may be authorized. (Burns' 54-501, supra.)

In Section 91 of the same statute, as found in Burns' (1951 Repl.), Section 54-504, it is provided that whenever a public utility desires to issue common stock it shall file with the
Commission its verified petition setting forth several specified matters, and the Commission is then required to make such inquiry or investigations, hold such hearings, and examine such witnesses and documents as it may deem of importance in enabling it to determine whether the proposed issue is in the public interest, that it is in accord with the provisions of the laws touching the issuance of securities by public utilities, and that it is reasonably necessary in the operations and management of the business of the utility in order that the utility may provide adequate service and facilities.

The critical section of the statute is Section 96, as found in Burns' (1951 Repl.), Section 54-511 which provides as follows:

"The commission shall charge every public utility and every municipality receiving permission from it to issue any stock, bonds, notes or other securities an amount equal to twenty-five cents [25¢] for each hundred dollars [$100] of such stock, bonds, notes or other securities, except that as to common stock of no par value, the fee shall be two and one-half cents [2½¢] per share * * *." 

The facts set out in your letter indicate that the public utility is seeking your permission for a stock split, which is defined in Fletcher, Cyclopedia Corporations, Perm. Ed., Vol. 19, page 725, as follows:

"Split-up * * * When a corporation decides to issue a greater number of shares to its stockholders in exchange for their holdings this is commonly referred to as a split-up."

Again, your letter indicates that this greater number of shares of common stock without par value is to be evidenced by new certificates. As indicated in above-cited statutes, it is the increase of shares with which the Commission is concerned, and for which the fee set out in Burns' 54-511, supra, is exacted, the fee being based upon the number of shares authorized as set out in the certificate of authority granted by the Commission.
Therefore, it is my opinion that the answer to the first part of your question is that the statutory fee is required in this type of transaction.

Assuming that the Commission grants permission to the utility to issue the stock, the precise effect of such authority is to increase the authorized number of shares from 55,800 to 111,600. Since you have not indicated otherwise, I am assuming that there is no question of the authority or fee in respect to the existing 55,800 shares, and, to the extent that issued and outstanding shares are replaced one for one, I know of no authority to the effect that such replacement would constitute the issuance of stock, subject to the statutory fee.

It is also provided that the Secretary of State shall charge and collect a fee of two cents (formerly one cent) per share as a filing fee in respect to a certificate of increase of capital stock, whether of par or no par value. Acts of 1929, Ch. 219, Sec. 2, as amended, and as found in Burns’ (1957 Supp.), Section 25-602. It is my understanding that neither the utility in question nor anyone else has raised any doubt that this fee is due upon the amendment of the articles of incorporation to increase the total authorized capital stock for exactly such a stock split, or any doubt that such an increase in number of shares is an increase in capital stock. The term “capital stock” means the aggregate number of shares. Acts of 1929, Ch. 215, Sec. 1, as amended, and as found in Burns’ (1948 Repl.), Section 25-101. In respect to shares of no par value common stock, it is the number of shares authorized by the Commission which is the basis for computing the fee required by the Acts of 1913, Ch. 76, Sec. 96, as amended, and as found in Burns’ (1951 Repl.), Section 54-511. There is no authority granted to the Commission to compute the fee on the basis of the amount of capital represented by the shares of stock.

In conclusion it is my opinion that the statutory fee should be assessed if the Commission grants permission to the public utility to increase its no par value common stock from 55,800 to 111,600 shares, whether such increase is to be made as a stock split or any other exchange of stock for property or money. Such fee should be assessed on the additional 55,800 shares, for the issuance of which shares such authority is necessary.