SIMON PRESANT
COUNSELLOR AT LAW
55 LIBERTY STREET
NEW YORK 5
RECTOR 2-6858

January 10, 1962

Mr. N. S. Hibshman, Executive Secretary
American Institute of Electrical Engineers
345 East 47th Street
New York 17, N. Y.

Dear Mr. Hibshman: Re: Merger Procedures

In reply to your letter of January 8th, 1962, relative to the above matter, I beg to advise you as follows:

AS TO VOTING PROCEDURE

Section 50 of the Membership Corporations Law deals with the consolidation of a domestic membership corporation. Subsection 8 c thereof provides as follows with respect to organizations having in excess of 500 members:

> "8. ... c. In the case of each constituent corporation having more than five hundred members, subscribed and acknowledged by the president or a vice-president and the secretary or an assistant secretary of the corporation, who shall make and annex an affidavit stating that they have been authorized to execute and file such certificate by the votes cast by two-thirds of the members of such corporation entitled to vote thereon, present, in person or by proxy, at a meeting held upon notice as prescribed in section forty-three of this chapter at which a quorum of the members entitled to vote with respect to consolidation was present, in person or by proxy, and the date of such meeting."

In my opinion the affirmative vote is required of two-thirds of the members entitled to vote on the question, who are present in person or by proxy, at a meeting held on due notice as required by Section Forty Three of the Membership Corporations law at which a quorum of the members entitled to vote on said question are present in person or by proxy. You are not required

therefore, under Section 50, subdivision 8 c of said law, to have the affirmative vote of two-thirds of the entire membership of the corporation entitled to vote thereon as set out in subdivision 8 b.

I wish to call to your attention that Section 52 of the Membership Corporations Law requires that the Court be informed whether any votes against adoption of the agreement of consolidation were cast, and further provides: "If the court shall find that the interests of non-consenting members are or may be substantially prejudiced by the proposed consolidation, the court may disapprove the agreement or may direct a modification thereof." The Court may even request a hearing on the matter and give notice to the interested parties. Of course, the tabulation of the votes for and against must be carefully noted.

AS TO BOARD RECOMMENDATIONS

The vote of the membership referred to in Section 50, subdivision 8 c, is not, in my opinion, a vote to amend your Constitution. It is rather a vote by the members to approve or disapprove an agreement of consolidation of two membership corporations into one, upon certain terms and conditions, and after approving it, the members usually authorize (1) the officers to execute the agreement, (2) to apply to the Court for its approval, and (3) to cause the Certificate of Consolidation and the required papers to be filed.

By reason thereof, I do not believe that the time schedule referred to in said letter, relating to the recommendations of your Board to the amendment of your Constitution, is applicable to the vote in question.

Voting on the question should not be by mail ballot but by votes cast in person or by proxy at a meeting duly called upon notice as required by law at which a quorum is present.

I would suggest that the Board of Directors of AIEE first approve the agreement of consolidation, etc., before it is put to a vote of the membership.

I understand that if February 15th, 1962, mentioned in the said letter is not a date line, such prior approval by the Board can be accomplished in sufficient time.

I have been unable to find in going over your Constitution and By-Laws "Quorum Requirements" other than for your annual membership meeting. Section C 90.010 of your Constitution states: "A quorum at the annual meeting, in person or by proxy, shall consist of not less than one hundred voting members as defined in C 20.110".

In connection therewith, I wish to call to your attention Section 20 of the Membership Corporations Law which reads, in part, as follows:

> "....The by-laws of any such corporation may make provisions that .....The number of members, not less than one-third, or, in any such corporation, except a cemetery corporation, if one-third be nine or more, not less than nine, or in any such cemetery corporation, if one-third be five or more, not less than five, to constitute a quorum at its meetings. ..."

In the case of Matter of N. Y. Electrical Workers Union v. Sullivan, 122 A. D. 764, the Court there dealt with Section 8 of the Membership Corporations Law, now Section 20 of said Law, and stated that if there was no limitations in the By-Laws as to what constituted a quorum "that we must be governed by Section 8 of the Membership Corporations Law, of which the fair intendment is that a quorum should be not less than one-third of the members unless specifically provided that if one-third be nine or more, it be not less than nine".

The Court similarly held in the Matter of Di Silvestro v. Sons if Italy Grand Lodge, 130 Misc. 494.

I thought I would pass this latter information along in the event you contemplate voting on the consolidation question at a meeting of the members other than at your annual meeting. If you intend a special meeting, kindly let me know so that I may send you a more detailed analysis of the requirements.

If you desire any further information called for by your said letter, please feel free to get in touch with me.

Sincerely yours,

Simon Present

SP/MS

January 8, 1962

Mr. Simon Presant
Counsellor at Law
55 Liberty Street
New York 5, New York

MERGER PROCEDURES

Dear Simon:

President Chase will be meeting with the other members of the Eight-Man Committee exploring the proposal for the merging of AIEE and IRE in Cleveland on Thursday, January 11, 1962. At that time, he would like to have your advice on two subjects.

1) Voting Procedure - We understand that the membership corporation law of the State of New York provides that the consolidation of two such organizations requires that two-thirds of the total membership of each shall vote favorably. However, there is another provision in the law which says that corporations of over 500 members may approve such a consolidation through an assembled meeting wherein two-thirds of those present in person or by proxy vote favorably.

It is our understanding that ASHRAE was put together under this second provision of the law. There is a good deal of doubt in the minds of all of those who have had occasion to seek responses of one kind or another from the membership of the two societies that we can get a sufficiently large response to achieve the needed two-thirds favorable vote of the total membership. The time is rapidly approaching when we must know whether it will be necessary to try for this large response or whether the job can be done more easily.

2) Board Recommendation - You will notice that the AIEE Constitution requires that any recommendation for its amendment be approved by the Board of Directors before February 15, This is very close. The next meeting of the Board of Directors is February 2, 1962. The Board of Directors of IRE need not act on this until their regular meeting in the third week of March 1962. It would be desirable, if legal, for the two Boards to take action within a few days of each other. The question is whether "approval in principle" given by the AIEE Board before February 15 would satisfy the requirement of our Constitution and the laws of New York State. After such "approval in principle" our Board could continue to work on the details of the Constitution and give its final approval at about the same time x that the IRE Board acts. This will barely give us time then to meet the April 1 date when we have to mail the Constitutional ballot to the membership for their approval.

The approval of an ordinary amendment to the Constitution requires only a 15% favorable vote. However, if this consolidation which involves a whole new Constitution must be put out for a complete membership vote, the picture is qute different.

The President and his collegues on the Eight-Man Committee need very much to have firm legal guidance in this connection. I hope that you and Mr. Tobin of the IRE Counsel can get together on this and give the Committee (in your case through Mr. Chase) the desired & advice in time for their meeting on January 11. If necessary, it could be given by telephone first thing in the morning of January 11, but it would be better if it could be arranged in writing before that time.

Cordially yours,

N. S. Hibshman
Executive Secretary

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cc: Mr. W. H. Chase