

**MUNICIPAL, COOPERATIVE AND PUBLIC UTILITY
ELECTRIC POWER OPERATIONS**

**REPORT OF
THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



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**Municipal, Cooperative and Public Utility
Electric Power Operations**

**REPORT OF
THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

Richmond, Virginia, September 24, 1963.

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Public utility companies which furnish electric power to the public have been operating in Virginia for many years; these companies are subject to regulation and control in all respects by the State Corporation Commission. Within the last thirty years there have also grown up a number of cooperative organizations developed under the sponsorship of the federal Rural Electrification Administration which, originating as a means of providing electric power to areas in which the public utilities had not found it profitable to operate, have developed into major suppliers of power in many parts of the State. In addition, a number of municipalities have developed their own electric power systems, primarily to serve the needs of residents of the municipality; in some instances the services furnished by these latter systems have been extended beyond the boundaries of the municipal corporation and into adjacent areas.

In 1950 the General Assembly adopted the "Utility Facilities Act" under which the State Corporation Commission was given jurisdiction to issue certificates of convenience and necessity for the establishment of electric power facilities and was authorized to allot specific territories to the certificated systems. This Act applied to the regulated public utilities and to the cooperatives, but municipal corporations were excluded from its operation. Although, generally speaking, the Commission has not issued such certificates for operation within areas served by the municipal corporations, in certain instances for particular reasons this has been necessary. Also with the expanding population of suburban areas and with annexation on the part of some municipalities bringing within their corporate limits areas served by other systems, some problems have arisen which have involved conflicts between the systems and the possibility of duplication of facilities resulting in inefficient operation.

At the 1962 Session of the General Assembly a bill was introduced which sought to resolve this potential conflict insofar as it related to operations by municipalities outside of their corporate limits but the bill, after extensive amendment in the House of origin, failed of passage by the General Assembly. The General Assembly did, however, adopt a resolution directing the Virginia Advisory Legislative Council to make a study of the subject and report to the 1964 Session. The text of this resolution is as follows:

SENATE JOINT RESOLUTION NO. 50

Directing the Virginia Advisory Legislative Council to make a study and report upon municipal electric service furnished outside the territorial limits of municipalities.

Whereas, prior to the enactment of the Utility Facilities Act in nineteen hundred fifty there was no regulation of service areas of electric utilities and therefore various electric companies and cooperative associations were free to serve the same areas and thereby cause duplication of facilities which was not in the public interest; and

Whereas, the Utility Facilities Act ended this duplication of facilities with respect to electric companies and cooperative associations by providing for regulation by the State Corporation Commission of the geographic areas served by such companies and associations; and

Whereas, at the present time a number of municipalities are providing electric service outside their borders without regulation as to service area under the Utility Facilities Act; and

Whereas, as a result of this situation there may be duplication of facilities which is not in the public interest; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Virginia Advisory Legislative Council is hereby directed to make a study of municipal electric service being furnished outside the territorial limits of cities and towns within the Commonwealth of Virginia and the advisability of making the Utility Facilities Act applicable to such service. All agencies of the State shall assist the Council in its study. The Council shall conclude its study and make its report to the Governor and the General Assembly not later than October one, nineteen hundred sixty-three.

The basic questions at issue having been matured for consideration at the 1962 Session of the General Assembly, the Council determined to consider the matters under study itself. It secured information concerning the practices of the State Corporation Commission in connection with the issuance of certificates of convenience and necessity for the furnishing of electric power, it secured suggestions from the affected groups, and it had a public hearing at which these groups were offered an opportunity to express and discuss their respective views. Based on the information presented to it, the Council now makes the following report.

Findings and Recommendations

1. It is unnecessary and undesirable that municipal corporations be brought fully under the jurisdiction of the State Corporation Commission in regard to their utility services which provide electricity.

2. The pattern of electric service provided by municipal corporations outside their boundaries as in effect on July 1, 1964, should not be disturbed.

3. Expansion of electric public utility service, or enlargement or acquisition of electric utility facilities outside of the political boundaries of municipal corporations by municipalities providing such service should be permitted only by agreement between the municipality concerned and any affected public utility (which, as used in the statute, includes both privately owned and cooperative utilities).

4. Where territory has been allotted under the Utility Facilities Act by the State Corporation Commission to a public utility, no such extension

of service or construction, enlargement or acquisition of facilities by a municipal corporation therein should be permitted unless the municipality enters into an agreement with the utility concerned or follows the procedure now provided by the statute which applies in the case where one utility seeks to furnish service in an area which has been certificated by the Commission to another utility.

5. Extension of public utility service, or construction, enlargement or acquisition of utility facilities by a public utility in any territory served exclusively by a municipal corporation should be permitted only by agreement between the municipality and the utility.

(Note: As used in this report, the term "municipality" or "municipal corporation" includes any governmental body which owns or operates any electric power system or facility and furnishes power to the public.)

Reasons for Recommendations

1. The development of electric public utility services by municipalities in Virginia goes back to the infancy of the electric power industry. The city of Danville, for instance, established its power plant well before the beginning of this century. At the time it was established, it was not a question of whether the city should supply electricity to its inhabitants or the same should be supplied by a public utility corporation; rather the question was whether the inhabitants of the city should have power furnished by the city or no electricity. With the growth of the city and of the surrounding area the city expanded its services to meet the demands of persons residing outside its borders who could not otherwise have secured such service.

The furnishing of electric power, like water supplies and sewerage systems, is regarded as a proper function of municipal government in Virginia and many of the municipal charters in this State have contained provisions authorizing the municipalities to furnish such service. In many instances the revenues derived from the public utilities operated by municipalities contribute substantially to meeting the costs of operating municipal government, and any infringement upon the power of the municipalities to provide such service would of necessity result in increasing the tax burden on local taxpayers. Regulation by a State agency of the operations of the municipalities in providing services to *their own citizens* would be incompatible with the independent status of local governments.

2. However, under the Utility Facilities Act, there has been established a State-wide pattern whereby territory is allocated to that electric public utility which, in the judgment of the State Corporation Commission, can furnish the service most efficiently and with greatest benefit to subscribers. Since municipalities are not subject to control by the State Corporation Commission, situations have arisen in which expansion of service by a municipality outside of its own boundaries has presented a possibility of inefficient duplication of services and undesirable competition between the unregulated municipality and the regulated utility. The basic justification for regulation of utilities is that by their very nature, since they are rendering essential public services, they should be permitted to avoid competition in order that the public can obtain the services offered at a fair rate and yet the utilities can be guaranteed a reasonable profit on their investment. For this reason, we do not favor giving the municipal electric utilities the opportunity to expand as they choose without regard to the rights vested by law in the regulated companies. At the same time, however, experience has shown that in some instances a municipally owned utility

is able to serve a given area more efficiently than the public utility to which the over-all area has been certificated by the Commission. We therefore recommend that in such cases the municipality concerned and the utility affected be authorized to enter into an agreement regarding the provision of the service which will thereafter be binding on both. Such agreement, however, should not be permitted to interfere in any way with the regulation of the public utility company which is subject to the Utility Facilities Act.

3. Where a municipal corporation is furnishing electric service outside its boundaries within an area which has been certificated to a public utility, we feel that it should stand on the same footing as would be the case with another public utility. Such a utility would be required to prove that the service rendered by the certificate holder in the territory is inadequate to the requirements of the public necessity and convenience. We propose that the same requirements be imposed on a municipal corporation desiring to extend service in an area allotted by the State Corporation Commission to a public utility. However, if there is no objection on the part of the certificate holder, and the matter can be settled by agreement, we propose this as an alternate method.

4. The preceding recommendations have imposed certain restrictions on the municipalities. If the public utilities are to be given such protection against encroachments and competition on the part of the municipal corporations, it appears only just that similar protection should be afforded to the municipalities in the areas in which they are now operating. Accordingly, we propose that where a municipal corporation is now serving territory outside of its boundaries, there can be no extension of service or expansion of utility facilities by a public utility in such territory without the consent of the municipality concerned. Nothing in the proposed bill would affect rights which may exist or accrue under past or future annexations.

Conclusion

We attach as an appendix to this Report a bill to carry out our recommendations. This bill is basically the one which was presented to the Council by the affected groups and appears to us to constitute a reasonable method of settling such problems as have arisen.

We wish to express to those who have assisted the Council in connection with this Study our sincere appreciation of their aid.

Respectfully submitted,

CHARLES K. HUTCHENS, Chairman
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A BILL to amend the Code of Virginia by adding in Chapter 10.1 of Title 56 a section numbered 56-265.4:1, relating to the furnishing of electric public utility service or provision of facilities therefor by municipal corporations and other governmental bodies and providing for agreements with public utilities with respect thereto; and conferring and imposing on the State Corporation Commission certain powers and duties with respect thereto.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 10.1 of Title 56 a section numbered 56-265.4:1, as follows:

§ 56-265.4:1. If any municipal corporation or other governmental body, having legal authority by charter or other law, shall desire to supply electric public utility service, or construct, enlarge or acquire, by lease or otherwise, any electric utility facilities, outside its political boundaries, it shall have power to enter into agreements in that regard with affected public utilities which shall be binding in accordance with their terms and for the period therein provided; but no contract entered into under this section shall limit the power of the Commission to fix rates and to otherwise regulate a public utility. No such service by a municipal corporation or other governmental body shall be provided, or facilities constructed, enlarged or acquired, in territory allotted to any public utility by the Commission except in territory served by such municipal corporation or other governmental body on the effective date of this act, unless the affected public utility shall consent by such an agreement or the Commission shall grant a certificate therefor upon application by the municipal corporation or other governmental body pursuant to § 56-265.4, authority for which certification is hereby granted. No public utility shall extend its electric public utility service, or construct, enlarge or acquire, by lease or otherwise, any electric utility facilities, in territory served exclusively by a municipal corporation or other governmental body on the effective date of this act, unless such municipal corporation or other governmental body shall consent by such an agreement. In case of question as to the scope of the territory served by a municipal corporation or other governmental body on the effective date of this act, the Commission may, and on application by either such public utility or such municipal corporation or other governmental body shall, decide such question and allot such territory accordingly, between such public utility and such municipal corporation or other governmental body, in which event any expansion of service outside the territory so allotted shall be subject to the applicable provisions of this Chapter.

Nothing herein shall be construed to increase, decrease or affect any rights a municipal corporation, public utility or other governmental body may have with regard to supplying electric public utility service in areas heretofore or hereafter annexed by such municipal corporation.

