REPORT OF THE

JOINT SUBCOMMITTEE STUDY OF PUBLIC UTILITIES

TO THE

SENATE COMMERCE AND LABOR COMMITTEE

AND THE

HOUSE CORPORATIONS, INSURANCE AND BANKING COMMITTEE

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I. INTRODUCTION

This report is the result of the directives delineated in the following resolutions passed at the 1975 Session of the General Assembly.

SENATE RESOLUTION NO. 27

Authorizing the Senate Commerce and Labor Committee to appoint a subcommittee to study the proposed legislation pending before the Committee at the 1975 session of the General Assembly relating to public utilities.

WHEREAS, the Senate Commerce and Labor Committee has been referred a large number of bills dealing with public utilities; and

WHEREAS, the complexity of the issues involved in this legislation, the short session and other important pending legislation referred to the Committee make it impossible for the Committee to expend the time necessary to fully explore the remifications of the proposed legislation dealing with public utilities; now, therefore, be it

RESOLVED by the Senate, That the Senate Commerce and Labor Committee is hereby authorized to appoint a subcommittee from its membership to study and report on the proposed legislation referred to the Committee at the 1975 session of the General Assembly dealing with public utilities. The Subcommittee shall also review any *** ERROR *** INVALID COMMAND lines30:

RESOLVED by the House of Delegates, the Senate concurring, That the respective Chairmen of the House Corporations, Insurance and Banking Committee and the Senate Commerce and Labor Committee are requested to appoint five members of the House Corporations, Insurance and Banking Committee and three members of the Senate Commerce and Labor Committee to a joint subcommittee to study means of better monitoring, preserving and

making more financially secure the public utilities and financial institutions doing business in this State, so that the depositors, consumers and public will be better protected during these difficult economic times. The study shall include but not be limited to the problems of removal of officers, merger, appointment of receivers and bonding requirements. The Virginia Bankers Association and the Virginia Savings and Loan League are requested to assist the joint subcommittee in its deliberations. The State Corporation Commission and all agencies of the State shall assist the subcommittee upon request.

The joint subcommittee shall complete its report with any recommended legislation by December one, nineteen hundred seventy-five.

In accordance with the directives contained in Senate Resolution No. 27, the Senate Commerce and Labor Committee appointed Senators J. Harry Michael, Jr., Peter K. Babalas, H. Selwyn Smith, Edward M. Holland and Frank W. Nolen to the membership of the Subcommittee.

At the March 31, 1975, meeting of the full House Corporations, Insurance and Banking Committee, the Committee voted that the study of public utilities referred to in House Joint Resolution No. 271 be given to a Subcommittee to sit with the Senate Subcommittee and report back at intermittent times to the full Committee on their findings. The House members attended the meetings and provided ideas and suggestions, but they took no part in the voting on the legislative packet to be recommended to the Senate Commerce and Labor Committee nor did they go on record as either approving or disapproving the final report. As stated, they will report the results to their full Committee. This action was taken to avoid redundancy and to allow for a more concentrated effort by all of those involved with the study.

Pursuant to their vote, the House Corporations, Insurance and Banking Committee appointed Delegates Robert R. Gwathmey, III, Richard M. Bagley, Frank E. Mann, Lewis W. Parker, Jr. and W. Ward Teel to assist in the Senate study.

Thus formed, the Joint Subcommittee proceeded to hold a series of Statewide public hearings to ascertain consumer problems and to solicit citizen ideas for the solution of those problems. Public hearings were held in Richmond, Abingdon, Salem, Painter, Yorktown, Virginia Beach, Weyer's Cave, Arlington, Fairfax, Fredericksburg, Prince William County and Louisa. At these hearings, citizens were allowed to speak without time constraints on the problems created by soaring electricity costs. The Subcommittee received numerous requests to investigate citizen allegations directed primarily at Virginia Electric and Power Company (hereinafter referred to as VEPCO), and Appalachian Power Company (hereinafter referred to as APCO). Follow-ups were forthcoming where possible.

The resolutions directed the attention of the Subcommittee to all utilities. Most complaints, though not all, received during the

course of the public hearings related to electric utilities.

In addition to the public hearings, the Joint Subcommittee has held several working sessions to deliberate on the work of the staff and consultants. Pursuant to the request of the Governor, the recommendations contained in the Governor's Electricity Cost Commission Study have been reviewed by the Subcommittee and certain of them, which will be discussed later in this report, have been incorporated into the Subcommittee's final recommendations.

The Subcommittee is being assisted in its endeavor by a team of consultants possessing certain expertise in the field of public utilities. Dr. James Dunstan, Executive Director, assists the Subcommittee's overall efforts and coordinates staff and consultant activity. John W. Chesson, Esquire, serves as special counsel to the Subcomittee and advises it on SCC and financing matters. Dr. James E. Brown serves as the Subcommittee's rate analyst. Mr. Norman Gregg, Jr. advises the Subcommittee on fuel related matters. L. Willis Robertson, Jr., Esquire and Thomas R. Oliver, Jr. served respectively as staff attorney and research associate. The Subcommittee wishes to express its appreciation to those men for their assistance in this arduous effort.

II. FOREWORD

The major problems facing this country involve the shortage of energy, the shortage of capital and the shortage of jobs. A reduction of these shortages is important to every individual, company, union and governmental group and must be attained through the coordinatiion of individual, industrial and governmental efforts.

Public utility operation is a key factor in the reduction of these shortages, since public utilities can: (1) control the usage of energy, (2) are a major user of investment capital and, (3) can provide minimum cost power that is so essential for jobs and for the nation's production to remain competitive.

Forward-looking, well-conceived public utility legislation is essential to the progress of Virginia. Thus, the goal of this Subcommittee becomes not a review of the various utility problems, but the initiation of specific legislative proposals which will help provide minimum cost energy consistant with a long-term energy supply and environmental cost-benefits.

Before proceeding with the specific recommendations a discussion of several general topics would be helpful.

There are no quick and easy answers. Every proposed solution has both advantages and disadvantages which are beneficial to some and detrimental to others. Careful detailed analysis will indicate: (1) many solutions are not new; (2) in most cases experiments have been tried; (3) volumes have been written on each topic with advocates praising their new found panacea and with opponents pointing to dismal failures or potential national

ruination.

Every state legislature and every regulatory agency is confronted to some degree with the same questions concerning the actions that should be taken. Even states that have passed specific bills lack confidence in their solutions. The controversies that are prevalent in Virginia abound in every state and there is no universal agreement on anything except that there are numerous problems which are difficult to resolve.

Utility rate-making is a tough, time consuming process. One basic consideration must be whether rates should be related strictly to costs or should social factors, i.e. lower rates for poverty level persons or those on fixed incomes, be built into the rates? This is, in the judgment of the Subcommittee, the most important question to be answered. If social factors are to be part of the rates, does the utility, the SCC or the legislature determine the degree? Utility stockholders are getting paid for the use of their capital. As such, they are the only flexible party. Stockholders can sell their utility stock and take their funds elsewhere, but the consumer as ratepayer and/or taxpayer has no choice. He must get the service from the utility in his area. The utility has no choice since by its charter it must service all customers in its jurisdiction. Because of the capital shortage, inflation and high utility debt levels, the utilities' cost of capital (what utilities must return to investors for the use of their capital) has increased substantially in recent years. Neither the SCC nor the utility has direct control of this cost. This situation and the fact that utilities cannot internally generate adequate funds and must seek substantial amounts of external funds has changed the SCC posture in rate making. Prior to 1968, most rate hearings involved a reduction of rates and there was a margin for error. Now, if the utility is not allowed an adequate return on equity, the price of the stock will be depressed and the cost of capital, which is passed on to the ratepayer, will increase. The importance and delicacy of this decision is indicated by testimony given in the VEPCO rate hearing in which it was stated that one tenth of 1% change in return on equity cost the ratepayers $4.5 million dollars. Thus, state regulatory agencies are almost forced to provide utilities an adequate return regardless of the managerial efficiency of the utility.

Fuel and financing make up the largest portion of total costs in the case of electric utilities. Thus, the nature of utility costs are such that no short term cost reductions are possible. In fact, with inflation, utility costs will continue to rise and these increases will be passed through to the consumer sooner or later. Therefore, the consumer cannot look for immediate rate relief. In the long term, consumer utility bills may continue to rise, but legislative action can be taken to minimize these increases .

There are three levels that legislative action may take. First, bills can be passed that are more or less cosmetic in nature and although they satisfy some pressure group will have little effect on utility rates either in the short term or long term. Second, bills can be passed that change the allocation of utility costs to consumers. these could involve life-line rates, changes in taxes, or other action

but this will not change the costs to the ratepayer-taxpayer group overall. Third, bills can be passed that will provide the ratepayer-taxpayer group with the minimum long term total costs. It is the intention of this Subcommittee to provide legislative recommendations in the latter two categories.

This means that Virginia must be provided with the most efficient utility operation and financing. Areas of potential savings exist in conservation of energy, load management and forecasting, efficient fuel purchasing, lower cost financing and the selection and installation of efficient generating capacity. The SCC obviously must play an important role in the implementation and monitoring of any changes.

As preparation for this report, the Joint Subcommittee has taken the following actions:

1. Held a meeting with the SCC;

2. Has requested the staff to analyze and review six significant policy areas:

(a) Fuels and fuel adjustment regulations,

(b) Financing and rate making,

(c) The SCC and its regulation of public utilities,

(d) The management of public utilities,

(e) Consumer and environment in relation to public utilities,

(f) Virginia legislative recommendations and those of other states;

3. The staff in line with the request has had meetings with:

(a) SCC and its staff,

(b) VEPCO's management,

(c) Federal Energy Administration,

(d) Consumer groups,

(e) American Public Power Association and others;

4. Held executive sessions to evaluate staff reports and to attempt to reach specific conclusions.

The report is divided in five major sections.

I. Introduction.

II. Foreword.

III. Specific recommendations on selected bills referred to this Subcommittee.

IV. Areas for future study and analysis.

V. Appendices:

(a) Consultant's Reports,

(b) Model RUCAG legislation,

(c) Copies of recommended legislation.

(d) Subcommittee action on recommendations from the Governor's Electricity Cost Commission.

III. SPECIFIC LEGISLATIVE RECOMMENDATIONS

1. A BILL PROHIBITING PUBLIC UTILITIES FROM INCLUDING PUBLICITY OR ADVERTISING EXPENSES OTHER THAN THOSE PUBLICIZING CONSERVATION MEASURES IN THEIR BASE RATES.

The membership of the Joint Subcommittee is of the opinion that utilities should not include advertising expenses to increase public demand for their services in their base rates when seeking an increase in rates before the SCC. The inclusion of such promotional expenses in the base rate is not conducive to the ultimate goal of energy conservation.

Conservation to maintain or decrease present growth rate levels should be encouraged. Therefore, the Subcommittee feels that advertising deemed by the SCC to be directed at encouraging the conservation of energy or toward lessening the cost of the service should not be subject to the limitation relating to inclusion in the base rate contained in this legislation.

This proposal is a result of the Subcommittee revision of Senate Bill No. 623 as introduced at the last session of the General Assembly and referred to the Subcommittee.

See Appendix V(c)(1) for a copy of the proposed legislation.

2. A BILL REQUIRING PRIOR APPROVAL BY THE SCC OF ANY NEW MAJOR GENERATION, TRANSMISSION OR DISTRIBUTION FACILITY OF A PUBLIC UTILITY, WHICH APPROVAL SHOULD WEIGH CAREFULLY THE PROJECTED LONG RANGE CONSUMPTION OF THE UTILITY'S SERVICE. ADDITIONALLY, THE SUBCOMMITTEE FEELS THAT PUBLIC UTILITIES SHOULD FILE THEIR 5 OR 10 YEAR PROGRAMS FOR OPERATION WITH THE SCC. THIS PLAN SHOULD BE REVIEWED AND APPROVED, DISAPPROVED OR MODIFIED BY THE SCC, AND JUSTIFIED BY THE UTILITIES ON AN ANNUAL BASIS BEFORE MAJOR FINANCIAL COMMITMENTS ARE

MADE.

The Subcommittee feels that major capital projects should not be begun without justification to the SCC that the new facilities are necessary to provide adequate service.

Under the present system, large capital projects are begun without approval of the SCC and the resultant large commitments of capital are put in the base rate when the utility seeks a rate increase. This is especially true in the case of nuclear plant construction which requires hundreds of millions of dollars in investments. Although the SCC still retains the prerogative of either approving or disapproving a pending rate request, this practice in fact lessens the Commission's options. Additionally, this procedure does not give the SCC proper regulatory control since it puts the SCC in the position of regulating after the fact.

This proposal is a result of the revision of Senate Bill No. 624 which was introduced at the last session of the legislature.

See Appendix V(c)(2) for a copy of the proposed legislation.

3. THE JOINT SUBCOMMITTEE RECOMMENDS THAT SENATE BILL NO. 626 WHICH WOULD REQUIRE PUBLIC UTILITIES TO MAKE ACTUAL MONTHLY BILLINGS FOR THEIR SERVICES NOT BE GIVEN ANY FURTHER CONSIDERATION AS THE PROCESS OF MONTHLY BILLINGS IS NOW BEING IMPLEMENTED BY MOST PUBLIC UTILITIES.

4. THE JOINT SUBCOMMITTEE RECOMMENDS THAT SENATE BILL NO. 627 WHICH WOULD GIVE THE GENERAL ASSEMBLY POWER TO AUTHORIZE THE OPERATION OF A SECOND PUBLIC UTILITY IN THE TERRITORY OF ANOTHER WHEN IT IS DETERMINED THAT THE SERVICE OF THE ORIGINAL UTILITY IS INADEQUATE NOT BE GIVEN ANY FURTHER CONSIDERATION.

The membership of the Joint Subcommittee feels that the present law gives the General Assembly all the power needed to deal with any problems in this area.

§ 56-8 of the Code presently gives the General Assembly the power to repeal the Charter of any public service corporation. Under the present code, the SCC has statutory authority to replace a public utility which is providing inadequate service to its customers with another utility.

5. A BILL SETTING UP A PROCEDURE UNDER WHICH ANNEXING TOWNS AND CITIES CAN ACQUIRE BY EMINENT DOMAIN THE DISTRIBUTION SYSTEMS (EXCLUDING SUBSTATIONS) OF A FRANCHISED UTILITY SERVING AN AREA WHICH IS ANNEXED BY SUCH MUNICIPALITIES.

The membership of the Joint Subcommittee feels that such a procedure should exist to enable cities and towns providing public utility services to acquire such facilities after such annexation and

thereby continue to provide such services to all the citizens within the new boundaries.

See Appendix V(c)(3) for a copy of the proposed legislation.

6. THE JOINT SUBCOMMITTEE RECOMMENDS THAT NO FURTHER ACTION BE TAKEN ON SENATE BILL NOS. 718 AND 719 REQUIRING TOLL FREE SERVICE FROM THE RESIDENCES OF CUSTOMERS TO THE COUNTY SEAT AT A COST NOT TO EXCEED THAT CHARGED OTHER COUNTY RESIDENTS FOR THE SAME SERVICE.

The members of the Subcommittee feel that no further action need be taken on Senate Bill Nos. 718 and 719 as Mr. F. W. ("Fritz") Palmore of Chesapeake and Potomac Telephone Company has assured the staff that resolution of the problem which the proposed legislation sought to alleviate is imminent. In addition, the SCC is considering the introduction of a bill which would accomplish the intention of these two bills.

7. THE JOINT SUBCOMMITTEE RECOMMENDS ENACTMENT OF SENATE BILL NO. 743 WHICH PROVIDES THAT EMERGENCY RATE INCREASES BE GRANTED PUBLIC UTILITIES ONLY WHEN THE EMERGENCY THREATENS THE ABILITY OF THE PUBLIC UTILITY TO PROVIDE ADEQUATE SERVICE TO THE PUBLIC DURING THE TIME REQUIRED TO HOLD A HEARING TO DETERMINE ALL THE ISSUES INVOLVED IN A FINAL DETERMINATION OF RATES OF SERVICE.

The Virginia Supreme Court in DuVal and Ridgill v. VEPCO (216 Va. 226, September 5, 1975) held that the statutory authority for defining what constitutes an emergency is vested in the SCC. Since the statute in this area is rather broad, the Subcommittee felt that the Commission would be subjected to less public criticism in the future if they had a more specific definition of an emergency situation to apply in the case of a petition for emergency rate relief.

See Appendix V(c)(4) for a copy of the proposed legislation.

8. THE JOINT SUBCOMMITTEE RECOMMENDS THAT NO FURTHER ACTION BE TAKEN ON SENATE BILL NO. 792 WHICH REQUIRES THE SCC ESTABLISH, ADVERTISE AND ADMINISTER A TOLL FREE STATEWIDE TELEPHONE LINE TO RECEIVE CONSUMER COMPLAINTS RELATING TO PUBLIC UTILITIES SERVICE.

The Joint Subcommittee reached its conclusion after ascertaining that the SCC has instituted a toll free Statewide line for the receipt of consumer complaints.

9. A BILL REQUIRING THE SCC TO CONSIDER THE PROFITS AND LOSSES OF ALL SUBSIDIARY AND AFFILIATE COMPANIES OF A HOLDING COMPANY WHEN A PUBLIC UTILITY OWNED BY A HOLDING COMPANY IS SEEKING A CHANGE IN ITS RATES.

The members of the Joint Subcommittee feel that this legislation (Senate Bill No. 878) addresses a moot point as the SCC is presently considering such profits and losses. Therefore, the Subcommittee does not recommend this legislation.

10. THE JOINT SUBCOMMITTEE RECOMMENDS NO FURTHER ACTION ON SENATE BILL NO. 879 WHICH DELETED THE REQUIREMENT OF FILING A SUSPENDING BOND TO DELAY ACTION OF THE COMMISSION AFFECTING RATES PENDING AN APPEAL OF THE COMMISSION'S DECISION TO THE SUPREME COURT.

The members of the Subcommittee feel that this legislation is not necessary as the rules of the Supreme Court already give priority to rate case appeals.

11. THE JOINT SUBCOMMITTEE RECOMMENDS A BILL TO REPLACE THE PRESENT SCC FUEL ADJUSTMENT CLAUSE FORMULA AND REPLACE IT WITH A FUEL CHARGE PER KILOWATT HOUR THAT WILL INCREASE OR DECREASE WITH A CHANGE IN THE COST OF PURCHASED FUEL.

Presently, a percentage of fuel costs is contained in the base rate and the remainder of the fuel charges are computed in the fuel adjustment clause, which adjustment is presently computed in terms of a percentage factor stated on the bill. The Subcommittee recommends that all fuel charges should be shown as a separate dollars and cents item on each consumer's bill. Thus, those fuel charges presently in the base rate would be taken out of that base rate and included in the new Fuel Adjustment Clause.

See Appendix V(c)(5) for a copy of the proposed legislation.

The SCC should monitor all fuel purchases, negotiations for such purchases, and contracts for such purchases by the utilities.

It would be advantageous to the consumer and desirable to the Subcommittee for the SCC to develop a method whereby they could compare what Virginia utilities pay for fuel with the various market prices of fuel to insure that Virginia's utilities are making prudent decisions in their fuel purchasing policies. This checking system should compare the average unit price for all types of fuels, i.e. oil, coal, and nuclear, on a national level and on the State level if the SCC deems it necessary.

Presently the development of a mechanism for making such comparisons has not been fully completed. The United States Energy Research and Development Administration is exploring various methods of comparison as are several states and independent organizations. The Joint Subcommittee is of the opinion that the SCC should familiarize itself with these studies and adopt the one it deems most appropriate for Virginia's particular situation. Therefore, the Subcommittee is recommending legislation of this nature.

See Appendix V(c)(6) for a copy of the proposed legislation.

The SCC should require prior approval of any change in a utility's fuel adjustment clause. This shall be accomplished through a system whereby abbreviated hearings will be held dealing only with changes in the fuel adjustment clause. Any regulations governing short form hearings must protect the opportunity of the utilities to purchase economically as well as protecting the interest of the consumer.

See Appendix V(c)(6) for a copy of the proposed legislation.

The operation of the present FAC, so far as can be judged from the public hearings, simply does not seem to be understood by the public, and that lack of understanding has made a major contribution to the criticism of the electric utilities. The Subcommittee believes that&corretive legislation is necessary to the public's understanding of the fuel adjustment clause, and the Subommittee believes that its proposal in this area will ontribute to a restoration of public confidence in the fuel adjustment clause policies of the SCC. The proposals, if implemented, will also encourage the utilities to make all possible economies in their fuel procurement policies.

These proposals are a result of a study of Senate Bill No. 616 as originally referred to the members of the Joint Subcommittee which required prior approval by the SCC of any changes in the fuel adjustment clauses of public utilities. As a result of the public hearings the Fuel Adjustment Clause has been looked at very scrupulously by the Subcommittee's staff and the whole question of the fuel adjustment clause and revisions to it are also under active consideration at this time by the SCC.

12. SENATE BILL NO. 625 PROHIBITS PUBLIC UTILITIES FROM CHARGING THEIR CUSTOMERS DEPOSITS FOR SERVICE IN EXCESS OF THE AMOUNT CHARGED IN 1974 AND REQUIRES THE PUBLIC UTILITY TO PAY ITS CUSTOMERS 8% INTEREST ANNUALLY FOR THE PRIVILEGE OF HOLDING THE DEPOSIT. IT IS NOTEWORTHY THAT SINCE THE STUDY HAS BEGUN, VEPCO HAS RAISED ITS INTEREST ON DEPOSITS FROM 6% TO 8%.

See Appendix V(c)(7) for a copy of the proposed legislation.

13. A BILL REQUIRING OFFICERS AND DIRECTORS OF PUBLIC UTILITIES TO FILE AND MAINTAIN WITH THE SCC A CURRENT RECORD OF ALL INTERESTS WHICH THEY MAY HOLD OF WHATEVER NATURE IN ALL OTHER CORPORATIONS TRANSACTING BUSINESS AMOUNTING TO $25,000 PER YEAR OR MORE WITH THE PUBLIC UTILITY OR ANY OF ITS AFFILIATES.

The members of the Joint Subcommittee feel that to increase public confidence in the regulation of public utilities, legislation of this nature is necessary. Recent disclosures of interlocking corporate directorships among public utilities and other corporations doing business with the utilities tends to lend support for legislation of this type. Most of Virginia's major utilities have

been relatively free of corporate interlocks although one of the major national utilities with several interlocking directorates does have a subsidiary in Virginia.

The proposed legislation is a result of a revision of Senate Bill No. 621 as originally referred to the Joint Subcommittee.

See Appendix V(c)(8) for a copy of the proposed legislation.

14. SENATE BILL NO. 630 TRANSFERS THE PRESENT DUTIES OF THE DIVISION OF CONSUMER COUNSEL FROM THE OFFICE OF THE ATTORNEY GENERAL TO THE ADMINISTRATOR OF CONSUMER AFFAIRS.

This legislation was not acted on by the Subcommittee and therefore has not been included in the legislative recommendations. The Subcommittee did give the matter of consumer representation considerable scrutiny paying particular attention to the RUCAG proposal which is in model legislation form in this report in Appendix (b). Although the Subcommittee has not recommended this legislation, it is inclined to look on it favorably.

15. SENATE BILL NO. 648 INCREASES THE MEMBERSHIP OF THE SCC FROM THREE TO FIVE COMMISSIONERS. THERE WAS CONSIDERABLE DEBATE CONCERNING THE MERITS OF THIS BILL. A MOTION FOR ITS INCLUSION IN THE SUBCOMMITTEE LEGISLATIVE PACKAGE RESULTED IN A 2-2 TIE VOTE AND THEREFORE FAILED.

16. SENATE BILL NO. 820 GRADUALLY REDUCES THE STATE FRANCHISE TAXES ON RAILWAY, TELEPHONE, WATER, HEAT, LIGHT AND POWER COMPANIES.

The Joint Subcommittee is of the opinion that this legislation should be enacted with the requirement that the resultant savings in taxes realized by the various utilities would be passed through to the utilities' consumers.

Additionally, pursuant to House Joint Resolution No. 285, Governor Godwin appointed a Committee to study this matter of the franchise tax during 1975. In relation to public utilities, the Committee made the following recommendations:

1. That the annual State franchise tax should be reduced in equal annual precentages over a five-year period beginning January 1, 1977, from the present maximum rates of 3.0 percent on telephone companies, 3.5 percent on electric, gas and water firms and 3 5/8 per cent on telegraph firms to a uniform maximum rate of 2.0 percent on Virginia intrastate gross receipts; and

2. That at the end of the five-year period, consideration should be given to further reducing the State franchise tax and the enacting of legislation placing public utilities under the State corporation income tax with State franchise tax payments credited against State income tax liabilities; and

3. That final sales of electricity, telephone, telegraph, gas, and water should be subject to the State and local sales and use tax and that certain selected services now exempt be included in the tax base.

See Appendix V(c)(9) for a copy of the proposed legislation.

17. SENATE BILL NO. 923 AUTHORIZES COUNTIES, CITIES AND TOWNS TO SET UP ELECTRICAL AUTHORITIES AND GO INTO THE ELECTRICAL ENERGY BUSINESS.

Since this bill was not originally referred to the Subcommittee, there was a concensus that a recommendation on its enactment may be inappropriate. However, the Subcommittee did hold a public hearing on the bill and since it is a new concept to Virginia and we are not certain of all of the ramifications, the Subcommittee feels that it needs further study.

IV. AREAS FOR FURTHER STUDY

Financing

In recent years, obtaining sufficient capital and paying for this capital has become a major problem for most utilities. Among the most important reasons for this are:

1. Inflation has caused interest rates to rise, increasing the cost of debt.

2. The stock market has been at a low level, increasing the cost of equity.

3. Nuclear power is more capital intensive than fossil fuel power generation. Although fuel savings of nuclear generation when compared to oil or coal generation are substantial, the capital investment is considerably more.

4. Utilities have been less and less able to generate enough cash internally to meet capital needs. Thus, a greater percentage of capital must be supplied externally.

5. The utilities have used more and more external capital. The ratio of debt to equity, a factor used by security analysts as measures of financial risk, has increased. The higher the financial risk, the higher the cost of financing.

6. The increase in debt has reduced debt coverage. Debt coverage is an important criterion used in rating bonds. The lower the debt coverage, the lower the bond rating and the higher the debt service charges.

7. Inflation has increased the need for additional working capital even if no expansion is planned.

8. There are increasing demands for the total capital available nationally not only by utilities but by other industries and government.

There is very little that this Subcommittee can do or recommend concerning specific financing. Each utility consults money market experts and investment bankers to determine the lowest cost capital instrument that is available to the utility based on the specific utility's capital structure and specific market conditions at the time. There are considerable differences in the capital structure and financing costs (debt service) between utilities. However, this is due to management's ability to make the proper financing decisions over a number of years. It is the utility that must determine the efficient mix between bank debt, bonds, preferred stock, common equity, retained earnings, leasing and other methods of obtaining capital. Financing costs are another factor which the SCC should use in evaluating utility management.

There have been a number of suggestions that the credit of the Commonwealth be used to guarantee some of the capital instruments of the utilities or to provide lower capital raised from the tax-free bonds to utilities. This is an important consideration, but, other than promoting joint ownership of facilities jointly used by private companies, municipally-owned companies and cooperatives, there is little action that can be taken at this time. The use of new types of State-supported financing is a step with significant long range impact on State fiscal planning. In spite of the large savings that seem feasible by State versus private financing, no action could be proposed without an in-depth analysis of the implications. Additionally, there are Constitutional questions concerning State financing of a private enterprise which as yet are unresolved. Article 10, Section 10 of the Constitution of Virginia seems to preclude the type of State support discussed above.

In addition to the types of financing, there is a more basic problem. This involves the amount of capital needed, and it is in this area that the greatest saving to the ratepayer can be realized. The purpose of the proposed bill requiring the utility to obtain SCC approval of any major capital expenditure is to require an appraisal of the basic need for capital. This will require the SCC to monitor not only load management but also the utility's load forecasting. Recently VEPCO has twice reduced its growth rate forecast. Although the reductions in growth rate might seem small, the effect compounded over ten years reduces the need for future capital by an amount almost as large as the present rate base. As indicated earlier, monitoring each utility's capital proposals before commitments are made should have a significant beneficial effect on the total need for outside funds.

Rate Structure

There have been many proposals for rate structure changes. The majority of these are not based on overall savings to the ratepayer, but a change in allocating existing or future costs among

users. Each group, consumer segment, municipalities, small industrials and large industrials, can tell why they should pay less but are loath to recommend who should pay more. There is a great appeal for the idea that the stockholders should get less, but once one realizes that utilities are competing in an open market for scarce capital, the dividends paid being recognized as the cost of the equity capital, this is hardly a solution. The fundamental decision that must be made, or it would be made by default, is whether the rate structure should be based on factors other than the actual costs. Social considerations range from lower residential rates for poverty level consumers to lower industrial rates to attract industry to provide jobs for those living at the poverty level. If other than a strict cost basis is used in rate making, who should determine the degree of subsidy provided and who should be overcharged, the utility, the SCC, the legislature or some other group?

It is the judgment of the Subcommittee that the setting of utility rates by the regulatory authority should be based on the actual cost the utility incurs in serving the customer. Social programs should be determined by the General Assembly and should be subject to revisions based on the purpose and needs at that particular time.

The second fundamental consideration in rate making should be conservation. This causes a problem because the two major costs of a power utility are capital costs and generating costs. Although these are related for the utility there may be no relationship between these costs for various consumer groups. There is a cost per customer regardless of usage. This includes the line to the house, the meter, the cost of billing, the cost of meter reading and the cost of maintaining service. These are present whether one or 1000 kilowatt hours are used by the customer. There is also a cost for having the capacity available to supply the peak demand of the customer and the variable costs of generation (fuel and transmission losses, for example). A conservation effort does not materially reduce these costs. If a utility's consumers use less electricity at peak times, it can result in a potential saving, but there is no immediate saving to the utility or the rate payer since the physical plant is already on line and financing has already been arranged and is being charged in the rate. If the peak is reduced, future capital expenditures may be reduced, eliminated or deferred, but the present rate base remains unchanged. If a utility's customers materially reduce their average consumption, such a reduction results in a lower bill to the customer and less variable generating cost for the utility. However, since there are less kilowatt hours to absorb the fixed costs of the utility, the fixed charge per kilowatt hour must go up to some degree and the rate to the customer must be increased to some degree per kilowatt hour. The utility performance as measured by load factor indicated a less efficient operation which less effect efficient operation is actually a result of lessening demand and lessening use of fixed generating equipment. Thus, the fundamental problem with conservation using present rate structure is that the greater the reduction in average usage the poorer the utility appears and the more it needs a rate increase to cover higher fixed costs per unit volume. The customer does not feel the full impact of his savings because he may move back into a higher unit price rate block, or the utility may get rate

relief and pass this on to the ratepayers. Many solutions have been proposed and again the problem is not simple and needs careful study.

Based on the above, the reduction of peak demand becomes a major goal, and if such reduction is achieved, then rates can be set to give incentives for the reduction of consumption at peak load periods and thus further a conservation effort. Many states and some federal agencies are studying the problems and it is important that some Virginia group, most likely the SCC, follow these studies and begin their own studies and experiments on peak load pricing.

In the long run, the reduction of peak demand is the one area where savings to the ratepayer can be accomplished and it must be followed up. Again, the solutions are not short range but must be developed over a long period of time.

State Corporation Commission

Senate Bill No. 648 would increase the membership of the SCC from three to five. It was generally agreed that a group of five people would not per se make better decisions than three people. The logic for adding two people therefore must be either to divide the workload of the Commissioners (that is, still have three man panels but have more panels available) or to add different types of people—a consumer advocate for example, to the group. It was generally agreed that adding a consumer advocate or any person of a particular persuasion would not improve the decision making process of the Commission. Thus, the decision to add two people must be made on the basis of reducing the workload for individual Commissioners so that hearings can be scheduled more quickly, decisions reached sooner, and additional duties (increased utility analysis for example) can be performed. If this is the purpose of the increase, efficient utilization of the two additional commissioners becomes essential.

In the analysis of the SCC some facts that might help in the decision making process are listed below.

1. The Virginia Commission has more different jurisdictions (banking, insurance, airports, public utilities) than commissions do in most other states.

2. The Commission has a staff of approximately 450 persons.

3. In the hearing with the Subcommittee, the Commissioners did not recommend the addition of two members and did not feel any major reorganization was necessary.

The Subcommittee, in its review of the SCC, would like to present the following observations.

1. Public utility regulation is of necessity becoming more complex and more time consuming. Since energy is becoming a

scarce resource, the significance of SCC rate setting has increased enormously.

2. Good rate setting in the future will depend on more detailed analysis by the SCC of a utility's (a) capital expenditures; (b) load factor, load management and load forecasts; (c) consumer policies; and (d) management efficiency in the area of fuel purchasing, cost reduction, financing, construction programs and environmental impact.

3. To expect the Commission to take on essential additional public utility regulatory responsibilities seems to be unfair unless help is provided. This could be in the form of reorganization, separation of jurisdictions, added staff or added commissioners. In other words, some action must be taken if more detailed regulation of public utilities as demanded by many consumers in the public hearings is to be accomplished.

On many occassions, it was suggested to the Subcommittee that the staff was not structured properly to supply maximum assistance to the Commissioners. While the Subcommittee made no in-depth study of the question, it does appear that some additional emphasis to staffing in the middle and senior levels would be justified.

4. A very real organizational conflict of interest exists in the present SCC structure. This was pointed out by a participant at the Virginia Beach public hearing. The SCC staff, under the Commissioners, prepares an adversary position in rate hearings and during the hearings the staff retains its adversary position but the Commissioners now become impartial judges. After the hearing, the staff supplies such additional data to the Commissioners as they may request for making their decision. It appears that this process puts both staff and Commissioners in an ambiguous position.

In summary, utility regulation has become more complex, more time consuming and infinitely more important to ratepayers and taxpayers than in the past. Thus, there has been a major change in the task before the SCC. This is especially true if the Commission takes on additional responsibilities for the closer monitoring of utility operations. The question before the Committee is, "Does the change in regulatory environment warrant a change in SCC organization?" The answer appears to be yes. The next question becomes "What organiztion change is ncessary and how should it be accomplished?" This is one of the most difficult questions before the Subcommittee. It does not appear that the single action of adding two Commissioners resolves the problem. As alluded to earlier in the report, the Subcommittee vote to increase the number of Commissioners resulted in a tie vote and consequently failed to be recommended in the legislative package.

Evaluation of Utility Management

This investigation into utility management included meetings with the SCC, VEPCO, and the Federal Power Commission

(hereinafter referred to as FPC), conversations with Mr. Smith, Director of Economics for National Association of Regulatory Commissioners (hereinafter referred to as NARUC), who is the author of the 1975 report, "The Measurement of Electric Utility Efficiency", and attendance by Mr. Oliver at a two day seminar held by New York State Public Service Commission on "Utility Productivity and Managerial Assessment". From this investigation a number of important conclusions can be reached. First, "....a major problem in public utility regulation is devising incentives for companies to improve their productivity and managerial efficiency." (Quote from New York State Public Service Commission.) Second, there is no easy way to compare utility performance and most utilities have fought hard, through the Edison Electric Institute, against the measurement criteria provided either by FPC or NARUC. Third, inflation, the fuel shortages, capital shortage, an financial structure of institutes have changed the emphasis of utility management. In the past, the goal was lower rates through technological development and innovation. Today it is higher rates through skilled presentation to regulatory agencies. Fourth, there are fewer incentives provided by the present system than could be provided to motivate utilities' management toward higher performance. Fifth, although A. D. Little gave VEPCO's management a commendation, much evidence has been supplied at public hearings indicating mistakes or poor judgment on the part of the utility's management. Sixth, attaining better utility management and working toward minimum cost service is not a one-time management evaluation but an on-going audit done periodically, measuring progress toward given goals. Seventh, utility management can have a major effect on rates paid by customers. Commonwealth Edison of Chicago has rates about half of those of Consolidated Edison of New York, even though both companies have similar jurisdictions, are the same size, and must generate power either by fossil or nuclear fuel.

In the area of better utility management, the Subcommittee can recommend several courses of action. A study of the problems of utility efficiency can be initiated by the legislature. The SCC can be advised to take a much more extensive evaluation of utility management and set up a procedure for annual audits. Budgets would necessarily have to be provided. A joint House and Senate utility task force could be set up with the responsibility, among others, to monitor utility performance on an annual basis and follow utility objectives versus performance. From the staff's point of view any of the three actions would be a step toward the goal of minimum rates. The important consideration is that utilities be monitored and that management's goals be a step toward the goal of minimum rates. This must be done without reducing management's responsibility to manage and without taking a significant portion of management's time.

Permanent Utilities Commission

It is the belief of the Subcommittee that the problems presently facing public utilities in the Commonwealth are of such a nature as

to warrant a continuing study by a permanent committee.

The creation of a permanent committee will give the committee members continuity and will help the members develop some expertise in this difficult area.

North Carolina has recently adopted such an approach by creating a Utility Review Committee to evaluate the actions of the State Utilities Commission and to analyze the operations of the several utility companies doing business in North Carolina and to make periodic reports and recommendations to the General Assembly for a period of five years.

The North Carolina committee consists of three Senate members and three House members. The committee has authority to employ professional staff, giving first consideration to employees of the Legislative Services Commission. The committee acts independently of all agencies of the State of North Carolina.

The Utility Review Committee has no regulatory authority but does have the following powers and duties:

1. To review orders of the State Utility Commission;

2. To review expenditures of public utilities to determine whether those expenses put in the rate structure are appropriate and necessary;

3. To review the role of the Public Service Commission and utilities in developing alternate energy sources;

4. To review the efforts of utilities to encourage the conservation of energy and thus possibly to reduce the necessity for additional generating facilities;

5. To submit evaluations of the performance of public utilities to the General Assembly.

In carrying out its assigned task the Committee shall have access to all books and records of public utilities and may subpoena witnesses, administer oaths, take testimony and cause depositions of witnesses to be taken where appropriate.

Consumer Representation

When one considers the pervasive influence arising from the need for energy and utility services, it appears clearly that adequate attention to the interest of consumer protection is needed.

The utilities, with substantial funds to spend in litigation, are more than any individual or an ad hoc consumer group can cope with effectively. It appears that our present Consumer Counsel is functioning under a handicap when confronted by the strong efforts which private utilities are able to muster.

Lack of material resources aside, the fact that the Consumer Counsel, wherever he may be located in the government of the Commonwealth, may be subject to political considerations remains a topic of concern. In years when the Attorney General is an activist, consumer-oriented individual, the public may fare rather well depending on his office's resources and the allocation thereof. However, if the Attorney General possesses a laissez-faire attitude, the inverse of the above statement would probably prevail. In either situation, the Attorney General's office would still be subject to the caprices of the legislature to fund, adequately or inadequately, his Office of the Consumer Counsel. Consideration must also be given to the possibility that any supervising officer of the government of the Commonwealth would use the Consumer Office as a tool of personal political aggrandizement while giving mere lip service to the genuine needs of the consumers. As such, the appointment of the Consumer Counsel, and his subsequent deployment, might be based more on political considerations than professional competence.

As an alternative to our present situation in the Commonwealth, it has been suggested that the Office of the Consumer Counsel be removed from the Attorney General's office to the Department of Agriculture (Senate Bill No. 630). The most glaring deficiency in this proposal is that the appointment of the Consumer Counsel would ultimately fall to the incumbent Governor since he appoints department heads, who in turn fill the positions within their agencies. Again, we are confronted by the problem that the office may become politicized and vacillate between being an effective consumer advocate or mere window dressing, depending on the Governor's attitude toward such matters.

Of course, there is the possibility of allowing the legislature to create a separate office of the Consumer Counsel and fill the top post by legislative appointment. But again, the appointment would be subject to political undercurrents. It is also quite easy to envisage a scenario wherein the legislature consumes an inordinate amount of time debating the appointment time which could be utilized more prudently.

Popular election of an independent Consumer Advocate has somewhat more appeal than the other alternatives, although it is not without its deficiencies. It is common knowledge that it requires great amounts of money to finance a statewide campaign of any sort. The question "to whom is the aspiring Consumer Counsel obligated?", would surely arise. Additionally, a charismatic candidate, perhaps of lesser ability, could quite conceivably defeat a highly qualified person who, unfortunately, projected a less appealing image.

Many interested persons have advanced the position that the SCC should be expanded to five Commissioners to allow a consumer advocate to sit on that body. This position seems as incongruous as one which would allow a utility executive to serve as a Commissioner. The SCC Commissioners in rendering judgment in rate cases should endeavor to be as objective and impartial as is humanly possible. Obviously, a consumer advocate or a utility

executive could not do this. The place for consumer representation is before the Commission, not on it. Article 9, Section 2 of the Constitution of Virginia states that the General Assembly may provide for the interests of the consumer. Clearly, the prerogative of what type of representation rests with the General Assembly.

Many of these proposals have at least one thing in common. They would require a considerable increase in the present appropriation to do the job effectively. Another common bond between the proposals is the question of who is "the consumer"? The definition is difficult to ascertain in any specific way. Industries are consumers; householders are consumers; their interest are not always the same.

A novel proposal which was first propounded at one of the Subcommittee's public hearings deserves some attention and thought. This idea, known as a Residential Utility Consumer Action Group (hereinafter referred to as RUCAG), seems to lack the deficiencies of the other alternatives. (See attached model legislation, Appendix V(b).) Basically, RUCAG is a relatively simple proposal which requires minimal action by the government. Through a special check-off space on electric and telephone utility bills, residential consumers can make a voluntary contribution by supplementing their required payment. (The proposal could be expanded to cover all other types of utility consumers.) The utilities would be allowed to offset their collection costs by holding the contributions long enough to accrue a proportionate amount of interest. The person who has contributec to RUCAG becomes a voting member of the non-profit organization, elects Directors, and assists in determining policy. The Directors, in turn, will hire a full-time staff of attorneys, accountants, economists, engineers, and other specialists to appear, on behalf of residential consumers, before the SCC and the legislature.

This proposal seems to be an extremely viable alternative which will allow people to help themselves rather than depend on a governmental entity. No tax money is involved, contributions are voluntary, and disenchanted persons may terminate contributions and membership at any time. If the plan fails, it fails due to the apathy of those most affected by rising utility costs. Therefore, an irate citizen cannot point an accusing finger at the legislature for taking no action to combat rising utility rates. In Connecticut, where the plan is also under consideration, it has been estimated that the RUCAG could raist as much as $600,000.00 annually. If these projections are even remotely accurate, one can readily see that the consumer would be on equal footing with the corps of experts and legal staff deployed by the utilities. Contributions would probably fluctuate according to rises in utility costs, which is as it should be.

In summary RUCAG is more attractive than the existing situation or the other alternatives under consideration. It runs less risk of becoming politicized, it is self-supporting, it does not create another level of government, and it can be expanded to cover the diverse interest of the various types of consumers. It should be noted, however, that the draft attached as Appendix V(b) speaks

only of residential consumers as members of the RUCAG.

The maintenance of the Consumer Counsel, as that office is presently in existence, is still a attractive idea. However, such counsel would no longer be charged with representing consumers in rate cases, assuming the adoption of the RUCAG idea. This would allow the counsel more time to concentrate on areas of consumer fraud, deceptive trade practices, etc. In all probability the office, if diverted of its rate-making responsibility, could become a very effective force serving consumer interests. The Subcommittee has made no specific recommendation in this area other than indicating its interest in the RUCAG proposal.

Conservation

One of the means to reduce drastically our dependence on foreign sources of oil is the judicious utilization of our present energy supplies. Despite our collision with economic problems, we still have no comprehensive energy policy, much less a program of austere conservation.

In the area of conservation, the Commonwealth has the opportunity to seize the initiative. Naturally, this would require a comprehensive, well-orchestrated policy in conjunction with a massive educational program designed to inform the citizens of the seriousness of the energy situation and of the urgent necessity to conserve fuel.

Practically any measure of conservation will meet some resistance and have an adverse impact on various portions of our society. However, the health and economic well-being of the whole must take precedence over the part.

Although the Subcommittee has not discussed the need for stringent methods of conservation, it is the opinion of the consultants and staff that there are several seemingly simple steps that may be taken to mitigate the current situation. Many of these measures will require changes in life-style and habits. However, if the people are apprised of the gravity of the situation, they will respond with sacrifices much like those made during other times of national emergencies. The crucial ingredient to achieve the desired results is leadership. It is incumbent on the elected representatives of the Commonwealth to impress upon the people the need for small sacrifices immediately in order to avoid a dire situation requiring monumental sacrifices in the near future.

Since the drafting of the body of this report, the Governor of the Commonwealth has established a commission under the chairmanship of Dr. Ronald Carrier to work in this area on a long range basis.

One fact remains paramount, we, as a nation and as a sovereign State, must lessen tremendously our reliance on foreign sources of energy. Conservation of our energy resources seems to be a spark of

light in the darkness of the present economic situation.

Environment

According to a recent report by the Council on the Environment, the direct impact of environmental legislation on utility prices is negligible. However, the litigation which ensues from environmental protestations can be costly. A study of the issue involving experts in the area should be undertaken before contemplating removal of those environmental constraints which are subject to state authority.

Tax Reform

Senate Bill No. 820 was the only major step in utility tax reform scrutinized by the Subcommittee. There are other areas where tax reform is possible, such as allowing local utility taxes to be used as deductions or credits on the State tax form. One possibility for making up the taxes lost to the localities could be a proposal to phase in by increments a 4% sales tax in lieu of the local utility tax. Although this would result in some loss of revenue to the localities, it would work to the benefit of the consumer and ultimately, the locality. These suggestions by no means constitute all that can be done in the area of tax reform. It may be possible for the consumer to realize considerable savings if meaningful reform is undertaken.

Respectfully submitted,

J. Harry Michael, Jr. Chairman

Peter K. Babalas, Vice Chairman

Richard M. Bagley

Robert R. Gwathmey, III

Edward M. Holland

Frank E. Mann

Frank W. Nolen

Lewis W. Parker, Jr.

H. Selwyn Smith

W. Ward Teel

V. APPENDICES

APPENDIX V(a)

CONSULTANT REPORTS

The following reports were written at the behest of the Subcommittee by the consultants hired to supplement the staff with certain areas of expertise.

Some of the recommendations contained in the reports has been adopted while others have been rejected.

The reports do not necessarily reflect the views of the Subcommittee membership on all matters. They do reflect the views of the contributing consultant and were utilized in some instances to provide input and stimulus for the Subcommittee study.

GREGG ENTERPRISES, INCORPORATED

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CONSULTANTS—PETROLEUM PRODUCTS

28 August 1974

Norman L. Gregg, Jr.
President

Telephone 804-977-0107
Telex 823444 BABA NFK

To: All Members of Senator Michael's Subcommittee and Staff

Subject: Forecast of Supply and Cost of Utility Fuels—1980/1985

1. Energy prices are expected to increase at approximately the rate of inflation experienced by the United States. These high energy prices will significantly affect energy consumption as well as patterns of fuel use.

2. Decontrol of "old oil" prices will result in an average of $2.40 per barrel increase or with complete decontrol could result in an increase in the price (retail) of regular gasoline by about 2.5 cents per gallon. This is with the assumption that present import fees are removed as indicated. Should they be retained increases up to five cents per gallon can be expected.

3. Elimination of the crude oil depletion allowance has removed about $2 billion from the funds available for new energy investment at a time when oil company capital expenditures are already running above income. Replacement cost of domestic crude reached a level of $12.73/B in 1974 (Robert Nathan to Senate Interior Committee). U.S. crude oil production peaked in 1972 and will decline each year until sizeable reserves are found and put into production. The Offshore Atlantic continental shelf offers the most promise compared with other alternatives.

4. Domestic wellhead oil prices will rise to parity with foreign oil prices by 1979. Thereafter an increase of 3%/year to 1985 is expected in both domestic and foreign oil prices.

5. Wellhead gas prices will rise at an average of nearly 12%/year to 1985. FPC will continue to control but will allow more realistic prices to increase interstate flow of gas. After 1985 gas prices will continue to rise steadily seeking parity with oil prices and will rise above oil thereafter.

6. Coal prices began rising in 1969 and increased at a rate of 14%/year to 1973. Since then oil prices have pulled coal prices up even faster and they will continue to rise until the supply gap is closed in the mid-80's.

7. From 1950 to 1970 utility oil prices were 30% higher than the price of coal. By 1974 oil was 2.8 times the price of coal but by the beginning of 1975 coal had risen to almost parity with oil. The oil/coal price ratio is expected to attain its pre-1970 relationship by 1985. Thereafter the ratio will be constant or increase as coal prices soften. Oil and synthetic gas from coal will follow coal prices with a price differential approximating the cost of synthesize and coal.

8. Energy supply by type of fuel—Domestic fossil fuels are in short supply, oil and gas because of a long term lack of development incentives and coal because of strikes and environmental concerns as well as attempts to shift utilities away from other fuels to coal. Nuclear is suffering growing pains and has environmental and capital indigestion. The current price of aroung $8 per pound for unprocessed uranium could rise to between $80 and $100 by year 2000. Short term, the 1985 price is expected to rise to the $21-27 range. The basic problem with uranium supply lies in the delay in the development of the "breeder-type" reactor and the facilities and techniques to reprocess used nuclear fuel as now used in the pressurized water types which make up most of the present and projected (thru 1985) plants. However, the technique is available and plants are to be constructed which will solve this problem as well as the problem of "waste or spent" fuel disposal.

9. For the future, our ample reserves of coal are expected to be our chief source of energy with nuclear fuel also playing a major role. Petroleum products will be primarily a source of gasoline for our transportation requirements and as a source of petro-chemical feedstocks. Natural and synthetic gas and liquid petroleum gas will eventually be limited to residential usage and a few light industry and commercial uses.

10. The Commonwealth of Virginia with its natural supply of coal reserves should adopt a policy of continuing to push the development of these resources. For the short term and to provide bunker fuel supplies for the many ships that make Hampton Roads one of the key ports in the U.S., consideration should be given to the installation of an offshore monobuoy petroleum receiving system with a storage and distribution system on the Eastern Shore. Such a system could be designed to move crude oil into the Middle Atlantic petroleum refining complex thus supplying a vital need for the entire East Coast-New England area and at the same time provide a source of additional revenue for the Commonwealth.

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CONSULTANTS—PETROLEUM PRODUCTS

28 August 1975

Norman Gregg, Jr.
President

Telephone 804-977-9197
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Hon. J. Harry Michael, Jr., Chairman

Joint Subcommittee for Public Utilities

Richmond, Virginia

Re: Fuel Adjustment Clause
VEPCO Rate Increase

Dear Senator Michael:

After attending two days of the previous SCC Fuel Adjustment Clause hearing and numerous days of the just completed VEPCO Rate Increase "merry-go-round" I offer the following comments and observations for consideration by the Subcommittee and staff. These and the attachments also evolved from much study of the voluminous material supplied from the Division of Legislative Services and various other sources.

Fuel Adjustment Clause

1. The new proposed FAC includes "fuel costs associated with purchased power". It would appear from VEPCO's testimony that power is purchased almost daily on a lowest cost-most efficient source basis in which case fuel cost should already be included in the purchase price.

2. Fuel Adjustments should be billed as a separate item (Exhibit NLG-2) with no portion included in the rate base. With fuel costs for the various utilities serving Virginia customers ranging from 65 to 80% of total operating and maintenance expense, little is left to regulate or judge management by. Even more important, as a separate item on each monthly bill the user will be regularly reminded to practice conservation to the maximum possible.

3. If the fuel adjustment cost is included in the rate base and raised as recommended to 1.389 cents per Kwh, it could actually result in a negative charge (credit) thus making it appear a reduction or refund was being made as a result of good fuel purchase practices rather than questionable regulatory supervision. Using the nine months Nov. '74 thru July '75, six of the nine months would have had a negative fuel adjustment on the proposed new

rate base.

4. Fuel Adjustment charges should be exempted from local utility taxes. During 1974 and continuing in 1975 localities are receiving a windfall revenue from the application of local utility taxes to the FAC. Figures for the 12 months thru June 1975 indicate this to be over 4 million dollars altho one county received 1/2 million less due to a reduction made effective Dec. 1974. While maximums limit the total amount collected, the small user pays a penalty and a disproportionate share of the tax.

Reserve Capacity & Damand Forecasts

1. A reserve capacity of 15% to 18% has for many years been considered by the FPC and utilities to be necessary to provide a safe reserve against brown-outs and/or black-outs. As ever larger and more efficient generating units are installed (800 to 1200 NW) representing 10% or more of a system capacity, a given utility can no longer depend on its own reserve entirely. It must be able to call on its associated Grind members' reserve as was demonstrated by Con-Ed (NY) when its "Big Alice" unit was out of service.

2. Demand Forecasts are normally predicted five to ten years ahead. While VEPCO has recently begun to use updated methods of forecasting, the fact that its 1985 Forecast Demand has been revised downward by 37% since 1972 obviously points to the need for improved forecasting. Grid Demand Forecasts should be taken into consideration and should be given considerable weight on a Statewide and even a National basis.

Political and economic factors intended to reduce our dependency on imported petroleum products and the rapidly decliningnatural gas supply will undoubtedly force a greater demand for electricity in the near future—five to ten years. This will probably more than offset user reductions in individual consumption related to higher cost.

Rate Schedules

1. Present rates charged all classes of users are of the use-incentive type which encourage greater consumption. Contrarily, from a conservation point of view, they also offer minimum reward for reduced consumption.

2. Much has been said and published about peak-demand and off-peak rates to assist the utilities in lowering demand. Most of the discussion has pointed to the individual residential customer who would save by changing some of his habits and life style. Peak Demand to the utility, however, means high summer demand vs winter demand. Both are subject to a wide range of weather forces which have a considerable effect on peak demand and Kwh requirements. While technology may provide some relief in the form of new solid-state computor-type metering, its present stage of development and cost place it in the long term benefit category.

3. Rate schedules proposed (Exhibit NLG-1) would not only

include the 22.5% Emergency increase but would contain an additional increase of up to 3.5% especially in the summer schedule. The winter schedule would increase slightly, aroung $2 per month for the 1000 Kwh/mo. user and up to $4 to $7 per month for the 2-4000 Kwh electric heat type customer. The summer schedule shows a slightly smaller increase up to the 1000 Kwh/mo. level with the 2000-4000 Kwh airconditioning user paying $5.68 to $11.32 per month more. Keep in mind these rates currently have a bulitin FAC of 0.422 cents per Kwh as opposed to the 1.389 cents proposed in the new rates.

I did not intend to burden the group with more reading material but feel this background could be helpful prior to our August 16th Working Session.

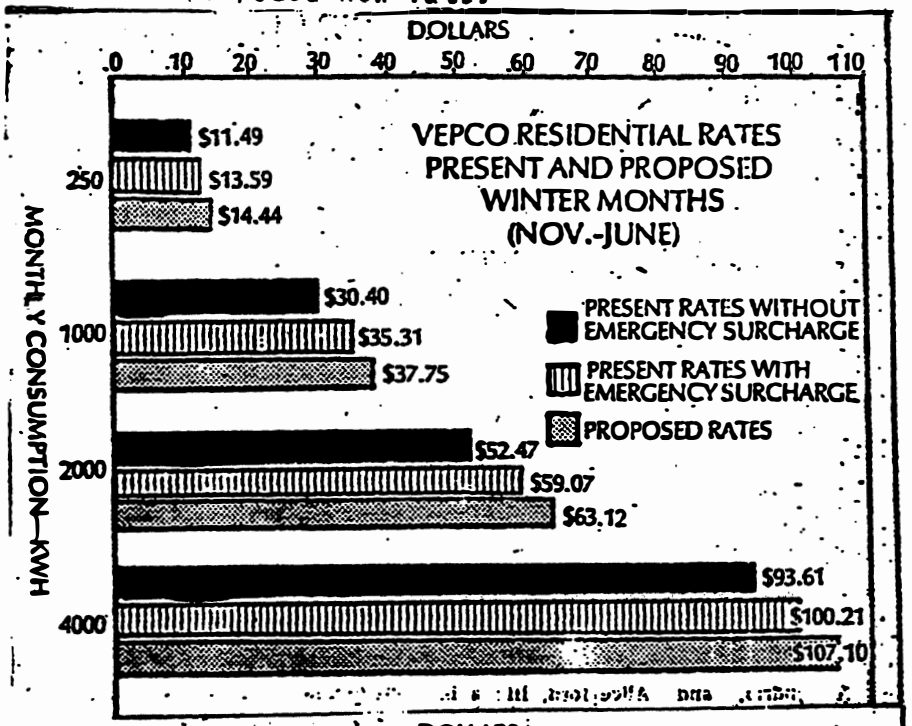
Sincerely,
Norman L. Gregg, Jr.

NLG/g

Copy—Subcommittee Members and Staff

Exhibit NLG-1

Note: The below billings include 0.422 cents fuel Adjustment built into the present base rate and 1.369 cents FA in the proposed new rate.



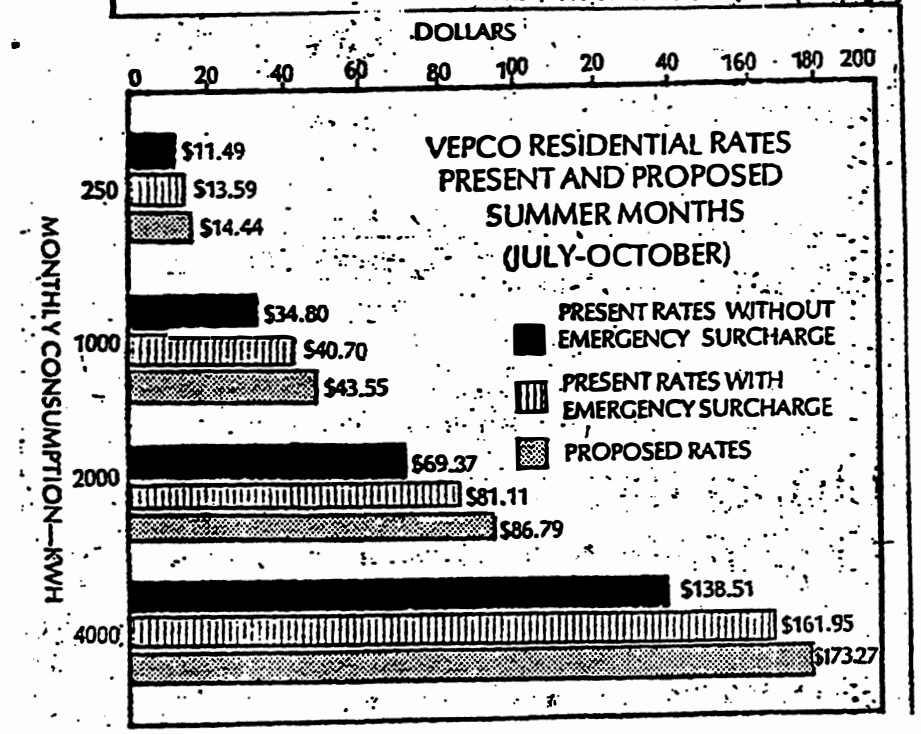
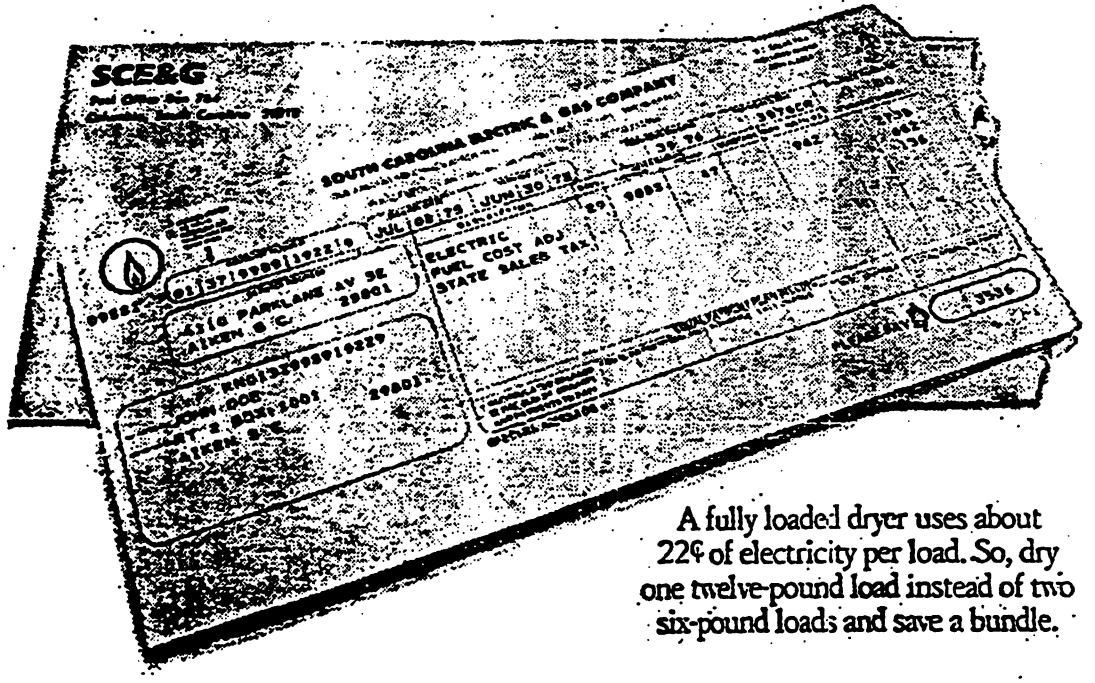


Exhibit NLG-2

EXAMPLE OF UTILITY ADVERTISING

Note: Billing Form lists Fuel Adjustment Clause amount separately and also includes space for Budget Billing.

Your dryer shouldn't be taking you to the cleaners.



A fully loaded dryer uses about 22¢ of electricity per load. So, dry one twelve-pound load instead of two six-pound loads and save a bundle.

August 26, 1975

Report on Utility Finance, Rate Making and Other Matters

Submitted by Dr. James E. Brown and Mr. Frank W. Brandon-Brown

To: Dr. James Dunstan, Coordinator and Staff and Consultants, Joint Subcommittee to Sbudy Public Utilities, Commonwealth of Virginia

1. Utility Financing

a. As is the case for many companies, regulated and non-regulated alike, errors in managerial judgment often result in improper timing of the issuance of securities and improper format (e.g., debt versus equity). The method and timing of financing has historically been left to the descretion of management and has not come under the purvue of a regulatory body such as the SCC. Within limits, this is as it should be. However, our research has shown that many utility companies have "traded on the equity" more so than could be justified under normal circumstances. That is, many utilities have used much more debt than would be considered prudent by the investment community. The result has been an imbalance in capital structures, higher interest costs and the ultimate inability to raise equity capital.

It is recommended that the SCC be directed to review all proposed financing by all public utilities with the power to enforce maintenance of capital structures within the boundaries generally established in the particular industry (electric, gas, water, telephone, etc.) and within the boundaries established by the investment community so as to minimize the possibility of higher interest rates or higher equity costs.

b. Tax-free bonds, backed by the good faith and credit of the state of local government, has frequently been mentioned as a possibility of holding interest rates down. Generally speaking, this is a subterfuge which is readily recognized as such by the investment community, the end result of which is the same level of interest as would have prevailed otherwise. Further, the use of the state or local government's good faith and credit to support a utility bond issue diminishes the ability of the state or local government thereby to guarantee its own bonds for other purposes.

There are exceptions to this general rule: (1) government support of utility bond issues to provide funds for pollution control equipment or for other environmental purposes; (2) government support of private utility bond issues in those cases where it is either impossible for the utility to raise the needed capital to serve consumers' needs or where the cost is prohibitive due to inadequate earnings, no growth and general lack of investor confidence.

c. Another form of financing is internal financing which should be encouraged when possible. A major criticism of VEPCO is its policy of using internally generated funds (through IRS provisions allowing accelerated depreciation for tax purposes) to pay "liquidating" or tax-free dividends. This practice simply puts off until the future the need to raise capital from outside sources and frequently at much higher costs.

It is our recommendation that the SCC should require flow-through accounting for accelerated depreciation as opposed to "normalization; however, for rate making purposes these arguments do not always operate to the long-run benefit of the consumer or to the utility company's investors.

d. Financing of local distributing systems, in most cases, is more costly than that which is obtainable by large companies such as VEPCO, APCO or WGLCO. This is even more evident when we consider the financing costs associated with municipal generating facilities historically.

2. Life Line Rates.

a. The definition of life line rates is that a level of energy usage be established at some appropriate level (600 kwh was mentioned in one of our meetings) and that the rate charged would be relatively low. Beyond this "life line" usage, the rate per kwh or per therm of gas would rise. This would be necessary for the utility company to recover the revenue lost by charging a low "life line" rate.

b. The life line rate proposal has several basic appeals: (1) it has strong political support from groups representing the poor and/or the aged; (2) conservationists argue that an increased rate above the life line rate would tend to discourage the use of energy; and (3) it is easy to administer and requires no additional form of taxation. The argument is based mainly on the assumption that low income consumers owned fewer appliances and therefore used less energy.

c. We find that life line rates are highly suspect to accomplish the goals for which they have been proposed. Mr. Jules Joskow, in a paper distributed to the members of the Subcommittee, stated that these rates "....are based on the tacit—and frequently unwarranted—assumption that the poor are always the minimum-use customer." Studies have been made in New York, Detroit and San Francisco, as well as a superficial study of Northern Virginia (in the sense that neither time nor complete date were available for an in-depty study). Similar conclusions were reached in each of these studies:

(1) There does not appear to be any significant correlation between income and energy consumption. That is to say, low income does not necessarily indicate low usage of natural gas and electricity.

(2) there is every indication that low income consumers may be contributing heavily to peak energy demands, particularly during the winter peak periods.

(3) Study results seem inconsistent with the hypothesis that low income equates with low use. There appear to be a number of reasons for this lack of consistency. First, low income housing stock often in old and poorly insulated, contributing to considerable energy wastage. Second, appliances used by low income groups may be less efficient than their more modern counterparts. Third, inadequate maintenance of heating plants by the poor could contribute to energy waste. Finally, low income customers, as well as the aged, normally have a more home-oriented life-style for lack of transportation and many other reasons.

d. The rationale for the declining block rate (as opposed to a life line rate with increasing charges as consumption increases) is based on the recognition of declining unit cost of providing electric and gas service as consumption increases.

If a higher rate for trailing blocks to discourage large-volume usage were instituted it would not reflect cost incidence, and under such a rate large-volume users would, in effect, subsidize sales of smaller usage customers.

e. Our conslusion is that there is no particular advantage in life line rates, inverse rate designs and similar tinkering with rates to give effect either to giving relief to the poor or aged or to conservation. No available evidence indicates otherwise, although the goals are certainly worthy of continued attention. It should be noted further that the more affluent are likely to benefit the most since our studies indicate that this group is generally a low-usage group.

3. Peak-load Pricing.

a. Economic analysis and a review of the literature leads us to the conclusion that peak-load pricing is perhaps the major solution proposed to date to the problem of conservation, particularly among large users of energy. The general idea is to charge a higher price for energy during those periods (time of day or season of the year) to reduce demand during peak periods, in turn reducing the necessity for maintaining large reserves in plant capacity, the cost of which has to be borne by the rate payer.

b. Two notes of caution must be considered, although these notes do not preclude immediate implementation of this device. First, it may not be possible for some large users to switch to an alternative fuel or use operate plants at times other than during peak periods without incurring such additional costs as to cause them discriminatory penalty or to encourage relocation. Second, individual small users, frequently a working family in the low income group, may find it impossible to take advantage of the lower off-peak rates.

4. Legislation: Tom Oliver already has a summary of our findings and opinions with respect to proposed legislation. He was to make this available as a part of this report.

5. Conservation.

a. Too little has been said concerning the economies that can be enjoyed from efficient use of energy. Total energy demands could be trimmed by at least 10% and probably considerably more simply through educational programs instituted by the Commonwealth with the utility industries. We feel that this is the sort of advertising which should be allowed and even encouraged by utilities—as opposed to promotinal advertising.

b. Public utility firms must be restrained in their plans for capital expansion projects which result in extreme excess capacity. We do not concur with the recommendation that review of expenditures in excess of $50,000 be subject to review and control, as that amount is too small and would be costly to administer. Instead, it is our recommendation that no dollar amount be specified but rather that any capital expansion proposal, regardless of amount, be subject to review and approval by the SCC. The SCC. as a matter or policy should consider regional grid patterns and regional reserves upon which various utilities may draw when granting or denying a request for expansion. Whether or not this is a matter for legislative action is beyond our scope of expertise.

6. Consumer Bill of Rights and RUCAG.

a. Estimated costs of implementation of both programs on the surface seem to outweigh the potential benefits derived therefrom, particularly in view of the fact that such costs (estimated to stem from the 1 1/2% "bad customers") must eventually be borne by the 98 1/2% of those customers who do not need such protection.

b. The RUCAG proposal seems particularly discriminatory to the consumer in that, although contributions would be made on a voluntary basis, the associated costs would have to be paid involuntarily by those who did not wish to contribute.

c. Along these lines, we so no real objection to any consumer organization privately financed intervening in any rate hearing; rather, such intervention would be healthy and should be encouraged. The vehicle of implementation is that which should be considered carefully, however, to avoid a discriminatory situation.

Respectfully submitted,
James E. Brown
Frank W. Brandon-Brown

The following appendix was submitted by Jack Chesson, Esquire, in his capacity as Special Counsel to the Subcommittee.

The preliminary findings concerning legislative actions needed to improve the regulation of public utilities in Virginia are as follows:

1. Restructure of the State Corporation Commission. Data compiled by the Federal Power Commission shows that the SCC has the most comprehensive and extensive powers of any body regulating public utilities in the United States. In addition to regulating electric, gas, and telephone utilities, the SCC also regulates transportation, banking, and insurance as well as administering fire and safety regulations, the Uniform Commercial Code, and the registering of corporations in Virginia. The expertise and time needed to properly fulfill the many tasks assigned to the SCC are beyond the limits of what may be expected from any three persons who are chosen to serve as commissioners.

The type of expertise needed to promote the public interest in banking and insurance, for example, is far removed from the sort of expertise needed to regulate public utilities. On the other hand, the time involved in regulating public utilities during the past few years has precluded the SCC from properly fulfilling its other responsibilities. The SCC has abdicated its responsibility to regulate insurance rates and the failings of the banking division are all to apparent to depositors and members of the General Assembly. The daily workload of administering corporate and safety laws in a responsible manner is either subordinated to regulatory responsibilities or detracts from the time needed to properly regulate public utilities.

Recent experience and public awareness over the regulation of public utilities have highlighted the weaknesses of the General Assembly's delegation of too much authority and responsibility to the SCC. The most important recommendation I make is that legislation be drafted divesting the SCC of its extraneous administrative and regulatory functions. Administration of corporate and safety laws should be assigned to the proper executive agencies. Regulation of insurance and banking should be assigned to a separate commission dealing solely with those vital matters. The regulation of public utilities should be the sole responsibility of a properly restructured SCC.

The time and expertise needed to regulate private monopolies providing necessary energy and communication services is more than enough to tax any commissioners assigned to perform that function. Citizens of the Commonwealth deserve and are demanding adequate attention to the regulation of basic energy and communication requirements.

2. Representation of Consumer Interests in Public Utility Regulation. At present, the residential consumer is purportedly represented by the SCC staff and the Attorney General. Both are inadequate.

The SCC staff has no independent power to appeal decisions of the SCC which residential consumers may believe to be adverse to their interests. In fact, the SCC staff is obliged to defend SCC orders, no matter what the staff position may have been prior to the decisions. The daily integration of administrative and regulatory functions under the direction of the commissioners prohibits the SCC staff from properly representing the interests of residential consumers against better financed and organized business interests or the inclinations of the SCC itself.

The Attorney General is impowered to represent all consumer interests, both business and residential. The interests of business and residential consumers often diverge as to service requirements and rate structures. Furthermore, the Attorney General is elected by the people to fulfill broad legal responsibilities in addition to consumer representation in public utility affairs. He may assume representation of consumer interests even though he was elected on the basis of his views in other vital areas such as crime, school bussing or gun control. The narrowing of accountability to the public for action or inaction in representing residential consumers on public utility issues should be a prime consideration in any attempt to restructure the present system. Residential consumers cannot be expected to mount an independent drive against every utility for every case affecting their safety and economic welfare. It must be remembered that even though the powers exercised in utility regulation are legislative, the procedures involved require representation of adverse interests in the manner of judicial proceedings.

I strongly recommend legislation to establish a residential consumer board financed by consumer contributions on monthly utility bills to represent residential consumers on all matters affecting their interests. The RUCAG model legislation already presented to the Subcommittee provides a viable method to achieve this goal without additional taxation or political considerations as to who should represent consumers. Residential consumers should directly represent themselves.

Consumers already pay for utilities to hire the best professionals to represent utility interests which are often adverse to those of residential consumers. Residential consumers must be provided the means to represent their own interest in an organized and financially viable manner. Additional legislation should equalize and reasonably limit the amounts spent by utilities and consumers in regulatory proceedings. A residential consumers board must also have equal channels of communication with ratepayers through bill enclosures and other acceptable means.

3. Fuel Adjustment Clauses. Fual adjustment and all other automatic cost adjustment clauses must be abolished. Millions of dollars in illegal and questionable overcharges have been discovered by Federal and state authorities across the nation. Such clauses are vehementaly denounced by consumers and undermine their respect of the regulatory process.

From a legal viewpoint, automatic cost adjustment clauses

represent a basic abdication of regulatory authority to private monopolies. Private monopolies, which are repugnant to our free enterprise system, are only tolerated in certain instances where the police powers of the state are used to protect the public interest. When the monopolies are left to decide for themselves what expenses are proper, the public interest is not served. Recent indignation over the fuel adjustment clause demonstrates that the public is well aware of this.

The brief submitted by the Consumer Congress in the SCC hearing on the fuel adjustment clause describes well the disincentives and ineffeciencies afforded utility managements under the present clause. Economic conditions do not warrant continued use of the clause. A rate hearing limited in scope to the cost of fuel would satisfy regulatory requirements while producing prompt results.

4. Selection of Commissioners. Election of commissioners by the General Assembly has not provided Virginia with the type of consumer-concious regulatory body found in many other states. The result is that business regulated by the SCC has been consistently far more profitable than business regulated by other authorities. Virginia has led the nation into such controversial areas as toll directory assistance, 20 cents pay phone calls, and nuclear power.

The United States Supreme Court held long ago that the SCC exercises only legislative power when it regulates utilities rates. Thus, commissioners should reflect the will of the public just like the members of the General Assembly whose powers the SCC is exercising. A separate judicial system is the avenue of redress for those offended by the legislative process. Virginia's utilities have never been reluctant to use the courts to protect their interests.

In order to make the SCC more responsive to public wishes, I recommend that commissioners either be directly elected by district or appointed by a directly elected official chosen for his views on consumer issues alone. This would narrow the accountability for utility decisions affecting the public adversely, and the process of selection would educate and focus public attention on important energy and communication issues.

The terms of commissioners should be shortened from six to three years to promote accountability. The number of commissioners should be enlarged to five with a quorum of three able to act for the SCC. A similar system is currently used by many state and Federal judicial systems. The advantage is that the SCC could operate more continuously and individual commissioners would have more time to perform their responsibilities. The time in reaching decisions could thus be reduced to the advantage of all parties.

Presently, commissioners exercise far too much power for persons not directly accountable to the public. Their workload should be reduced through a restructuring of the SCC, and their accountability must be narrowed.

5. Procedures. Present rules of procedure at the SCC were promulgated without opportunity for public comment and input. Participants in proceedings have complained that the current rules exclude full participation by all members of the public as guaranteed by the Constitution. New rules should be issued after proper public comment.

All fees and transcript costs should be abolished, other than a nominal filing fee, for all appeals to the Virginia Supreme Court. The right of appeal guaranteed by the Constitution does not work for consumers in major utility rate cases because the transcripts are long and cost several thousand dollars. The SCC has, in the past, refused to allow consumers to borrow copies for appeal purposes.

Rules limiting exparte contracts between commissioners and parties to a proceeding should be established. When the SCC staff presents a position before the SCC, there should be limitations on contact with the commissioners outside of the hearings process.

Utilities must be required to keep separate books for their operations subject to regulation by the SCC. Complete financial statements are absolutely necessary for the SCC and the public to be able to effectively analyze the efficiency and the flow of funds from Virginia operations, as well as computing a proper rate of return for the more profitable SCC regulated segment of a utility's business.

Public hearings and SCC approval must be made a mandatory prerequisite of all major decisions by utility managements. Customers bear the economic and safety costs of management decisions, but have no input into the decision making process. The issues and costs are much too important to be presented to the public as an accomplished fact. Customers deserve an input into basic decisions concerning plant type or fuel choice which will affect their rates for many years. Daily affairs would still be left to management and scrutinized during regular hearings.

Advertising by the SCC and private utilities should be discontinued except for conservation information prepared by the SCC. The public believes it is a waste of money and improper for the SCC to advertise on behalf of, or in opposition to, matters which will be in controversey in proceedings before the SCC. Utilities provide a necessary service under monopolistic conditions which negate any need to charge ratepayers to convince them how wonderful the utility really is. Good public images are built on good service, and the public hearings previously recommended are the proper forum for educating consumers as to the merits of certain energy sources or communication methods. Connecticut has recently enacted a law banning advertising which can serve as a model. Public utilities and the SCC would still have the use of the free media channels available to everyone else, of course, and employees of both are free to express their views as individuals.

6. Rate-Making Standards. On of the problems in Virginia, as in most other states, is that legislatures delegated broad legislative powers to regulatory commissions with few or no standards to

guide the commissions in their tasks. It is imperative that the General Assembly now clarify the manner in which the SCC exercises its broad powers. Over the years, the caprices of various commissioners guided by the often unopposed arguments of well-paid utility counsel have developed a few vague standards which are totally inadequate in achieving either good substance of sound procedure. The usual SCC order contains a brief summary of the evidence with a one-sentence conclusion by the SCC. There is urgent need for legislation clarifying the rate standards to be applied.

All conclusions by the SCC must be required to be supported by findings of fact and law with reasoned analyses contained in the body of the opinion. Nothing is more frustrating to a participant than to have thorough legal arguments and factual analyses dismissed without a shred of reasoned discussion. The right of appeal guaranteed by the Constitution is rendered worthless because it is impossible to show where the SCC erred in its conclusions. The standard which requires that legislation passed by the General Assembly not be so vague as to be meaningless should be required of the legislative orders of the SCC also.

The allowable rate base should be defined to include only the capital solicited from voluntary outside investors and the earnings which have been retained in the business. Over the years, capital and properties exceeding the value of all investor supplied capital have been allowed in the rate base upon which the investors earn a rate of return. The excess capital and properties are financed by customers through the normal operations of the business. They are forced to pay a rate of return on their own money under the current rate base formula employed by the SCC.

Allowable expenses charged to customers should be defined to include only those expenses absolutely necessary to the production of basic utility service. Expenditures for trade associations, country clubs, lobbying, management retreats, abandoned projects, etc. should all be charged to shareholders who elect the management, enjoy the benefits, and purportedly take the ristks. Charitable contributions should also be excluded and charged to the shareholders who reap the goodwill. As the West Virginia Commission put it, "Giving away other people's money is not charity". Shareholder generosity and participation by employees in local fund raising efforts will allow utilities to contribute to the community.

There should be a requirement that contracts exceeding a stated value will be awarded through competitive bidding. Negotiated contracts do not establish public confidence in monopolistic procurement involving vast sums of money.

Other appropriate standards should be legislated.

7. Municipal Power. Several communities in Virginia have chosen to supply their own basic utilities, just as many have decided to provide garbage collection, water, and other services on a non-profit basis. the Virginia Supreme Court through various opinions

has virtually prohibited municipalities from acquiring private utility properties for the public interest. The Court has cited a lack of state enabling legislation in support of its findings. Such legislation should be enacted to allow localities the option of providing their citizens with basic utility service.

8. Customer Bill of Rights. Legislation assuring customers of basic fairness and safeguards should be enacted. Procedural steps regarding termination of service, handling of complaints, deposits, etc. should be established for the protection of all parties.

APPENDIX V(b)

Revised Edition
August 1975

AN ACT CONCERNING THE CREATION OF A RESIDENTIAL UTILITY

CONSUMER ACTION GROUP

Be it enacted by the Senate and House of Representtives in General Assembly convened:

LEGISLATIVE FINDINGS AND POLICY

Section 1. The legislature finds and declares that

(a) utility bills are increasing at an unparalleled rate in all forms of utility service;

(b) a well funded private nonprofit membership corporation composed of consumers is needed to represent the interests of consumers before utility regulatory agencies and courts to help such agencies and courts in the exercise of their statutory responsibilities in a manner consistent with the public interest and with effective and responsive government;

(c) utility regulatory agencies often fail to consider adequately the interests of consumers, in part because consumers lack effective representation before such agencies;

(d) consumer complaints are increasing and are inadequately handled;

(e) it is the responsibility of the state government to insure that a utility corporation chartered under its jurisdiction does not earn more than a fair rate of return and is operated efficiently;

(f) it is the responsibility of state government to assure that utility services are priced to the people of the state so that their basic human needs can be met without undue economic hardship;

(g) the rapid rate of growth in the demand for energy is due in part to wasteful, uneconomic, inefficient, and unnecessary exploitation of energy and that a continuation of such growth will result, and is currently resulting in serious threat to the health and well being of individuals and the envirionment and to the personal and financial well being of the citizens of this state; and

(h) utility consumers have the right to use the check-off provision described below to fund activities to provide funds for consumer representation in utility matters.

Section 2. It is the policy and intent of this legislation to:

(a) establish with all necessary powers a not for profit membership corporation to be called a Residential Utility Consumer Action Group, Inc. with the powers and responsibilities to assure adequate representation and protection of consumers; and;

(b) provide for consumer membership in the corporation and consumer responsibility for the actions of the corporation.

DEFINITIONS

Section 3. As used in this Chapter, unless the contex otherwise requires—

(1) the term "residential consumer" or "residential utility consumer" as used in this Chapter shall mean any person billed by a utility under a residential rate or any person whose rent for lodging includes payment for such utilities.

(2) the term "regulated public utility", "utility" or "utility corporation" as used in this Chapter means a corporation which is engaged in the business of furnishing electric, telephone, gas or water service if rates for such furnishing or sale have been established or are subject to approval by a regulatory or municipal authority.

(3) the term "member" or "member of the corporation" as used in this Chapter shall mean any residential consumer who has contributed a minimum of ..... dollar(s) to the Residential Utility Consumer Action Group in the corporation's preceding fiscal year.

(4) the term "Member" or "Member of the Board of Directors" as used in this Chapter shall mean any residential consumer duly elected to the Board of Directors of the Corporation.

(5) the term "utility regulatory agency" or "agency" as used in this Chapter shall mean a State, or political subdivision thereof, an agency or instrumentality of the United States, a public service or public utility commission or other similar body, which has jurisdiction to establish rates and charges for the sale of utility services, siting of power plants, protection of the environment, or general review authority over energy matters affecting the state.

6. the term "Senatorial district" as used in this Chapter shall mean those political subdivisions used for the election of members to the Senate of the State.

(7) the term "proxy" as used in this Chapter shall mean a signed statement authorizing one member to vote in another member's name.

(8) the term "campaign expenditure" as used in this Chapter shall mean money, goods, services or other benefit paid, made,

loaned, given, conferred, or promised, including, but not limited to use of office space, telephones, equipment, staff services, and provision of meals, drinks, entertainment, or transportation. This definition shall be construed as broadly as possible to include anything for which a recipient would or could be expected to pay money, or the promise (whether or not legally enforceable) of any such thing.

ESTABLISHMENT AND MEMBERSHIP

Section 4. There is hereby created a not for profit membership corporation to be known as the Residential Utility Consumer Action Group, Inc. whose members shall consist of all residential utility consumers who contributed a minimum of ..... dollar(s) to the organization during the corporation's preceeding fiscal year. Except that for the first fiscal year, the members shall consist of all those who have contributed to the organization during that fiscal year.

POWERS

Section 5.

(a) The Residential Utility Consumer Cation Group shall have all powers, duties and responsibilities as any other private membership nonprofit corporation chartered by the State.

(b) The Residential Utility Consumer Action Group shall have all rights and powers reasonably necessary to effectively represent and protect the interests of consumers of utility services. It has all powers specifically designated as well as those necessary and incidental to providing such representation and protection.

(c) The Residential Utility Consumer Action Group may seek such exempt status under the Internal Revenue Code as the members decide could further the protection of consumer interests.

(d) the Residential Utility Consumer Action Group may use any legislative devices necessary to carry out its purposes including, but not limited to, initiative, referendum and recall.

(e) The Residential Utility Consumer Action Group may accept grants, contributions and appropriations and contract for services which cannot reasonably be performed by its employees.

REPRESENTATION OF CONSUMERS

Section 6. Hearings.

(a) Whenever the Residential Utility Consumer Action Group determines that the result of any utility regulatory agency proceeding may substantially ffect the interests of residential utility consumers, it may intervene as of right as a party or otherwise

participate for the purpose of representing the interests of residential utility consumers in such proceeding. The Residential Utility Consumer Action Group shall comply with utility regulatory agency statutes and rules of procedure of general applicability governing (1) intervention or participation in such proceeding and (2) the conduct of such proceeding. The intervention of the Residential Utility Consumer Action Group in any such proceeding shall not affect the obligation of the utility regulatory agency conducting such proceeding to operate in the public interest.

(b) In any utility proceeding or activity in which the Residential Utility Consumer Action Group is intervening or participating, it is authorized to request the utility regulatory agency to issue such orders as are appropriate under the agency's rules of practice and procedure with respect to the summoning of witnesses, copying of documents, papers, and records, production of books and papers, and submission of information in writing. Such utility regulatory agency shall issue such orders unless it reasonably determines that any such order requested is not relevant to the matter at issue, or would unduly interfere with such utility regulatory agency's discharge of its own statutory obligation.

Section 7. Prehearing activity.

(a) In exercising its authority under this Section, the Residential Utility Consumer Action Group is authorized to obtain data by requiring any utility corporation whose actions it determines mbay substantially affect an interest of residential utility consumers, by general or specific order setting forth with particularity the consumer interest involved and the purposes for which the information is being sought, to file with it a report or answers in writing to specific questions concerning such activities and other related information.

(b) The Residential Utility Consumer Action Group shall not exercise its authority under Section 6(a) if the information sought—

(1) is available as a matter of public recored; or

(2) is for use in connection with its intervention in a regulatory proceeding against the utility to whom the interrogatory is addressed if the proceeding is pending at the time the interrogatory is requested and the regulatory agency has subpoena power.

Section 8. Petitions for rule making.

(a) Whenever the Residential Utility Consumer Action Group determines that it would be in the interest of residential utility consumers to do so, it may file with the regulatory agency a petition requesting it (1) to commence and complete a proceeding respecting any utility activity or lack thereof, or (2) to complete such proceedings.

(b) The petition shall set forth facts which it is claimed establish the need for the proceeding and a brief description of the substance of the order or amendment desired as a result of the hearing.

(c) The Regulatory Agency may hold a public hearing or may conduct such investigation or proceeding as it deems appropriate in order to determine whether or not such petition should be granted.

(d) Within sixty days after the filing of the petition described in subsection (b), the utility regulatory agency shall either grant or deny the petition. If the agency grants the petition, it shall promptly commence or complete the proceeding, as requested by the petition. If the agency denies the petition it shall publish the reasons for such denial.

(e) If the Utility regulatory agency denies the petition made under this section (or if it fails to grant or deny such petition within sixty days), the petitioner may commence a civil action in a court to compel the utility regulatory agency to commence or complete the proceeding (or both), as requested in the petition. Any such action may be filed by the petitioner thirty days after the denial of the petition (or [if the agency fails to grant or deny the petition within sixty days] at any time thereafter.)

(f) If the petitioner can demonstrate to the satisfaction of the court, by a preponderance of the evidence in a de novo proceeding before such court, that the failure of the agency to commence or complete the proceeding as requested in the petition was unreasonable the court shall order the agency to commence of complete the proceeding (or both), as requested in the petition.

(g) In any action under this subsection, the court shall have no authority to compel the agency to take any action other than the commencement or completion (or both) of a proceeding.

ADDITIONAL REMEDIES

Section 9.

The remedies under this Act shall be in addition to, and not in lieu of other remedies provided by law.

JUDICIAL REVIEW

Section 10. The Residential Utility Consumer Action Group shall be deemed to have an interest sufficient to maintain actions for judicial review and may, as of right, and in the manner prescribed by law, intervene or otherwise participate in any civil proceedings which involves the review or enforcement of an agency action that the Residential Utility Consumer Action Group determines may substantially affect the interests of consumers.

RESEARCH

Section 11. The

Utility Consumer Action Group is authorized to conduct, support, and assist research, studies, plans, investigations, conferences, demonstration projects, and surveys concerning the interests of residential utility consumers.

FUNDING

Section 12. (a) There is hereby created a new account to be included in the Uniform Systems of Accounts to be called the Residential Utility Consumer Action Group Account.

(b) Upon proper request by the Residential Utility Consumer Action Group, as described in subsection ( ) of this section, each utility shall include or enclose within, upon or attached to any periodic billing which such utility sends, mails, or delivers to any or every utility consumer,

(1) a card, statement, or similar enclosure not to exceed ... x ... inches nd not to exceed ... ounces avoir, prepared (and furnished) by the Residential Utility Consumer Action Group upon which the utility consumer may indicate that any payment in excess of the balance due on such billing shall be transferred to such Residential Utility Consumer Action Group Account;

(2) a statement prepared and furnished to such utility by the Residential Utility Consumer Action Group to be printed upon the fact of the billing which shall be no smaller than .... inches high and .... inches wide and a box to be printed upon the fact of the billing which shall be no small than .... inches high and .... inches wide upon which the utility consumer may indicate that any pyment in excess of the balance due on such billing shall be transferred to the Residential Utility Consumer Action Group; and/or

(3) a statement or any materials prepared and furnished to such utility by the Residential Utility Consumer Action Group concerning the organization, past, current and future activities of the Residential Utility Consumer Action Group and/or any other matter which may affect the interests of utility consumers. The statement or materials shall not exceed the folded sixe of .... x .... inches and shall not exceed .... ounces avoir.

(c) Each utility subject to this act shall include or enclose within, upon or attached to any periodic billing any material prepared and furnished by the Residential Utility Consumer Action Group as described in subsection (b) upon the written request of the Residential Utility Consumer Acution Group which shall conform to the following guidelines:

(1) The Residential Utility Consumer Action Group shall notify the utilities of its intention to include any material or statement as described in subsection (b) within, upon or attached to any specified periodic billing up to one year in advance, but not less than twenty-one (21) calendar days prior to the mailing of such periodic billings; and

(2) The Residential Utility Consumer Action Group shall supply the utility with the material or statement to be included within, upon or attached to any specified periodic billing up to one year in advance, but not less than fourteen (14) calendar days prior to the mailing of such periodic bills.

(d) The Residential Utility Consumer Action Group shall pay all reasonable costs incurred by such utility company in complying with the Act. In case of dispute as to the proper costs, the utility must continue to comply with the Act.

(e) Each utility subject to this Act shall transfer the monies accumulated in the Residential Utility Consumer Action Group to the Residential Utility Consumer Action Group every thirty days. It shall also within the time period stated transfer to the Residential Utility Consumer Action Group the names and the amount of the contribution of those consumers who have made contributions to the Residential Utility Consumer Action Group Account.

(f) No utility, officer or employee of such utility may in any way interfere with the service or in any way penalize any consumer contributing to the Residential Utility Consumer Action Group or participating in any of its activities.

(g) No utility, officer or employee of such utility may in any way interfere with or hinder the distribution of the check-off card, or in any way change its mailing procedures so as to make the inclusion and distribution of said check-off card difficult and more expensive.

BOARD OF DIRECTORS

Section 13.

(a) Establishment and Membership.

There is hereby created a Board of Directors whose Members shall be chosen by the membership of the Residential Utility Consumer Action Group in a yearly meeting convened for that purpose. The terms of the members of the Board shall be staggered and drawn by lot, one-third of the Board elected annually.

(b) Term of Office.

The term of office for members of the Board shall be three years and no Member shall serve more than two consecutive terms.

(c) Nomination.

(1) Initial Members.

there shall be seven initial Members of the Board of Directors, each individually appointed by the Attorney General, the Speaker of the House, the Majority Leader of the House, the Minority Leader of the House, the President Pro Tempore of the Senate, the Majority

Leader of the Senate, and the Minority Leader of the Senate.

(2) Successor Members.

(i) Once the consumers of the utilities have contributed ten thousand dollars, a meeting of the membership of the Corporation shall be promptly held to elect the Board of Directors.

(ii) The Board shall be comprised of one person from each Senatorial District who shall represent the interests of the members of that District. Each member of the corporation within a Senatorial District shall have one vote in the election from that district.

(3) Financial disclosure of Candidates for Board Members.

(i) Each Candidate for the Board of Directors shall file a statement of financial interests in accordance with the provisions of this Act within sixty days prior to the election of Members of the Board of Directors.

(ii) A statement of financial interests shall be on a form approved by the members, and shall include the following information:

(A.) the identity, by name, of all corporate and organizational directorships, held and fiduciary relationships held;

(B.) a detailed description of all real estate in the state in which any interest, direct or indirect is held, including an option to buy;

(C.) the name of each creditor to whom monies in excess of $1,000 are owed, the nature of the amount owned, and the interest rate;

(D.) the name of each business, insurance policy, or trust in which a financial interest exists, and the nature of the amount of such interest;

(E.) the sources, by name, and category of the amounts of any income, including capital gains, whether or not taxable, received during the preceding year;

(F.) a list of business with which he/she is associated that do business with a utility and a description of the nature of the business or regulation;

(G.) if an attorney, accountant or engineer, a list of all clients doing business with a utility, and a description of the nature of such business;

(H.) if an insurance or real estate agency, a list of all clients of the individual or firm wich which he/she is associated who are either a utility, an employee of such utility, a consultant to any utility, or a shareholder of any utility.

(4) Financing of elections.

(i) The Residential Utility Consumer Action Group shall mail to each member within a Senatorial District a two page statement from each cndidate. The costs for such mailing shall be borne by theResidential Utility Consumer Action Group.

(ii) In addition to the assistance provided each candidate in subsection (i), each candidate may spend ..... .

(iii) In order to become eligible for the mailing described in this Section, a candidate shall

(a) obtain, maintain and furnish to the membership any records, books and other information it may request regarding campaign expenditures; and

(b) cooperate fully with the audit and examination conducted by the membership.

(iv) Each member who is a candidate for election to the Board of Directors shall certify, under penalty of perjury, that they have incurred no expenditures in excess of ..... .

(d) Election procedures.

(1) Every candidate for election as a Member of the Board of Directors from a Senatorial district must be a member of the Residential Utility Consumer Action Group and reside in that Senatorial district.

(2) A petition for nomination to the Board of Directors from any District must be submitted to the Board of Directors not less than sixty (60) days prior to the election signed by 5 percent of the members residing in such district.

(3) The Board of Directors shall verify the validity of the signatures.

(4) If the Board of Directors verifies the signatures required under subsection (1), the Board shall declare such nomination in effect.

(5) At the same time that a candidate's statement and financial disclosure form, as described in subsection ..., is sent to each member residing in that district, an official ballot listing the candidates for election to the Board of Directors from that district shall be included. Each member has one vote in the election and sall submit the mail ballot by ..... .

(6) Election shall be by a simple majority of the votes cast. If there are more than two candidates and no one receives a majority, the candidate with the most votes shall be declared the winner.

(7) After the first election of the Board of Directors, the Board shall develop election procedures and standards to be approved by a majority of the members of the corporation.

(e) Eligibility.

No employee, consultant, shareholder, bondholder or spouse of any employee, shareholder or bondholder of a utility shall be eligible for election to the Board of Directors. If any member of the Board of Directors becomes either an employee, consultant, shareholder, bondholder or spouse of any employee, consultant, shareholder or bondholder of a utility, their seat shall be declared vacant.

(f) Vacancies.

To fill any vacancy occasioned by the failure of any person elected as a director to qualify, or in the event of death, removal, resignation, or disqvalification of any member, a successor for the unexpired term shall be nominated from the same Senatorial District and selected by a two thirds majority of the remaining members of the Board. Such vacancies shall be filled within two meetings of the Board.

(g) Powers.

The Board shall have the power to manage the affairs of the Corporation.

(h) Duties.

The Board shall have, among others, the following duties: (1) to submit to the membership at each quarterly meeting a financial report for such quarterly period; (2) to submit to the membership at each quarterly meeting a summary of its activities for the prececing quarter, (3) to keep minutes, books and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by any member; (4) to prepare periodic statements of the financial and substantive operations of the Corporation and to make copies of each available to members and the public; (5) to cause its books to be audited by a competent certified public accountant at least once each fiscal year;

(i) Meetings and Materials.

(1) All meetings of the Board shall be open to the public, including meetings of all subcommittees. In addition, complete minutes of the meetings shall be kept and distributed to all public libraries in the state. All reports, studies and financial date shall be open to public inspection during regular business hours.

(2) The Board of Directors shall hold regular meetings at least quarter-annually on such dates as it may determine. Special meetings may be called by the President or any ..... Members upon at least 10 days notice. ..... Members of the Board shall constitute a quorum.

(j) Annual Report.

The Board shall, as soon as practical after the close of the fiscal year, prepare and mail an annual report to each member and

prepare and mail an annual report to each public library in the state.

(k) Expenses and Compensation.

the members of the Board shall be reimbursed for expenses ncessarily incurred by them in the performance of their duties.

(1) Recall.

Members of the Board of Directors can be removed by petition of forty percent of the total members eligible to vote in the last election from the Senatorial District from which that Board member was elected. No petition for recall may be filed within six months of the election of the Board member. If a member of the Board of Directors is recalled, a new election for that seat shall be held within two months. The recalled member shall serve pending the election.

(m) Members of the board of Directors and staff eligible to disburse funds shall be bonded. The cost of such bonds shall be paid by the Residential Utility Consumer Action Group.

OFFICERS

Section 14. Election.

(a) At the first regular meeting of the Board following the annual election, the Board shall elect from its Members a President, a Vice-President, a Secretary and a Treasurer. Such officers shall hold office for the ensuing year and until their successors are elected, unless removed from office by the concurring vote of a majority of all the directors.

(b) In case of the death, resignation or removal of any of the aforementioned officers, the Board shall elect a successor to hold office for the remainder of the term for which that officer had been elected.

(c) The Board shall also have the power to elect and at pleasure remove a Comptroller and such other officers as it shall determine.

Section 15. Duties and Powers.

The officers shall perform the duties customary to their offices and such other duties as shall be delegated to them by the Board of Directors.

EXECUTIVE DIRECTOR

Section 16. The Board of Directors shall engage the services of an Executive Director who shall be in immediate charge of the activities of the staff of the corporation, subject to the directions of the Board of Directors. He or she shall exercise supervision over the offices, facilities and personnel of the corporation and shall have

custody of its books, records and mailing lists. He or she shall prepare and submit to the Treasurer an annual and quarterly budgets and income estimates which are to be presented to the Board of Directors. He or she shall have all the privileges of Membership on the Board of Directors except the right to vote. The Executive Director shall be subject to removal by the concurring vote of a majority of all the directors.

CONSUMER COMPLAINTS

Section 17. Whenever the Residential Utility Consumer Action Group receives from a residential utility consumer any written complaint it shall, unless it determines that such complaint or information appears to be frivolous, promptly transmit such complaint of information to the appropriate utility regulatory agency. Such utility regulatory agency shall keep the Residential Utility Consumer Action Group informed of what action it is taking on complaints transmitted pursuant to this section.

ANNUAL MEETING

Section 18. The annual membership meeting shall be held on a date in ...(month)..., and at a place within the State, to be determined by the Board of Directors.

MISCELLANEOUS PROVISIONS

Section 18. Nothing in this Chapter shall be construed to limit the right of any consumer or group or class of consumers or environmentalists to initiate, intervene in, or otherwise participate in any utility regulatory agency or court proceeding or activity, nor to require any petition or notification to the Residential Utility Consumer Action Group as a condition precedent to such right, nor to relieve any utility regulatory agency or court of any obligation, or affect its discretion, to permit intervention or participation by a consumer or group or class of consumers in any proceeding or activity.

STOCK OWNERSHIP

Section 19. Nothing in this Chapter shall be deemed to preclude the ownership by the corporation of one share of stock in each utility doing business in the state.

SEVERABILITY

Section 20. If any provision of this Chapter shall be declared unconstitutional or invalid, the other provisions shall remain in effect notwithstanding.

PENALTIES

Section 21. (a) Whoever violates any provision of this Chapter, shall be subject to civil penalty of not more than $5,000 for each violation. Each violation of Section 12 shall constitute a separate

and continuing violation.

(b) Any person, Director or Officer who shall knowingly or wilfully violate any provision of this Chapter or shall fail to perform any duty imposed under this Chapter shall be liable to imprisonment for a term not to exceed six (6) months.

EFFECTIVE DATE

Section 22. This Act shall take effect upon passage.

APPENDIX V(c)(1)

LD0811

A BILL to amend the Code of Virginia by adding a section numbered 56-234.3, prohibiting public utilities from including certain advertising expenses in their rate bases.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-234.3 as follows:

§ 56-234.3. No public utility shall include as an operating expense any advertising expenses in its rate base unless such advertising expense has been approved by the State Corporation Commission as advertising for the purposes of energy conservation; the publication or distribution of existing or proposed rate schedules; notices required by law or regulation; or public information regarding service interruptions,safety measures, emergency conditions, or employment opportunities.

The State Corporation Commission shall promulgate all necessary rules and regulations to apprise public utilities of the type advertising it deems to be in compliance with the purposes stated above.

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APPENDIX V(c)(2)

LD0773

A BILL to amend the Code of Virginia by adding a section numbered 56-234.3, relating to the power of the State Corporation Commission to approve expenditures of public utilities.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-234.3 as follows:

§ 56-234.3. Approval of expenditures.—Any public utility intending to construct any new generation, transmission or distribution facility or make any expenditure amounting to five per centum or more of its rate base shall submit to the State Corporation Commission a petition setting forth the nature of the proposed construction or expenditure and the necessity therefor in relation to its projected forecast of programs of operation. The Commission shall review such petition and determine whether the proposed improvements are necessary to enable the public utility to furnish reasonably adequate service and facilities at reasonable and just rates. After making its determination, the Commission shall enter an order either approving or disapproving the proposed expenditure.

In addition, every public utility shall annually file with the Commission a five and ten year projected forecast of its programs of operation. Such a forecast shall include, but not be limited to, the utility's load forecast, the anticipated required capacity to fulfill the requirements of the forecast, how the utility will achieve such capacity, the financial requirements for the period covered, the anticipated sources of those financial requirements, the research and development procedures, where appropriate, of new energy sources, and the budget for the research and development program.

The Commission shall have the authority to approve, disapprove, or alter the utility's program in a manner consistent with the best interest of the citizens in the franchise area of the utility.

The petitioning or filing public utility may appeal the decision of the Commission to the Supreme Court of Virginia.

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APPENDIX V(c)(3)

LD0789

A Bill to amend and reenact § 56-265.4:1, of the Code of Virginia, relating to furnishing electric utility service by municipal corporations; and to amend the Code of Virginia by adding a section numbered 56-265.4:2, relating to extension of service by cities and towns into annexed areas.

Be it enacted by the General Assembly of Virginia:

1. That § 56-265.4:1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-265.4:2 as follows:

§ 56-265.4:1. Furnishing of electric public utility service or provision of facilities therefor by municipal corporations and other governmental bodies.—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 June twenty-six, nineteen hundred and sixty-four, 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. *Provided, however, this limitation on the extension of public utility service by any municipal corporation or governmental body outside its political boundaries shall not be applicable to cities or towns extending their service in accordance with the provisions of § 56-264.4:2 of the Code of Virginia.* 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 June twenty-six, nineteen hundred and sixty-four, 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 June twenty-six, nineteen hundred and sixty-four, 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, provided,

however, that nothing contained herein shall prevent any municipal corporation from constructing or maintaining facilities in county areas for the purpose of generating or purchasing electricity to be transmitted into the service area of such municipal corporation.

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.

§ 56-265.4:2. Extension of service by cities and towns into annexed areas.—Any city or town in the Commonwealth which generates electric utility service for the use of its residents may, upon annexation of additional territory to such city or town, acquire the distribution system facilities of the electric utility serving the newly annexed area in the manner provided by the laws of this State for the exercise of the right of eminent domain. As used in this section the term "distribution system facilities" shall be deemed to include all facilities necessary to distribute electric utility service to the newly annexed area but shall not include substations of the public utility whose facilities are being acquired, unless such substations are wholly used to serve the area being annexed.

Upon completion of the eminent domain proceedings, the State Corporation Commission shall amend the certificate of convenience and necessity of the public utility whose distribution system facilities have been acquired to reflect the change in its territory.

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APPENDIX V(c)(4)

LD0779

A Bill to amend and reenact § 56-245, as amended, of the Code of Virginia, relating to temporary emergency rate increase in utility rates.

Be it enacted by the General Assembly of Virginia:

1. That § 56-245, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 56-245. Temporary increase in rates.—Whenever the Commission, upon petition of any public utility, is of the opinion and so finds, after an examination of the reports, annual or otherwise, filed with the Commission by such public utility, together with any other facts or information which the Commission may acquire or receive from an investigation of the books, records or papers, or from an inspection of the property of such public utility, or upon evidence introduced by such public utility, that an emergency exists *which threatens the ability of the public utility to provide adequate service to the public within the period of time required to hold a hearing to determine all of the issues involved in a final determination of rates of service,* and is of the opinion and so finds that a hearing to determine all of the issues involved in the final determination of the rates or service will require more than ninety days of elapsed time, the Commission may, in case of such emergency, enter a temporary order fixing a temporary schedule of rates, which order shall be forthwith binding upon such utility and its customers; provided, however, that when the Commission orders an increase in the rates or charges of any public utility by means of such temporary order, it shall require such utility to enter into bond in such amount and with such security as the Commission shall approve, payable to the Commonwealth, and conditioned to insure prompt refund by such public utility, to those entitled thereto, of all amounts which such public utility shall collect or receive in excess of such rates and charges as may be finally fixed and determined by the Commission; and provided, further, however, that no such temporary order shall remain in force or effect for a longer period than nine months from its effective date, and a further period not to exceed three months in addition if so ordered by the Commission.

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APPENDIX V(c)(5)

LD0767

A Bill to amend the Code of Virginia by adding in Article 2 of Chapter 10 of Title 56 a section numbered 56-234.01 relating to the establishment and administration of a certain fuel adjustment clause formula by the State Corporation Commission.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2 of Chapter 10 of Title 56 a section numbered 56-234.01 as follows:

§ 56-234.01. The Commission shall establish and implement not later than January one, nineteen hundred seventy-seven a fuel charge formula for electric utilities with a fuel charge per kilowatt hour that will only increase or decrease with the change in the cost of purchased fuel. he fuel charge shall be derived by multiplying the base cost by the ratio of the new unit cost to the old unit cost for a particular fuel and by the percentage of generation by a particular fuel. The sum of the products for all the fuels used will constitute the new fuel charge.

Such fuel charge shall appear as a separate monetary item on the consumer's bill and shall not be a part of the basic rate charged for energy. Hereafter, all billings for electricity will consist of an energy charge and a fuel charge in the case of small users and will consist of an energy charge, kilowatt demand charge, Reactive Kilowatt Amperes demand charge and a fuel charge in the case of large users.

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APPENDIX V(c)(6)

LD0777

A Bill to amend the Code of Virginia by adding a section numbered 56-248.1 relating to utility oversight procedures by the State Corporation Commission.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-248.1 as follows:

§ 56-248.1. Commission to monitor fuel prices and utility fuel purchases; procedure for charge in fuel clause.—The Commission shall monitor all fuel purchases, negotiations for such purchases, and contracts for such purchases of a utility to ascertain that all feasible economies are being utilized.

In addition, the Commission shall establish a fuel price index in order to compare the prices paid for the various types of fuel by Virginia utilities with the average price of the various types of fuel paid by other public utilities at comparable geographic locations in the market.

Any change in the figures used by a utility to compute its fuel adjustment clause shall receive prior approval by the Commission at a hearing dealing solely with such changes. The Commission shall promulgate the procedure for such a hearing in such a manner as to assure the protection of the utilities' opportunity to purchase fuel economically as well as protecting the interest of the consumer.

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APPENDIX V(c)(7)

LD0783

A Bill to amend the Code of Virginia by adding a section numbered 56-234.3 relating to public utility deposits.

Be it enacted by the Geneal Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-234.3 as follows:

§ 56-234.3. No public utility shall charge its customers deposits for service in excess of the amount such utility charged for customer deposits in the year nineteen hundred seventy-four.

The public utility shall pay its customer an interest rate of eight per centum annually for the privilege of holding its customer's deposit.

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APPENDIX V(c)(8)

LD0785

A BILL to amend the Code of Virginia by adding a section numbered 13.1-46.1, relating to disclosure of interests by corporate directors and officers and penalties for violations.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 13.1-46.1 as follows:

§ 13.1-46.1. Disclosure of holdings by certain directors and officers.—The directors and officers of any public utility as defined in § 56-232 shall file and maintain a current record of all interests which they may hold of whatever nature in all other corporations including beneficial interests if the corporation in any manner transacts any business of twenty-five thousand dollars per year or more with the public utility or any of its affiliates. As used in this section "transacting business" shall include any endeavor for the benefit of either a public utility or corporation with which it deals wherein any form of interaction occurs between the two entities.

The record shall be filed and maintained in the office of the clerk of the State Corporation Commission.

Failure to comply with the provisions of this section shall be unlawful. For each violation hereof, not exceeding two, the offense shall constitute and be punishable as a Class 1 misdemeanor. Any subsequent offense shall constitute a felony punishable by a fine not exceeding five thousand dollars and confinement in the penitentiary not exceeding three years, either or both.

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APPENDIX V(c)(9)

LD0813

A Bill to amend and reenact §§ 58-519, 58-580 and 58-603, as severally amended, of the Code of Virginia, relating to State franchise taxes on railway, telephone, and water, heat, light and power companies; and to amend the Code of Virginia by adding in Article 1 of Chapter 12 of Title 58 a section numbered 58-514.2:1, relating to the refund of certain funds.

Be it enacted by the General Assembly of Virginia:

1. That §§ 58-519, 58-580 and 58-603, as severally amended, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 12 of Title 58 a section numbered 58-514.2:1 as follows:

§ 58-514.2:1. Refund of franchise tax savings.—The Commission shall require all railway, telephone, water, heat, light and power companies receiving a reduction in their franchise taxes as a result of amendments to §§ 58-519, 58-580 and 58-603 of the Code of Virginia enacted during the nineteen hundred seventy-six session of the General Assembly to refund on an equal basis to all customers the savings to such companies during the tax years nineteen hundred seventy-seven through nineteen hundred eighty-one.

§ 58-519. State franchise tax.—Every railway company shall pay to the State an annual State franchise tax for each calendar year equal to one and five-tenths per centum upon the gross transportation receipts hereinafter specified. Such franchise tax, with the taxes hereinbefore provided for, shall be in lieu of all taxes or license charges whatsoever upon the franchises of such companies and the shares of stock issued by them and upon all of their property, as hereinbefore provided; provided ~~:~~, *however, the rate of such annual State franchise tax for the tax year nineteen hundred seventy-seven shall be one and four-tenths per centum; for the tax year nineteen hundred seventy-eight, one and three-tenths per centum; for the tax year nineteen hundred seventy-nine, one and two-tenths per centum; for the tax year nineteen hundred eighty, one and one-tenth per centum; and for the tax year nineteen hundred eighty-one and for each tax year thereafter, one per centum; provided further that as to the tax due for the tax year nineteen hundred seventy-seven, if the tax is less than the tax for the tax year nineteen hundred seventy-six, then the reduction from one and five-tenths per centum to one and four tenths per centum for the tax year nineteen hundred seventy-seven shall be limited to such reduction as will produce, in the tax year nineteen hundred seventy-seven, an amount of tax equal at least to that received in the tax year nineteen hundred seventy-six. As used herein, "tax year" means the year such tax is determined as prescribed by § 58-520.*

~~That~~ Nothing herein contained shall exempt such corporations from the annual fee required by § 58-450 or from assessment for street and other local improvements which shall be authorized by law, or from the county, city, town, or magisterial district levies hereinafter provided for other than a franchise tax.

§ 58-580. License tax on telephone companies.—The specific license tax to be paid by every corporation, person or association, for the privilege of operating the apparatus necessary to

communicate by telephone, shall be:

(1) When the gross receipts do not exceed sixty-five thousand dollars and when the number of miles of pole line did not exceed seven hundred miles and a majority of the stock or other property of such company is not owned or controlled by any other telephone or telegraph company whose receipts exceed sixty-five thousand dollars, a sum equal to one and nine-sixteenths per centum of the gross receipts of such corporation, person or association from business done within this State during the year ending the thirty-first day of December preceding;

(2) When the gross receipts from business done within this State during any such year are in excess of sixty-five thousand dollars or the number of miles of pole line exceed seven hundred or a majority of the stock or other property of such company is owned or controlled by any other telephone or telegraph company whose receipts exceed sixty-five thousand dollars, the license tax shall be a sum equal to one and nine-sixteenths per centum of such receipts up to sixty-five thousand dollars and an additional sum equal to three per centum of such receipts exceeding sixty-five thousand dollars *; provided, however, that the license tax on receipts exceeding sixty-five thousand dollars for the tax year nineteen hundred seventy-seven shall be an amount equal to two and eight-tenths per centum; for the tax year nineteen hundred seventy-eight shall be an amount equal to two and six-tenths per centum; for the tax year nineteen hundred seventy-nine shall be an amount equal to two and four-tenths per centum; and for the tax year nineteen hundred eighty shall be an amount equal to two and two-tenths per centum; and for the tax year nineteen hundred eighty-one and for each tax year thereafter two per centum; provided further that as to the tax due for the tax year nineteen hundred seventy-seven, if the tax for the tax year attributable to receipts exceeding sixty-five thousand dollars is less than the tax for nineteen hundred seventy-six, then the reduction from three per centum to two and eight-tenths per centum for the tax year nineteen hundred seventy-seven shall be limited to such reduction as will produce, in the tax year nineteen hundred seventy-seven, an amount of tax equal at least to that received in the tax year nineteen hundred seventy-six* and, in addition, a sum equal to two dollars and twenty-five cents per mile of pole line or conduit, including the number of miles of other property used in lieu of pole lines or conduits, such as buried cable, submarine cable or buried wire, owned, operated or used by such corporation, person or association in this State, provided that, when the gross receipts do not exceed an average of two hundred dollars per mile of pole line or conduits, including the number of miles of other property used in lieu of pole lines or conduits, such as buried cable, submarine cable or buried wire, the license tax on gross receipts shall be as herein provided and the additional sum equal to one dollar per mile of pole line or conduits including the number of miles of other property used in lieu of pole lines or conduits, such as buried cable, submarine cable or buried wire, owned, operated or used by such corporation, person or association in this State, instead of two dollars and twenty-five cents per mile as hereinabove provided;

(3) When the number of miles of pole line exceeds seven hundred and no license tax is paid upon gross receipts, the license tax shall be a sum equal to ten dollars per mile of pole line or conduits including the number of miles of other property used in lieu of pole lines or conduits, such as buried cable, submarine cable

or buried wire, owned, operated, or used by such corporation, person or association in this State.

But no license tax shall be charged against any telephone company chartered in this State for the privilege of prosecuting its business when such company is purely a local mutual association and does not charge others for transmitting messages over its line, or lines, and is not designed to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof.

~~The provisions of this section shall apply to the assessment for the tax year nineteen hundred forty nine and annually thereafter, unless otherwise provided by law.~~

§ 58-603. Annual State franchise tax; local license taxes.— Every corporation coming within the provisions of this article shall pay to the State for each tax year an annual State franchise tax equal to one and one-eighth per centum of its gross receipts from all sources up to one hundred thousand dollars of such gross receipts and three and one-half per centum of all such gross receipts from all sources in excess of one hundred thousand dollars, for the privilege of exercising its franchise in this State, which, with the taxes hereinbefore provided for, shall be in lieu of the annual State merchants license tax required under chapter 7 (§ 58-239 et seq.) of this title and all State taxes or license charges whatsoever upon the franchises of such corporation and the shares of stock issued by it and upon all its property as hereinbefore provided; provided, ~~that:~~ *however, that the tax on gross receipts in excess of one hundred thousand dollars for the tax year nineteen hundred seventy-seven shall be an amount equal to three and three-tenths per centum; for the tax year nineteen hundred seventy-eight shall be an amount equal to three and one-tenth per centum; for the tax year nineteen hundred seventy-nine shall be an amount equal to two and nine-tenths per centum; for the tax year nineteen hundred eighty shall be an amount equal to two and seven-tenths per centum; and for the tax year nineteen hundred eighty-one and thereafter shall be an amount equal to two and one-half per centum; provided further that as to the tax due for the tax year nineteen hundred seventy-seven, if the tax is less than the tax for the tax year nineteen hundred seventy-six, then the reduction from three and one-half per centum to three and three-tenths per centum for the tax year nineteen hundred seventy-seven shall be limited to such reduction as will produce, in the tax year nineteen hundred seventy-seven, an amount of tax equal at least to that received in the tax year nineteen hundred seventy-six.*

(1) Nothing herein contained shall exempt such corporation from motor vehicle license taxes or motor vehicle fuel taxes or the annual fee required by § 58-450 or from assessments for street and other local improvements, which shall be authorized by law, nor from the county, city, town, district or road levies;

(2) Any city, town or county may impose a license tax under § 58-266.1 upon such corporation for the privilege of doing business therein, which shall not exceed one half of one per centum of the gross receipts of such business accruing to such corporation from such business in such city, town or county;

(3) From the amount of any such license tax there shall be deducted any sum or sums paid by such corporations to such city, town or county as a merchant's license tax and license taxes, except

motor vehicle license taxes; and

(4) Nothing herein contained shall annul or interfere with or prevent any contract or agreement by ordinance between such corporations and cities and towns as to compensation for the use of the streets or alleys of such cities and towns by such corporations.

~~The provisions of this section shall apply to the assessment for the tax year nineteen hundred forty nine and annually thereafter, unless otherwise provided by law~~.

2. That this act shall be effective on and after July one, nineteen hundred seventy-seven.

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APPENDIX V(d)

Several recommendations were made in the Governor's Electricity Cost Commission Report and referred to the Subcommittee by Governor Godwin for study and possible implementation. Listed below are those recommendations from the report which would require legislation and the Subcommittee's action thereon.

That the State Corporation Commission adopt a single fuel adjustment formula for use by all of the electric generating utilities operating in the State of Virginia.

Recommendation

That the SCC conduct periodic spot management audits of electric utilities to review the policies, programs and practices of the individual utilities in the Commonwealth of Virginia.

Comment: The Subcommittee have this matter high priority in its study and is offering legislation which will give the SCC much greater authority over the management and practices of Virginis's public utilities.

Recommendation

That the SCC be given the power to approve or disapprove for cause within 30 days new contracts for fuel purchases made by utilities using the fuel adjustment clause.

Comment: A variation of this proposal is incorporated in the Subcommittee's bills dealing with fuels and the fuel adjustment clause.

Recommendation

That the General Assembly appoint a study commission to assign an existing commission to conduct a management study of the SCC and its duties.

Comment: The proposed study has been completed by the Commission on Governmental Management. The Subcommittee, therefore, can see no further purpose to be served by directing another such study.

Recommendation

That state and local governments establish energy conservation programs that provide economic incentives and serve as examples for business, industry and individual consumers of electricity.

Comment: The Subcommittee is making no recommendations in this area other than allowing utility advertising for conservation purposes.

Recommendation

That the General Assembly enact legislation to strengthen the State Building Code to provide for minimum construction standards which would promote conservation of energy in the heating and cooling of buildings.

Comment: No bills of this nature were referred to the Subcommittee under Senate Resolution 27 which gave the Subcommittee its charge.

Recommendation

That the State and the nation, where appropriate, develop alternative sources of capital needed for the electric utility industry. These sources may include:

1. an agency such as a Reconstruction Finance Corporation to be established at a federal level for the utilities industry;

2. accelerated depreciation of capital equipment be increased from four to 12 percent for the utilities industry indefinitely;

3. provision for sale and lease-back arrangements with improved tax incentives;

4. provision for increases in investment tax credit;

5. provision that dividends from electric utility companies be tax exempt if reinvested in the utility;

6. encouragement of coordination of efforts between municipalities, cooperatives and investor-owned utilities;

7. extended fast tax write-offs of capital expenditures and for equipment required in environmental controls and converting power plants from oil to the use of coal; and

8. changes in the rate structure.

Comment: These recommendations were also outside of the Subcommittee's charge under Senate Resolution No. 27.

Recommendation

That the Governor encourage the General Assembly at its next session to examine and make revisions in the State gross receipts and local consumer utility taxes to provide relief to local utility users.

Comment: The Subommittee has incorporated this proposal in one of the bills in its legislative package. However, there is no provision for a revision in locality utility taxes.