

**REPORT OF THE  
STATE CORPORATION COMMISSION ON**

**COMMISSION FEES AND CHARGES  
TO CONSUMERS AND GROUPS  
REPRESENTING CONSUMER  
INTERESTS WHEN PARTICIPATING IN  
PROCEEDINGS BEFORE THE  
COMMISSION**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 14**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1995**

# COMMONWEALTH OF VIRGINIA

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## STATE CORPORATION COMMISSION

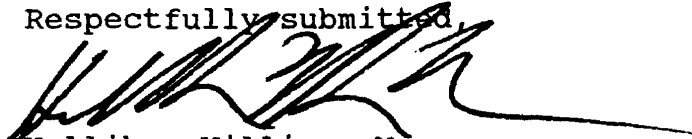
December 20, 1994

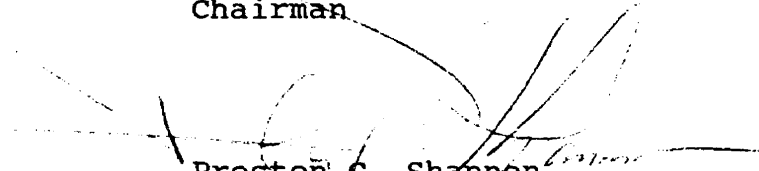
TO: The Honorable George Allen  
Governor of Virginia  
and  
The General Assembly of Virginia

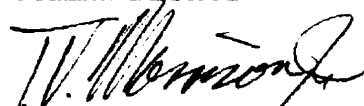
We are pleased to transmit this Report of the State Corporation Commission on Commission Fees and Charges to Consumers and Groups Representing Consumer Interests when Participating in Proceedings before the Commission.

The study was initiated and the report prepared pursuant to House Joint Resolution 246 of the 1994 Session of the General Assembly of Virginia.

Respectfully submitted,

  
Hullahen Williams Moore  
Chairman

  
Preston C. Shannon  
Commissioner

  
Theodore V. Morrison, Jr.  
Commissioner

/mmc  
Enclosure

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## EXECUTIVE SUMMARY

House Joint Resolution No. 246 (1994) directs the State Corporation Commission to study charges to individual consumers and groups representing consumer interests when participating in proceedings before the Commission. The Resolution directs the Commission to suggest ways to eliminate, subsidize, or otherwise reduce such costs and expenses to consumers, or groups representing consumers.

The key issues are whether current Commission costs and charges to consumers are such a financial burden as to inhibit participation in Commission proceedings, and how best to reduce any identified burden.

The Commission's Rules of Practice and Procedure allow for two levels of participation by consumers in formal proceedings, as either an intervener or a protestant. As an intervener, a consumer or consumer group may participate in a limited manner by writing a letter or appearing at a hearing and making a statement as a public witness. Interveners, if they wish, may go further and file a brief in the case. With leave of the Commission, an intervener can also present oral argument.

As a protestant, a consumer or consumer group may act as a full party to the proceeding - presenting testimony, cross-examining witnesses, and presenting written and oral legal argument. Organizations must have legal counsel for such participation, and, although an individual may participate without counsel, legal representation is usually advisable.

Consumer interests are often represented by multiple parties in Commission proceedings. They may be represented by the Attorney General's Office, by individuals, or by groups. In large utility cases, there is generally extensive participation by consumer interests. In cases where these interests do not appear, Commission staff remains a representative of the public interest.

### Commission Costs and Charges

Court reporting services are provided to the Commission pursuant to a contract between the Reporter and the Commission. Under the current contract, the Reporter must devote full time to the Commission and is responsible for satisfying all court reporting requirements of the Commission. Under the contract, the Commission pays the Reporter a fixed annual amount in compensation for services provided, which include providing to the Commission copies of transcripts. The Reporter sells copies of transcripts to parties in proceedings, or to anyone else, under rates established by the contract. Under the present arrangement, approximately 50 percent of the Reporter's annual income is derived from Commission compensation and 50 percent is generated by the sale of transcripts.

The Clerk's Office charges outside parties for copies of documents on file at the rate established by Virginia Code Section 13.1-617 (one dollar per page for the first two pages and fifty cents for each additional page). From a review of recent records, it appears that there is no subsidy of Commission operations by charges made to outside parties for copies of documents by the Clerk's Office. That is, reproduction costs to the Clerk's Office roughly approximate the charges made by the Clerk's Office to outside parties for document reproduction.

### Perspectives of Interested Parties

During the study, 85 questionnaires concerning Commission fees and charges were mailed to parties who have recently participated in Commission proceedings; 24 responses were received. The most frequently cited costs of participation were the fees and costs associated with legal representation, expert witnesses and document purchases and distribution. Many of the consumer group respondents suggested that the costs associated with their participation be subsidized, while several stated that there should be no subsidization.

### Findings and Recommendations

Based on the responses filed, it is clear that the expenses most often complained about are those associated with participating in litigation generally - fees and costs for lawyers, expert witnesses, and consultants. The use of expert witnesses and consultants is wholly within the discretion of participants in Commission proceedings. The Commission does not require expert testimony and has no control over the fees charged by experts and consultants. Whether individual consumers or consumer groups should be able to obtain these types of services at the expense of the Commonwealth is a public policy question beyond the scope of this study, and the resolution of which would require legislation.

### Cost of Transcripts

Although it may be costly, in relative terms, to purchase a lengthy transcript from the Commission's Reporter, the prices charged are comparable to the costs involved in litigation transcribed by a private firm, and comparable to that found in other courts of record. It should be noted that the contract provides that the Reporter "shall furnish a transcript of all docketed proceedings, or portions thereof . . . ." Thus, with a voluminous transcript, a party can review the transcript available in the Commission's Clerk's Office and purchase from the Reporter only selected pages of interest. No legislation is required to address the cost of transcripts, and the Commission will consider the results of this study when it next reviews its contract with the Commission Reporter.

### Cost of Commission Copy Work and of Other Documents

No changes are recommended. Total costs are relatively small and do not appear to affect the participants in proceedings who receive all filed documents in a proceeding free. Also, the cost and charges appear reasonable - cost of reproduction to the Clerk's Office approximates the revenues received for document reproduction for outside parties. If any change in rates is desired, it will have to be accomplished through legislation (Virginia Code Section 13.1-617).

Although it may add to a party's expenses to have to file with the Commission and serve on other parties copies of pleadings, this is a standard practice in litigation and is warranted by principles of justice and fairness. The Commission will review its rules that establish the number of copies of pleadings required to be filed.

### Conclusion

It appears that current Commission practices do not inhibit significantly consumer participation in Commission proceedings. However, in certain circumstances, full participation in a complex, protracted proceeding can be relatively costly. Simpler forms of participation (*i.e.*, intervener status) provide less costly alternative methods of participation. The Commission will consider changes to its rules of practice, and other administrative changes, which can lower the cost of participation in its proceedings. For the Commonwealth to provide significant subsidies to public interest interveners is a public policy question for the General Assembly and would require legislation.

**Report of the State Corporation Commission**  
**on**  
**Commission Fees and Charges to Consumers and**  
**Groups Representing Consumer Interests when**  
**Participating in Proceedings Before the Commission**  
**HJR 246**

**I.**  
**INTRODUCTION**

The 1994 session of the General Assembly, through House Joint Resolution No. 246, directed the State Corporation Commission to study Commission charges to individual consumers and groups representing consumer interests when participating in proceedings before the Commission (see Appendix A).

The need for such a study is described in the Resolution: due to the length and complexity of many proceedings, consumers must expend considerable financial resources to ensure meaningful participation, "particularly in instances where the reproduction of lengthy hearing transcripts . . . can cost several thousand dollars, that the average interested consumer or consumer group is scarcely able to afford participation in such proceedings . . . ."

The Resolution directs the Commission to suggest ways to eliminate, subsidize, or otherwise reduce such costs and expenses to consumers, or groups representing consumers, in proceedings before the Commission.

**Scope of Study**

Because most major cases heard by the Commission involve public utilities, the focus of this study is on Commission proceedings that concern consumer interests in public utility matters and issues. Costs to consumers to participate in major cases involving other areas of Commission responsibility are comparable to costs in major utility cases.

**Key Issues and Considerations**

The Joint Resolution focuses on Commission-generated costs and charges made to parties in a proceeding and not on other costs that a party may incur, *i.e.*, costs of legal counsel, expert and lay witnesses, consultants, travel costs, etc. The key issues are whether current Commission costs and charges to consumers for participating in Commission proceedings are such a financial burden that they inhibit participation in Commission proceedings, and how best to reduce any identified burden.

## Approach and Study Methods

The Commission directed its staff to establish a Task Force, under the overall supervision of the Commission's Office of General Counsel, to identify and review issues, to gather relevant information, and to formulate findings and recommendations to be presented to the Commission for its consideration. The results of the staff's efforts, as adopted by the Commission, are hereby offered to the General Assembly for review during its 1995 Session. The Task Force was composed of the following Commission staff members: Joel Peck, Esquire and Allen Parker, Paralegal, Office of the General Counsel; William Bridge, Clerk of the Commission; Suzi Craft, Clerk's Office; Kenneth Schrad, Director of Information Resources; and James Douglas, Division of Public Utility Accounting.

Public input was solicited from 85 persons who have participated in recent Commission proceedings, either (i) as individual consumers, consumer groups, or counsel for consumers or consumer groups (including the Office of the Attorney General), or (ii) as a regulated entity (see Appendixes B and C). A total of 24 responses were received. Of the 22 respondents who could be identified, 14 were within the consumer group (i.e., group (i), above) and eight were within the regulated entity group.

## **II.**

### **BACKGROUND: COMMISSION PROCEEDINGS**

Commission proceedings are governed by the Virginia Constitution, relevant statutes, (e.g., Virginia Code Section 12.1-25 et seq.), and the Commission's Rules of Practice and Procedure (relevant Rules are found in Appendix D).

The Commission conducts both formal and informal proceedings (Rules, Part V, 5:1). "Matters requiring the taking of evidence and all instances of rules to show cause are considered to be formal proceedings . . . . Whenever practicable, informal proceedings are recommended for expeditious adjustment of complaints of violations of statute, rule or regulation, or of controversies arising from administrative action within the Commission" (Id.). "There are no fees, unless otherwise provided by law, for filing and/or prosecuting formal or informal proceedings before the Commission" (Rules, Part V, 5:2).

Applications by a regulated company for authority to increase rates or to construct a substantial facility (e.g., a high voltage electric line) and cases instituted to review a matter that impacts an entire industry (e.g., competition among utilities providing telephone service) are conducted as formal proceedings. Depending on the complexity of the issues and the number of participants, the hearing of such a case typically takes from one to eight days. Often, a portion of these kinds of hearings is conducted in the localities served by the utilities, and public sessions are held during the day as well as the evening.

Acting as an intervener, a consumer or consumer group may participate in a Commission proceeding by writing a letter or appearing at a hearing and making a statement as a public witness. Interveners, if they wish, may go further and file a brief in the case. Individual consumers may represent themselves, although consumer organizations, if they desire to file a brief, are required by Commission Rules of Practice and Procedure to do so



through legal counsel. With leave of the Commission, an intervener can also make oral argument to the Commission.

As a protestant, a consumer or consumer group may act as a full party to the proceeding - presenting testimony, cross-examining witnesses, and presenting written and oral legal argument. Organizations must obtain legal counsel to accomplish these functions, and, although an individual consumer may participate without counsel, legal representation is usually advisable.

Thus, the Commission's rules allow a range of participation levels for consumers in formal proceedings. Some of them are much less expensive than others. For example, a consumer may simply write a letter or appear at a hearing and make an oral statement without any obligation to take on the expense of more complicated participation.

In addition, Article IX, Section 2 of the Constitution of Virginia (1971), provides that the Commission must ensure that the interests of consumers are represented in proceedings before it, unless the General Assembly otherwise provides for such representation. The General Assembly provided for such representation in Section 2.1-133.1, Code of Virginia. The General Assembly created within the Office of the Attorney General a Division of Consumer Counsel which, as one of its duties, appears before the Commission on behalf of consumers. This duty consists of appearing in cases and presenting evidence, cross-examining witnesses, preparing legal briefs and arguments, and appealing adverse decisions (see 14 Wm. & Mary L. Rev. 610-611 (1973)).

Consumer interests are often represented by multiple parties in Commission proceedings. They may be represented by the Attorney General's Office, by individuals or by groups representing consumers. In large utility cases, as well as cases involving rates of other types of regulated businesses (e.g., workers' compensation insurance and small loan companies) there is ample participation by consumer interests even at existing cost levels. In cases where these interests do not appear, Commission staff remains a representative of the public interest.

### **III.** **COMMISSION COSTS AND CHARGES**

General operating costs of the Commission, including staff, support services, and programs, are reflected in the Commission's annual budget. A part of those costs are for court reporting services. A portion of the revenues that support Commission operations are derived from charges for providing copies of documents and other data on file with the Commission.

## Court Reporting Services and Transcripts

Under Commission Rules of Practice and Procedure, the official transcript of a formal hearing "shall be the transcript of the stenographic notes taken at the hearing by the Commission's regularly-employed court reporter . . . . Parties desiring to purchase copies of the transcript of record shall make arrangement therefor directly with the Commission's Reporter . . . . When hearing testimony is transcribed, a copy thereof is always lodged with the Clerk [of the Commission] where it is available for public inspection. (In the event of appeal from the Commission action, the full record must be certified by the Clerk)" (Rules, Part VIII, 8:1).

The transcript is available for purchase through purchasing arrangements under the contract between the Reporter and the Commission. Parties in the proceeding, or anyone else, may purchase a copy of the transcript directly from the Reporter.

Under the current contract between the Commission and the Reporter, the Reporter is required to devote full time to recording and transcribing Commission-generated matters. In addition, the Reporter is responsible for satisfying all court reporting requirements of the Commission, specifically:

- To be present and record all formal proceedings before the Commission.
- To be present and record such other proceedings and meetings as may be directed by one or more Commissioners.
- To prepare a transcript, "[u]pon request by the Commission or Commission Counsel . . . only when reasonably necessary for the proper disposition of a particular proceeding and to satisfy the requirements of Virginia Code Section 56-235.3 to place a transcript of certain utility rate cases in at least one location within the utility's service area."
- "At the request of the Clerk of the Commission, upon his receipt of a notice of appeal, the Reporter shall provide a duplicate original transcript as required for certification to the Clerk of the Supreme Court."

Pursuant to the contract, the Commission pays the Reporter a fixed annual amount in compensation for services provided to the Commission, including such copies of transcripts as may be needed by the Commission and its staff. In addition, "the Reporter shall have the exclusive right of the sale of transcripts of Commission proceedings. Transcripts shall be sold at the following rates:

\$3.00 per page for each transcript sold and each additional copy  
to that purchaser shall be at the rate of \$.30 per page."

Based on the above rate structure, the gross revenue before expenses of the Reporter was evenly divided, approximately, between Commission compensation and sales of transcripts (Commission audit report, March 3, 1994, for years 1992 and 1993). Essentially, under the present contract, the Commission and parties to Commission proceedings share equally in paying the costs for court reporting services.

Under the contract, parties can negotiate with the Reporter a price per page different from the above rates. Generally this has been a high premium price, up to \$8.50 per page, for overnight production of transcripts. The premium is justified because of the significant level of overtime involved. However, there have been occasions where parties were billed only \$1.50 per page because the Reporter recognized the financial limitations of the party involved. This was a good-will gesture on the part of the Reporter. It has occurred infrequently in recent years, and the sums of money involved were not great.

It should be noted that the contract provides that the Reporter "shall furnish a transcript of all docketed proceedings, or portions thereof, to any member of the public so ordering . . ." (emphasis added). Thus, in a lengthy and complex case with a voluminous transcript, a party can review the transcript in the Clerk's Office and purchase from the Reporter just those pages of interest to that party.

If a party appeals an order of the Commission, that party need provide only the relevant portion of the transcript in the appendix filed with the Supreme Court. It is the Commission that is responsible for providing the whole record, including a complete transcript, for certification to the Clerk of the Supreme Court.

#### **Document Reproduction Costs and Charges**

The Commission operates within the Clerk's Office a Reproduction Center that is self-supporting. That is, through a documented cost accounting system, the Center charges for work provided to the organizational units of the Commission amounts which are sufficient to cover the operating costs of the Center. When an outside party (i.e., a non-Commission person) requests copies of documents, the Clerk's Office (Document Control Center) has those documents copied by the Reproduction Center and an internal charge is made by the Center at rates needed to ensure that the Center is self-supporting. The Clerk's Office, in turn, charges the outside party at the rate established by Virginia Code Section 13.1-617 (one dollar for each of the first two pages and fifty cents for each additional page). From a review of recent records, it appears that there is no subsidy of Commission operations by charges made to outside parties for copies of documents by the Clerk's Office. That is, reproduction costs to the Clerk's Office roughly approximate the charges made by the Clerk's Office to outside parties for document reproduction.

#### **IV.**

#### **PERSPECTIVES OF INTERESTED PARTIES**

The Task Force, through a mailing in June and July, 1994, requested suggestions and comments from parties who have participated in Commission proceedings, including consumers, consumer groups, and utilities, concerning Commission fees and charges (see Appendix B). Eighty-five questionnaires were mailed and 24 responses were received, a response rate of 28 percent (see Appendix C).

The most frequently cited costs of participation were the fees and costs associated with legal representation, expert witnesses and document purchases and distribution. Other noted expenses were those related to attending a Commission proceeding - travel, food, lodging,

missed work. Most of these expenses, as noted earlier, are beyond the scope of this study. It should be mentioned, however, that such costs and fees are common in most litigation and are not peculiar to Commission proceedings.

Many of the consumer group respondents suggested that the costs associated with their participation be subsidized, while several stated that there should be no subsidization. Of those who favored subsidies, most shared the view that such funding should be borne by the regulated entities, and some favored use of general fund revenue. Other comments and suggestions included creation of a citizen utility board, more local and evening hearings, and reduction of the number of copies of pleadings that must be filed with the Commission and served on other parties.

Generally, the responses from the group of regulated entities expressed the view that the current framework for formal proceedings did not inhibit meaningful participation by consumers. Further, several of these respondents noted that the Attorney General's Division of Consumer Counsel and, on occasion, a local governing body, vigorously represented consumers' interest in Commission proceedings.

## V. FINDINGS AND RECOMMENDATIONS

The study directed by House Joint Resolution No. 246 has brought into focus a number of issues of concern to the Commission. Some of these issues can, and will, be addressed administratively by the Commission.

Based on the responses filed by some of the individual consumers and public interest groups, it is clear that the expenses most often complained about are those associated with participating in litigation generally - fees and costs for lawyers, expert witnesses and consultants. As alluded to above (see "Background: Commission Proceedings," *supra* at 2), there are certain times when a party must appear by counsel. Although this requirement is embodied in Rule 4:8 of the Commission's Rules of Practice and Procedure, its purpose is to protect a non-lawyer participant from unwittingly violating the prohibition against the unauthorized practice of law. Of course, a consumer who wishes to participate as an intervener or as an individual protestant, need not appear through an attorney.

The use of expert witnesses and consultants is wholly within the discretion of participants in Commission proceedings. The Commission does not require expert testimony and, moreover, has no control over the fees charged by experts and consultants. Whether to employ one or more experts is a litigation decision made by the participant.

Whether individual consumers and consumer groups should be able to obtain these services at the expense of the Commonwealth's taxpayers or consumers generally (by way of subsidies from the regulated entities) is a public policy question the resolution of which would require legislation. Moreover, such subsidization probably would require a commitment of substantial additional public funds to consumer representation over those already provided in the budget of the Division of Consumer Counsel in the Office of the Attorney General.

†

With respect to those expenses over which the Commission does have control, the following observations and recommendations are offered:

### Cost of Transcripts

Although it may be costly, in absolute terms, to purchase a lengthy transcript from the Commission's Reporter, the prices charged are comparable to the costs involved in litigation transcribed by a private reporting firm. A private firm normally charges an "appearance" fee for being present. This fee can range from \$125 to \$195 per day (eight hours). Transcript rates for an original document range from \$2.00 to \$2.75 per page. Charges to Commission participants are \$3.00 per page, and there is no "appearance" fee. In addition, incidental expenses incurred by a private firm, such as fees for parking, travel and lodging, may be passed on to the employing party. Such incidental costs, when incurred by the Commission's Reporter, are paid by the Commission. Another cost-saving factor available to a participant in a Commission proceeding is the option to review the transcript lodged in the Clerk's Office or other locations\* and purchase from the Reporter only the pages desired by that party.

An alternative recommended by several parties who commented is to provide all participants a transcript free of charge. The expense and duplication of this approach could be great. For example, in a controversial electrical transmission line extension proceeding, numerous property owners could appear as protestants, and each would be entitled to receive a free copy of the transcript. Based on the level of participation in Commission proceedings in 1993 and the production and distribution of transcripts by the Reporter, it is estimated that there would be a minimum additional annual cost burden to the Commission of at least \$75,000 if transcripts were to be provided free to all parties.

It was also suggested by some of the commentators that a party be allowed to petition the Commission for a free copy of a transcript (or a copy at a reduced charge) identifying the rationale for such an exemption - in terms of a financial hardship and burden to the petitioning party. If such a petition were granted, the Commission would pay the cost of that transcript to the Reporter for that party. It is likely that this situation would arise infrequently and that the additional cost to the Commission would be minimal. However, the Commission would be required to develop a definition of financial hardship.

Another possibility is modification of certain provisions of the contract between the Commission and the Reporter. This contract is reviewed periodically and, when next considered, will be viewed in light of the relevant comments submitted in response to the questionnaire. For example, to address the concerns about the cost of obtaining a transcript, it may be desirable to decrease the prescribed per page charge for a transcript and to increase the amount of fixed compensation paid by the Commission to the Reporter. Or, it may be appropriate to establish varying charges for different categories of participants.

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\* See, e.g., Va. Code § 56-235.3, discussed briefly on p. 4, supra.

### **Cost of Commission Copy Work**

No change is recommended in charges to outside parties for costs of document reproduction made by the Clerk's Office, rates for which are established by statute. Total costs are relatively small, and usually do not affect the participants in proceedings who receive all filed documents in a proceeding free. Also, the costs and charges appear reasonable - cost of reproduction to the Clerk's Office approximates the revenues received by the Clerk's Office for document reproduction for outside parties. If any change in rates is desired, it will have to be accomplished by legislation. Virginia Code Section 13.1-617 would require amendment to change the charges stated there (this section applies to Commission copy work generally, not just to copy work related to formal proceedings). Any such amendment should allow for the recovery of at least the actual costs of providing the copies furnished.

### **Copies of Pleadings and Other Documents**

As noted above, participants in proceedings receive copies of documents from other participants. The copies are provided at the expense of the participant filing the documents, which may increase the costs of that participant. Under current Commission Rules of Practice and Procedure, certain filings made with the Commission must be in an original and 15 copies, unless otherwise specified (Rules, Part V, 5:12). On occasion, the Commission has required that just one copy of a document be filed (such a requirement was ordered in regard to comments filed in the recent local telephone calling plans case). Requiring fewer copies could reduce the costs of participation. The Commission has been reviewing its Rules of Practice and Procedure, including the Rules that address the number of copies required to be filed with the Commission. No legislation is needed to effect changes in the Rules, and the Commission will consider the costs of multiple copy filing requirements as it considers Rules revisions.

A few of the consumer group comments mentioned the costs to a party related to reproducing that party's pleadings, prefiled testimony and exhibits, written briefs, etc., and serving a copy on all other parties. In many Commission cases, numerous parties participate. However, justice and fairness require that each party be given an opportunity to review in advance the evidence and positions that the other parties intend to present at hearing. As is the case with the expenses for lawyers and expert witnesses, whether these costs should be borne by each party or should be borne entirely or partially by taxpayers or other consumers is a policy issue which is beyond the Commission's power to resolve. Such a procedure would be a significant departure from the ordinary processes used widely by courts and administrative agencies in Virginia and elsewhere.

## **VI. CONCLUSION**

It appears that current Commission practices do not prohibit consumer participation in Commission proceedings. However, as this study has indicated, full participation in a complex, protracted proceeding can be costly. Informal treatment of disputes and simpler forms of participation (i.e., intervener status) already available provide less costly alternative methods of participation. Although no legislation is recommended, the Commission will continue to review its interval procedures, particularly with respect to transcripts, to attempt to reduce further the costs of participation in Commission proceedings.

## **APPENDIXES**

**GENERAL ASSEMBLY OF VIRGINIA -- 1994 SESSION****HOUSE JOINT RESOLUTION NO. 246**

*Directing the State Corporation Commission to study costs and expenses to consumers for proceedings before the Commission.*

Agreed to by the House of Delegates, March 10, 1994

Agreed to by the Senate, March 8, 1994

WHEREAS, Virginia Code § 12.1-12 requires the Virginia State Corporation Commission to ensure that the interests of consumers are represented in all proceedings before the Commission unless the General Assembly otherwise provides for the representation of such interests; and

WHEREAS, the General Assembly enacted § 2.1-133.1 in 1970 establishing the Division of Consumer Counsel within the Office of the Attorney General to represent consumers' interest before the State Corporation Commission; and

WHEREAS, the length and complexity of many proceedings of public interest before the Commission necessitate that consumers expend considerable time and financial resources to ensure meaningful participation in such proceedings; and

WHEREAS, the cost of such participation has reached such a high level in recent hearings, particularly in instances where the reproduction of lengthy hearing transcripts for purposes of motions or appeals can cost several thousand dollars, that the average interested consumer or consumer group is scarcely able to afford such participation; and

WHEREAS, it is nevertheless the policy of the Commonwealth as articulated in § 2.1-133.1 of the Code of Virginia that consumers participate in these proceedings; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the State Corporation Commission conduct an examination of Commission costs and expenses to consumers for participation in proceedings before the Commission and shall propose to the General Assembly ways in which such Commission costs and expenses can be eliminated, subsidized or otherwise reduced to ensure that the policies articulated in § 2.1-133.1 of the Code of Virginia are realized in a meaningful and affordable way. The Division of Consumer Counsel within the Office of the Attorney General and other agencies of the Commonwealth shall provide such assistance as the Commission may request. The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.



# COMMONWEALTH OF VIRGINIA

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Facsimile Number (804) 371-9240



## STATE CORPORATION COMMISSION

June 15, 1994

Mr. John Doe  
State Corporation Commission  
P. O. Box 1197  
Richmond, Va 23219

Dear Mr. Doe:

The State Corporation Commission is examining its costs and expenses to individual consumers and groups representing consumer interests when participating in proceedings before the Commission. The SCC was directed to conduct this review by the 1994 General Assembly through passage of House Joint Resolution 246.

In conducting this study, the Commission is inviting written comments from you. An SCC staff study group has prepared a short list of questions to help identify the financial burdens (actual or perceived) that consumers now experience as participants in SCC cases.

The primary purpose of this informal survey is to review, examine and assess the impact of SCC costs and expenses on consumers, or groups representing consumers' interests. A related purpose is to assess the extent to which such charges inhibit meaningful consumer participation.

The resolution directs the SCC to suggest ways to eliminate, subsidize or otherwise reduce such costs and expenses. The findings and conclusions of the Commission study will be made in a report to the General Assembly later this year.

If you choose to respond to the questionnaire, you may do so by submitting your answers by letter or discussion paper. Please return your comments to Allen Parker, Paralegal, in the enclosed self-addressed, stamped envelope. The deadline for submitting comments is July 20, 1994.

Thank you for your prompt attention to this matter. I would welcome your suggestions regarding others who may be interested in this survey.

Sincerely yours,

Joel H. Peck  
Senior Counsel

SCC Questionnaire re: HJR 246  
Study of SCC Costs and Expenses to Consumers  
Participating in Commission Cases  
June 1994

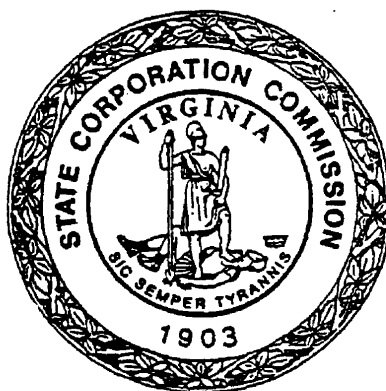
1. Please identify any SCC costs or expenses that you believe inhibit the ability of consumers to meaningfully participate in Commission proceedings.
2. In what way do these costs/expenses inhibit consumer participation?
3. What SCC costs/expenses would you suggest be reduced or eliminated in order to make it easier for consumers to participate?
4. Should all participants in a SCC proceeding be subject to the same costs/expenses or should participants representing consumers receive subsidies through reduced costs/expenses? Why?
5. If costs/expenses are reduced or eliminated for participating consumers, who should bear the financial burden? How should the reduced or eliminated costs/expenses be recouped?
6. What constitutes consumer representation for purposes of determining who should receive the benefit of reduced or eliminated costs/expenses? (An individual; a group; the Office of the Attorney General, Division of Consumer Counsel; any end user of the service provided by the regulated business--e.g., utility customer, insurance policyholder, financial institution customer, etc.?)
7. Please provide names and addresses of others that you believe may like an opportunity to respond to this questionnaire.
8. Additional comments may be placed on the back of this page or on a separate sheet.  
Thank you for your participation.

PLEASE RETURN BY JULY 20, 1994

RESPONDENTS TO QUESTIONNAIRE

1. William S. Bilenky, Esq.
2. Julie Lapham, Common Cause
3. Roger Diedrich, Virginia Chapter, Sierra Club
4. Jeffrey M. Gleason, Southern Environmental Law Center
5. Edward L. Petrini, Esq., Virginia Attorney General's Office
6. Richard and Susan Cardiman
7. Irene E. Leech
8. Jean Ann Fox, Virginia Citizens Consumer Council
9. H. Lane Kneedler, Esq., Hazel & Thomas
10. Louis R. Monacell, Esq., Va. Committee for Fair Utility Rates
11. William B. Grant, Virginia Chapter, Sierra Club
12. Grover Mitchell
13. Harriet Hodges
14. Steve Sinclair, Consumer Affairs, Fairfax County
15. Donald R. Hayes, Esq., Washington Gas Light/Shenandoah Gas
16. James G. Sager, United Cities Gas Company
17. Walter R. Hunter, Virginia Natural Gas
18. Rodney W. Anderson, Esq., Commonwealth Gas Services
19. R. Daniel Carson, Jr., Appalachian Power Company
20. Alan J. Noia, The Potomac Edison Company
21. Robert M. Hewett, Kentucky Utilities Company
22. Charles C. Jones, Jr., Va/Md/Del Association of Electric Cooperatives
23. 2 Respondents did not identify themselves

**Commonwealth of Virginia**  
**State Corporation Commission**



**Rules of Practice and Procedure**

**Adopted September 1, 1974**

**Last Revised August 1, 1986**

## APPENDIX D

### PART IV PARTIES TO PROCEEDINGS

4.1. *Parties.* Parties to a proceeding before the Commission are designated as applicants, petitioners, complainants, defendants, protestants, or interveners, according to the nature of the proceeding and the relationship of the respective parties.

4.2. *Applicants.* Persons filing formal written requests with the Commission for some right, privilege, authority or determination subject to the jurisdiction of the Commission are designated as applicants.

4.3. *Petitioners.* Persons filing formal written requests for redress of some alleged wrong arising from acts or things done or omitted to be done in violation of some law administered by the Commission, or in violation of some rule, regulation or order issued thereby, are designated as petitioners.

4.4. *Complainants.* Persons making informal written requests for redress of some alleged wrong arising from acts or things done or omitted to be done in violation of some law administered by the Commission, or in violation of some rule, regulation or order issued thereby are designated as complainants.

4.5. *Defendants.* In all complaints, proceedings, contests, or controversies by or before the Commission instituted by the Commonwealth or by the Commission on its own motion, or upon petition, the party against whom the complaint is preferred, or the proceeding instituted, shall be the defendant.

4.6. *Protestants.* Persons filing a notice of protest and/or protest in opposition to the granting of an application, in whole or in part, are designated as protestants. All protestants must submit evidence in support of their protest, and comply with the requirements of Rules 5:10, 5:16, and 6:2. A protestant may not act in the capacity of both witness and counsel except in his own behalf. All cross-examination permitted by a protestant shall be material and relevant to protestant's case as contemplated by Rules 5:10, 5:16 and 6:2.

4.7. *Interveners.* Any interested person may intervene in a proceeding commenced by an application, or by a Rule to Show Cause under Rule 4:11, or by the Commission pursuant to Rule 4:12, by attending the hearing and executing and filing with the bailiff a notice of appearance on forms provided for that purpose. An intervener, subject to challenge for lack of interest and subject to the general rules of relevancy and redundancy, may testify in support of or in opposition to the object of the proceeding, may file a brief, and may make oral argument with leave of the Commission, but may not otherwise participate in the proceeding before the Commission.

4.8. *Counsel.* No person not duly admitted to practice law before the court of last resort of any state or territory of the United States or of the District of Columbia shall appear as attorney or counsel in any proceeding except in his own behalf when a party thereto, or in behalf of a partnership, party to the proceeding, of which such person is adequately identified as a member; provided, however, no foreign attorney may appear unless in association with a member of the Virginia State Bar.

4.9. *Commission's Staff.* Members of the Commission's staff appear neither in support of, nor in opposition to, any party in any cause, but solely on behalf of the general public interest to see that all the facts appertaining thereto are clearly presented to the Commission. They may conduct investigations and otherwise evaluate the issue or issues raised, may testify and offer exhibits with reference thereto, and shall be subject to cross-examination as any other witness. In all proceedings the Commission's staff is represented by the General Counsel division of the Commission.

4.10. *Consumer Counsel.* Code § 2.1-133.1 provides for a Division of Consumer Counsel within the office of the Attorney General, the duties of which, in part, shall be to appear before the Commission to represent and be heard on behalf of consumers' interests, and investigate such matters relating to such appearance, with the objective of insuring that any matters adversely affecting the interests of the consumer are properly controlled and regulated. In all such proceedings before the Commission, the Division of Consumer Counsel shall have as full a right of discovery as is provided by these Rules for any other party, and otherwise may participate to the extent reasonably necessary to discharge its statutory duties.

4.11. *Rules To Show Cause.* Investigative, disciplinary, and penal proceedings will be instituted by rule to show cause at the instigation of the Commonwealth, by the Commission's own motion as a consequence of any unresolved valid complaint upon petition, or for other good cause. In all such proceedings the public interest shall be represented and prosecuted by the General Counsel division. The issuance of such a rule does not place on the defendant the burden of proof.

4.12. *Promulgation of General Orders, Rules or Regulations.* Before promulgating any general order, rule or regulation, the Commission shall give reasonable notice of its contents and shall afford interested persons having objections thereof an opportunity to present evidence and be heard. Oral argument in all such cases shall be by leave of the Commission, but briefs in support or opposition will be received within a time period fixed by the Commission.

4.13. *Consultation by Parties with Commissioners.* No party, or person acting on behalf of any party, shall confer with, or otherwise communicate with, any Commissioner with respect to the merits of any pending proceeding without first giving adequate notice to all other parties, other than interveners under Rule 4:7, and affording such other parties full opportunity to be present and to participate, or otherwise to make appropriate response to the substance of the communication.

4.14. *Consultation between Commissioners and their Staff.* As provided by Rule 4:9, no member of the Commission's Staff is a "party" to any proceeding before the Commission, regardless of his participation in Staff investigations with respect thereto or of his participation therein as a witness. Since the purpose of the Staff is to aid the Commission in the proper discharge of Commission duties, the Commissioners shall be free at all times to confer with their Staff, or any of them, with respect to any proceeding. Provided, however, no facts not of record which reasonably could be expected to influence the decision in any matter pending before the Commission shall be furnished to any Commissioner unless all parties to the proceeding, other than interveners under Rule 4:7, be likewise informed and afforded a reasonable opportunity to respond.

**PART V  
PLEADINGS**

5:1. *Nature of Proceeding.* The Commission recognizes both formal and informal proceedings. Matters requiring the taking of evidence and all instances of rules to show cause are considered to be formal proceedings and must be instituted and progressed in conformity with applicable rules. Whenever practicable, informal proceedings are recommended for expeditious adjustment of complaints of violations of statute, rule or regulation, or of controversies arising from administrative action within the Commission.

5:2. *Filing Fees.* There are no fees, unless otherwise provided by law, for filing and/or prosecuting formal or informal proceedings before the Commission.

5:3. *Declaratory Judgments.* A person having no other adequate remedy may petition the Commission for a declaratory judgment under Code § 8.01-184. In such a proceeding, the Commission shall provide by order for any necessary notice to third persons and intervention thereof, which intervention shall be by motion.

5:4. *Informal Proceedings (Complaints).* Informal proceedings may be commenced by letter, telegram, or other instrument in writing, directed to the appropriate Administrative Division, setting forth the name and post office address of the person or persons, or naming the Administrative Division of the Commission, against whom the proceeding is instituted, together with a concise statement of all the facts necessary to an understanding of the grievance and a statement of the relief desired. Matters so presented will be reviewed by the appropriate division or Commissioner and otherwise handled with the parties affected, by correspondence or otherwise, with the object of resolving the matter without formal order or hearing, but nothing herein shall preclude the issuance of a formal order when necessary or appropriate for full relief.

5:5. *Complaint - An Informal Pleading.* All complaints under Rule 5:4 are regarded initially as instituting an informal proceeding and need comply only with the requisites of that Rule.

5:6. *Subsequent Formal Proceeding.* The instigation of an informal proceeding is without prejudice to the right thereafter to institute a formal proceeding covering the same subject matter. Upon petition of any aggrieved party, or upon its own motion if necessary for full relief, the Commission will convert any unresolved valid complaint to a formal proceeding by the issuance of a rule to show cause, or by an appropriate order setting a formal hearing, upon at least ten (10) days notice to the parties, or as shall be required by statute.

5:7. *Rules to Show Cause - Style of Proceeding.*

(a) Cases instituted by the Commission on its own motion against a defendant will be styled:

COMMONWEALTH OF VIRGINIA, *ex rel.*  
STATE CORPORATION COMMISSION  
v.  
(Defendant's name)

(b) Cases instituted by others against a defendant will be styled:

COMMONWEALTH OF VIRGINIA, *ex rel.*  
(Complainant's name)  
v.  
(Defendant's name)

5:8. *Promulgation of General Orders, Rules or Regulations - Style of Proceeding.* Proceedings Instituted by the Commission for the captioned purposes will be styled:

COMMONWEALTH OF VIRGINIA, *ex rel.*  
STATE CORPORATION COMMISSION  
*Ex Parte, in re*

5:9. *Formal Pleadings.* Pleadings in formal proceedings include applications, petitions, notices of protest, protests, answers, motions, and comments on Hearing Examiners' Reports. Printed form applications supplied by Administrative Divisions are not subject to Rules 5:10, 5:12 and 5:13.

5:10. *Contents.*

(a) In addition to the requirements of Rules 5:15 and 5:16, all formal pleading shall be appropriately designated ("Notice of Protest", "Answer", etc.) and shall contain the name and post office address of each party by or for whom the pleading is filed, and the name and post office address of counsel, if any. No such pleading need be under oath unless so required by statute, but shall be signed by counsel, or by each party in the absence of counsel.

(b) Applications for tax refunds or the correction of tax assessments must comply with the applicable statutes.

5:11. *Amendments.* No amendments shall be made to any formal pleading after it is filed except by leave of the Commission, which leave shall be liberally granted in the furtherance of justice. The Commission shall make such provision for notice and for opportunity to respond to the amended pleadings as it may deem necessary and proper.

5:12. *Copies and Paper Size Required.*

(a) The provisions of this rule as to the number of copies required to be filed shall control in all cases unless other rules applicable to specific types of proceedings provide for a different number of copies or unless otherwise specified by the Commission. The Commission may require additional copies of any formal pleading to be filed at any time.

(b) Applications, together with petitions filed by utilities, shall be filed in original with fifteen (15) copies unless otherwise specified by the Commission. Applications, petitions, and supporting exhibits which are filed by a utility shall be bound securely on the left hand margin. An application shall not be bound in volumes exceeding two inches in thickness. An application containing exhibits shall have tab dividers between each exhibit and shall include an index identifying its contents.

(c) Petitions, other than those of utilities, shall be filed in original and five (5) copies.

(d) Pre-trial motions whether responsive or special, shall be filed in original with four (4) copies, together with service of one (1) copy upon all counsel of record and upon all parties not so represented.

(e) Protests, notices of protest, answers, and comments on Hearing Examiners' Reports shall be filed in original with fifteen (15) copies, together with service of one (1) copy upon counsel of record for each applicant or petitioner and upon any such party not so represented.

(f) All documents of whatever nature filed with the Clerk of the Commission (Document Control Center) shall be produced on pages 8 1/2 x 11 inches in size. This rule shall not apply to tables, charts, plats, photographs, and other material that cannot be reasonably reproduced on paper of that size.

In addition all documents filed with the Clerk shall be fully collated and assembled into complete and proper sets ready for distribution and use, without the need for further assembly, sorting or rearrangement.

5:13. *Filing and Service by Mail.* Any formal pleading or other related document or paper shall be considered filed with the Commission upon receipt of the original and required copies by the Clerk of the Commission at the following address: State Corporation Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23216. Said original and copies shall immediately be stamped by the Clerk showing date and time of receipt. Informal complaints shall conform to Rule 5:4. Any formal pleading or other document or paper required to be served on the parties to any proceeding, absent special order of the Commission to the contrary, shall be effected by delivery of a true copy thereof, or by depositing same in the United States mail properly addressed and stamped, on or before the day of filing. Notices, findings of fact, opinions, decisions, orders or any other papers to be served by the Commission may be served by United States mail; provided however, all writs, processes, and orders of the Commission acting in conformity with Code § 12.1-27 shall be attested and served in compliance with Code § 12.1-29. At the foot of any formal pleading or other document or paper required to be served, the party making service shall append either acceptance of service or a certificate of counsel of record that copies were mailed or delivered as required. Counsel herein shall be as defined in Rule 1:5, Rules of the Supreme Court of Virginia.

5:14. *Docket or Case Number.* When a formal proceeding is filed with the Commission, it shall immediately be assigned an individual number. Thereafter, all pleadings, papers, briefs, correspondence, etc., relating to said proceeding shall refer to such number.

5:15. *Initial Pleadings.* The initial pleading in any formal proceeding shall be an application or a petition.

(a) Applications: An application is the appropriate initial pleading in a formal proceeding wherein the applicant seeks authority to engage in some regulated industry or business subject to the Commission's regulatory control, or to make any changes in the presently authorized service, rate, facilities, or other aspects of the public service purpose or operation of any such regulated industry or business for which Commission authority is required by law. In addition to the requirements of Rule 5:10, each application shall contain (i) a full and clear statement of facts which the party or parties are prepared to prove by competent evidence, the proof of which will warrant the objective sought; and (ii) details of the objective sought and the legal basis therefor.

(b) Petitions: A petition is the appropriate initial pleading in a formal proceeding wherein a party complainant seeks the redress of some alleged wrong arising from prior action or inaction of the Commission, or from the violation of some statute or rule, regulation or order of the Commission which it has the legal duty to administer or enforce. In addition to the requirements of Rule 5:10, each petition shall contain (i) a full and clear statement of facts which the party or parties are prepared to prove by competent evidence, the proof of which will warrant the relief sought; and (ii) a statement of the specific relief sought and the legal basis therefor.

5:16. *Responsive Pleadings.* The usual responsive pleadings in any formal proceeding shall be a notice of protest, protest, motion, answer, or comments on a Hearing Examiner's Report, as shall be appropriate, supplemented with such other pleadings, including stipulations of facts and memoranda, as may be appropriate.

(a) Notice of Protest: A notice of protest is the proper initial response to an application in a formal proceeding by which a protestant advises the Commission of his interest in protecting existing rights against invasion by an applicant. Such notice is appropriate only in those cases in which the Commission requires the pre-filing of prepared testimony and exhibits as provided by Rules 6:1 and 6:2. In all other cases, the appropriate initial responsive pleading of a protestant will be by protest as hereafter provided. In addition to the requirements of Rule 5:10, a notice of protest shall contain a precise statement of the interest of the party or parties filing same, and it shall be filed within the time prescribed by the Commission as provided by Rule 6:1.

(b) Protests: A protest is a proper responsive pleading to an application in a formal proceeding by which the protestant seeks to protect existing rights against invasion by the applicant. It shall be the initial responsive pleading by a protestant in all cases in which the parties are not required to pre-file testimony and exhibits. When such a pre-trial filing is required, a protest must be filed in support of, and subsequent to, a notice of protest. A protest must be filed within the time prescribed by the Commission Order which, in cases involving pre-filed testimony and exhibits, will always be

subsequent to such filing by the applicant. In addition to the requirements of Rule 5:10, a protest shall contain (i) a precise statement of the interest of the protestant in the proceeding; (ii) a full and clear statement of the facts which the protestant is prepared to prove by competent evidence, the proof of which will warrant the relief sought; and (iii) a statement of the specific relief sought and the legal basis therefor.

(c) Answers: An answer is the proper responsive pleading to a petition or rule to show cause. An answer, in addition to the requirements of Rule 5:10, shall contain (i) a precise statement of the interest of the party filing same; (ii) a full and clear statement of facts which the party is prepared to prove by competent evidence, the proof of which will warrant the relief sought; and (iii) a statement of the specific relief sought and the legal basis therefor. An answer must be filed within the time prescribed by the Commission.

(d) Motions: A motion is the proper responsive pleading for testing the legal sufficiency of any application, protest, or rule to show cause. Recognized for this purpose are motions to dismiss and motions for more definite statement.

(i) Motion to Dismiss: Lack of Commission jurisdiction, failure to state a cause of action, or other legal insufficiency apparent on the face of the application, protest, or rule to show cause may be raised by motion to dismiss. Such a motion, directed to any one or more legal defects, may be filed separately or incorporated in a protest or any other responsive pleading which the Commission may direct be filed. Responsive motions must be filed within the time prescribed by the Commission.

(ii) Motion for More Definite Statement: Whenever an application, protest, or rule to show cause is so vague, ambiguous, or indefinite as to make it unreasonably difficult to determine a fair and adequate response thereto, the Commission, at its discretion, on proper request, or of its own motion, may require the filing of a more definite statement or an amended application, protest, or rule and make such provision for the filing of responsive pleadings and postponement of hearing as it may consider necessary and proper. Any such motion and the response thereto must be filed within the time prescribed by the Commission.

(e) Comments on a Hearing Examiner's Report: Comments are the proper responsive pleading to a report of a Hearing Examiner. Such comments may note a party's objections to any of the rulings, findings of fact or recommendations made by an Examiner in his Report, or may offer remarks in support of or clarifications regarding the Examiner's Report. No party may file a reply to comments on the Examiner's Report.

5:17. *Improper Joinder of Causes.* Substantive rules or standards, or the procedures intended to implement same, previously adopted by the Commission, governing the review and disposition of applications, may not be challenged by any party to a proceeding intended by these Rules to be commenced by application. Any such challenge must be by independent petition.

5:18. *Extension of Time.* The Commission may, at its discretion, grant an extension of time for the filing of any responsive pleading required or permitted by these Rules. Applications for such extensions shall be made by special motion and served on all parties of record and filed with the Commission at least three (3) days prior to the date on which the pleading was required to have been filed.

## PART VIII FORMAL HEARING

8:1. *Official Transcript of Hearing.* The official transcript of a formal hearing before the Commission shall be the transcript of the stenographic notes taken at the hearing by the Commission's regularly-employed court reporter and certified by him as a true and correct transcript of said proceeding. In the absence of the Commission's regular court reporter, the Commission will arrange for a suitable substitute whose certified transcript will be recognized as the official record. Parties desiring to purchase copies of the transcript of record shall make arrangement therefor directly with the Commission's reporter or substitute reporter. Stenographic notes are not transcribed unless specifically requested by the Commission or by some party in interest who wishes to purchase same. When the testimony is transcribed, a copy thereof is always lodged with the Clerk where it is available for public inspection. (In the event of appeal from the Commission action the full record must be certified by the Clerk.)