

**INTERIM REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

**The Regulatory Responsibilities,  
Policies and Activities of the  
State Corporation Commission**

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



**SENATE DOCUMENT NO. 33**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2001**



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The Honorable Kathy J. Byron  
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## EXECUTIVE SUMMARY

Adopted by the 2000 Session of the General Assembly, Senate Joint Resolution No. 173 and House Joint Resolution No. 187 established a joint subcommittee to study the regulatory responsibilities, policies and activities of the State Corporation Commission. The joint subcommittee is required by the resolution to complete its work and submit its findings and recommendations to the Governor and the 2002 Session of the General Assembly.

The 1902 *Constitution of Virginia* created the State Corporation Commission (SCC) as a separate department of state government vested with legislative, executive and judicial functions. Pursuant to its constitutional mandate, the SCC exercises executive, legislative and judicial powers, a departure from the separation of powers doctrine that serves as the basis for the role and organization of state government in most other instances. Though initially established with three basic powers (granting charters of incorporation in Virginia and administering corporate laws, regulating rates and services of railroads and telephone and telegraph companies, and regulating certain other transportation companies), within a few years the General Assembly began to add several statutory duties and responsibilities to the SCC. This statutory expansion of the original constitutional mandate served to give the SCC authority to exercise executive, legislative and judicial powers over public utilities, banks, insurance companies, securities, motor carriers, pipelines and railroads. It is this growth in the SCC's regulatory responsibility and the concurrent increase in the impact of the SCC's regulatory policies on the state's economy and its citizens that are the basis of the joint subcommittee's charge.

At the outset of its deliberations, the joint subcommittee determined that the enormous scope of SCC's regulatory authority necessitated the need to develop a focus on issues that would be most appropriate to include in the study. The joint subcommittee adopted a comprehensive document titled "Issues for Consideration," encompassing the issues for inclusion in the study. The joint subcommittee adopted a study work plan that provides a detailed yet flexible method for achieving the study objectives.

The joint subcommittee also determined that securing an independent consultant would greatly assist in achieving the objectives of the study. At its last meeting, the joint subcommittee hired the School of Public Policy at George Mason University as a consultant. The report of the consultant will be due on August 31, 2001, and is anticipated to be an important component of the joint subcommittee's deliberations in the second year of the study.



INTERIM REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING  
THE REGULATORY RESPONSIBILITIES, POLICIES, AND ACTIVITIES OF THE STATE  
CORPORATION COMMISSION

To: The Honorable James C. Gilmore, III, Governor of Virginia  
and  
The General Assembly of Virginia

Richmond, Virginia  
January 2001

## I. STUDY AUTHORITY

Senate Joint Resolution No. 173 (Appendix A) and House Joint Resolution No. 187 (Appendix B), agreed to during the 2000 Session of the General Assembly, established a joint subcommittee to study the regulatory responsibilities, policies and activities of the State Corporation Commission. The joint subcommittee is required by the resolution to complete its work and submit its findings and recommendations to the Governor and the 2002 Session of the General Assembly.

The joint subcommittee is comprised of 16 members: four members of the Senate, appointed by the Senate Committee on Privileges and Elections; six members of the House of Delegates, appointed by the Speaker of the House; and four citizens, appointed by the Governor. In addition, the Attorney General and the Secretary of Commerce and Trade or their designees serve *ex officio*.

## II. BACKGROUND

### A. Historical Overview

The 1902 *Constitution of Virginia* created the State Corporation Commission (SCC) as a separate department of state government vested with legislative, executive and judicial functions. Pursuant to its constitutional mandate, the SCC exercises executive, legislative and judicial powers, a departure from the separation of powers doctrine that serves as the basis for the role and organization of State government in most other instances. This unique grant of power is directly the product of the circumstances that existed in the years preceding the creation of the SCC.

The years preceding the 1902 constitutional revision saw a great rise in the size and power of railroad companies in the country. As railroads became the predominant means of transportation across the nation, state legislators became increasingly concerned about the industry's economic power and the potential harmful effects of that power on the public interest. The need for some form of regulation became evident as a means to protect the public interest. In Virginia during the 1800s, the General Assembly frequently attempted to regulate railroads and provide for a state entity to promulgate and enforce railroad regulations. Beginning in 1816, with the creation of the Board of Public Works and continuing through the establishment of the Railroad Commissioner in 1876, most of these efforts to control the power of the railroads through regulatory action were ineffective. (Appendix D)

The dominance of railroad companies in the commercial and political arenas and the abuses of such concentrated power have been cited by many observers as the single most important contributing factor in the Commonwealth's failure to achieve effective railroad regulation during this time period. The widely held belief of the time was that the regular legislative process, with its exposure to the powerful pressures of the railroad industry, was not operating effectively in the area of this form of economic regulation and was failing to adequately protect the public interest.

The combined experience of these past regulatory failures led to the feeling among the state's legislators that the need to meet the challenge of effective economic regulation in the public interest overshadowed the problems inherent in granting any one governmental body judicial, legislative and executive powers. As a result, the 1902 *Constitution of Virginia* created the SCC as a separate department of state government empowered to perform legislative functions and to issue and enforce its own orders as a court of record. In effect, it formed an independent regulatory agency administering an independent regulatory mechanism. Legislative authority is exercised by the SCC when it makes rules or sets rates. The executive authority of the SCC is exercised in its day-to-day administration of the various regulatory programs within its jurisdiction. When the SCC acts as a court of record and holds formal hearings, it is exercising judicial authority.

## **B. Constitutional powers and duties of the State Corporation Commission**

The 1902 *Constitution of Virginia* established the SCC with three basic powers: (1) to grant charters of incorporation in Virginia and administer corporate laws, (2) to regulate the rates and services of railroads and telephone and telegraph companies, and (3) to regulate certain other transportation companies. The 1902 Constitution also provided for the General Assembly to grant additional responsibilities to the SCC. Within a few years the General Assembly began to add several statutory duties and responsibilities to the SCC. This statutory expansion of the original constitutional mandate served to give the SCC authority to exercise executive, legislative and judicial



powers over public utilities, banks, insurance companies, securities, motor carriers, pipelines and railroads by the time of the constitutional revision of 1971. (Appendix E)

The 1971 *Constitution of Virginia* left the core structure of the SCC intact; however, the General Assembly was provided with broader authority to shape the role and responsibilities of the SCC than provided for in the 1902 *Constitution of Virginia*. Article IX of the 1971 *Constitution of Virginia*, comprised of seven sections, contains the constitutional provisions pertaining to the SCC. (Appendix C) Section 1 of the article confers upon the SCC its constitutional status and provides for the number, qualifications and manner of election of the commissioners. This section also authorizes the General Assembly to increase the number of commissioners from three to no more than five.<sup>1</sup> Other provisions pertaining to the SCC commissioners are also contained in this section including (i) the method of removal and for filling vacancies, (ii) retirement, (iii) election of a chairman, and (iv) the extent of the SCC's power over its subordinates and employees.

The powers and duties of the SCC are detailed in Section 2 of Article IX:

*Subject to the provisions of this Constitution and to such requirements as may be prescribed by law, the Commission shall be the department of government through which shall be issued all charters, and amendments or extensions thereof, of domestic corporations and all licenses of foreign corporations to do business in this Commonwealth.*

*Except as may be otherwise prescribed by this Constitution or by law, the Commission shall be charged with the duty of administering the laws made in pursuance of this Constitution for the regulation and control of corporations doing business in this Commonwealth. Subject to such criteria and other requirements as may be prescribed by law, the Commission shall have the power and be charged with the duty of regulating the rates, charges, and services and, except as may be otherwise authorized by this Constitution or by general law, the facilities of railroad, telephone, gas, and electric companies.*

*The Commission shall in proceedings before it ensure that the interests of the consumers of the Commonwealth are represented, unless the General Assembly otherwise provides for representation of such interests.*

*The Commission shall have such other powers and duties not inconsistent with this Constitution as may be prescribed by law.*

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<sup>1</sup> Between 1919 and 1926, Commissioners were elected through public election. The 1928 *Constitution of Virginia* implemented the present form of selection providing for election of Commissioners by the General Assembly.

Three provisions of this section provide the parameters of SCC jurisdiction and the ability of the General Assembly to affect that jurisdiction: regulation of railroads and utilities, chartering and regulation of corporations, and conferring of additional duties.

The Constitution gives the SCC the power and duty to regulate the rates, charges and services of railroad, telephone, gas and electric companies. This authority, however, is "[s]ubject to such criteria and other requirements as may be prescribed by law." Accordingly, the SCC's authority in this regard "is subordinate to the power of the General Assembly to command otherwise."<sup>2</sup> Similarly, the Constitution gives the SCC the power and duty to regulate the facilities of such companies (e.g. the placement of electric and telephone transmission lines), except as otherwise authorized by the General Assembly.

In terms of the regulation of corporations in general, the Constitution creates the SCC as the department of government to issue all charters, amendments and extensions thereof of domestic corporations and to issue all licenses of foreign companies to do business in the state. This authority is subject to such requirements as may be prescribed by the General Assembly. Similarly, except as may be otherwise prescribed by the General Assembly, the SCC is constitutionally charged with the duty of administering the laws for the regulation and control of corporations doing business in Virginia.

Regarding additional duties, the last sentence of Section 2 of Article IX authorizes the General Assembly to confer powers and duties on the SCC beyond those specifically conferred in the Constitution, confirming the practice of the legislature since the SCC's inception in 1903.

Section 3 of Article IX provides the SCC its judicial power by conferring upon it the power of a court of record, including the ability to administer oaths, compel the attendance of witnesses and production of documents, and to enforce compliance with its orders. This section also authorizes the SCC to develop its own rules of practice and procedure. The General Assembly, however, has the power to adopt, amend, modify or set aside SCC rules or substitute SCC rules with rules of its own.

The rights of parties to appeal final decisions of the SCC are set out in Section 4. The Commonwealth, parties in interest and parties aggrieved by the action of the SCC may appeal only to the Virginia Supreme Court. The section further provides that no other court of the Commonwealth has jurisdiction to review, reverse, correct or annul any action of the SCC. Section 5 prohibits foreign corporations from exercising public service functions in the Commonwealth. Foreign corporations must reincorporate in Virginia in order to act as public service companies.

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<sup>2</sup> See Commonwealth v. Virginia Electric and Power Company, et al, 214 Va. 457, 465 (1974).

Section 6 requires that corporations be chartered and that charters be amended or extended only through the passage of general laws thereby prohibiting the use of special acts to achieve such purposes. The section also limits the discretion that may be exercised by the SCC in granting, amending or extending corporate charters by restricting its purview to making sure the applicant has fully complied with all requirements of the law. Finally, Section 7 defines the term "corporation" as used in the article by excluding municipal corporations, other political subdivisions and public institutions owned or controlled by the Commonwealth.

In carrying out its broad regulatory responsibilities, the SCC exercises some degree of fiscal independence. The SCC is a non—general fund agency that receives all funding for its operations from revenues derived from specified regulatory assessments or fees paid by regulated industries or other earmarked revenue sources. Revenues are received into four special funds: corporate operations, financial institutions, insurance and valuation. These revenues are collected by the SCC in the form of (i) taxes, (ii) interest and penalties on delinquent taxes, (iii) regulatory assessments, (iv) fees for special items or activities such as licenses, corporate charters, and special audits, and (v) copy certification and publication charges. Funds for the operation of the SCC are budgeted under the normal state appropriation process and are maintained in the four special funds.

### **III. OVERVIEW OF SCC OPERATIONS**

From its initial 1903 budget of \$24,000 and staff of five employees, the SCC has grown to have an annual operating budget of approximately \$51 million and a staff of 560. This growth was in response to the additional duties conferred by the General Assembly, duties that have the common thread of economic regulation. The SCC's regulatory functions are divided among seven divisions, each overseeing a specific industry or group of industries. The SCC exercises economic regulation over a wide range of businesses and operations that daily affect the lives of citizens; no other state regulatory commission in the country has the jurisdiction over as many areas as does the SCC. A brief description of the core regulatory functions of the SCC follows.

#### ***Office of the Clerk of the Commission***

The Clerk's office performs functions similar to those of a clerk of court in a court of record except that it deals only with matters within the Commission's jurisdiction. The office is responsible for maintaining the Commission's judicial records and the docket of cases and preparing and transmitting records to the Supreme Court in cases on appeal from Commission judgments. In addition, the office is responsible for the

issuance of corporate charters and the collection of registration and franchise fees<sup>3</sup> and serves as the depository for all documents required to be filed by corporations, both foreign and domestic. The office also serves as the statutory agent for service of process on certain corporations and acts as the filing officer under the Uniform Federal Tax Lien Regulatory Act<sup>4</sup> and for Uniform Commercial Code financing statements, amendments, termination statements, and assignments by secured parties.

### ***Bureau of Insurance***

The Bureau of Insurance is divided into several divisions dealing with different aspects of insurance regulation. The financial regulation division (i) licenses insurance companies;<sup>5</sup> (ii) approves holding companies;<sup>6</sup> (iii) regulates/monitors premium finance companies, auto clubs, multiple employer welfare arrangements, HMOs, and continuing care retirement communities;<sup>7</sup> (iv) monitors financial solvency of insurance companies;<sup>8</sup> (v) audits finances of insurance companies and publishes the data.<sup>9</sup> Other divisions of the Bureau deal specifically with different types of insurance offerings (i.e. Life and Health, Property and Casualty, etc.). Each of these divisions licenses agents and agencies, investigates consumer complaints and the affairs of agents, examines market conduct, and monitors forms and rates. In total, the Bureau licenses approximately 82,903 insurance agents<sup>10</sup> and agencies in the state.

In addition, the Bureau performs financial examinations of Virginia insurance companies. Other functions include reviewing insurance forms, performing market conduct examinations, and assisting consumers with the review of insurance forms. Through the Office of the Managed Care Ombudsman, the Bureau assists consumers in understanding the managed care process. Adverse treatment decisions by managed care entities are subject to review by outside medical peer review organizations through the external appeals process accessed through the Office.

### ***Bureau of Financial Institutions***

The Bureau of Financial Institutions regulates several aspects of the financial industry in Virginia. It investigates and makes recommendations on charter applications for new state financial institutions and new branches of existing institutions. The Bureau also analyzes and monitors the financial soundness of state banks, savings institutions and credit unions. Banks are required to get certification of

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<sup>3</sup> VA. CODE ANN. §12.1-20 (1999)

<sup>4</sup> VA. CODE ANN. §55-142.1 et seq.

<sup>5</sup> VA. CODE ANN. §38.2-200 (1999)

<sup>6</sup> VA. CODE ANN. §38.2-326 (1999)

<sup>7</sup> VA. CODE ANN. §38.2 (1999)

<sup>8</sup> VA. CODE ANN. §38.2-1300 (1999)

<sup>9</sup> VA. CODE ANN. §§38.2-1317, 38.2-1320.4 (1999)

<sup>10</sup> This figure includes property & casualty, life & health and title insurance agents and agencies.

authority from the SCC before doing business in Virginia.<sup>11</sup> Also, the SCC reviews applications filed by financial institutions in Virginia before they merge with other institutions and administers interstate bank acquisitions.<sup>12</sup> The Bureau also licenses and examines mortgage lenders and brokers.<sup>13</sup>

In addition, the Bureau licenses money order sellers, money transmitters, consumer finance (small loan) companies, debt counseling services, and industrial loan associations and registers check cashers.

### ***Division of Securities and Retail Franchising***

The Division of Securities and Retail Franchising oversees the registration of publicly offered securities as well as the regulation of broker-dealers, securities salesmen, and investment advisors. The Division registers franchises and registers, audits and investigates securities transactions as well as the people who sell securities and the people who provide investment advice with respect to them. It also investigates complaints under the "Blue Sky Laws," registers franchises and accompanying disclosure documents under the Retail Franchising Act and registers intrastate trademarks and service marks.

### ***Division of Railroad Regulation***

The Division of Railroad Regulation conducts inspections and surveillance of railroad tracks and inspects motive power and equipment in Virginia according to Federal Railroad Administration Track Safety Standards. The Division investigates citizen complaints regarding blocking of rail crossings and conducts accident investigations in cooperation with the Federal Railroad Administration. The Division also investigates various complaints involving service and any other matters pertaining to railroad problems in the State.

### ***Division of Communications***

This division monitors, enforces and makes recommendations on certain rates, tariffs and operating procedures of investor-owned telecommunications companies including local exchange telephone companies, intrastate long distance companies, and cellular/wireless telephone and radio common carriers (including the maintenance of territorial maps). In carrying out these responsibilities, the division (i) enforces service standards, (ii) assures compliance with tariff regulations, (iii) coordinates extended area

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<sup>11</sup> VA. CODE ANN. §6.1-13 (1999)

<sup>12</sup> See VA CODE ANN. §§ 6.1-194.39, 6.1-194.97, 6.1-399 (1999)

<sup>13</sup> But see VA. CODE ANN. §6.1-194.62 (1999) (providing that when a loan is "insured, guaranteed or made under a firm commitment to be sold, assigned or otherwise transferred to an agency or instrumentality of the federal government or to a corporation organized under federal law, it is subject to these (i.e. federal) laws").

service studies, (iv) enforces pay telephone regulations, (v) assists in carrying out provisions of the 1996 Telecommunications Act, and (vi) prescribes depreciation rates. The Division also prepares testimony for rate and service proceedings, develops special studies, monitors construction programs, and investigates and resolves consumer complaints. The Division has a major role in overseeing the implementation of competition in the telecommunications market<sup>14</sup> and developing and implementing alternatives to traditional forms of regulation as competitive markets develop.<sup>15</sup>

### ***Division of Energy Regulation***

The Division reviews rate applications filed by investor-owned utilities and member-owned cooperatives and prepares testimony for rate cases before the Commission. The Division is responsible for monitoring utility construction projects and reviewing applications for the construction of transmission lines exceeding 150 kilovolts, electric generating units exceeding 100 megawatts, and natural gas pipelines. Other responsibilities of this division include (i) review of generating unit performance of investor-owned electric utilities, (ii) administration of the gas pipeline safety program including approximately 240 master-metered systems, (iii) enforcement of the "Underground Utility Damage Prevention Act,"<sup>16</sup> and (iv) investigation of gas accidents. The Division responds to consumer complaints and inquiries regarding electric, gas, water and sewer utilities and serves a major role in assisting the Commission in the performance of its implementation responsibilities regarding the restructuring of the electric and natural gas industries.

### ***Division of Public Utility Taxation***

This division is responsible for assessing the property of public service companies for local taxation, annual certification of those assessments and assessing and collecting gross receipts and special regulatory taxes from certain public service companies.

### ***Miscellaneous Operations***

Several other divisions, grouped as either administrative or law divisions, provide support for the SCC's activities. The administrative divisions include: Division of Information Resources, Division of Human Resources, Office of Comptroller/Administrative Services, and Information Technology Division. The law

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<sup>14</sup> See 47 U.S.C. §§ 252(a)(2), 252(b)(1), 252(d) (1999) (requiring state regulatory commissions to mediate disputes between entering carriers and the existing carrier and after negotiations have run their course to arbitrate and "open issues").

<sup>15</sup> See VA. CODE ANN. § 56-235.5 (1999) (including price regulation, ranges of authorized rates of return, categories of service and price indexing).

<sup>16</sup> See VA. CODE ANN. § 56-265.14 (1999)

divisions consist of: Office of General Counsel, Office of Hearing Examiners, and the Office of Solicitor General.

#### IV. PAST STUDIES

Since the creation of the SCC, numerous studies have been commissioned by the General Assembly reviewing various operational components of the SCC and the industries it regulates. Only a few of these have had the objective, however, of independently examining the SCC's core functions in their entirety.

One such study was performed in the mid-1970s by the Commission on State Governmental Management (Hopkins Commission). The Hopkins Commission was created by the 1973 General Assembly to examine state government in its entirety, primarily in response to concerns about the growth of the state's government. The Commission's priority recommendations for 1977 and 1978 included numerous proposed changes to the SCC.

Based mainly on perceived advantages inherent in the separation of governmental powers, the Hopkins Commission recommended that most of the executive functions of the SCC be transferred to various executive branch agencies headed by individuals appointed by and directly responsible to the Governor.<sup>17</sup> Under these proposals the SCC would have continued its rate-making, rule-making and adjudicative activities. The Commission thought that this separation of responsibilities was necessary both to ensure the independence of the judicial and legislative activities of the State Corporation Commission and to subject the executive decisions to policy-making input by elected officials directly responsible to the people.

The specific recommendations of the Hopkins Commission included:

1. Transferring executive responsibilities for public utility regulation to a Department of Public Utilities;
2. Transferring executive responsibilities for insurance regulation to a Department of Insurance;
3. Transferring executive responsibilities for banking regulation to a Department of Banking;
4. Transferring executive responsibilities for securities regulation to a Department of Securities and Retail Franchising;

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<sup>17</sup> Seven members of the 15-member commission dissented regarding most of the recommendations affecting the SCC.

5. Transferring the taxation of public service corporations to the Department of Taxation;
6. Transferring executive responsibilities over motor carrier activities to the Division of Motor Vehicles;
7. Transferring the Division of Aeronautics to the proposed Office of Transportation; and
8. Transferring the Fire Marshal Division to the proposed Office of Public Safety.

Soon after the Hopkins Commission report, the General Assembly enacted only two of the recommendations regarding the SCC; transferring the Division of Aeronautics and the Fire Marshal Division from the SCC to the executive branch.<sup>18</sup>

Another broad, independent study of the SCC was performed by the Joint Legislative Audit and Review Commission (JLARC) in 1985. Item 11 of the 1985 Appropriations Act directed JLARC to perform a comprehensive audit and review of the operations of the independent agencies of the Commonwealth. Its subsequent report regarding the SCC, House Document No. 15 (1987), titled "Organization and Management Review of the State Corporation Commission," focused primarily on the efficiency, effectiveness and degree of compliance with legislative intent of the internal structure and management of the SCC. In this regard the report found that, for the most part, the overall organization and management of the SCC was sound.

Some areas where JLARC found problems existed included:

1. Maintenance of excessive balances in certain special funds maintained by the SCC;
2. Assessment of regulatory fees upon certain industries at rates not in line with the actual costs of regulating the particular industry, thereby improperly having some industries "subsidize" the costs of regulating other industries;
3. Underutilization of the Executive Director, whose responsibilities are not clearly defined; and

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<sup>18</sup> The Motor Carrier Division was transferred to the Department of Motor Vehicles by legislation enacted during the 1995 Session of the General Assembly.



4. General weakness in all areas of the organization and management of the Bureau of Insurance.

JLARC's report alluded to, but did not address, the issue concerning separation of powers raised by the Hopkins Commission. However, based on concerns with duplication of efforts regarding the regulation of motor carriers, the report recommended more coordination of efforts between the SCC and the executive branch agencies having responsibilities in this regard. The report also recommended that the SCC postpone a proposed expansion of its regulation of financial institutions until an appropriate needs analysis had been performed.

Previously, in 1978, in a more narrow vein, the General Assembly passed HJR 56 that created a joint subcommittee to study the feasibility of granting the State Corporation Commission certain management overview responsibilities and powers to facilitate the regulation of public utilities. In its report, House Document No. 40 (1980), the joint subcommittee made several specific, narrow recommendations, but on the broader issue merely stated that "since the SCC should be carrying out important overview and inspection functions [over utility companies], . . . the Legislature should not hesitate to give the Commission the proper powers to carry out such functions."

In a study of even narrower scope, JLARC reported in 1985 that the SCC should have permitted more competition in its award of certain contracts for automated services ("ADP Contracting at the State Corporation Commission," House Document No. 4, (1985)).

In 1994, the General Assembly passed HJR 212 that requested the Motor Carrier Division of the State Corporation Commission to provide a comprehensive report on the service to the motor carrier industry and recommend ways to simplify regulation to achieve "one-stop" shopping. In its report, House Document No. 12 (1995), the SCC concluded that the Commonwealth should move toward a concept of one-stop shopping, and, "because the Motor Carrier Division deals with the motor carrier industry exclusively, it naturally follows that the SCC should be the focus of the 'one-stop shopping' concept." Despite this recommendation, however, the General Assembly enacted legislation during the 1995 Session transferring motor carrier activities from the SCC to the Division of Motor Vehicles.

In 1996, the General Assembly passed SJR 118 that formed a joint subcommittee to study the potential for restructuring the electric utility industry. This study was continued for two additional years and resulted in three reports, Senate Document No. 28 (1997), Senate Document No. 40 (1998) and Senate Document No. 34 (1999). The final report recommended restructuring Virginia's electric utility industry through a phase-in of customer choice for electricity generation in combination with a seven-year rate cap.

It was recommended that the SCC have regulatory oversight of this process, working collaboratively with a legislative oversight committee.

In 1999, the General Assembly enacted legislation restructuring the electric utility industry to provide for a phase-in of market competition for the generation of electric power. Similar legislation restructuring the gas utility industry was enacted by the General Assembly in 1999 and 2000.

As part of the electric utility restructuring, the General Assembly statutorily created the Legislative Transition Task Force to work collaboratively with the SCC in conjunction with the phase-in of electric energy retail competition, until July 1, 2005. The task force is to report annually to the Governor and the General Assembly concerning the progress of each stage of the phase-in of retail competition.

## **V. MEETINGS OF THE JOINT SUBCOMMITTEE**

### ***June 24, 2000, Meeting***

The joint subcommittee met four times in its first year of the study. The first meeting was on June 24, 2000, and began with a historical overview of the creation and regulatory responsibilities of the State Corporation Commission. In addition, Judge Hulihan Williams Moore, one of three Commissioners, provided the joint subcommittee with an overview of the SCC's operations.

Judge Moore discussed the growth in the regulatory responsibility of the SCC since its creation. He also stated that the primary businesses regulated by the SCC, especially insurance, banking, communications, and energy, shared three basic characteristics: (i) each is a critical industry that affects the lives of the state's citizens every day, (ii) each industry has been subject to comprehensive economic regulation, and (iii) each industry is moving to an increased reliance on the market and competition as principal regulators.

Judge Moore informed the joint subcommittee that the SCC had hired an independent consultant to undertake a comprehensive study of the SCC's organization, structure and process as well as its rules of practice and procedure to determine how best to meet its regulatory responsibilities. It was emphasized that the scope of the consultant's review would be confined to the effectiveness and efficiency of SCC operations and was not intended to extend to the powers and duties of the SCC. Judge Moore offered the independent consultant as a resource to the joint subcommittee.

Discussion among the members of the joint subcommittee centered on developing a work plan for the first year of the study. Based on the breadth and importance of the study, the joint subcommittee determined that before a work plan

could be developed there was a need to clarify the focus and direction of the study. Suggestions among the joint subcommittee members regarding the focus and direction included:

- defining the relevance of the SCC's structure in light of the changes to the regulatory scheme of many of the industries within the SCC's purview;
- determining whether the Commonwealth is best served under the SCC's current authority and organizational structure;
- determining the economic development role of the SCC;
- examining the impact of federal regulation and the direction of such regulation over time; and
- reviewing how regulation of the various industries is shared by the state and federal governments.

The joint subcommittee also discussed the possibility of hiring an independent consultant to assist the joint subcommittee in its work, especially in consideration of the enormity of the legislative charge. While some members voiced support for such a consultant, others expressed concern about funding for the services and the amount of time necessary for the work to be completed. It was agreed that Chairman Norment, Secretary DuVal and staff would review the issue and provide the joint subcommittee with a recommendation regarding the feasibility of securing an independent consultant and further, what issues would be appropriate for such a consultant to examine.

It was also resolved that a portion of the next meeting of the joint subcommittee be devoted to clarifying the greater issue of the direction of the study and finalizing a work plan and timeline for the remainder of the study. In this regard, Chairman Norment suggested that members provide staff with their comments regarding the overall direction of the study as well as the on the issue of securing an independent consultant and the possible areas of examination for such consultant by July 17, 2000. These suggestions would be incorporated into the discussion of the joint subcommittee's charge at the its next meeting.

Several members believed that the report of the consultant hired by the SCC would be extremely helpful to the work of the joint subcommittee. After it was indicated that a preliminary report would be available by August of 2000, it was decided that the report be reviewed at the next meeting.

***August 24, 2000, Meeting***

The second meeting of the joint subcommittee began with a presentation by David Wirick from the National Regulatory Research Institute, the consultant hired by the SCC to study its operations, presented an interim report on his study.

Mr. Wirick stated that the scope of his engagement included examination of SCC structure, organization, and procedures focusing on a broad array of areas and issues, including (i) communications and leadership, both internal and external; (ii) commission structure; (iii) staffing, management and coordination among divisions; (iv) commission process; (v) external relations; and (vi) consumer protection. Regarding the intended timing of the engagement, Mr. Wirick detailed the following time line:

- Extensive interviews with Judges, managers, staff, legislators, utility representatives, and consumer representatives (June-December 2000).
- Interim report (August 2000).
- Identification of the scope of the final report (September 2000).
- Final report (end of year 2000) to include options and recommendations.

Mr. Wirick also informed the joint subcommittee of several issues and recommendations that his research uncovered including i) the establishment of a Director of Administration for the SCC, ii) consideration of options for coordination of public utility functions with no recommendation to establish a Director of Utilities, and iii) continuation of SCC authority for regulation of insurance, financial institutions and securities and examination of those models for application to public utilities. Potential issues for additional consideration by his examination included:

1. Strategic planning and identification of the future mission of the SCC;
2. SCC staffing and the role of the staff, particularly in public utility regulation;
3. Consumer relations;
4. Organization for accomplishment of the SCC mission;
5. Commission processes, including alternative dispute resolution;
6. Information systems;
7. Legislative and public relations;
8. Internal communications; and
9. Regulatory convergence and new regulatory methods.

After Mr. Wirick's presentation, the joint subcommittee discussed whether it would hire a consultant to assist in its study. The joint subcommittee ultimately determined that securing a consultant would be beneficial in helping achieve the goals of the study. It was agreed that at the next meeting the subcommittee would consider the process for hiring the consultant and issues for the consultant to examine.

Staff presented a list of possible issues, divided between general considerations and internal operational considerations, for the joint subcommittee's review to assist in developing the study's scope. Chairman Norment stated that the public would have an opportunity through September 5, 2000, to comment on the list of issues and to suggest additional issues. At that time, Chairman Norment stated that staff, using the list of issues presented, public comments, and issues raised by Mr. Wirick's interim report, will develop a draft of a proposed work plan for the subcommittee, and will distribute the proposal to all subcommittee members. Subcommittee members will then respond to the proposal, and staff will prepare a new draft in light of the responses, for consideration by the subcommittee at its next meeting on October 4, 2000, at 10:00 a.m.

#### ***October 4, 2000, Meeting***

The joint subcommittee held its third meeting on October 4, 2000. The purpose of the meeting was to review and adopt a final list of considerations compiled by staff and developed from public and subcommittee member comment and to adopt a study work plan for accomplishment of the study objectives. An additional purpose of the meeting was for the joint subcommittee to determine a process for securing an independent consultant.

The joint subcommittee adopted a comprehensive document titled "Issues for Consideration," which encompassed the scope of the study objectives that the joint subcommittee intended to reach over the course of the study. (Appendix D) The issues are set out in two broad categories--general considerations and internal operational considerations. Subjects under general consideration include i) appropriate regulation of new and future industries, ii) developing regulatory policy, iii) compliance with General Assembly policy and intent, iv) separation functions, v) the relationship among the SCC, the General Assembly, and the Executive Branch, and vi) funding and financial oversight. Internal operational considerations involved examination of the mission and structure of the SCC as well as the operation of its regulatory programs.

#### ***Procedure for selecting the independent consultant***

Staff presented information to the joint subcommittee regarding options for the process to be used in securing an independent consultant, funding for the consultant and the scope of the issues to be examined by the consultant. Discussion among the

joint subcommittee members centered on the need to secure a consultant by December of 2000 and how to structure the request for proposals. The joint subcommittee decided that it would look to the state's public institutions of higher education to provide the consultant services and instructed staff to send requests for proposals to the state's 14 public four-year institutions of higher education. It was further decided that the "Issues for Consideration" previously approved by the joint subcommittee provided the appropriate scope of issues for determination by the consultant. The joint subcommittee decided it would seek funding for the consultant from the Legislative Reversion Account through the Joint Rules Committee.

In order to facilitate the selection of the consultant, the joint subcommittee directed staff to develop a request for proposals and to perform the initial review of any submitted proposals. After reviewing the proposals, staff would then provide a recommendation regarding the finalist(s) who best satisfies the needs of the joint subcommittee. The finalist(s) then would present the proposal at the December 2000 meeting of the joint subcommittee.

The joint subcommittee also adopted a work plan that would carry its work through the completion of the study. There was also agreement that the work plan should remain flexible to ensure maximum participation and input from all interested parties. As a part of the work plan discussion, some members expressed a desire to provide an opportunity for public comment, formal or informal, at the next meeting of the joint subcommittee. Several members noted that the consultant hired by the joint subcommittee would be required to obtain comment from the regulated community, consumer groups, and other interested parties. It was ultimately resolved that it would be more appropriate to provide for a public hearing or public comment period after the consultant had been engaged, in the second year of the study.

The joint subcommittee scheduled its next meeting for December 5, 2000, at 1:00 p.m. Several subcommittee members indicated an interest in the SCC's revision of its procedural rules. SCC representatives indicated that an executive summary of the proposed changes would be provided prior to the subcommittee's next meeting. An update on the status of the report from the SCC's consultant was also requested for the next meeting.

#### ***December 5, 2000, Meeting***

The fourth meeting of the joint subcommittee focused on the review of the staff recommendation regarding proposals received in response to the joint subcommittee's request for proposals to provide consultant services. In addition, the joint subcommittee briefly reviewed the status of the work of the consultant hired by the State Corporation Commission and the agency's revision of its rules and procedures.

Joint Subcommittee Chair, Senator Norment, also introduced William E. Fitzgerald to the joint subcommittee as the new member appointed by the Governor.

*Selection of the independent consultant*

The joint subcommittee obtained a total of \$100,000 to fund a contract for consultant services. Half of the amount was provided from the Legislative Reversion Account with the other half provided by the Secretary of Commerce and Trade. On October 11, 2000, staff sent request for proposals to each of the state's 14 public institutions of higher education. As directed by the joint subcommittee, entities responding to the request for proposals were required to address the items included in the "Issues for Consideration" document. In addition, the request for proposals also stated that each proposal submitted should contain, at a minimum, (1) the qualifications and experience of the individuals who will provide the consulting services, (2) a proposed consulting work plan and methodology to be utilized, and (3) the proposed consulting fee and schedule of payments.

The School of Public Policy at George Mason University (SPP) was the only institution submitting a complete proposal.<sup>19</sup> Staff reviewed the proposal using the following criteria:

1. Degree of understanding of the work to be shown by the thoroughness and quality of proposal;
2. Number, qualifications, role, and related experience of professions providing the consulting services;
3. Amount of compensation required, and schedule of payments; and
4. Proposed scheduling of tasks to ensure completion of work according to the established deadlines.

The initial proposal included a total budget substantially over the funding available for the study. After meeting with staff to discuss the proposal, SPP submitted a revised proposal including a budget of \$142,999, with the University providing an in-kind contribution of \$43,000. Staff proceeded to review the revised proposal using the agreed-upon criteria included in the request for proposals and subsequently concluded that the SPP proposal should be recommended to the joint subcommittee.

At the December 5, 2000, meeting, the joint subcommittee received a presentation from SPP representatives regarding the proposal including the methodology and

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<sup>19</sup> Three other institutions, the University of Virginia, Mary Washington University and Virginia State University, made inquiries or responded that they were unable to provide the consulting services.

intended work plan. Several members were concerned that only one complete proposal was submitted. It was suggested that perhaps additional proposals should be solicited. The joint subcommittee resolved, however, that soliciting additional proposals would prevent the consultant from commencing work in January. The joint subcommittee ultimately determined that additional proposals would not be solicited.

Some subcommittee members expressed concern that the scope of the study, as provided by the request for proposals, was too broad to allow a useful report to be produced within the time frame allowed. There was discussion among the members regarding how to best limit the scope to achieve the maximum benefit from the consultant's work. Some members felt there was a need to determine whether the SCC was carrying out its mission and objectives in compliance with the policy and intent of the General Assembly. Other members believed that a more prospective approach was required that involved analyzing the prevailing trends of the industries regulated by the SCC and the impact of those trends. The joint subcommittee ultimately determined that the appropriate scope of issues for the consultant to study were encompassed in Item I A, B and C and Item II A and B of the "Issues for Consideration" document. The joint subcommittee requested SPP to submit a revised proposal indicating the more narrow scope.

Some members also expressed a strong desire for the consultant to include other entities of the University in the proposal. The joint subcommittee requested that an attempt be made by SPP to include other divisions and entities of the University in the study. SPP representatives at the meeting indicated a willingness to include other entities and stated that an attempt would be made to do so in the revised proposal.

#### *Status of SCC consultant's work*

Regarding status of the consultant hired by the SCC, the joint subcommittee was informed that the report would be submitted in January of 2001 rather than December of 2000. Kenneth Schrad reiterated that the SCC would make the report and the consultant available to the joint subcommittee. Mr. Schrad also updated the joint subcommittee on the status of the proposed revisions to the SCC's Rules of Practice and Procedure. Prior to the meeting, each joint subcommittee member was provided with a summary of comments received from interested parties. Oral argument on the proposed rule revisions were held on Tuesday, January 9, 2001, at 10:00 a.m. As requested by the joint subcommittee, the SCC provided members of the General Assembly with notice of the oral argument.



Respectfully Submitted,

The Honorable Thomas K. Norment, Jr., *Chair*

The Honorable Eric I. Cantor, *Vice-Chair*

The Honorable Kathy J. Byron

The Honorable Charles J. Colgan

The Honorable L. Karen Darner

The Honorable Barry E. DuVal

Mr. William E. Fitzgerald

Mr. Edward L. Flippen, Esq

Mr. Andrew B. Fogarty

Ms. Judith Williams Jagdmann, Esq.

The Honorable Joseph P. Johnson, Jr.

The Honorable Harvey B. Morgan

The Honorable Richard L. Saslaw

The Honorable Kenneth W. Stolle

The Honorable Frank W. Wagner

Mr. Robert W. Woltz, Jr.

2000 SESSION

ENROLLED

SENATE JOINT RESOLUTION NO. 173

*Establishing a joint subcommittee to study the regulatory responsibilities, policies, and activities of the State Corporation Commission.*

Agreed to by the Senate, March 9, 2000

Agreed to by the House of Delegates, March 8, 2000

WHEREAS, the 1902 Constitution of Virginia created the State Corporation Commission (the Commission), enumerating in detail its duties and procedures and vesting the Commission with legislative, judicial, and executive powers; and

WHEREAS, the Commission exercises legislative authority when it makes rules or sets rates, judicial authority when it acts as a court of record and holds formal hearings, and executive authority in its day-to-day administration; and

WHEREAS, despite the exercise of these powers, the Commission is not part of the legislative, judicial, and executive branches of government; however, it is a separate department of Virginia state government; and

WHEREAS, when it began its operations in 1903, the Commission had two primary functions, the regulation of rates and services of railroads and the issuance of corporate charters with a budget of \$24,000 and five employees; and

WHEREAS, since that time the Commission's jurisdiction has expanded significantly as a result of legislative amendments and constitutional amendments to include the regulation of energy, insurance, securities, corporate filings, communications, financial institutions, and railroads; and

WHEREAS, the Commission has a current staff of 560 and an annual operating budget of approximately \$51 million; and

WHEREAS, despite the growth of the Commission over the years and the ever-increasing impact its policies have on the economy and lives of the citizens of the Commonwealth, there is no external assessment routinely made showing the impact its actions have had or will have on the economy and the lives of citizens of the Commonwealth, or whether alternative approaches would allow the Commission to fulfill its Constitutional and legislative responsibilities; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study the regulatory responsibilities, policies, and activities of the State Corporation Commission. The joint subcommittee shall also study the impact of such policies and activities on the lives of the citizens of the Commonwealth.

The joint subcommittee shall consist of 16 members, which shall include 10 legislative members, 4 nonlegislative citizen members, and 2 ex officio members as follows: four members of the Senate to be appointed by the Senate Committee on Privileges and Elections; six members of the House of Delegates to be appointed by the Speaker of the House, in accordance with the principles of Rule 16 of the Rules of the House of Delegates; four citizens to be appointed by the Governor; and the Attorney General or his designee and the Secretary of Commerce and Trade or his designee to serve ex officio.

The direct costs of this study shall not exceed \$14,500.

The Division of Legislative Services shall provide staff support for the study. The State Corporation Commission shall provide technical assistance to the joint subcommittee, upon request. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall submit an interim report to the Governor and the 2001 Session of the General Assembly. The joint subcommittee shall complete its work in time to submit its written findings and recommendations to the Governor and the 2002 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

APPENDIX B

GENERAL ASSEMBLY OF VIRGINIA -- 2000 SESSION

HOUSE JOINT RESOLUTION NO. 187

*Establishing a joint subcommittee to study the regulatory responsibilities, policies, and activities of the State Corporation Commission.*

Agreed to by the House of Delegates, March 10, 2000

Agreed to by the Senate, March 10, 2000

WHEREAS, the 1902 Constitution of Virginia created the State Corporation Commission (the Commission), enumerating in detail its duties and procedures and vesting the Commission with legislative, judicial, and executive powers; and

WHEREAS, the Commission exercises legislative authority when it makes rules or sets rates, judicial authority when it acts as a court of record and holds formal hearings, and executive authority in its day-to-day administration; and

WHEREAS, despite the exercise of these powers, the Commission is not part of the legislative, judicial, and executive branches of government; however, it is a separate department of state government; and

WHEREAS, when it began its operations in 1903, the Commission had two primary functions, the regulation of rates and services of railroads and the issuance of corporate charters with a budget of \$24,000 and five employees; and

WHEREAS, since that time the Commission's jurisdiction has expanded significantly as a result of legislative amendments and constitutional amendments to include the regulation of energy, insurance, securities, corporate filings, communications, financial institutions, and railroads; and

WHEREAS, the Commission has a current staff of 560 and an annual operating budget of approximately \$51 million; and

WHEREAS, despite the growth of the Commission over the years and the ever-increasing impact its policies have on the economy and lives of the citizens of the Commonwealth, there is no external assessment routinely made showing the impact its actions have had or will have on the economy and the lives of citizens of the Commonwealth, or whether alternative approaches would allow the Commission to fulfill its Constitutional and legislative responsibilities; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the regulatory responsibilities, policies, and activities of the State Corporation Commission. The joint subcommittee shall also study the impact of such policies and activities on the lives of the citizens of the Commonwealth.

The joint subcommittee shall consist of 16 members, which shall include 10 legislative members, 4 nonlegislative citizen members, and 2 ex officio members as follows: six members of the House of Delegates to be appointed by the Speaker of the House, in accordance with the principles of Rule 16 of the Rules of the House of Delegates; four members of the Senate to be appointed by the Senate Committee on Privileges and Elections; four citizens to be appointed by the Governor; and the Attorney General or his designee and the Secretary of Commerce and Trade or his designee to serve ex officio.

The direct costs of this study shall not exceed \$14,500.

The Division of Legislative Services shall provide staff support for the study. The State Corporation Commission shall provide technical assistance to the joint subcommittee, upon request. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall submit an interim report to the Governor and the 2001 Session of the General Assembly. The joint subcommittee shall complete its work in time to submit its written findings and recommendations to the Governor and the 2002 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

## EXPANSION OF SCC REGULATORY RESPONSIBILITY (1902 through 1971)

Year	Additional Regulatory Responsibility
1906	Regulation of insurance.
1906	Investigate cases of suspected arson.
1910	Valuation of the property of public utilities for local taxation, and assessment of state taxes on them.
1910	Regulation of banking.
1914	Fixing the rates of public utilities, and regulating their services.
1915	Taxation of the rolling stock of car line companies.
1918	Administration of the Blue Sky Law.
1923	Regulation of transportation by motor vehicle.
1924	Fixing rates of pilotage.
1928	Regulation of aeronautics.
1928	Licensing of dams.
1930	Transferring to the Commission from the office of the Secretary of the Commonwealth the recording of corporate charters.
1932	Collection of the gross receipts tax on common carriers by motor vehicle.
1934	Regulation of the issuance of securities by public utilities.
1934	Regulation of contracts between public utilities and affiliates.
1938	Transferring from the Department of Highways to the Commission functions relating to the construction and maintenance of airports.
1940	Assessment and collection of the motor fuel road tax.
1940	Supervision of Blue Cross and Blue Shield contracts.
1946	Fixing the maximum charges of small loan companies.
1948	Registration of trade-marks.
1948	Adoption and enforcement of regulations for the prevention of fire hazards in public buildings. Appointment of Chief Fire Marshal for the state.

1948	Regulation of household goods carriers.
1950	Adoption of safety regulations for liquefied petroleum gas.
1950	Issuance of certificates of public convenience and necessity to public utilities.
1952	Regulation of petroleum tank truck carriers.
1954	Transferring from the Division of Motor Vehicles the issuance of identification tags for commercial vehicles.
1956	Issuance of certificates of convenience and advantage to small loan companies.
1956	Transferring from the Secretary of the Commonwealth to the Clerk of the Commission all functions relating to service of process on corporations.
1956	Collection of surtax on motor fuel used in the state by heavy vehicles.
1956	Regulation of transportation of explosives.
1956	Regulation of sight-seeing carriers.
1956	Licensing of automobile clubs.
1958	Administration of uninsured motorists' funds.
1958	Registration of service marks.
1958	Registration of laundry marks.
1960	Regulations for installation of boilers.
1964	Regulation of insurance premium finance companies.
1964	Regulation of the leasing of motor vehicles.
1964	Central filing office, Uniform Commercial Code.
1964	Publish motor vehicle reciprocity agreements and decide whether a motor vehicle carrier is entitled to reciprocity.
1964	Register Interstate Commerce Commission authority of motor carriers.
1964	Assessment for local taxation of petroleum pipe line companies.
1966	Regulation of parachute jumping.
1968	Administration of Take-Over-Bid Disclosure Act.
1968	Administration of Consumer Credit Code.
1968	Regulation of sight-seeing and charter party boats.

<b>1968</b>	<b>Regulation of Basic Property Insurance Inspection and Placement Plan.</b>
<b>1970</b>	<b>Regulation of Radio Common Carriers.</b>
<b>1970</b>	<b>Regulation of Virginia Insurance Guaranty Association.</b>
<b>1970</b>	<b>Administration of Virginia Industrialized Building Unit and Mobile Home Safety Law.</b>
<b>1971</b>	<b>Mediate controversies between public service companies and their employees and patrons.</b>

**JOINT SUBCOMMITTEE STUDYING THE REGULATORY  
RESPONSIBILITIES, POLICIES AND ACTIVITIES OF THE STATE  
CORPORATION COMMISSION  
(SJR 173/HJR 187)  
ISSUES FOR CONSIDERATION**

**I. General Considerations**

**A. Appropriate Regulation of New and Future Industries**

1. Is the overall direction of the SCC in terms of its policy and rule making authority well suited to the new market dynamics of the business activities it regulates?
2. Is the SCC's current direction and approach towards the new economic conditions affecting the business activities it regulates appropriate? If not, what new direction and approaches are required?
3. How can the SCC be changed to ensure that in the future government will continue to achieve the proper balance between public protection and encouraging and rewarding entrepreneurial initiative, competitive innovation and economic development?

**B. Developing Regulatory Policy**

1. What is the appropriate role of the SCC in the development of regulatory policy for the Commonwealth?
2. How effectively has the SCC participated in the development of regulatory policy for the Commonwealth?

**C. Compliance with General Assembly Policy and Intent**

1. Is the SCC, in exercising the authority delegated to it by the General Assembly, achieving the results that the General Assembly intended?
2. Is the SCC staff effective and faithful in carrying out the legislative intent of the General Assembly in those cases where policy has been set by legislation?

**D. Separation of Functions**

1. Are the interests of the Commonwealth best served by having policy determinations and rule making authority for the various business activities regulated by the SCC housed in one agency?

2. Should policy making decisions and rule making be conducted by other state agencies or the General Assembly?
3. In light of technological advances and more universal access to information, does there remain a need to have a single regulatory agency in order to achieve the goals of regulatory consistency, expertise and specific institutional knowledge, and to prevent undue influence on the regulatory process?
4. Should the same SCC staff lobby and then regulate? Does this relationship represent a conflict?
5. Should the adjudicatory and management roles of the SCC be separated?

#### **E. Relationship Among SCC, General Assembly, and Executive Branch**

1. Should more collaboration be established among the SCC, the Executive branch and the General Assembly to promote common goals and create more job opportunities while protecting consumers?

#### **F. Funding and Financial Oversight**

1. What is the proper level of funding for the SCC in light of its responsibilities in the changing regulatory environment?
2. What are the financial operations of the SCC and how does the General Assembly provide oversight over those operations?

#### **G. Miscellaneous**

1. Should the process for selecting judges be changed?
2. Should the SCC be authorized to waive its immunity from suit in federal court in order to permit it to address issues brought for its consideration pursuant to the federal Telecommunications Act of 1996? (Federal courts have concluded that state commissions like the SCC are deemed to have waived their immunity from suit in federal court if they arbitrate unsettled issues between new entry telephone companies and incumbent telephone companies, because either party may then appeal to federal court. Accordingly, the SCC recently concluded that it could not longer arbitrate such issues because it was not empowered to waive such immunity.)

## **II. Internal Operational Considerations**

### **A. Mission and Structure**

1. Does the SCC's mission accurately describe its activities?
2. Does the SCC's organizational structure advance its ability to achieve the stated mission?



3. Could the SCC be restructured to better accomplish its mission?

**B. Operations**

1. Is there excessive fragmentation of the SCC staff such that responsibilities are unclear and/or duplicative, contributing to cumbersome and protracted regulatory proceedings?
2. How are the functions (executive/legislative/judicial) carried out by the SCC are different from those carried out by other executive or legislative branch agencies?
3. Do the SCC's Rules of Practice provide for adequate due process?
4. Do the Commissioners provide adequate oversight over the activities of its divisions including addressing complaints regarding the actions of SCC employees?
5. What are the different proceedings held or conducted by the SCC and how can they be streamlined?
6. Should the SCC's processes and structure be modified to better accommodate a collaborative model for rulemaking?

**JOINT SUBCOMMITTEE STUDYING  
THE STATE CORPORATION COMMISSION  
(SJR 173/HJR 187)  
PROPOSED WORK PLAN**

**First Meeting- June 29, 2000**

- ✓ Reviewed subcommittee charge
- ✓ Reviewed past studies of the powers, structure, and policies of the SCC
- ✓ Received background information on the SCC (constitutional and statutory framework, history, and areas of regulatory responsibility)
- ✓ Received overview of SCC Operations

**Second Meeting- August 24, 2000**

- ✓ Received presentation on preliminary report of SCC consultant
- ✓ Continued discussion regarding use of consultant by the joint subcommittee
- ✓ Continued identification and prioritization of issues related to the study

**Third Meeting- October 4, 2000**

- ➔ Determine options regarding hiring a consultant:
  - *Who*- restricted pool (i.e. public universities), unrestricted pool
  - *What*- issues to be studied by the consultant
  - *When*- time frame for i) hiring the consultant and ii) final completion of the study
  - *Funding*- i) estimated consultant fee and ii) source of funding
- ➔ Identify issues for consideration by the joint subcommittee (**See Revised Issues for Consideration**)
- ➔ Approval of workplan

**Fourth Meeting- December, 2000**

- ➔ Receive presentation by consultant finalist
- ➔ Select consultant (subject to resolution of funding issue)
- ➔ Opportunity for public comment
- ➔ Review content of joint subcommittee's interim report to the Governor and General Assembly

#### **Fifth Meeting- April, 2001**

- Receive presentation by consultant on work progress
- Assess and refine goals and objectives relative to the work of the consultant and the joint subcommittee
- Establish remaining workplan

#### **Meetings- May, June and July, 2001**

Meetings as needed may be scheduled during this period as the study evolves and the workplan is refined

#### **Meeting- August, 2001**

- Receive final report and recommendations from consultant
- Opportunity for public comment (Note: final report of consultant will be made available prior to the meeting)
- Determine action on consultant recommendations

#### **Meetings- September, October and November, 2001**

Meetings as needed may be scheduled during this period to allow the joint subcommittee to develop its final recommendations and receive additional information and public comment

#### **Meeting- November/December, 2001**

- Opportunity for public comment
- Approve final report and recommendations of the joint subcommittee to the Governor and the General Assembly

