

REPORT AND RECOMMENDATIONS  
OF THE SENATE CONSUMER AFFAIRS COMMITTEE  
TO REFORM THE PENNSYLVANIA PUBLIC  
UTILITY COMMISSION

*Comment  
Burtus K. of August  
15-22*

Senate of Pennsylvania  
Harrisburg, Pennsylvania  
September 1975

"THE DOGMAS OF THE QUIET PAST ARE INADEQUATE TO THE  
STORMY PRESENT. THE OCCASION IS PILED HIGH WITH  
DIFFICULTY AND WE MUST RISE WITH THE OCCASION. AS  
OUR CASE IS NEW, SO WE MUST THINK ANEW AND ACT ANEW.  
WE MUST DISENTHRAL OURSELVES,..."

SECOND ANNUAL MESSAGE, DECEMBER 1, 1862

PRESIDENT ABRAHAM LINCOLN

Committee on Consumer Affairs

Senate of Pennsylvania

October, 1975

REPORT AND RECOMMENDATIONS  
TO REFORM THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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Conducted pursuant to Resolution

Serial No. 33, adopted April 22, 1975

Franklin L. Kury  
Chairman

Wayne S. Ewing

John J. Sweeney  
Vice Chairman

Clarence D. Bell

Robert J. Mellow

Thomas W. Andrews

Robert L. Myers III

Robert C. Jubelirer

Paul McKinney

Edward M. Early

## Letter of Transmittal

To the Members of The Senate:

The Senate Committee on Consumer Affairs submits to you this report and its accompanying recommendations concluding an eight-month review into the function and structure of the Pennsylvania Public Utility Commission.

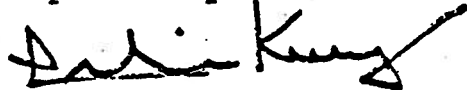
It was patently evident when the General Assembly convened for business in January of 1975 that one priority issue to be addressed was the Public Utility Commission and the manner in which it fulfilled its responsibilities for the citizens of this Commonwealth.

Seldom if ever in the 38-year-old history of the PUC had the clamor of public dissatisfaction and outrage with the agency reached the level and pitch which existed against it when this session came into being. It was in this light that this inquiry was conducted pursuant to Senate Serial Resolution No. 33 adopted April 22, 1975.

With this report and recommendation for substantive change, this Committee believes it offers the citizens of this state a worthy beginning in the direction of a more competent, more professional, more judicial utility regulatory process. We emphasize that we regard this as only a beginning. The journey toward ultimate achievement of that goal will be a long one, indeed, to travel. But even the longest of journeys begins with a first step. This is what we offer in this report.

In conclusion, this Committee expresses its gratitude and appreciation to the staff for its efforts and assistance in the preparation of this document, particularly, for the Majority Committee, Counsel James H. Cawley and Vincent P. Carocci, and, for the Minority, Counsel Fred R. Taylor, Susan Shanaman and Robert Williams.

Respectfully submitted,



Franklin L. Kury, Chairman

October, 1975

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## I--INTRODUCTION

From New England to California, a national debate of intense and immense proportions has erupted. The subject of that debate: The spiraling cost and sharply dwindling supply of energy in these United States.

At the center of this national maelstrom is the much-maligned, much buffeted state regulatory agency.

On the one hand, the state regulator is impertuned incessantly by the utility industry for favorable and faster consideration of bigger and bigger rate increases to meet soaring consumer and industrial demands for increased energy usage.

On the other, the regulatory agency is embattled at every turn by angry consumer groups and environmentalists for relief through a drastic redesign of utility rate structure and through energy conservation.

It falls to the state regulatory commission to assess these sharply conflicting positions and attempt to bring them into delicate balance.

It might well prove to be a "no-win" position. In the words of Richard Cudahy, chairman of the Wisconsin Public Service Commission:

"WE SEEM TO BE REACHING THE POINT AT WHICH WHATEVER WE (STATE REGULATORS) DO IS MORE AND MORE OBNOXIOUS TO MORE AND MORE PEOPLE ON MORE AND MORE FREQUENT OCCASIONS.

"THERE IS NO DOUBT IN MY MIND THAT MOST CONSUMERS FEEL THAT RATE INCREASES, OR PRICE INCREASES OF ANY KIND ARE A 'RIP-OFF'...

"THE WHOLE CONCEPT OF RATE OF RETURN... BEING REQUIRED TO ATTRACT CAPITAL--12% OF EQUITY--IS QUITE BEYOND THE COMPREHENSION OF PEOPLE WHO ARE RECEIVING 5 3/4 PERCENT IN A SAVINGS AND LOAN OR WHATEVER SAVINGS THEY CAN SALVAGE TEMPORARILY FROM INFLATION.

"THE GAP IN VIEWPOINT BETWEEN REGULATED INDUSTRY AND ITS CUSTOMERS IS SO WIDE TODAY THAT A VERY DANGEROUS SITUATION IS BEING CREATED."

Chairman Cudahy's assessment of the situation nationally could, in its particulars, apply to the situation in Pennsylvania today.

That fact is that public confidence in the utility regulatory process of this Commonwealth has waned so badly as to be almost non-existent.

And that poses a very dangerous situation.

It was to cope with this condition and propose appropriate remedies that an inquiry into the structure, procedures and functions of the Pennsylvania Public Utility Commission was undertaken by the Senate Committee on Consumer Affairs.

We noted when the review commenced that, to our knowledge, no legislative inquiry of any substantial magnitude had ever been undertaken into the PUC since the Commission was created in 1937.

We likened the Public Utility Commission to a ship which had been out to sea for almost 40 years without major overhaul. We proposed to bring that ship into dry dock for a thorough inspection. Where repairs might be needed we proposed to initiate them.

We held out no false hope to anyone we would develop the sole and ultimate response to the complex problems of utility regulation in this state.

We hold out no such hope with this document.

Rather, we pledged to focus our attention on the question of whether the regulatory structure, procedures, and methods of the Public Utility Commission of these past 40 years were equal and adequate to meet the demands of rapidly changing conditions today.

We have conducted that review.

Now that we have we concur in Lincoln's admonition that "the dogmas of the quiet past" are inadequate to "the stormy present."

Like Lincoln, we believe the basic challenge confronting the Public Utility Commission is a challenge to "rise with the occasion..." to think and to act anew.

This report and its accompanying legislative proposals are intended to enable the Commission to meet that challenge.

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Public hearings were conducted by this Committee and testimony was heard on these dates from these witnesses:

April 24, 1974, Harrisburg, Pennsylvania

Commissioner Louis J. Carter

Commissioner James McGirr Kelly

Commissioner Robert Bloom

May 1, 1975, Harrisburg, Pennsylvania

Peter Brown, counsel to the Public Utility Commission

Bernard T. Helhowski, director, Bureau of Rates and Research

Will Ketner, secretary

Jerry Rich, director, Bureau of Investigations Service and Enforcement

Merle A. Forst, director, Bureau of Transportation

May 13, 1975, Harrisburg, Pennsylvania

George I. Bloom, former chairman, Public Utility Commission

David Dunlap, Esq., Harrisburg

Philip Kalodner, chairman-designate, Public Utility Commission



May 14, 1975, Harrisburg, Pennsylvania \*\*\*\*\*

Frank Jones, Citizens Committee for Ethical  
Insurance.

Walter M. Creitz, President, Pennsylvania Electric  
Association

President, Metropolitan Edison  
Electric Company

\*\*\*\*\*Former PUC Commissioner Herbert Denenberg was invited by correspondence, April 16, April 30, to testify before this Committee at its May 14, 1975 hearings. He declined. By subsequent correspondence, May 20, Mr. Denenberg was offered the opportunity to submit written testimony for the consideration of the Committee. He chose not to do so.

June 12, 1975, Harrisburg, Pennsylvania

Stuart E. McMurray, President, People's Natural  
Gas Co.  
Member, Board of Directors,  
Pennsylvania Gas Ass'n.

Joseph C. Zwerdling, Chief Administrative Law Judge  
Federal Power Commission  
Washington, D.C.

Albert Herbert, Executive Vice President  
Pennsylvania Independent Telephone  
Ass'n.

Mary Ann Klein, SCCA consumer organization, York, PA

June 19, 1975, Harrisburg, Pennsylvania :

Jack K. Busby, President, Pennsylvania Power &  
Light Company

Jacob G. Kassab, Secretary of Transportation

Jean Ann Fox, Director, Allegheny County Bureau of  
Consumer Affairs

Paul Garver, People's Power Project, New American  
Movement, Pittsburgh



Walter Cavagnaro, chief engineer, Division  
of Utilities

Donald Houck, assistant chief engineer,  
Division of Utilities

## II--SUMMARY OF RECOMMENDATIONS

### The PUC--The Short Run Response

#### A--The Public Utility Commissioners

- 1--Fulltime commissioner with statute prohibiting against engaging in any other form of income-producing occupation.  
(See Page 4 ).\*
- 2--Increase salary of commissioner, effective July 1, 1976, to \$40,000 annually and \$42,500 for chairman. (See Page 5 )
- 3--Enact a statutory code of conduct for commissioners similar to the judicial code of conduct adopted by State Supreme Court (See Page 5 ).
- 4--Require commissioners to disclose financial holdings in any utility or affiliates under PUC jurisdiction and divest themselves of such holdings within 90 days (See Page 7 ).
- 5--Reduce term of commissioners from 10 years to 6 years (See Page 8 ).\*\*
- 6--Prohibit commissioners or selected ranking staff of PUC from accepting employment with any utility or affiliate subject to PUC jurisdiction for period of one-year after service with Commission terminates (See Page 9)

\*--See Minority Comment, Page 92

\*\*--See Minority Comment, Page 92

7--Delete from Civil Service Regulations the requirement that prior utility experience required for employment on PUC staff (See Page 10)

8--Empower Commission to set salaries of its employes (See Page 10).

B--The PUC Budget

9--Increase budget assessment authorization of Commission from two-tenths of one percent to three-tenths of one percent of gross utility revenues (See Page 13)

10--Appropriate \$50,000 to PUC to contract for establishment of permanent accredited course in utility regulation and economics within state's system of higher education (See Page 13)

11--Authorize Commission to set aside 1.5 percent of its annual budget for employment of ad hoc consultants (See Page 14)

12--Require commission to annually report on consultants employed as part of its budget submission (See Page 15)

13--Revise budget approval process of PUC (See Page 15)

14--Require budget to be submitted by Feb. 1 annually and approved within 30 days (See Page 16)

## C--Commission Procedures

- 15--Require single-stage rather than multi-stage filings with proviso for interim rate relief (See Page 18).
- 16--Require that public hearings be conducted before any rate approval, full or interim, be granted by PUC (See Page 20)
- 17--Require appropriate commission staff to testify at hearings as to findings and conclusions. (See Page 21)
- 18--Permit cross-examination of staff witnesses at rate hearings. Authorize staff to participate in cross-examinations of other witnesses at rate case (See Page 21)
- 19--Require an affirmative vote of majority of commissioners serving for any order, suspension or other action of Commission to take effect (See Page 23)
- 20--Prohibit ex-parte communications between commissioners and staff of PUC with utilities involved in rate cases (See Page 24)
- 21--Direct commission to study its current schedule of filing fees to submit plan for approval of General Assembly (See Page 24)
- 22--Direct PUC to adopt uniform billing practices (See Page 25)

D--Bureau Organization

- 23--Create office of independent Administrative Law Judge to replace ineffectual hearing examiner system. (See Page 29)
- 24--Create within PUC a Bureau of Conservation, Economics and Energy Planning (CEEP), as principle research and planning arm of Commission. (See Page 33)
- 25--Require utilities to file annually energy conservation reports. (See Page 34)
- 26--Require CEEP to review all proposals for utility plant expansion. (See Page 35)
- 27--Require CEEP to submit for consideration of Commission its findings on what impact of plant expansion has on rate filings as they are submitted. (See Page 35)
- 28--Create executive directorship as chief administrative arm of Commission. (See Page 36)
- 29--Create new Bureau of Consumer Services within Commission structure. (See Page 38)
- 30--Empower Commission with authority to select its own legal counsel. (See Page 40)
- 31--Delineate staff functions of Law Bureau in three areas. (See Page 40)

D--Bureau Organization (Cont.)

32--Limit Commission jurisdiction in railroad-highway crossing projects to immediate intersection of railroad and highway right-of-way.

(See Page 46 )\*\*\*

33--Restrict Commission power to appropriate except for railroad operating rights-of-way.

(See Page 46) \*\*\*

34--Recommend PUC be given power to allocate costs against Department of Transportation only when a state highway involved in railroad-highway crossing. (See Page 49)\*\*\*

35--Better define Commission authority to allocate costs of railroad-highway crossing project between Commonwealth, municipalities and utilities where relocation of utility facilities involved. (See Page 49) \*\*\*

36--Require Commission to act when request for subpoena involved in crossing case. (See Page 49)\*\*\*

37--Provide that railroads be charged with responsibility for maintenance of abandoned crossings until final cost allocation agreement reached.

(See Page 50) \*\*\*

38--Empower Commission with authority to suspend crossings in addition to abolition. (See Page 50)

\*\*\*--See Minority Comment, Page 93



39--Establish railroad crossing protection fund.

(See Page 51)

40--Direct Commission to study various alternatives to its regulation of taxicab service. (See Page 55).

#### Consumer Advocate

41--Establish office of Consumer Advocate within the Department of Justice and limit authority for a period of three years to matters before the PUC. (See Page 56 ). \*\*\*\*

#### Municipal Regulation

42--Empower the PUC to exercise regulatory jurisdiction over municipal utilities. (See Page 59) \*\*\*\*\*

#### The PUC--The Long Run Response

##### A--Fair Value vs. Original Cost

43--Pennsylvania adopt an original cost method for determination of rate base. (See Page 62) \*\*\*\*\*

##### B--Construction Work in Progress

44--Permit 10-20 percent of construction work in progress to be included in net investment rate base. (See Page 70) \*\*\*\*\*

##### C--Future Test Years

45--Provide for use of forward-looking test periods in determining new rates. (See Page 73)

D--Fuel Adjustment Clauses and Affiliated Interests

47--Tighten language governing Affiliated Interests  
within PUC Statute. (See Page 75)

E--Natural Gas Allocation

48--Empower Commission to exercise exclusive  
authority over intrastate natural gas allo-  
cation. (See Page 79)

F--Alternative Rate Structures

49--Direct Commission to undertake study of  
alternative rate structures. (See Page 81)

\*\*\*\*--See Minority Comment, Page 93

\*\*\*\*\*--See Minority Comment, Page 94

\*\*\*\*\*--See Minority Comment, Page 94

\*\*\*\*\*--See Minority Comment, Page 95

### III--REFORM OF THE PUBLIC UTILITY COMMISSION STRUCTURE: THE SHORT-RUN RESPONSE

In 1937, the state administration of former Gov. George Earle heralded the dawning in Pennsylvania of a new era of progressive regulation of investor-owned public utilities. Gov. Earle, with perhaps excusable and understandable political rhetoric, declared:

"A NEW CHAPTER WAS WRITTEN INTO THE HISTORY OF PROGRESSIVE LEGISLATION ON JUNE 1, 1937, WHEN THE STATE'S NEW PUBLIC UTILITY LAW...BECAME EFFECTIVE, REPLACING THE LONG-OUTMODED, CUMBERSOME PIECE OF ONE-SIDED LEGISLATION THAT HAD BEEN THE LAW SINCE 1914. THE NEW LAW IS THE MOST ADVANCED BIT OF UTILITY REGULATION IN THE COUNTRY. IT WAS MADE TO PROTECT THE RATE PAYING PUBLIC. IT GIVES THE PEOPLE BETTER PROTECTION AND MORE RIGHTS WITHOUT BEING UNFAIR TO THE UTILITIES. THE ANCIENT PUBLIC SERVICE COMPANY LAW, NOW REPEALED, PROTECTED THE UTILITIES BUT DENIED THE RATE PAYER ANY PRACTICAL, WORKABLE METHOD TO RELIEVE HIMSELF FROM UNJUST AND DISCRIMINATORY RATES."

Now history has a way of repeating itself!

The clamor of public outrage once directed against the extinct Pennsylvania Public Service Commission has erupted once again. This time, it is directed against the very commission which was so loudly proclaimed as a worthy successor to the P. S. C. This time it is the PUC which is being accused of being the handmaiden of the utility industry.

This Committee has refrained from such a blanket indictment of the PUC. But we are convinced that the road back to restored public credibility in the Commission will be a long road, a difficult road to travel.

The Senate Committee on Consumer Affairs is committed with this report and its accompanying legislation to begin that journey now.

This report, it should be emphasized, is viewed by this committee as only that--a beginning. But it is, we believe, a worthy beginning, a necessary beginning.

In submitting this report and legislation, we stress that no attempt is made here to attach blame for past or current deficiencies of the Public Utility Commission.

The focus of this report is to the future. We have concerned ourselves little with what may have gone wrong yesterday.

Rather, we have concerned ourselves greatly with what we in Pennsylvania should be doing with utility regulation today and tomorrow.

Testimony was gathered by this committee from authoritative witnesses at seven days of public hearings. In addition, field inspections were conducted by members and staff of this committee to the states of Wisconsin and California--generally regarded as progressive regulatory states by those knowledgeable in such matters.

All of this, plus independent research, have lead us to the conclusion that the structure, the functions and the procedures of the Public Utility Commission are, indeed, in need of serious and substantive overhaul.

We do not, for a moment, suggest that what we propose as the short-term response shall reverse the spiraling cost of utility service throughout this Commonwealth. Rather, we have as our objective a revitalization of the professionalism, efficiency and effectiveness of this commission and its procedures.

Our aim is to restore public confidence in the PUC by fortifying its processes, opening them up to the public and making comprehensible to the public at large what has heretofore been less so.

The Public Utility Commission is charged by law with a dual regulatory responsibility: To guarantee residents of this Commonwealth with adequate utility service at rates which are reasonable to the rate-payer who benefits from it and fair to the utility

which provides it. It is to permit the PUC to adequately meet its dual obligation, judiciously and equitably, that these recommendations are put forth.

First, the short-run response:

## A--The Public Utility Commissioner

This Committee is convinced that the effectiveness of the Public Utility Commission will be only as good and as real as the direct daily leadership provided it by the policymakers of the agency, namely: the Public Utility Commissioners themselves. Only as these individuals apply themselves, individually and collectively, to the difficult if not impossible task of equitable and judicial regulation of public utilities in Pennsylvania will the Commission, in fact, succeed in its mission. Such personal commitment will not come without an increase in administrative and professional costs. But come it must if the Commission is to function with a renewed sense of credibility, vitality and professionalism.

To start, this Committee believes the time is here to put aside a needless and irrelevant debate over the question of whether serving as a member of the Public Utility Commission is a fulltime responsibility. Whether it now is or is not fulltime is immaterial. It is our position that the office of Public Utility Commissioner must be the fulltime and sole occupation of the person who occupies that office.

1. WE PROPOSE TO ENACT BY STATUTE A PROHIBITION AGAINST A COMMISSIONER FROM ENGAGING IN ANY OTHER FORM OF INCOME-PRODUCING OCCUPATION DURING HIS/HER TENURE OF SERVICE ON THE PUC, EFFECTIVE, JULY 1, 1976.

We are convinced that absentee leadership will no longer suffice. The current demands on the commission are now fulltime. They are expanding. Divided professional attentions cannot keep pace. If the commissioners are to provide the leadership required, it will require their constant personal and physical presence and direction at the offices of the Commission.

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If the public utility commissioners are to be expected to devote their full talents and energies solely to their office, this Committee believes they must be compensated and staffed at a level commensurate with their heavy and serious responsibility. Therefore:

2. IT IS THE RECOMMENDATION OF THIS COMMITTEE THAT THE SALARY OF THE PUBLIC UTILITY COMMISSIONER BE ESTABLISHED, EFFECTIVE JULY 1, 1976, STATUTORILY AT \$40,000 ANNUALLY FOR EACH MEMBER AND \$42,500 FOR THE CHAIRMAN.

No less than 24 of the 50 states in the nation now pay their utility regulators more than the \$25,000 salary of a Pennsylvania commissioner. Given the ever-increasing magnitude and complexity of utility regulation throughout this nation, this Committee concludes that a salary of \$25,000 simply is insufficient for a major industrial state to pay and expect, in return, that an individual solely devote his full abilities to the regulatory business of the commission. We concur in the testimony of Commissioner James McGirr Kelly, who said:

"...AS A LAWYER, I KNOW THAT A MILLION-DOLLAR CASE IS A BIG CASE TO A JUDGE. BUT WE (THE PUC) SIT AND LISTEN TO \$100 MILLION CASES. NOT AFFECTING FOUR OR FIVE OR SIX PEOPLE, BUT AT TIMES AFFECTING EVERY CITIZEN IN PENNSYLVANIA. TO THAT EXTENT, I THINK THERE SHOULD BE AN INCREASE OF AT LEAST A MINIMUM TO WHAT A MAN ON (THE COURT OF) COMMON PLEAS GETS."

We believe the responsibility of a Public Utility Commissioner is at least commensurate with that of a Common Pleas judge. It surely is at least the equal of members of the executive cabinet. We believe the commissioner should be compensated accordingly.

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In proposing higher compensation for the commissioners, this Committee expects certain commitments from them in return. In addition to the prohibition against any other form of income-producing occupation, we propose other things as well.

3. THIS COMMITTEE PROPOSES TO REQUIRE THAT CONDUCT OF THE PUBLIC UTILITY COMMISSIONER BE GOVERNED BY A CODE OF ETHICS SIMILAR TO THE JUDICIAL CODE OF ETHICS ESTABLISHED BY THE SUPREME COURT OF PENNSYLVANIA IN NOVEMBER, 1973, FOR MEMBERS OF THE PENNSYLVANIA JUDICIARY.

It is our view that a commissioner is a quasi-judicial officer. Accordingly, his conduct should be judiciously governed by a code of conduct representative of the office. Our code will provide that a commissioner must:

--Avoid impropriety and the appearance of impropriety in all his activities.

--Perform his duties impartially and diligently.

--Avoid all ex-parte communications concerning a case pending before the PUC.

--Abstain from public comment about a matter pending and should require similar abstention on the part of commission personnel subject to his direction and control.

--Require staff and personnel subject to his direction to observe the standards of fidelity and diligence that apply to him.

--Initiate appropriate disciplinary measures against commission personnel for unprofessional conduct.

--Disqualify himself from proceedings in which his impartiality might be reasonably questioned.

--Inform himself about his personal and fiduciary interest and make a reasonable effort to inform himself about the personal financial interests of his spouse and children.

--Regulate his extra-curricular activities to minimize the risk of conflict with his official duties. He may speak, write or lecture concerning the regulatory process in Pennsylvania and may be reimbursed for actual expenses incurred therein.

--Refrain from solicitation of funds for any political, educational, religious, charitable, fraternal or civic purposes, although he may be listed as an officer, director or trustee of such organizations.

--Refrain from financial or business dealings which would tend to reflect adversely on his



impartiality, although he may hold investments which do not come within the purview of his regulatory responsibilities, such as a family business.

4. WE PROPOSE TO REQUIRE BY STATUTE THAT MEMBERS OF THE PUBLIC UTILITY COMMISSION FILE UPON ASSUMING OFFICE A DISCLOSURE OF FINANCIAL HOLDINGS IN A PUBLIC UTILITY OR AFFILIATES AND DIVEST THEMSELVES OF SUCH HOLDINGS WITHIN 90 DAYS, EFFECTIVE JULY 1, 1976.

In an era of unparalleled public cynicism toward public officials throughout the land, the committee believes it imperative to require a form of financial disclosure and divestiture on the part of the Public Utility Commissioner. Specifically, each commissioner will be required to disclose holdings in any public utility or affiliate upon assuming office and divest himself of those interests through blind trusts or similar methods within 90 days after tenure begins. Incumbent commissioners will have three months to comply with disclosure and divestiture provisions after the effective date.

We will require that all disclosures mandated of a commissioner contain the identity of the holdings and interests of the commissioners and their families, but without any disclosure of net values.

All disclosure statements shall be part of the public record and filed with the Secretary of the Commonwealth, the Secretary of the Senate and the Chief Clerk of the House of Representatives.

It matters little whether we as a committee agree or disagree with popular public conceptions of inherent and unavoidable conflict between public officers and their public responsibilities. What matters is that we recognize that the public believes it to be so.

Nothing less than financial disclosure, it seems to us, will suffice to allay suspicions to that effect in regard to the Public Utility Commission and its members.

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This committee was presented with testimony from a number of parties suggesting a change in the

size of the Commission from five to seven or even nine members. In our final analysis, however, we declined to concur in that particular recommendation. We believe a five-member commission can function as effectively and as diligently as a seven-member Commission or nine-member Commission--or, for that matter, a three-member Commission as exists in other states such as Wisconsin.

It is the view of this committee that it is the individual commitment and dedication of the commissioners rather than their numbers which will determine how well they meet their public responsibilities. For this reason, we recommend no change in the size of the Commission.

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We do, however, propose that the term of the Public Utility Commissioner be changed. Specifically:

5. WE PROPOSE THAT THE TERM OF THE PUBLIC UTILITY COMMISSIONER BE REDUCED AS FUTURE VACANCIES OCCUR FROM A TEN-YEAR TO A SIX-YEAR TENURE.

This committee is unanimous in its opinion that a public utility commissioner, if that person is to be truly independent and impartial, must be free of any direct tenure relationship to the appointing power, in this case, the Governor, whoever that might be. For that reason alone, a four-year term would be folly.

There is a consideration beyond that, however. It revolves around the nature of the office. It is the extraordinary appointee, indeed, who could step into the Public Utility Commission and regard himself fully informed and authoritative in his responsibilities in less than one year. Once acclimated and knowledgeable in the responsibilities and functions of his office, he should be afforded a decent opportunity to put that expertise to use for an extended period of time. A four-year term, in our view, would not satisfy that objective.

We believe, however, that the six-year term will satisfy that aim.

Why our reservation about the 10-year term?

For a very fundamental reason. It is our view that if one general criticism can be reasonably made against the Public Utility Commission it is that it tends to conduct its business today in much the same fashion it did when it was created 38 years ago. We believe that the longevity of the 10-year term may have contributed to an apathy toward or unawareness of changing conditions in the field of utility regulation. It is a natural human tendency to do things the way they were learned to be done. Ten-year terms, we believe, may have subconsciously and understandably contributed to an atmosphere of lethargy within the Commission membership--a subconscious resistance to think and act anew.

Given the nature of the agency's responsibility, we believe it must place a premium on awareness and responsiveness to rapidly changing conditions in the energy field. We believe the six-year term would prove more conducive than the 10-year term to initiative and innovation. We believe the six-year term will prove to be in the public interest. More importantly, we believe it will prove to be in the agency's interest, as well.

\*\*\*\*\*

We believe the power to appoint members to the Public Utility Commission should continue to rest with the Governor of the Commonwealth. We believe the appointment should be made in conformity with the provision of the new Constitutional provision adopted by referendum in May, 1975. We believe the nominees of the Governor should be subject to the confirmation of the Senate of Pennsylvania as provided for by law.

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Current Public Utility Law prohibits the appointment of a commissioner or the employment of any employe "who occupies any official relationship to any public service company or public utility..." We propose to enlarge on that principle.

6. THIS COMMITTEE PROPOSES TO STATUTORILY PROHIBIT ANY COMMISSIONER OR RANKING STAFF OF THE COMMISSION FROM ACCEPTING EMPLOYMENT WITH ANY PUBLIC UTILITY OR AFFILIATE SUBJECT TO REGULATION OF THE PUC FOR A PERIOD OF ONE YEAR AFTER THEIR TENURE OF SERVICE.

If public confidence in the integrity of the PUC is at issue, as it most certainly is, we believe it sound public policy to enact such a restriction on the future employment of the commissioners and ranking commission staff, such as the corps of administrative law judges we propose to create, the executive director of the agency and its bureau heads. It hardly breeds public confidence to learn that a person charged with regulation of public utilities, or one who has participated at the highest staff levels in that regulatory process, has left the Commission for the employ of a company under PUC jurisdiction. To our knowledge, this has not been a serious problem in the past. Our proposal is constructed in the interest of guaranteeing that it will not become a serious problem in the future. We recognize the severity of the restriction we propose. But the choice to accept it rests where it rightly belongs--with the commissioner or employee under consideration.

7. THIS COMMITTEE PROPOSES TO DELETE FROM CIVIL SERVICE REGULATIONS A PROVISION WHICH REQUIRES PRIOR UTILITY EXPERIENCE BEFORE A PERSON MAY BE EMPLOYED ON THE STAFF OF THE PUC.

We believe such a prohibition arbitrarily excludes a host of capable young technicians and specialists from employment on the staff of the commission. We were told repeatedly that the PUC encounters great difficulty in recruiting qualified and trained personnel. We believe the requirement of current law contributes to rather than subtracts from that difficulty. We believe it should be eliminated. Given the provisions for educational in-service training we shall discuss in subsequent sections of this report, we believe the requirement for prior utility experience should be done away with.

8. WE PROPOSE TO AUTHORIZE BY LAW THAT THE COMMISSION BE EMPOWERED IN ACCORDANCE WITH ITS RULES AND REGULATIONS, AND IN CONJUNCTION WITH CIVIL SERVICE STANDARDS ESTABLISHED IN COOPERATION WITH THE CIVIL SERVICE COMMISSION, TO SET THE SALARIES OF ITS EMPLOYEES ON ITS OWN MOTION.

The Public Utility Commission was established as an independent, regulatory agency of the Commonwealth.

Yet, it must rely on the decisions of the State Executive Board for the salary schedules of its employes. That seems unnecessarily contradictory and restrictive to us. The Commission budget is secured through assessments against the utilities and public service companies it regulates. We believe it should be permitted to establish salary levels at its own discretion within the confines of that budget. The Commission knows better than anyone else its salary and personnel situation. It should be allowed to deal with them accordingly.

\*\*\*\*\*

Finally, it is the position of this committee that as we attempt to legislatively uplift the office of Public Utility Commissioner, the commissioners must be provided adequate personal staff to better meet their responsibilities. We believe the Commission would be well-advised to provide in its annual budget specific allocations for an administrative and technical assistant for each of the commissioners. Given the accelerating responsibilities commissioners are now confronted with, and are likely to be confronted with through the foreseeable future, we believe the commissioners require such staff support. The ultimate decision, though, should necessarily rest with the commissioners themselves. Our legislation will provide the authorization for such staff support as the Commission deems advisable.

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## B--The Budget

If there was one common thread to the testimony this committee heard from members and staff to the Public Utility Commission, it related to the Commission's limited budget capability. The Commission had two primary problems, we were told: Manpower and Money.

Former Commission Counsel Peter Brown testified that of the 21 attorneys employed in the Law Bureau of the agency, only eight--less than half--were working fulltime on rate case assignments. The other 13 were involved in other commission efforts.

The situation in the Bureau of Rates and Research was not much better, according to its director, Mr. Bernard Helhowski. Mr. Helhowski testified before this committee that while his caseload had tripled over the past seven years, his technical rate staff had remained at a fairly constant number of 60.

In addition, Mr. Helhowski testified that the average salary paid to staff in his bureau ranged between \$14,000 and \$15,000 annually. Moreover, in his words, the individuals at the highest pay levels were at the top of the salary ladder with nowhere to go. This strikes us as hardly an atmosphere likely to attract bright, capable, trained, eager young specialists to the employ of the Commission.

Pennsylvania's Public Utility Commission is functioning today at a budget level of \$8 million. With anticipated increased revenues because of accelerating rates, that budget figure is expected to grow approximately to \$9 million in fiscal 1975-1976. But compare that to the budget of New York at \$17.2 annually. Or, California at \$14 million. It is inconceivable to us that the Public Utility Commission of Pennsylvania, with substantially the same workload and critical problems, can operate at substantially less cost than two sister states of similar size and economic foundation.

For the fact is that if we were to reasonably expect the Pennsylvania PUC to increase the in-service professionalization of its staff; to successfully recruit competent technical personnel for vital staff positions; to develop a cadre of qualified and expert administrative law judges (of which we shall have much to say later); and to employ as case load dictates consultant expertise to assist the commission in the fulfillment of its mission...

If all of this is to happen, then the Commission must be afforded the budgetary flexibility to achieve those goals. The times demand increased professionalism at the Public Utility Commission. The Commission must be afforded the financial ability to attract these young professionals. It does not have that now. Therefore:

9. WE PROPOSE THAT THE BUDGET ASSESSMENT AUTHORIZATION OF THE PUBLIC UTILITY COMMISSION BE INCREASED FROM TWO-TENTHS OF ONE PERCENT OF GROSS REVENUES TO THREE-TENTHS OF ONE PERCENT.

The commission receives its budgetary funds through an assessment against each utility and public service company under its jurisdiction. We calculate that by increasing this assessment authority by one-tenth of one percent, the commission's budget for fiscal 1975-76 will increase from \$9 million to approximately \$15 million annually.

In return for this increased budget flexibility, this committee expects the Commission to embark immediately on a crash program to implement both educational and training curricula for its technical staff personnel.

10. WE PROPOSE TO APPROPRIATE \$50,000 TO THE PUC TO ENTER INTO CONTRACT WITH ACCREDITED INSTITUTIONS OF HIGHER LEARNING IN PENNSYLVANIA TO ESTABLISH FORMALLY AND PERMANENTLY A CURRICULUM IN UTILITY ECONOMICS AND UTILITY REGULATION.

We heard repeated testimony that one of the most imposing obstacles to recruitment is the lack of skilled personnel available in the marketplace. We readily acknowledge this condition. We suggest that something should be done, and promptly, to remedy it. That

something, as we see it, is a formal educational offering within the state's system of higher education to provide a potential recruiting ground for Commission service. We believe the opportunity for successful recruitment will greatly increase with the establishment of formal curricula in the economics of utilities and the intricacies of utility regulation. Given the wealth of academia available in this Commonwealth, we believe such curricula is readily achievable.

At the same time, we would urge the Commission to give priority attention to the in-service training and educational opportunities available to its current and future staff. California provides an impressive in-service training effort-- either at the Commission headquarters or through short course instruction at colleges and universities throughout the country. We expect that Pennsylvania will focus with more intensity on this effort now that additional funds will be made available to it. Such effort would increase the ability of staff to respond to changing circumstances and boost staff morale as well.

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One of the points which registered heavily with this committee during the testimony-taking phase of this inquiry was the virtually unlimited amount of consultant resources available to utilities in the preparation and pursuit of its rate filings. In one particular case, Philadelphia Electric Co., we learned that P. E. outspent the PUC by a 6-to-1 ratio; \$636,000 to \$106,000 in the preparation, submission, review, hearings and final order on its multi-million dollar rate application. It strikes us that in such instances, the PUC could find itself seriously undermanned in contesting massive cases with the utilities. In California, we were impressed to learn that the budget of its Public Utilities Commission for the first time provided a \$400,000 authorization for the employment of outside expertise in the review and analysis of major rate cases. We see and concur in the wisdom and rationale of that allocation. Therefore:

11. WE PROPOSE THAT THE PUC BE AUTHORIZED TO SET ASIDE 1.5 PERCENT OF ITS ANNUAL BUDGET FOR THE EMPLOYMENT OF CONSULTANT ASSISTANCE AS DEEMED NECESSARY BY THE COMMISSION.



12. WE FURTHER WILL REQUIRE THAT AS PART OF ITS ANNUAL BUDGET SUBMISSION TO THE GENERAL ASSEMBLY AND THE GOVERNOR'S OFFICE, THE COMMISSION PROVIDE AN ITEMIZED LIST OF CONSULTANTS EMPLOYED, CONTRACT TERMS, WORK ACCOMPLISHED AND FEES PAID DURING THE PRIOR FISCAL YEAR.

Again, on the basis of the Philadelphia Electric comparison, it is evident, as a general rule, that when the major utilities require consultant assistance, they simply go out and get it. Such a luxury is not permitted in the Commission. We believe it should be. We can foresee where in very specific target areas such as rate design, rate base, energy conservation or economics, outside consultant assistance would be invaluable to the Commission and its staff. We view this as a valuable supplement to the capabilities of the commission staff. We certainly do not intend it to be a substitute.

With regard to the consultant report to the General Assembly, this committee regards that report as a public document subject to public review. It would also provide the respective Appropriations Committees of the General Assembly with the foundation for a review of consultant practices with the Commission, should the Committees believe further detailed inquiry was necessary.

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This Committee also believes it advisable to revise the manner in which the budget of the Commission is finally approved. Under current practice, the budget request is submitted to three parties of State Government: The Governor and the respective chairmen of the Senate and House Appropriations Committees. Each of those parties then determines the level of commission spending for the ensuing fiscal year. The lowest of the three levels takes effect. We believe such a system lends itself to the potential for arbitrary decision-making by any one of the three parties where factors other than need might well come in to play. Therefore:

13. WE PROPOSE THAT EXISTING LAW BE AMENDED TO PROVIDE THAT THE FINAL BUDGET APPROVAL OF PUBLIC UTILITY COMMISSION BUDGET FUNDS REST JOINTLY WITH

THE APPROPRIATIONS COMMITTEES OF THE TWO LEGISLATIVE CHAMBERS. WE PROPOSE, HOWEVER, THAT THE COMMISSION BE REQUIRED TO SUBMIT ITS BUDGET REQUEST ANNUALLY TO THE GOVERNOR FOR HIS REVIEW AND COMMENT, WHICH HE SHALL FORWARD TO THE COMMITTEES FOR THEIR COUNSEL AND GUIDANCE.

We see no need for action by the entire membership of both legislative chambers. Rather we believe there is merit in the present system of vesting approval authority to the respective appropriations panels.

14. THE COMMISSION SHALL SUBMIT ITS ANNUAL BUDGET PROPOSAL TO THE APPROPRIATIONS COMMITTEES OF THE SENATE AND HOUSE, AND THE GOVERNOR FOR HIS COMMENT, NO LATER THAN FEB. 1 EACH YEAR. SHOULD THE COMMITTEES FAIL TO ADOPT A BUDGET FOR THE COMMISSION WITHIN 30 DAYS FOLLOWING FEB. 1, THE REQUEST OF THE COMMISSION SHALL TAKE EFFECT AS SUBMITTED.

Where the Appropriations Committees might differ in their recommendations regarding the commission budget, those differences shall be submitted to a six-member conference committee of the two committees for resolution. It would rest with the full committees to ratify the proposal arrived at in mini-conference.

## C-Commission Procedures

Of central concern to this Committee was the question: Exactly what is the role of the Pennsylvania Public Utility Commission? In our view, nowhere was it better expressed or more precisely defined than in a document, "Pennsylvania Public Utility Commission," submitted as evidence to this committee by former Commission Chairman George I. Bloom. That document stated in part:

"THE PENNSYLVANIA PUBLIC UTILITY COMMISSION IS A QUASI-JUDICIAL AGENCY OF THE LEGISLATURE WITH THE PRIMARY DUTY AND CHIEF OBJECTIVE TO ESTABLISH AND MAINTAIN REASONABLE RATES AND ADEQUATE SERVICE BY PUBLIC UTILITIES OPERATING WITHIN THE COMMONWEALTH..."

Thus, the role of the Commission, in a layman's definition, is essentially judicial in character. That, by its very definition, rules out an advocacy role for the agency.

This Committee believes it important to emphasize that point.

We believe it would be unwise and unsound to expect the Commission to perform a consumer advocacy function. It cannot!

The PUC must be an impartial judge. While it has an obvious responsibility to protect the public interest, it must, by definition and by law, leave advocacy to others--principally, representatives of the utilities and representatives of the ratepayers.

There is no question in our mind that the Public Utility Commission has attempted, and is attempting now, to function in a quasi-judicial manner. But after an extensive review of the procedures employed in that effort, we come away convinced that the processes of the PUC are in need of dramatic alteration if the Commission is to be truly quasi-judicial in nature. We believe the procedures employed at the PUC are inadequate for the times and contribute to the common notion that the PUC is ill-equipped to

cope with the resources and manpower of the utility industry. The revisions we set forth are offered to fortify the independence and objectivity of the regulatory process. At the same time, we anticipate they will contribute to a greater public understanding of the process. Our recommendations touch upon these specific areas:

15. THIS COMMITTEE PROPOSES TO REQUIRE AS A MATTER OF LAW THAT A RATE APPLICATION OF A UTILITY BE FILED IN ONE SINGLE STAGE FOR THE REVIEW AND ORDER OF THE PUBLIC UTILITY COMMISSION. OUR LEGISLATION WILL EMPOWER THE COMMISSION, WITHIN 60 DAYS TO GRANT A PORTION OF THAT FILING IN THE FORM OF INTERIM RATE RELIEF.

We believe the current system of multi-stage rate filings contributes substantially to public confusion and misunderstanding of the regulatory process. Under a multi-stage system, a utility may seek a rate increase in two or three steps. The practical effect is that the new rates become effective on a staggered schedule--i.e., the first stage in 60 days, the second in five or six months and the third, three or four months after that. It is a confusing process for the rate payer. The practical effect of the multi-stage system has been to permit the lower stages to take effect and only the upper limits of the final stage of the filing are subject to a suspension order by the commission.

Philip Kalodner, former Commission counsel and nominee, in testimony before this committee, offered this analogy:

"MULTI-STAGE FILING IS LIKE A FIRECRACKER. THE FIRST STAGE GOES OFF AND THEN THE SECOND AND THEN THE THIRD AND THEN THE FOURTH GOES OFF.

"...UTILITIES FIGURED...THEY COULD HAVE THREE-STAGE FILINGS DESIGNED SO THAT THE COMMISSION, WITHOUT HEARING, WOULD PUT ONE STAGE INTO EFFECT IN SIXTY DAYS AND THEN, WITH THE FINISH OF THE SIX MONTHS (THE SECOND STAGE), WOULD SUSPEND ONLY THE THIRD BUT NOT THE SECOND STAGE. FINALLY, AT THE END OF THE NINTH MONTH THEY WOULD GET SUCH OF THE THIRD STAGE AS THE COMMISSION DEEMED APPROPRIATE."

This Committee recognizes that utilities must naturally protect their own interest and that of their shareholders. If a multi-stage filing assists it in securing as much of the revenue it maintains it requires, we would expect that it would naturally pursue that course at every opportunity.

But the Committee is dissatisfied with the multi-stage process. We believe it tends to confuse and compound an already complex and complicated process. Given the resources and expertise available to utilities, it is inconceivable to us that the industry lacks the ability to file a full and complete single application which will adequately meet its revenue requirements over an extended period of time. We believe it imperative that it be required to do so.

We believe as a matter of law that the full magnitude and scope of a rate filing be established instantly as a matter of public record at the moment of filing. If a utility is filing in terms of \$100 million, it should be made known instantly--not \$100 million in three or four steps.

As part of that whole filing, our legislation provides that the utility may request a portion of that application to be awarded in the form of immediate relief pending the final determination of the full request. Both the whole filing and the request for interim relief should be accompanied by substantiating documents and tariff schedules for the review, analysis and recommendation of the commission staff and decision of administrative law judges, of whom we shall speak later. We recognize that utilities have legitimate need for prompt regulatory action on their petitions. We propose where appropriate, to empower the Commission with the opportunity to grant it, through the form of interim rate relief. Single filings and interim relief are employed in Wisconsin. The system works satisfactorily in Wisconsin. There is no reason why it should work less than satisfactorily in Pennsylvania and, in the process, contribute to a greater public understanding of exactly what is involved.

In a rate case we envision this pattern taking place. The rate request should be a whole filing. As part of the filing a request for interim rate relief would be made, if deemed by the company to be necessary to its financial health. The Chief Administrative Law Judge (see following chapter) of the Commission would assign the case to a law judge and within 60 days the judge would be required to hold a public hearing dealing solely with the company's need for immediate financial relief and make a recommendation to the Commissioners. The Commissioners would then be required to act on the recommended interim rate increase before the 60-day period expires. After the interim rate decision, the Commission would then direct that same law judge to conduct a second round of public hearings for the purposes of establishing a relevant record and final determination on the full rate application.

16. THIS COMMITTEE PROPOSES TO MANDATE BY STATUTE THAT NO FORM OF RATE RELIEF, WHOLE OR INTERIM, BE GRANTED BY THE COMMISSION WITHOUT THE BENEFIT OF PUBLIC HEARINGS.

Under current law, it is possible for rate applications to be granted by the Public Utility Commission without the formality of a public hearing. We believe that to be an unsound and unwise public policy. We recognize that as a matter of practice, the Commission holds public hearings on all major filings. Our mandate will not dramatically alter the practice. It is, however, the position of this committee that a public record should be established at every stage in the regulatory process. This, we contend, is an absolute essential to retaining public faith and confidence in that process. In converting to a single stage filing, this Committee is convinced that public hearings can be held without unduly delaying an appropriate order, particularly in regard to interim rate relief. As noted earlier, the interim relief system is employed in Wisconsin with the benefit of public hearings. It has not proven to be a lengthy or controversial proceeding. The fact is that interim relief is but a bare minimum rate consideration. It is generally recognized as such by the parties to the application--the utility, consumer intervenor and the Commission. It is resolved with but a minimum of controversy, if any.

The public hearing mandate of Wisconsin serves a very important function. It serves to establish a record. It serves to provide for a public review and analysis of a particular rate application by the technical staff of the commission. Most importantly, it provides a full public record for the administrative law judge to render his opinion. This Committee believes it imperative that this record be established; whether a filing is contested or not, whether it is major or minor in scope. The guarantee of a full and complete public record is an inherent obligation of a public regulatory body such as the Public Utility Commission.

17. WE PROPOSE TO MANDATE IN LAW THAT THE STAFF OF THE COMMISSION CHARGED WITH THE REVIEW AND ANALYSIS OF A RATE FILING BE REQUIRED AS A MATTER OF COURSE TO TESTIFY AT PUBLIC HEARINGS AS TO ITS FINDINGS AND CONCLUSIONS WITH REGARD TO A PARTICULAR FILING.

18. WE FURTHER PROPOSE TO PERMIT CROSS-EXAMINATION OF STAFF WITNESSES BY PARTIES TO A FILING--THE UTILITY AND INTERVENORS. WE FURTHER PROPOSE TO EMPOWER THE STAFF OF THE COMMISSION TO JOIN WITH COMMISSION COUNSEL IN DIRECT CROSS-EXAMINATION OF WITNESSES AT A RATE HEARING IN ACCORDANCE WITH ADMINISTRATIVE PROCEDURE DEVELOPED BY THE COMMISSION.

One of the thorniest questions confronting this Committee was that of confidentiality of staff reports. We recognize the absolute essentiality of confidentiality insofar as conclusions and recommendations advanced for the consideration of the Commission. We propose to retain confidentiality (SEE ADMINISTRATIVE LAW JUDGES.) We dispute, however, whether that confidentiality should cloak the analysis and conclusions of the commission staff as to a particular rate filing. The function of the Commission staff, as we envision it, is to provide an independent, impartial review of rate filings. We do not suggest that such an analysis is not now being made. We do, however, note that there is no way of knowing exactly what the staff position is since the staff is not required to testify to that point in public hearing. Such is not the case with federal regulatory agencies. Joseph Zwerdling, chief administrative law judge of the Federal Power Commission, told this committee:

"AT THE FEDERAL POWER COMMISSION, THE STAFF OF THE AGENCY PARTICIPATES IN EVERY HEARING FROM A TO Z, THE SAME AS ANY PRIVATE PARTY TO A CASE. THE STAFF PRODUCES EVIDENCE AND WITNESSES OF ITS OWN. THEIR RESPONSIBILITY IS TO DEVELOP A RECORD WHICH WILL MAKE IT POSSIBLE FOR THE ADMINISTRATIVE LAW JUDGE, INITIALLY AND THE COMMISSION, ULTIMATELY, TO REACH A DECISION."

"THE STAFF MUST PARTICIPATE FULL SCALE IN EVERY CONTESTED CASE. THIS IS VERY IMPORTANT BECAUSE THE STAFF HAS NO AXE TO GRIND AND THEIR PRESENCE MAKES IT MORE LIKELY THAT A FULL RECORD WILL BE DEVELOPED ON A PUBLIC INTEREST POSITION."

Interestingly enough, it was a practice similar to what is currently employed in Pennsylvania which led to the creation of the Administrative Law Judge concept now utilized at the federal regulatory level. As Mr. Zwerdling so aptly testified:

"THE STAFF CAN'T WEAR THE HAT OF THE ANALYST, LAWYER AND JUDGE.

"THE OLD SYSTEM PROBABLY WORKED MORE EXPEDITIOUSLY. BUT THE THING THAT BROUGHT ABOUT THE ENACTMENT OF THE (FEDERAL ADMINISTRATIVE PROCEDURES) ACT WAS THAT THE UTILITIES WERE FRUSTRATED. THEY EXPENDED ENERGY AND TALENT IN TRYING AND ARGUING CASES BEFORE A HEARING EXAMINER. BUT THE DECISION WAS MADE BY AN ANONYMOUS, FACE-LESS TEAM OF STAFF EXPERTS WITH WHOM THEY COULD NOT IDENTIFY AND TO WHOM THEY HAD NO OPPORTUNITY TO ADDRESS THEIR ARGUMENTS."

The same might be said of the rate payer in Pennsylvania at this moment.

Like the utility, he has no way of accurately knowing the position of the Commission staff with regard to a particular filing. Nor is that position subject to the test of cross-examination by either the utility or municipal or consumer intervenor.

The fact is that in Pennsylvania, it is the staff position which, almost without fail, proves to be the final order of the Commission.



We as a Committee have confidence in the ability of the staff to make an objective, impartial analysis of a rate filing. We have confidence that the position of the staff can stand the test of cross-examination. We think it should be put to that test.

By the same token, we believe the technical staff should be afforded the opportunity to directly cross-examine witnesses advanced by other parties to a rate case. Primary cross-examination responsibility should, of course, rest with the legal counsel of the Commission. But we believe it both reasonable and advisable to also permit selected staff, under rules and procedures of the Commission, to join in the cross-examination. As a matter of practice, it is largely the technical staff which passes on to the Commission counsel the questions to be asked of witnesses. We say the staff should be entitled to participate in that function directly. They take such an active part in Wisconsin and California. They should here, as well.

19. THIS COMMITTEE PROPOSES LEGISLATION  
REQUIRING AN AFFIRMATIVE VOTE OF A MAJORITY OF  
THOSE COMMISSIONERS SERVING FOR ANY RATE INCREASE  
OR ORDER OF THE COMMISSION TO TAKE EFFECT.

Under current law, a rate application may take effect in Pennsylvania unless suspended by the unanimous vote of a quorum of the five-member Commission. This gives rise to two distinct problems. The first is that in the absence of a full Commission, such as we experience today, the Commission may be effectively hamstrung on the opposition of but one commissioner. It in effect renders the Commission inoperative unless there is unanimity on a given matter. For that reason, we believe the Commission should be permitted to function on a majority vote of those members serving. We so propose.

Secondly, current practice puts the emphasis on a passive stance of the Commission, i.e., rates take effect unless suspended. This lends substance to the impression that the Commissioner exists to serve the utility rather than the public at large. It is an impression which must be corrected. We hold that the Commission must exercise its regulatory powers positively and actively, rather than negatively and passively.

Under current law, a rate application may take effect unless the Commission votes within 60 days of a filing to suspend. This, in effect, permits rates to be approved simply by the inaction of the commission--i.e., no action on the suspension question. Our legislation will require that the commission formally act on a suspension motion within 60 days of a filing. If approved, the rates will be suspended. If rejected by a majority, the rates will take effect.

20. THIS COMMITTEE FURTHER PROPOSES TO PROHIBIT AS A MATTER OF LAW EX-PARTE COMMUNICATIONS BETWEEN COMMISSIONERS AND STAFF OF THE PUBLIC UTILITY COMMISSION AND UTILITIES UNDER ITS JURISDICTION, EXCEPT FOR THAT FORMALLY CORRESPONDED ON A PARTICULAR MATTER THROUGH THE OFFICE OF THE LEGAL COUNSEL.

With this proposal, we in no way attempt to impugn the integrity of the Commission. Rather, we simply hold to the position that such ex-parte discussion poses a serious threat of detracting from the integrity of the regulatory process, rather than adding to it or fortifying it.

In the words of incumbent Chairman Carter:

"THERE HAS BEEN A CUSTOM AND A TRADITION HERE THAT THE BUREAU OF RATES AND RESEARCH IS IN REGULAR CONTACT WITH UTILITIES DURING THE COURSE OF A RATE CASE.

"YOU NEVER KNOW HOW MUCH HARM THIS HAS DONE."

We do not suggest harm has, in fact, been done. We do believe, however, that such conversations possess a potential harm. We are aware of Commissioner Carter's executive directive barring ex-parte discussions between staff and utilities. We propose to fortify that directive by mandating this prohibition as a matter of law so that ex-parte discussions be barred for not only the staff, but the commissioners as well.

21. BY RESOLUTION, THIS COMMITTEE PROPOSES TO DIRECT THE PUBLIC UTILITY COMMISSION TO STUDY ITS SCHEDULE OF FILING FEES AND RECOMMEND TO THE GENERAL ASSEMBLY A SCHEDULE WHICH WILL MORE ACCURATELY REFLECT THE TYPE OF FILING AND THE FINANCIAL RESOURCES OF THE APPLICANT.

Filing fees should be increased to reflect the importance of the filing. At the present time, \$100 million rate filings cost the same as an independent trucker's application for certificate of public convenience. The fees should be correlated with the importance of the filing to the public. The Committee by resolution shall direct the PUC to study the fees and formulate a filing fee schedule which reflects the type of filing and the type and financial resources of the applicant and authorize the PUC to implement such a fee schedule with the approval of the legislature. An average tenfold increase in fees could add \$270,000 to the \$30,000 presently being collected.

Administratively, this Committee believes the Commission would be well-advised to initiate two other changes under its own executive prerogative. We commend these changes heartily to the Commission for their consideration.

22. THIS COMMITTEE DIRECTS THE PUC TO ADOPT WITHIN 90 DAYS REGULATIONS CALLING FOR UNIFORM BILLING PRACTICES AND PROCEDURES ON THE PART OF UTILITIES.

As an additional customer service, the PUC should modify through its regulations utility billing practices to eliminate customer deposit requirements for everyone but those consumers who are verified credit risks. Twenty-five days should be allowed for bill payment without penalty. All charges including fuel adjustment, all taxes and other adjustments should be itemized on the bill by category. Personal contact by a utility company representative should be required before any discontinuance of service. Our legislation will direct that this be done within 90 days.

Assigned Commissioner--

We learned in California of a concept which appears to us to have considerable merit. It is the assigned commissioner plan whereby each commissioner is assigned to monitor a particular filing, be it major or minor, from its conception to its conclusion. That commissioner works intimately with staff in the preparation of its review and findings of the application. That commissioner is also charged with

direct oversight responsibility in the conduct of public hearings on a rate application. The commissioner, in the process, is also in a position to become the commission's authority-in-residence on a particular filing and speak with more detailed knowledge on that case than his fellow commissioners in the full commission's consideration of its formal and final order. We believe this concept should be applied by the Pennsylvania Public Utility Commission in its administrative regulations. Our legislation will authorize such a concept. We would not, however, go so far as California in one important respect. In California, the assigned commissioner is empowered to order on his own initiative changes in the draft decision of a hearing examiner without prior consultation and debate within the full commission. We believe this would be ill-advised. As we shall elaborate in a subsequent section dealing with Law Judges, we believe the draft decision should be a matter for the full commission rather than a single commissioner to deliberate and alter.

## D-Bureau Organization

Testimony presented to this committee, supplemented by field interviews and personal observation of regulatory commission operation in other states, have lead us to the inescapable conclusion that there should be considerable reorganization of the internal bureau structure of the Public Utility Commission.

Most importantly, we shall propose to mandate in law that the PUC establish as expeditiously as possible two new and separate bureau classifications. The first proposes the creation of an Administrative Law Judge Office to consist of full time, well-compensated professional attorney examiners who would serve as the presiding officer at all rate proceedings before the commission. These administrative judges will, in effect, sit as the first trial court of the commission from the beginning of a case to the end. They would hear, review and assess testimony. It will be these administrative judges who submit to the Commission the initial draft decision which would serve as the foundation for the Commission's final order.

Secondly, we propose to mandate establishment within the commission of a Bureau of Conservation, Economics, and Energy Planning, staffed by competent professionals such as engineers and economists, to assume the critical responsibility of becoming the Commission's research and planning arm so far as the supply, demand, availability and trends of energy within the Commonwealth are concerned. Testimony submitted to this committee quite clearly discloses that no serious research and planning effort is being made within the Commission at this moment by any one particular bureau.

Our other recommendations propose to enhance and enlarge the daily administration leadership of the commission through the creation of an executive directorship blanketing the entire structure of the agency; a revitalization of consumer services through the creation of a Bureau of Consumer Services replacing the antiquated Secretary's Bureau; a greater degree of autonomy for the Commission in regard to the personnel of the Law Bureau and a sharper division of responsibilities within that

bureau; a reordering of functions for the Bureau of Rates and Research; a retention, with certain modifications, of the Bureau of Transportation; and creation of a state office of Consumer Advocate within the executive branch of government, but with a restriction that its activities be limited in its formative years to matters subject to the regulation of the Public Utility Commission.

We are aware of the management study underway at the Commission's own initiative by Arthur Young Associates. We welcome it. Undoubtedly, that study can serve to supplement in perhaps greater detail, or even modify in certain respects, what we propose here. Our personal conclusions, however, dictate a table of organization chart which provide with the Commission:

- A. Executive Director--the chief administrative officer of the Commission.
- B. Bureau of Consumer Services--the primary consumer services office of the Commission.
- C. Law Bureau--the chief legal arm of the Commission.
- D. Bureau of Rates and Accounting--the chief rate and accounting analysts of the Commission.
- E. Bureau of Conservation, Economics and Energy Planning--the chief research and planning arm of the Commission.
- F. Administrative Law Judges--the chief hearing and decision arm of the Commission.
- G. Bureau of Transportation--the Commission's motor carrier regulator including railroad grade crossings.

Addressing ourselves specifically to each of these organizational recommendations, in their order of priority as we see them:

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1--Office of Administrative Law Judges

If there is any system of the Commission validly subject to intense criticism, it is the current system of hearing examiners.

Our inquiry brought to light an intolerable situation where a cadre of 20 hearing examiners are on fulltime payroll of this Commission at scattered locations throughout the state with salaries ranging anywhere from \$18,000-to-\$22,000 annually.

These examiners may be called upon to sit in as few as five rate hearings a year and certainly no more than 10-to-15 for which they are paid a considerable sum. One estimate calculated the individual cost of these examiners to be in excess of \$600/hour. The only requirement for their employment is that they be members of the Bar in good standing for a period of three years. The only condition for hiring is securing the affirmative vote of at least three of the five commissioners.

They do little more at hearings than serve as traffic officers in so far as what is permitted into the record and what is not.

They write no decisions.

Nor do they analyze the testimony for the benefit of the Commission.

They only recently have been directed on a limited basis to report to the commissioners their views on the credibility of witnesses.

The hearing examiner system as it now functions is nothing less than a deplorable sham on the hearing process. There is absolutely no justification for it. It must be terminated immediately.

23. THIS COMMITTEE PROPOSES THAT AN OFFICE OF ADMINISTRATIVE LAW JUDGES PATTERNED AFTER THE FEDERAL ADMINISTRATIVE PROCEDURES ACT BE CREATED BY STATUTE WITHIN THE INTERNAL ORGANIZATION OF THE PUBLIC UTILITY COMMISSION.

Of all the testimony, evidence and interviews gathered by this committee, perhaps none was so informative or as enlightening as that offered by Joseph Zwerdling, chief administrative law judge of the

Federal Power Commission these past 11 years and an employe of the F. P. C. these past 30 years. Commenting on the hearing examiner concept now employed by the Public Utility Commission, Judge Zwerdling told this committee:

"NO SYSTEM CAN WORK WHERE THE PRESIDING OFFICER SIMPLY SITS THERE AS A MASTER OF CEREMONIES. IT IS COSMETIC AND NOT A HEARING PROCEDURE."

The administrative law judge, as it functions at the federal level and as we see it functioning here, serves as the trial court of the regulatory agency. It is the law judge's primary responsibility to develop the record on which the Commission will ultimately reach its final decision. He enjoys complete independence in the exercise of his judgment and the conclusions he reaches in his draft decision to the Commission. To aid in his conclusions, he often demands written briefs from the parties to define and clarify the issues. Once he has decided, the parties may make exceptions to his recommendation, and the full Commission may hear oral argument on them before making its final order.

The administrative law judge program shall be developed by the PUC in cooperation and in conjunction with the Civil Service Commission insofar as requisite qualifications, testing and order of classification are concerned, patterned after the federal model.

Administrative judges shall be granted civil service status and shall be paid in a classification range of \$30,000-\$35,000 annually according to the steps established by the Civil Service Commission. (They receive \$34,000 to \$40,000 in Washington.) All Commission law judges shall all be certified members of the Bar. Ex-parte discussions on the merits between commissioners, staff and parties to a rate case with the presiding law judge shall be prohibited.

The chief administrative law judge of the Commission shall be selected by the Commission. The chief judge shall assign members of the cadre to rate cases. The chief administrative law judge shall not be considered a civil service position. Should



a member of the law judge cadre be selected as chief and, at some subsequent date removed by the Commission, that individual shall be afforded the opportunity to revert back to law judge status at a classification and salary level last occupied by the individual at the time of elevation. No law judge shall be removed from the office for reasons other than misfeasance, malfeasance or misconduct. Charges must be brought before the Civil Service Commission and a hearing on those charges be conducted prior to a determination by the Commission.

It is the object of this recommendation to professionalize and uplift the hearing procedures of the Public Utility Commission. It is the view of this committee that creation of a professional cadre of administrative law judges within the PUC is the keystone of any reform of Commission procedures.

In addition, we recognize the necessity of providing adequate technical staff support for the law judges. Our legislation shall authorize the Commission to provide that backup within its budgetary powers.

But, again, if the Commission procedures are to be fortified and revitalized, the success of the Administrative Law Judge concept is absolutely essential.

In the words of John W. Macy Jr., former chairman of the federal Civil Service Commission:

"HEARING EXAMINERS...CONDUCT HEARINGS (OFTEN IN ACCUSATORY PROCEEDINGS), MAKE RECORDS AND RECOMMEND...DECISIONS OF GOVERNMENT THAT HAVE A FAR-REACHING IMPACT ON THE INDIVIDUAL RIGHTS AND PROPERTY AND THE DAILY LIVES OF EVERY AMERICAN: THEY HOLD KEY POSITIONS IN AGENCIES WHOSE RESPONSIBILITIES...PERMEATE EVERY SPHERE AND ALMOST EVERY ACTIVITY OF OUR NATIONAL LIFE AND HAVE A PROFOUND EFFECT UPON THE DIRECTION AND PACE OF OUR ECONOMIC GROWTH...

"...THEY PLAY THIS CRITICAL ROLE IN A MAELSTROM OF COMPETING PRIVATE AND PUBLIC INTERESTS, AGAINST THE BACKDROP OF THE ECONOMICALLY AND SOCIALLY SENSITIVE, AND OFTEN POLITICALLY EXPLOSIVE, PROCESS THAT IS REGULATION."

Only through creation of a hearing procedure which has the faith and confidence of the utility, the consumer and intervenors can the Commission effectively and judiciously arrive at a fair and reasonable decision in its orders.

We believe that if the Public Utility Commission is to effectively become the judiciously impartial agency we envision its role to be, it is absolutely imperative that a truly adversary proceeding between the parties be established, subject to the independent, analytical judgment of an authoritative third party--the Administrative Law Judge.

Such would be the inevitable result of a process which has a professionally qualified administrative law judge weighing equally the testimony submitted by the utility, the staff of the Commission and intervening parties and submitting conclusions and recommendations to the Commission for its final decision. As we see it, it matters little whether the Commission in its wisdom adopts the draft decision of the administrative law judge without modification or alteration. What matters is that the decision, which serves as the core of the Commission order, is prepared on the basis of a fully developed record at public hearings, reviewed by an independent professional and serves to, in Mr. Zwerdling's words, boil down the issues to a manageable size.

Such a procedure as we envision may not necessarily reduce or even level off the inflationary spiral of utility rates in Pennsylvania and the nation. But it will serve to create a hearing system in the truest, most precise sense of the word. It will fortify a regulatory process in this state which is subject to sharp disrepute from all parties at this time. Without such a system, the integrity of the process cannot be guaranteed.

2--Bureau of Conservation, Economics and Energy Planning.

There is no one existing division of the Public Utility Commission now charged and performing primary responsibility for charting and planning of long-range energy needs and trends in the Commonwealth.

Ostensibly this activity would fall within the Bureau of Rates and Research. But, in the testimony of Mr. Bernard Helhowski, its director, we learned that there are only four or five members of his 60-member technical staff who concentrate on research activities for the Commission. Mr. Helhowski went on to say:

"IT IS DIFFICULT FOR US TO USE THESE PEOPLE ON RESEARCH WHEN WE MUST USE THEM FOR RATE WORK. THIS IS ONE OF OUR DEFICIENCIES. WE DO NOT HAVE ENOUGH PEOPLE IN OUR RESEARCH OR STATISTICS (SECTION) THAT WE COULD DEVELOP INFORMATION."

Asked whether the staff seeks or encourages utilities to provide it with research information and studies, Mr. Helhowski responded:

"WE ATTEMPT TO. IN FACT, A LOT OF THE--SOME OF THE RESEARCH, WE ASKED THE UTILITIES TO MAKE THE STUDY AND SUBMIT IT TO US FOR REVIEW."

We also heard testimony from Mr. Jerry Rich, director of the Bureau of Investigations, Service and Enforcement to the effect that its personnel did conduct certain research into specific areas of concern, such as the availability of natural gas supplies. But that effort could hardly be classified as a major, continuing, exhaustive research, the type of which must be of central focus to the PUC in this age of spiraling costs, increasing demand and decreasing supply and capacity.

24. THIS COMMITTEE PROPOSES THAT THERE BE ESTABLISHED IMMEDIATELY WITHIN THE PUBLIC UTILITY COMMISSION A BUREAU OF CONSERVATION, ECONOMICS AND ENERGY PLANNING.

This bureau is to serve as the principal research and planning arm of the Public Utility Commission. It is to be manned by trained economists, engineers, environmentalists, statisticians and other such skilled technicians as necessary in accordance with standards and qualifications established by the commission in conjunction with the state Civil Service Commission.

Any reasoned analysis of the never-ending complexities in the energy field today leads to the inescapable conclusion that an inherent part of any attempted long-run response to an energy problem of crisis proportions rests in concerted research, planning and conservation programs for the future.

The State of California has acknowledged this to be so this past year by creating a State Energy Commission which, in many respects, overlaps to the point of duplication the responsibilities and functions of that state's Public Utilities Commission. We believe that duplication is unnecessary for Pennsylvania.

We envision this new bureau as being an expert arm of the Commission to work with existing or future agencies of the state to develop projections of long-range energy needs of the Commonwealth.

The bureau would be charged with developing conservation measures designed to level accelerating demand in the interest of deferring heavy, costly and burdensome new construction in plant capacity. It would also be the arm of the agency best staffed and equipped to conduct the exhaustive, encompassing type of research and planning we propose in subsequent sections of this report to review and develop alternative forms of rate pricing, rate calculation and the like.

25. THIS COMMITTEE WILL REQUIRE AS A MATTER OF LAW THAT UTILITIES SUBJECT TO THE REGULATION OF THE PUC FILE ANNUALLY WITH THIS BUREAU REPORTS SUMMARIZING ITS EFFORTS AND ACTIVITIES RELATING TO ENERGY CONSERVATION.

It follows that if the PUC is to conduct an exhaustive research and planning effort in energy conservation, it must be informed of such activities undertaken by the utilities. A later section on

"Construction Work in Progress" proposes that the commission may give added weight in this regard to conservation efforts of each utility. The Bureau of Conservation, Economic and Energy Planning is the logical repository and analyst of conservation activities.

26. THIS COMMITTEE WILL REQUIRE THAT BEFORE ANY PLANT EXPANSION IS UNDERTAKEN BY UTILITIES, SUCH PROPOSALS MUST BE SUBMITTED TO THIS BUREAU FOR ITS REVIEW, COMMENT AND RECOMMENDATION TO THE FULL COMMISSION. THE COMMISSION SHALL CONSIDER THE REVIEW OF THE BUREAU BEFORE ACTING ON APPLICATION OF THE UTILITIES FOR CERTIFICATES OF SECURITY.

The PUC currently exercises regulatory control of plant expansion through its authority to approve or disapprove security certificates to finance present or probable future capital needs. We propose that before the Commission renders that decision, the Bureau of Conservation, Economics and Energy Planning be required to review, comment and recommend to the Commission on each proposal for future plant expansion. That recommendation shall become a matter of public record at the time of the Commission order.

27. ADDITIONALLY, WE PROPOSE TO REQUIRE THAT EACH RATE APPLICATION SUBMITTED TO THE COMMISSION BE ANALYZED BY THE BUREAU FOR A REPORT ON THE IMPACT FUTURE PLANT EXPANSION HAS IN THE FILING. THIS IMPACT STUDY SHALL BE FORWARDED TO BOTH THE FULL COMMISSION AND PRESIDING ADMINISTRATIVE LAW JUDGE FOR THEIR CONSIDERATION IN THEIR FULL DETERMINATIONS.

It is the view of this committee that plant expansion has considerable impact on the rate filing of utilities with the Commission. We believe that a separate analysis must be made for the benefit and consideration of the full Commission prior to arriving at a final determination. We believe the arm of the Commission best suited to this task would be the Bureau of Conservation, Economics and Energy Planning. This report, too, shall be part of the public record.

### 3--Office of the Executive Director

It is quite evident from the testimony we heard that the existing office of the Secretary to the Public Utility Commission is the central administrative office of the agency with a multitude of processing, scheduling and public information functions. But in the words of the past occupant of that office, Mr. Will Ketner:

"...THERE IS A GREAT DEAL OF RESPONSIBILITY MINUS THE AUTHORITY VESTED IN THE OFFICE OF THE SECRETARY. I THINK THE VOLUME OF THE WORK THIS COMMISSION IS FACED WITH...HAS MADE IT ALL THE MORE NECESSARY THAT AN EXECUTIVE SECRETARY OR SOMEONE WHO HAS THE AUTHORITY MANDATED BY THE MEMBERS OF THE COMMISSION WOULD BE HELPFUL..."

We concur.

28. THIS COMMITTEE PROPOSES THE ABOLITION OF THE EXISTING SECRETARY'S OFFICE AND, IN ITS PLACE. THE CREATION OF AN OFFICE OF THE EXECUTIVE DIRECTOR TO ASSUME FULL AND TOTAL RESPONSIBILITY FOR THE ADMINISTRATIVE AFFAIRS OF THE COMMISSION.

We believe the most effective avenue to clarifying and precisely defining the administrative authority and responsibility within the Public Utility Commission is through the creation of an office of the Executive Director.

It will be this office which has vested to it the full administrative authority of the Commission subject to the supervisory powers of the Commissioners of the agency. The executive director shall serve at the pleasure of the Commission. For daily chain of command purposes, however, he shall work through and report to the chairman of the Commission.

As part of the office, we propose to include the existing personnel office of the Commission. In this regard, we recommend that the Commission move promptly to institute a complete and accurate time-cost report system so that it can more explicitly determine the man-hours and cost spent by staff of the agency in the processing, review and final determination of each case before it. This function is most reasonably assumed by the personnel division subject to the oversight of the executive director.

For organizational purposes and coordinated effort, we recommend that the Public Information Office of the Commission be established within the overall purview of the Executive Director's Office. The director of Public Information shall be employed, however, by the full board of commissioners and answerable to it in a manner similar to the executive director.

Additionally, we must take this opportunity to chastise the Commission for failing to live up adequately to a mandate of existing law that its operating rules and regulations be published annually and as they are revised. This Committee in preparation for this inquiry attempted to come in possession of the latest rules and regulations of the Commission. We expected they would be available as a matter of course. Rather, the frustration and delay we experienced in that effort was a sad commentary on the administrative control and direction of the PUC. It hardly spoke well of the Commission's internal housekeeping procedures. We expect this mandate of existing law to be fulfilled without delay or complication. We expect the Office of the Executive Director to see to its implementation.

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#### 4--Bureau of Consumer Services

In conjunction with our recommendation regarding creation of an executive directorship, we believe it would, thus, be appropriate to establish within the Commission structure a bureau to serve as a central point of assistance for consumers.

29. THIS COMMITTEE RECOMMENDS THE ABOLITION OF THE BUREAU OF INVESTIGATIONS, SERVICE AND ENFORCEMENT AND A TRANSFER AND CONSOLIDATION OF ITS ACTIVITIES INTO A NEWLY CONSTITUTED BUREAU OF CONSUMER SERVICES.

In effect, we are proposing a consolidation of functions now performed in the customer relations area by the existing Bureau of I, S & E and the Secretary's Office.

Fundamental to the organization of the Bureau of Consumer Services is establishment of a central office of the Commission to deal with consumer complaints.

During the course of these hearings, we learned that complaints to the PUC of a customer or service nature may be routinely channeled through any one of five offices--the commissioners directly; the Secretary's Bureau, the Rates & Research Bureau; the I. S. & E. Bureau or the Law Bureau--and responded to without any internal coordination or communication within the agency. We believe this to be a bad system, one which requires rectification immediately. It is difficult for a Commission to function effectively in an area as sensitive as customer or service relations without guaranteeing a high degree of cooperation and coordination among its arms. It is absolutely essential that a central consumer complaint office be established subject to the direction and supervision of the bureau director.

As part of the complaint office and bureau responsibility we shall direct that an annual report be furnished to the Commissioners as to the volume and disposition of complaints received.

The bureau shall keep complete and accurate records of all complaints received, the subject of the complaint, the utility involved and the disposition of the complaint.



The Commission may consider the volume, nature, subject and disposition of complaints against a utility in any proceeding before the Commission in which that utility is a party.

We also propose to direct the Commission to adopt and widely publish standard rules for consumer complaints. Such rules should include, but not be limited to, reporting by individual utilities on consumer complaints received and their disposition by that utility.

In reviewing the testimony, we have come to the conclusion that retaining the Bureau of Investigations, Service and Enforcement as a separate arm of the agency is unnecessary. While in no way attempting to denigrate the performance of that bureau's personnel, it is our conclusion that its mission is of such lesser magnitude that it would better lend itself to the coordinated supervision of the Bureau of Consumer Services. The expeditious handling of customer or service complaints, and investigation and review thereof, or enforcement of motor carrier certificates and territories, seem to us to fall into an administrative area which requires centralized and coordinated control. That we say should be vested with this new bureau.

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The Hearing Section shall be the staff responsible for appearing in any and all proceedings before the Commission, charged with the responsibility for assisting in the development, cross-examination and presentation of the public record.

It is the attorneys of the Hearing Section which shall bear the responsibility for cross-examination of witnesses on behalf of the Commission. Cross-examination shall be a right afforded automatically to the Hearing Section attorneys.

The Advisory Staff staff shall be the arm of the Law Bureau which shall serve as the chief legal advisory arm to the Commissioners on any and all matters before them.

The Trial Section shall be the arm of the Commission which represents the agency in all courts of record. This shall be the section which shall also assist the Attorney General in appropriate actions instituted by that office.

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## 6-Bureau of Rates and Accounting

If there is one bureau within the existing structure of the commission which most ultimately and exhaustively involves itself in the rate decisions of the agency, it is the existing Bureau of Rates and Research. This is the Bureau which analyzes each rate filing. This is the Bureau which literally provides Commission counsel with the interrogatories to be posed to witnesses at rate hearings. Above all, this is the Bureau which prepares the confidential report to the full commission. This report with rare exception is the document adopted as the final order of the Commission.

We stand impressed with the professional competence and personal dedication of the personnel of this Bureau. We see, however, a need for a revision in the role it plays for the agency. Most particularly, its role should be limited to analysis of rate applications, leaving confidential recommendations to others.

Additionally, we submit that its title, "Bureau of Rates and Research", is a misnomer. As noted previously in this report, the Bureau performs precious little independent research. Its title, if only in the interest of accuracy, should be redesignated, "Bureau of Rates and Accounting."

The primary mission of this Bureau as we see it, once the Office of Administrative Law Judge is in place, should be that of accounting review and technical rate analysis of applications as they are received. We believe this is the Bureau which is now legitimately charged with the primary responsibility of determining staff position on particular rate applications and the methods proposed to raise the revenue to meet those requested rate levels. We propose that it continue in this fashion.

This is the Bureau, above all others, which will carry the burden for the staff testimony we previously in this report proposed to mandate. To repeat Judge Zwerdling's testimony:

**"THE STAFF PRODUCES EVIDENCE AND WITNESSES  
OF ITS OWN. THEIR RESPONSIBILITY IS TO  
DEVELOP A RECORD WHICH WILL MAKE IT POSSIBLE**

FOR THE ADMINISTRATIVE LAW JUDGE, INITIALLY,  
AND THE COMMISSION, ULTIMATELY, TO REACH A  
DECISION...

"THE STAFF CAN'T WEAR THE HAT OF THE  
ANALYST, LAWYER AND JUDGE..."

This is exactly what is transpiring within the Bureau of Rates at this point. The Rate Bureau is functioning as analyst, lawyer and judge. This is exactly what we propose to eliminate with these recommendations.

We propose to put the Bureau of Rates in a position of offering an independent analysis of its findings and conclusions into the public record for the consideration of the Commission, and the information of parties to the case. We do not doubt the staff of the Bureau of Rates attempts to protect the public interest in the performance of its duties. We believe its findings and recommendations can stand the test of cross-examination and analysis by the parties to the case.

But most importantly, we believe the impartial review of rate applications by this Bureau, and public testimony as to its findings and recommendations, are vital to the adversary process we propose to establish in Pennsylvania for utility rate regulation.

As was written by Judge Zwerdling:

"IT IS IMPORTANT TO BEAR IN MIND THAT EACH OF THE CONFLICTING PRIVATE PARTIES (TO A REGULATORY CASE) IS INTERESTED ONLY IN DEVELOPING POSITIONS OR EVIDENCE WHICH IT DEEMS HELPFUL TO ITS OWN PRIVATE OBJECTIVE.

"UNDER THE CIRCUMSTANCES, THE STAFF MAY BE THE ONLY PARTY WHICH MAY AND SHOULD WISH TO DEVELOP THE ENTIRE PICTURE--LET THE CHIPS FALL WHERE THEY MAY. EXPERIENCE DEMONSTRATES THAT THE INTERPLAY BETWEEN THE CONFLICTING PRIVATE PARTIES AND THE STAFF IN OPEN HEARING, EACH HAVING A DIFFERENT ROLE TO PERFORM, PRODUCES USEFUL AND DESIRABLE RESULTS."

It will fall under the concept we propose to the independent administrative law judge to hear the evidence, weigh it and recommend a decision to the full Commission. This is not, as we see it, a function for the Bureau of Rates to perform any longer.

We should emphasize here that this is a procedural reform with direct bearing on the regulatory process. It may or may not have a direct and material impact on the rate burden shouldered by utility customers. But the emphasis it places on procedural objectivity and impartiality is essential to the integrity of the process. It is also necessary for the understanding and confidence of the rate payer.

In reviewing the role of the Bureau of Rates in regard to the review of fuel cost adjustment charges, we find a number of deficiencies.

Most particularly we are convinced that the audit capability of the Bureau must be expanded, significantly and promptly. The inadequacy of that audit effort is best demonstrated in this exchange between Director Helhowski and Committee Counsel during the course of our hearings:

Q--"DOES YOUR STAFF HAVE--DO THEY ENCOURAGE UTILITIES TO DO RESEARCH AND DEVELOPMENT AT ALL?"

A--"WE ATTEMPT TO. IN FACT A LOT OF THE--SOME OF THE RESEARCH, WE ASKED THE UTILITIES TO MAKE THE STUDY AND SUBMIT IT TO US FOR REVIEW.

"IN OTHER WORDS, THE FUEL ADJUSTMENT PROCEDURE THAT THE COMMISSION HAS RECENTLY UNDERTAKEN, WE HAVE ASKED THE UTILITIES TO HAVE THEIR CPA OR ACCOUNTING FIRMS CERTIFY THAT THE EXPENSES ARE PROPER."

Q--"SO THAT IN THE FUEL ADJUSTMENT CLAUSE, YOU ARE RELYING ON THEIR CPA TO TELL THAT THE FIGURES THEY ARE GIVING YOU ARE RIGHT?"

A--"TO SOME EXTENT WE ARE GOING TO REVIEW WHAT THEY SUBMIT, AND I HAVE SENT FIELD MEN OUT TO CHECK TWO COMPANIES ALREADY AND WE WILL GO TO A THIRD COMPANY.

"WE ARE MAKING INDEPENDENT AUDITS OF OUR OWN, BUT THOSE ARE VERY COMPLICATED AND VERY DIFFICULT PROBLEMS."

This Committee is very much aware of the commendable work already performed in this area by the House Committee on Mines and Management under the chairmanship of Rep. Bernard O'Brien.

The work of the independent O'Brien Committee auditors demonstrates quite vividly what can happen when the PUC does no more than review the figures supplied them by another source. It is imperative that the Bureau of Rates and Accounting audit these fuel adjustment charges. A mere review is simply not enough. We will mandate that these fuel adjustment charges be audited at least quarterly by auditors of the Commission or by independent auditors employed by the Commission for that expressed purpose.

We shall later in this report deal in more detail with the fuel adjustment charge. For the moment, we limit ourselves to the charge that fuel costs paid by utilities should be subject to the stringent audit of the Commission. If manpower be the crux of the problem, the ability to deal with it will be there through the sizeable increase in budget authorization we propose. This, coupled with a strengthening of safeguards relating to affiliated interests we shall discuss later, is but a bare minimum effort we expect the commission to exert in this area. Anything less than that will be insufficient.

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7--Bureau of Transportation

On June 19, 1975 Secretary of Transportation Jacob G. Kassab testified before the Committee concerning a number of transportation related problems now inherent in the Public Utility Law.

1. Section 409(b) of the Public Utility Law gives the Public Utility Commission the "exclusive power" to determine and fix the area of a railroad-highway crossing project. Within this area the Commission is given the additional power to allocate the costs of the project between the public utility, the municipal corporation, or the Commonwealth.

32. WE RECOMMEND THAT THE COMMISSION'S JURISDICTION IN RAILROAD-HIGHWAY CROSSING PROJECTS BE LIMITED TO THE IMMEDIATE INTERSECTIONS OF THE RAILROAD AND THE HIGHWAY RIGHT-OF-WAY LINES IN ALL APPLICATION PROCEEDINGS.

This is to insure that the project area, and therefore the costs to be assessed to the Commonwealth or to municipalities, will be strictly limited.

This limitation applies to Application proceedings only because in such proceedings all problems have been previously settled, and the Department of Transportation has agreed to pay for all costs with the exception of the relocation of utility facilities which may exist in the public right-of-way. The limitation therefore eliminates much duplication of effort on the part of the Public Utility Commission.

2. Section 409(b) also gives the Commission the "exclusive power" to appropriate property required for the construction of the project.

We do not believe that the Commission needs this exclusive power to appropriate property in Application proceedings, again because of the needless duplication of effort.

33. WE THEREFORE RECOMMEND THAT SECTION 409(b) OF THE PUBLIC UTILITY LAW BE AMENDED INsofar AS IT WOULD APPLY TO APPLICATION PROCEEDINGS, TO REMOVE THE COMMISSION'S POWER TO APPROPRIATE PROPERTY EXCEPT FOR

RAILROAD OPERATING RIGHTS-OF-WAY WHERE THE TAKING  
(NOT THE VALUE OF THE LAND) CANNOT BE AGREED UPON  
BETWEEN THE RAILROAD AND THE DEPARTMENT OF TRANS-  
PORTATION OR OTHER PUBLIC AGENCIES MAKING THE  
APPLICATION:

This restriction will not affect the Commission's power to determine those conditions involving the safety and the prevention of accidents at railroad-highway crossings. Further, in investigation proceedings of complaint proceedings where the Department of Transportation and other parties are respondents, the Commission should retain its exclusive power to determine the jurisdictional limits within which it will act and to appropriate property. In such cases there has been no advanced planning as in application proceedings, and it is unlikely that the parties to the proceeding can agree on the work to be done, or who should perform the work, or what the allocation of the improvement costs should be.

3. Secretary Kassab testified that his Department is continually confronted with the problem of railroad-highway crossings which have not been maintained, or have been improperly maintained by those who are obligated to do so by an existing Commission Order. Failure to comply with these Orders give rise to complaint or investigation proceedings initiated by the Commission pursuant to Section 902 of the Public Utility Law which confers full authority on the Commission to enforce its orders. However, the Commission rarely attempts to make use of such authority.

All too often the Commission during the complaint proceeding modifies its previous order and transfers the legal obligation to make the necessary maintenance to the Department of Transportation. This relieves the responsible party from its obligation to do as it was previously ordered to do. The most flagrant example involves bridges carrying a highway over a railroad where the bridge has seriously deteriorated because maintenance has been deferred or neglected by the railroad or other party responsible for the maintenance. Often there is a hazard to the safety of the traveling public, and yet this dangerous



condition is allowed to continue by the responsible party until the obligation to make the repairs is transferred to the Department of Transportation. See Railroad Crossing Protection Fund below.

For some reason the Commission has not seen fit under Section 903 of the Public Utility Law to apply to the Commonwealth Court for an injunction, mandamus, or other appropriate legal proceedings to enforce its Order or to restrain the violation of its orders.

We therefore recommend that the Public Utility Law be amended to provide that:

- (1) Section 409(b) be amended to restrict the Commission from transferring maintenance obligation placed upon a party by its prior Order to another party until such obligations are fulfilled;
- (2) Sections 902 and 903 be amended to make it mandatory for the Commission to enforce its prior Orders upon notice from an interested party without the necessity of the complaining party to file a formal Complaint;
- (3) Section 1301 be amended to provide for greater civil penalties for violation of Commission Orders;
- (4) Section 1302 be amended to provide for a greater criminal penalty upon conviction of a violation of a Commission Order.

4. The Department of Transportation has been assessed by the Commission for costs of a railroad-highway improvement on local roads which do not form a part of the State Highway System. This is done by the Commission under authority of Section 411(a) which gives the Commission power to allocate such costs upon the Commonwealth, although the Department of Transportation is not specifically mentioned.

The Department of Transportation argues, and we think rightly so, that the Legislature never intended that moneys appropriated to the Department

of Transportation be used on non-state highways, and that such allocated costs should not be imposed upon PennDOT alone when other agencies and Departments of the Commonwealth which have public roads and highways under their jurisdiction and which have railroad crossings are not so charged.

34. WE THEREFORE RECOMMEND THAT THE PUBLIC UTILITY COMMISSION BE GIVEN THE POWER TO ALLOCATE COSTS UNDER SECTION 411(a) AGAINST THE DEPARTMENT OF TRANSPORTATION WHEN A STATE-DESIGNATED HIGHWAY IS INVOLVED IN A RAILROAD-HIGHWAY CROSSING.

35. WE FURTHER RECOMMEND THAT SECTION 411(a) OF THE PUBLIC UTILITY LAW BE AMENDED TO ADD SUFFICIENT GUIDELINES FOR THE COMMISSION TO FOLLOW TO ALLOCATE THE COST OF A RAILROAD-HIGHWAY CROSSING PROJECT BETWEEN THE COMMONWEALTH, MUNICIPAL CORPORATIONS, AND THE PUBLIC UTILITIES WHERE THERE IS A RELOCATION OF UTILITY FACILITIES FROM THE PUBLIC RIGHT-OF-WAY.

5. Section 1009 of the Public Utility Law gives the Commission the power to subpoena witnesses and to compel the production of books, records, papers, and documents as may be necessary or proper to any proceeding, investigation, or hearing. The law, however, places no time limitations upon the Commission within which it is to act when a party requests a subpoena for such items.

36. WE RECOMMEND THAT A TIME LIMITATION BE ESTABLISHED WITHIN WHICH THE COMMISSION MUST ACT ON A REQUEST BY ANY INTERESTED PARTY FOR THE ISSUANCE OF A SUBPOENA, EITHER BY DIRECTING AN ORAL ARGUMENT TO TAKE PLACE BEFORE THE COMMISSION, OR A HEARING ON THE NECESSITY OF ISSUING SUCH A SUBPOENA. OR BY THE ISSUANCE OF SUCH A SUBPOENA REQUIRING THE REQUESTED DOCUMENTS, OR WITNESSES TO BE PRODUCED.

6. With the prospect of continued abandonment of many miles of railroad trackage in Pennsylvania under proposals being made under the Railroad Reorganization Act of 1973, removal of railroad crossings, both at grade and separated crossings, will become necessary. Who should bear the financial responsibility for the maintenance and removal of such crossings?

37. WE RECOMMEND THAT THE RAILROADS BE CHARGED WITH THE RESPONSIBILITY FOR MAINTENANCE OF THE CROSSING AREA UPON ABANDONMENT UNTIL SUCH TIME AS AN AGREEMENT CAN BE REACHED BETWEEN THE RAILROAD AND THE DEPARTMENT OF TRANSPORTATION. OR A POLITICAL SUBDIVISION IN THE CASE OF A LOCAL ROAD, AS TO THE ALLOCATION OF COSTS IN ELIMINATING THE CROSSING.

The legislation we propose is virtually identical to that passed in New York State in 1972.

7. Similarly, with the curtailment of railroad service and pending abandonment proceedings before the Interstate Commerce Commission, many railroad crossings have not been maintained properly. The railroads should have applied to the Public Utility Commission for abolition of these crossings, but they have not done so for fear of losing their right-of-way over the highway.

The law makes no provision for a mere suspension of the crossing which would permit the railroad to retain its right-of-way across the highway. After suspension, the Commission could order the railroad ties and rails removed as well as the warning signs and signals. At a later date, should the railroad wish, it could merely reapply to have the crossing restored without any question as to its right-of-way.

38. WE RECOMMEND THAT SECTION 409(b) OF THE PUBLIC UTILITY LAW BE AMENDED TO VEST POWER IN THE COMMISSION TO "SUSPEND" A CROSSING. IN ADDITION TO ABOLITION.

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#### Railroad Crossing Protection Fund

Because this problem is of extreme concern to the Committee, it was discussed at length with Merle A. Forst, director of the Bureau of Transportation of the Commission, when he testified before the Committee. Mr. Forst testified that innumerable petitions are filed by parties who have been directed to perform or pay for an improvement. In effect this seeks to reargue the points which the Commission has already considered in arriving at its Decision and Order. The Commission under necessity of due process, must consider these petitions.

Meanwhile, the danger meant to be corrected by the original Order remains and often becomes more serious. Eventually, when the petitions are finally dealt with, the various bankrupt railroads fall back upon the lack of consent or approval of the trustees in bankruptcy, and eventually the bankruptcy judge, and further time passes.

39. WE RECOMMEND THAT A RAILROAD CROSSING PROTECTION FUND BE CREATED SO THAT DANGEROUS CONDITIONS AT CROSSINGS MAY IMMEDIATELY BE REPAIRED. A LIEN WOULD THEN BE PLACED UPON THE RAILROAD OR OTHER RESPONSIBLE PARTY, SO THAT THE FUND MAY EVENTUALLY BE REIMBURSED FOR THE COSTS OF REPAIR.

No less than 22 other states have such crossing funds so that dangerous railroad-highway conditions can be repaired immediately and without further danger to the traveling public.

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#### IV. Joint Resolution Mandating a Public Utility Commission Study of the Regulated Taxicab Industry

During the course of this Committee's proceedings pursuant to Senate Resolution No. 33 of 1975, the staff of the Public Utility Commission's Law Bureau and Bureau of Transportation have, at the specific behest of Senator Paul McKinney with the full Committee's approval, explored the feasibility of transferring taxicab regulation in Pennsylvania from the PUC to certain of the local urban communities.

This study was prompted by the irregular and often inadequate service now provided by regulated taxicabs in Pennsylvania's urban areas.

The staff acquired copies of statutes, regulations and related information from some fifty (50) state utility commissions. Jurisdiction was found to vary from full economic control (as in Pennsylvania) to lesser degrees of regulation, with some states limiting control to one or several large communities or one major city. On-site visits were made at Baltimore (Maryland Public Service Commission) and New York City (New York City Taxi and Limousine Commission).

##### Maryland

It was found that the Maryland Public Service Commission exercises full regulatory control over taxis in four metropolitan areas of the state, and jurisdiction in additional areas only attached when the population of a community exceeds 50,000. It issues a single permit for each taxicab and since 1946 the total number of permits has been limited to 1,151. The following basic rules are strictly enforced:

- (1) Reissuance of the permit is required every year--cab to be operated by owner or by a driver responsible to the owner.
- (2) Driver must display a permit card, a fare schedule and maintain a daily record of trips.
- (3) Minimum limits of insurance coverage and maintenance of certain vehicle equipment and safety standards are required.

The Maryland Public Service Commission judiciously avoids interference in unregulated areas of the state but holds itself available to give assistance on request. The majority of Maryland fleet owners lease their vehicles to drivers, the rental charges being subject to review and approval by the drivers' local union. Owners maintain control over driver operations through two-way radio communication.

### New York

The New York Public Service Commission does not regulate taxicab industry in any part of the state. Each municipality has the right to regulate its own taxi service. Prior to 1971 the taxi industry in New York City was regulated for many years by the Hack Bureau of the City's Police Department. As taxi service continued to deteriorate and complaints against the Police Department piled up, the City Council was pressured to transfer the authority to a local city commission. In 1971, Local Law No. 12 transferred complete regulation of the New York City taxicab industry from the Police Department to the newly created New York City Taxi and Limousine Commission. The express purpose of the law was to:

"...CONTINUE, FURTHER DEVELOP, AND IMPROVE TAXI AND LIMOUSINE SERVICE IN THE CITY OF NEW YORK. TO PROMOTE AND PROTECT PUBLIC COMFORT AND CONVENIENCE, TO ADOPT AND ESTABLISH AN OVERALL PUBLIC TRANSPORTATION POLICY GOVERNING TAXI, COACH AND LIMOUSINE SERVICE AS IT RELATES TO THE OVERALL PUBLIC TRANSPORTATION NETWORK OF THE CITY; TO ESTABLISH CERTAIN RATES, STANDARDS OF SERVICE, EQUIPMENT AND SAFETY AND DESIGN STANDARDS AND CRITERIA FOR THE LICENSING OF VEHICLES, DRIVERS AND CHAUFFERS, OWNERS AND OPERATORS ENGAGED IN SUCH SERVICES."

These goals were to be regulated and enforced under the guidance of nine (9) Commissioners appointed by the Mayor with the advice and consent of the City Council. They maintain control over:

1. Regulation of fares.
2. Supervision of standards and conditions of taxi service.

3. Revocation and suspension of licenses for vehicles.
4. Issuance, as well as terms for revocation and suspension of licenses for drivers.
5. Standards of safety and design in operation of vehicles.
6. Insurance coverage.
7. Uniform system of accounts and right to inspect books and records.

### Gypsy Service


The operation of "gypsy" taxis in relation to the legitimate taxi industry was also examined. While "gypsies" are generally frowned upon by the enforcement staff of every utility commission and by regulated carriers alike (the latter alleging diversion of substantial revenues from legitimate channels), the situation has developed where the public use of "gypsy" cabs in many metropolitan areas is now an "accepted way of life."

While "gypsy" service has been in existence for over fifty years, it has prospered more recently in large urban centers because of the reluctance of regulated taxis to serve so-called "high-crime" areas. The public appeal is enhanced by the fact that unregulated taxis can charge cheaper fares based on less overhead and maintenance costs and operations conducted frequently without adequate insurance coverage.

A recent article by Dave Leherr, a staff writer for the Pittsburgh Post-Gazette, sheds considerable light on the "gypsy" cab situation in that area of Pennsylvania. The writer describes this service as having become so acceptable in the Pittsburgh area that support is being rallied to publicly fund the service as an essential adjunct to existing mass transit facilities.

### Summary

The preliminary conclusion by the PUC staff was that before any proposal is adopted to transfer the taxicab authority of the Public Utility Commission to local political subdivisions, the following questions should be carefully considered:

- 
1. Would the creation of local commissions similar to the New York City Taxi and Limousine Commission, bring about more effective control and thereby afford better public service, as well as improving service into so-called "high-crime" areas?
  2. If the foregoing method of deregulation is considered feasible, should the transfer of PUC authority be limited only to Philadelphia and Pittsburgh and perhaps their respective mass transit areas (SEPTA and PAT) or should the transfer of authority be extended to additional large political subdivisions?
  3. Should the transfer of PUC authority impose mandatory or permissive jurisdiction over taxi cabs to such local municipalities?
  4. What should be transferred to local communities and what should be retained by the PUC with respect to a franchise to operate, rates, service and safety?

40. IT IS OUR RECOMMENDATION THAT, BY JOINT RESOLUTION, THE PUBLIC UTILITY COMMISSION BE MANDATED TO STUDY VARIOUS PROPOSED ALTERNATIVES TO FULL ECONOMIC CONTROL OF THE REGULATED TAXICAB INDUSTRY IN PENNSYLVANIA, AND TO DETERMINE WHAT CHANGES, IF ANY, SHOULD BE MADE, INCLUDING CONSIDERATION OF THE ECONOMIC AND SOCIAL CONSEQUENCES, AND TO REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE LEGISLATURE NOT LATER THAN SIX MONTHS FROM THE ADOPTION OF SUCH A MEASURE.



## V-The Consumer Advocate

There is pending before this Committee House Bill 175, a measure which proposes the creation of a Department of Consumer Advocate within the Executive structure of State Government. The question of the consumer advocate was an important consideration of this Committee with regard to the Public Utility Commission. Specifically, our interest focused on the question of what, if any, impact would a Consumer Advocate have in public utility cases? The answers were varied, ranging from an extreme influence to none at all. But the witnesses generally were agreed: Public sentiment was clearly demanding direct consumer advocacy in rate regulation. That being the case, direct opposition to such an office was minimal.

This committee agrees with the principle of the Consumer Advocate. We believe it is an appropriate response of government to the increasingly suspicious attitude of a skeptical public. We take the view that direct participation of a Consumer Advocate in utility cases before the PUC, if it did nothing else, would be an important step in fortifying and re-establishing credibility in the regulatory process and further securing the adversary proceedings we seek.

41. THIS COMMITTEE PROPOSES THE CREATION OF AN OFFICE OF CONSUMER ADVOCATE WITHIN THE DEPARTMENT OF JUSTICE. THE PROFESSIONAL ACTIVITIES OF THIS OFFICE SHALL BE LIMITED FOR AN INITIAL PERIOD OF THREE YEARS TO MATTERS PENDING BEFORE THE PUBLIC UTILITY COMMISSION. IT SHALL BE FUNDED AS PART OF THE ANNUAL BUDGET APPROPRIATION TO THE DEPARTMENT OF JUSTICE AS RECOMMENDED BY THE GOVERNOR AND APPROVED BY THE GENERAL ASSEMBLY.

This committee believes there is a place for a Consumer Advocate within the framework of state government. We are just as firm in our belief that this place is not as part of the Public Utility Commission.

Nor, do we think, should it be given cabinet or departmental status at its inception. It may well come to cabinet potential at some time down the road. It certainly has not come to that as yet. Like an infant, it has to learn to crawl before it attempts to walk, and to walk before it attempts to run.

If the Consumer Advocate is to function in the manner intended, it must be staffed, trained and skilled accordingly. That will take some time and doing. But anything less than that would constitute a fraud on the very consumers the advocate is charged with serving. It would be cosmetic and ineffectual.

That is why we deliberately propose its creation as an office of the Department of Justice. The concept of the Consumer Advocate, obviously, is to provide a class of society--namely, the small businessman, the farmer, the average residential user--with legal representation in matters pending before regulatory bodies of this Commonwealth.

As so aptly testified by Walter M. Creitz, president of the Pennsylvania Electric Association:

"THE AVERAGE CITIZEN HAS NEITHER THE TIME NOR THE MONEY TO PRESENT HIS OPINIONS BEFORE THE PUC.

"THE CONSUMER ADVOCATE WOULD BE IN A POSITION TO ECHO THE VOICE OF THE AVERAGE CITIZEN."

We are convinced that the soaring caseload before the PUC will provide the Consumer Advocate with sufficient challenge and workload to more than occupy the time and talents of its charter staff.

If the Consumer Advocate functions professionally and effectively in the public utility arena, it can function professionally and effectively in other regulatory arenas of the Commonwealth as well.

The point of our recommendation is to get the office established, staffed and functioning. As it matures, its areas of authority can be expanded as circumstances warrant.

Since we propose to limit the Consumer Advocate to the utility field initially, we also propose that the same restriction applicable to the staff of the PUC be applied to its staff. Namely, professional personnel of the Office of Consumer Advocate would be prohibited from accepting employment with one of the industries subject to its jurisdiction for a period of one year following their service in the agency.

We believe that the Attorney General, with the approval of the Governor, would be the appointing authority since the office is proposed as an arm of the Justice Department. It defies logic to anticipate that an attorney general, an appointee of the Governor, would select as the Consumer Advocate an individual whose philosophy conflicted with the consumer goals and directions of the chief executive of this state.

For the purpose of establishing and staffing the office, our legislation will propose a \$250,000 appropriation for the balance of the current fiscal year. Following that, the office will be funded through the traditional budget procedures of the Commonwealth.

## VI. Regulation of Municipal Corporations

### 42. WE PROPOSE TO EMPOWER THE PUC TO EXERCISE REGULATORY JURISDICTION OVER MUNICIPAL ELECTRIC, WATER AND GAS UTILITIES.

Present law provides that the Public Utility Commission has jurisdiction to regulate public utility service "furnished or rendered by a municipal corporation, or by the operating agencies of any municipal corporation", only beyond the municipality's corporate limits.

In other words the PUC has no authority to regulate utility service provided by a municipality within its corporate borders.

Within those corporate limits, municipalities throughout the nation have one common problem--inadequate financing. The demands by citizens for services from municipal governments are at an all-time high and are growing. The costs of providing these services are growing as well. The problem is complicated further by archaic taxing structures, and by the fact that many logical sources of revenue are pre-empted by levels of government other than the municipality. Finally, many municipalities are facing either statutory or practical limitations in their ability to meet their growing financial obligations from taxation.

As a result, too often the profits from municipally owned systems are used to subsidize other municipal functions. Also, even though the Public Utility Law forbids unreasonable discrimination between customers, different rates may be charged by a municipality to customers it serves on both sides of the municipal border. This, understandably is cause for great wonderment and outrage among the consuming populace.

Therefore, because of the magnitude and complexity inherent in solving today's utility regulation problems, we propose to empower the Public Utility Commission to regulate electric, water, and gas public utility service furnished or rendered by municipal corporations or by their operating agencies.

## VII-Miscellaneous

In the process of our review, it came to our attention that there exists a number of deficiencies of existing Public Utility Commission law. To correct those, we offer these recommendations:

Stock Sales and/or Transfers-The Committee proposes to clearly define a section of the law which sets forth the rights of a utility to sell or transfer stock.

Present law prohibits the sale or transfer of any tangible or intangible property of a public utility without prior PUC approval. However, that provision does not clearly spell out that prohibition includes the disposition of utility property by the sale or transfer of stock.

We propose to specifically provide that the sale or transfer of stock must first be approved by the Commission.

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Telephone Discontinuance-The Committee proposes to protect telephone and telegraph customers from punitive discontinuances of service in the same way in which the customers of other utility service are protected.

The 1974 amendment to the Public Utility Law inadvertently excluded telephone and telegraph services as among those which are prohibited from discontinuing service immediately prior to weekends or specified holidays. Such discontinuance, of course, places an additional and unnecessary burden upon the customer who, when he contacts the utility to make an adjustment, pay up his bill or point out a utility error, finds the office closed and no business being transacted.

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Microwave Communications-Mobile radio-telegraph and microwave communications, which were not in existence in 1937, now play a significant part in the daily activities of many personal and business consumers.

The Committee proposes to clarify the Commission's regulatory jurisdiction over advanced forms of telephone and telegraph communications.

VIII. THE PUBLIC UTILITY COMMISSION - THE LONG-RUN  
RESPONSE

Introduction

We have thus far discussed short-term solutions to problems we perceive. Now we turn to the long term. It seems to us that the best hope for an end to a seemingly endless spiral of soaring rates rests in two areas: Redesign of the rate structure and energy conservation. There is no other way out.

We are not callous to the legitimate needs of the utilities. A generally outstanding record of performance by utility companies in past years, marked by technological improvements in service, provision of facilities in pace with demand, and delivery of service at reduced unit cost, developed a confident faith on the part of the public that ample service would be always readily at hand. Now, because of rising costs and financial constraints, utilities have become fair game for attack in an atmosphere of incomprehension of both the principles of utility regulation and the process by which regulation is effected. The answer rests with the consumer and the utility.

The hour is late and the system cries out for change, pragmatic change and effective change. We must respond accordingly, for the problems we face possess a potential for mischief in direct proportion to the public's readiness to accord our solutions credibility.

A. Fair Value vs. Original Cost Rate Base

43. WE RECOMMEND THAT PENNSYLVANIA ADOPT THE ORIGINAL COST METHOD OF DETERMINING RATE BASE

Determination of the rate base - the value of a company's property used and useful in the public service minus accumulated depreciation - is one of the most important and most difficult problems in utility regulation. There has always been agreement that the price for the service of a regulated company should be high enough to cover operating expense, depreciation, and taxes, and also allow a fair return on the fair value of the capital invested in the business. Consumers expect to pay "just and reasonable" prices for the services they demand; investors expect to receive a "fair" return on the capital they invest. But how should the Commission establish the value of a company's property?

The question is an important one because public utility rates are determined by multiplying the rate base ("fair value" being the present standard in Pennsylvania) by the rate of return, and adding the resulting amount to the utility's operating expenses. This final figure equals the utility's gross receipts (revenue) and is divided among the different classes of users [(Rate Base x Rate of Return) + Operating Expenses = Revenue].

In arriving at its fair value determination, the Commission gives consideration to the original cost of construction of the property and the reproduction cost at fair average prices. In recent electric and telephone rate cases, the fair value rate base determined has been roughly 15% greater than the original cost rate base would have been. In gas rate cases, the fair value rate base is usually 20-30% greater than the original cost rate base.

The Committee concerned itself with the fair value method of determining the rate base because of its concern that application of the method was not in the public interest. We conclude that the use of fair value has been a failure because of its speculative nature, because of the time and

expense of its calculation, and because it encourages inclusion in the rate base of reproduction cost of structures and facilities (new) which are no longer used or are of very minimal use.

As aptly stated by Jack K. Busby, president of Pennsylvania Power & Light Company, before our Committee:

"BECAUSE FAIR VALUE DETERMINATION OF THE PROPERTY RATE BASE IS COMPLEX, TIME-CONSUMING AND, TO MANY PEOPLE, MYSTERIOUS, AND VIEWED BY SOME AS A 'COVER' FOR HIGHER RATES THAN WOULD OTHERWISE BE JUSTIFIED, I THINK ITS CONTINUED USE MAY NOT BE IN THE BEST INTERESTS OF CONSUMERS, UTILITY COMPANIES AND THE REGULATORY AGENCIES. IT SEEMS TO BE ENTIRELY CLEAR THAT THE ORIGINAL COST APPROACH IS MORE INTEL-LIGIBLE, MORE CREDIBLE AND, THEREFORE, MORE IN KEEPING WITH TODAY'S CONDITIONS WHERE THE DECISION-MAKING PROCESS MUST BE OPEN AND UNDERSTANDABLE IF SOCIAL CONFIDENCE IN OUR INSTITUTIONS IS TO BE MAINTAINED."

These sentiments were echoed before our Committee by David Dunlap, Esquire, the acknowledged dean of utility attorneys in the Commonwealth, who stated with regard to the fair value method:

"MORE TIME IS SPENT ON THIS ASPECT OF A RATE CASE THAN UPON ALL THE OTHER ASPECTS COMBINED. NEITHER THE GENERAL PUBLIC NOR ANYONE ELSE EXCEPT THE TECHNICIANS UNDER-stand the present involuted method, whereby the rental to investors depends not upon their investment but rather upon the value of the utility's plant. THE PUBLIC DOES NOT SEE THE CONNECTION BETWEEN THE PLANT ON THE ONE HAND, AND THE AMOUNT OF INVESTORS' RENTALS ON THE OTHER HAND."

Or, as phrased by Stuart E. McMurray, president of the Peoples Natural Gas Company:

"THERE ARE A NUMBER OF FACTORS CAUSING COMMISSION DELAY, BUT THE CHIEF ONE IS THE COMPLEX FORMULA THAT REQUIRES THE



RETURN INGREDIENT--THE AMOUNT REQUIRED TO PAY INTEREST ON BONDS AND DIVIDENDS ON STOCK--BE DETERMINED BY APPLYING A PERCENTAGE RATE OF RETURN TO A RATE BASE MEASURED BY THE VALUE OF THE UTILITY'S PLANT. ASIDE FROM THE INCONGRUITY OF DETERMINING THE RETURN ON SECURITIES ON THE BASIS OF PLANT VALUES, THE TIME TAKEN TO INVESTIGATE THOSE VALUES, THE DEPRECIATION, THE CASH WORKING CAPITAL, THE MATERIALS AND SUPPLIES AND OTHER RATE BASE INGREDIENTS, IS THE CHIEF CAUSE OF RATE CASE DELAY." (EMPHASIS MR. MCMURRAY'S)

Finally, Richard D. Cudahy, chairman of the Wisconsin Public Service Commission, told the Committee:

"ALTHOUGH WE MIGHT EXPLORE MANY COMPLEXITIES OF THE PROBLEM, THE NET INVESTMENT RATE BASE [ORIGINAL COST] METHOD MAY BE RECOMMENDED PRIMARILY FOR TWO REASONS: (1) IT IS ADMINISTRATIVELY SIMPLE AND YIELDS RELATIVELY UNARGUABLE RESULTS DURING A PERIOD WHEN THE TIME AND MANPOWER OF THE REGULATORY AGENCIES ARE AT A PREMIUM, AND (2) IT YIELDS RESULTS WHICH CORRESPOND CLOSELY TO THE APPLICABLE CAPITALIZATION OF THE UTILITY AND, THEREFORE, IT RELATES CLOSELY TO THE COST-OF-CAPITAL METHOD OF DETERMINING THE REQUIREMENTS FOR MAINTAINING FINANCIAL INTEGRITY AND ATTRACTING CAPITAL."

Prior to the decision of the Supreme Court of the United States in Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1944), valuation of property "used or useful" in the public utility service was largely governed by the rule of Smyth v. Ames, 169 U.S. 466, 564 (1898), which provided "...that the basis of all calculations as to the reasonableness of rates to be charged by a corporation...must be the fair value of the property being used by it for the convenience of the public." Since 1923, however, when the dissenting opinion of Mr. Justice Brandeis in Southwestern Bell Telephone Co. v. Public Service Commission of Missouri, 262 U.S.

175 (1923), introduced the "prudent investment" concept of the rate base in the Supreme Court of the United States, an unmistakable trend has developed away from fair value.

In 1933 in Los Angeles Gas & Electric Corp. v. Railroad Commission of California, 289 U.S. 289 (1933), and again in 1938 in Railroad Commission v. Pacific Gas & Electric Co., 302 U.S. 388 (1938), the Supreme Court held that procedural due process as distinguished from substantive due process did not require the use of fair value. And at last in the Hope case, the Supreme Court declared that in determining reasonable rates "it is the end reached not the method employed which is controlling." [Emphasis ours]

The effect of this decision is to free the state Commissions so far as the federal constitution is concerned from any restrictions in their choice of a method of determining rate base. It follows that the Pennsylvania Commission need conform only to Pennsylvania statutory law in establishing property valuations for rate making purposes, and that the Legislature may in its discretion prescribe fair value, original cost less depreciation, or any other method for determining the rate base.

As a result, the trend away from fair value has continued. As of 1967, 31 state utility commissions (including the District of Columbia) used original cost (or "prudent investment") in regulating electric and gas utilities, twelve used fair value - a compromise between original and reproduction cost - one called its method "average net investment," and one used reproduction cost specifically. Of the remaining six states, four had no state Commissions to regulate gas and electric utilities, and two Commissions had no established procedures.

According to the National Association of Regulatory Utility Commissioners, only ten states still use the fair value method: Arizona, Delaware, Indiana, Maryland, Mississippi, Missouri, New Mexico, North Carolina, Pennsylvania, and Texas.

Most recently, the Montana State legislature passed a bill eliminating the fair value method. The legislation does not bind the state's Commission to any value as long as no higher value than original cost is used.

Pennsylvania adheres to fair value because the Public Utility Law provides as follows:

"THE COMMISSION MAY AFTER REASONABLE NOTICE AND HEARING, ASCERTAIN AND FIX THE FAIR VALUE OF THE WHOLE OR ANY PART OF THE PROPERTY OF ANY PUBLIC UTILITY, INsofar AS THE SAME IS MATERIAL TO THE EXERCISE OF THE JURISDICTION OF THE COMMISSION, AND MAY MAKE REVALUATIONS FROM TIME TO TIME AND ASCERTAIN THE FAIR VALUE OF ALL NEW CONSTRUCTION, EXTENSIONS, AND ADDITIONS TO THE PROPERTY OF ANY PUBLIC UTILITY...." (EMPHASIS ADDED)

There is some indication that the legislature intended to abolish the fair value method when it repealed the Public Service Company Law of 1913 and replaced it with the present law in 1937. The definition of "fair value" in the previous law was omitted but, as just seen in the above quotation of the law, the words "fair value" were used again.

The co-sponsor of the 1937 statute, during floor debate, shed some light on the Legislature's intent. State Representative Leo A. Achterman asserted:

"THE BILL PROVIDES FOR A RETURN ON THE CAPITAL INVESTED IN THE ASSETS OF THE CORPORATION, NOT A FANCIFUL ONE, NOT A CONJURED ONE, BUT A REAL AND ACTUAL VALUE. IT IS ON THAT BASIS THAT WE ARE EXPECTING THE PUBLIC UTILITIES COMMISSION TO FIX THE RATES OF THE VARIOUS UTILITIES IN THIS STATE."

As observed by Curtis M. Pontz and Stephen A. Sheller in their recent article entitled "The Consumer Interest - Is It Being Protected By The Public Utility Commission":

THIS STATEMENT CAN BE CONSTRUED AS AN INTENT TO MAKE INVESTED CAPITAL THE RATE BASE IN PENNSYLVANIA. SUCH A PROPOSAL WAS

NOT NEW TO RATE REGULATION, FOR, AS JUSTICE BRANDEIS HAD WRITTEN, IN CALLING FOR THE DEMISE OF SMYTH V. AMES, '[T]HE THING DEVOTED BY THE INVESTOR TO THE PUBLIC USE IS NOT SPECIFIC PROPERTY, TANGIBLE AND INTANGIBLE, BUT CAPITAL EMBARKED IN THE ENTERPRISE. UPON THE CAPITAL SO INVESTED THE FEDERAL CONSTITUTION GUARANTEES TO THE UTILITY THE OPPORTUNITY TO EARN A FAIR RETURN.' ACHTERMAN'S REMARK LIKEWISE SEEMS TO REFER TO A THEORY OF RATE-MAKING INCORPORATING A 'CAPITAL INVESTED' OR 'ACTUAL COST' RATE BASE."

In any event, we are intent upon ending the endless controversies during rate cases over the proper valuation of utility property, and conclude that the continual revaluation of capital investments made in the past are a deplorably inefficient and indirect way of approaching the task of devising economically efficient rates. Our sentiments coincide with those of two commentators who stated in 1940:

"IT IS NOT TOO MUCH TO SAY THAT IN TERMS OF COST, DELAY, UNCERTAINTY, AND THE AROUSING OF ANIMOSITY AND CONTENTION, THE PERFORMANCE OF THE REPRODUCTION COST METHOD FALLS LITTLE SHORT OF A PUBLIC SCANDAL; BY FAR THE GREATER PART OF THE GROTESQUE AND COSTLY PONDEROSITY WHICH CHARACTERIZES MODERN RATE REGULATION IS TO BE ATTRIBUTED DIRECTLY AND SOLELY TO THE REPRODUCTION COST APPROACH. THERE IS NO OCCASION HERE TO RECITE DETAILS OF THE MANEUVERING IN A TYPICAL RATE PROCEEDING. THE MONTHS AND YEARS SPENT BY CONTENDING PARTIES, COMMISSIONS, AND COURTS OVER SUCH HYPOTHETICAL FACTORS AS PRICING, CONDITIONS OF CONSTRUCTION, LABOR PERFORMANCE, OVERHEADS, INTANGIBLES, THE HUGE SUMS PAID TO ENGINEERS AND ACCOUNTANTS AND OTHER PROFESSIONAL EXPERTS, DIRECTED IN THEIR CLAIMS AND COUNTER-CLAIMS BY HIGH-PRICED ATTORNEYS SKILLED IN THE ART OF RATE CASE STRATEGY; THE HIGHLY CHARGED, POLITICO-LEGAL-MYSTIC CHARACTER OF THE WHOLE PERFORMANCE - THIS IS ALL ACCEPTED PRACTICE UNDER THE REPRODUCTION COST METHOD, YET IT SEEMS FAR REMOVED FROM THE ESSENTIAL BUSINESS OF SETTING THE PRICE OF A SINGLE SERVICE IN A SINGLE COMMUNITY UNDER CONDITIONS OF SIMPLE MONOPOLY."

We should acknowledge that the Committee heard testimony to the effect that the fair value method should be retained in an inflationary economy. Nevertheless, we feel that original cost method makes more sense and cite Chairman Cudahy of Wisconsin (which has long been an original cost state) although, of necessity, his words are couched in rather esoteric language:

"THE PRINCIPAL ARGUMENT ADVANCED FOR A 'FAIR' VALUE' RATE BASE METHOD DURING MODERN TIMES HAS BEEN THE CONTINUING (AND ALMOST UNIVERSALLY PREDICTED TO BE PERMANENT) STATE OF INFLATION. BUT, AS A PRACTICAL MATTER, ANY ADVANTAGES WHICH 'FAIR VALUE' MIGHT PURPORT TO OFFER IN THIS AREA ARE MORE THAN OFF-SET BY DELAY, UNCERTAINTY AND WASTE OF REGULATORY RESOURCES IN ESTABLISHING 'FAIR VALUE'.

"I BELIEVE THAT THE PROBLEMS OF INFLATION CAN MOST EFFECTIVELY BE COPEd WITH REGARDLESS OF THE RATE-BASE METHOD USED BY SUCH MEASURES AS: (A) ESTABLISHMENT OF APPROPRIATE RATES OF DEPRECIATION, (B) SELECTION OF TEST YEARS (FOR OPERATING RESULTS) WHICH REPRESENT FUTURE, PROJECTED PERIODS RATHER THAN HISTORICAL, PAST PERIODS, (C) NORMALIZATION OF DEPRECIATION FOR RATEMAKING PURPOSES WHICH HAS BEEN ACCELERATED FOR TAX PURPOSES, (D) INCLUSION OF SOME PART OF CONSTRUCTION WORK IN PROGRESS IN THE RATE BASE (WHICH MEANS THAT RATE BASE IS MADE TO BECOME THE EQUIVALENT OF CAPITALIZATION IN A MORE REALISTIC SENSE) AND (E) THE PROVISION OF ATTRITION ALLOWANCES."

We therefore agree with Mr. Busby that the use of the original cost approach, rather than fair value, is desirable. It is more compatible with making a sound, data-based evaluation of utility company financial performance and financial needs and with determining the reasonableness of utility earnings.

We must also agree with him, however, that no one should expect that a changeover to original cost would effect lower rate levels. The rate of return must be raised correspondingly to adjust for the fact that the return will be calculated on the older,

original cost of the investment rather than its speculatively determined present-day value. Experience has demonstrated, however, that the rate of return is somewhat less in original cost states than fair value states. At the least, the changeover will open the way to a more rational, understandable, and quicker decision-making process.

In summary, the words of Robert H. Griswold, Esquire, spoken before the Public Utility Section of the Pennsylvania Bar Association in 1971, are particularly appropriate:

"WHAT I AM SUGGESTING IS THAT THOSE ISSUES OF A CASE WHICH MUST BE RESOLVED THROUGH THE HEARING PROCESS BE CONFINED AS FAR AS POSSIBLE AND SIMPLIFIED. TO THIS END, THE IDEA OF ORIGINAL COST RATE BASE OUGHT TO BE CONSIDERED SERIOUSLY AND DISPASSIONATELY. THIS HERESY IS ADVANCED NOT AS A MEANS OF KEEPING RATES DOWN--RATE OF RETURN MUST BE ADJUSTED COMMENSURATELY--BUT AS A WAY OF GETTING RID OF THE WHOLE BUSINESS OF ATTEMPTING TO ESTABLISH 'FAIR VALUE.' THE COST OF A UTILITY PLANT IS REASONABLY ASCERTAINABLE: ITS 'FAIR VALUE' IS NOT. IT MAY BE THAT WE HAVE NOT YET ACHIEVED A DEGREE OF POLITICAL SOPHISTICATION IN PENNSYLVANIA SUFFICIENT THAT A RATE OF RETURN APPROPRIATE TO AN ORIGINAL COST RATE BASE CAN BE PUBLICLY ACKNOWLEDGED AS FAIR, BUT THAT I AM RELUCTANT TO BELIEVE. AT ANY RATE, IT SEEMS TO ME THAT THERE IS SO MUCH TO BE GAINED BY ELIMINATING THE HOCUS-POCUS OF 'FAIR VALUE' THAT THE EFFORT SHOULD BE MADE."

In short, of all the inadequate dogmas of the quiet past, chief among them in utility regulation is the "fair value" concept. We therefore recommend that Pennsylvania adopt the original cost method of determining rate base.

B. Inclusion of Construction Work In Progress In  
The Rate Base

44. WE RECOMMEND THE INCLUSION OF CONSTRUCTION  
WORK IN PROGRESS LIMITED TO 10-20% OF NET INVESTMENT  
RATE BASE

Historically, utilities cannot begin to recover the cost of new equipment until it is placed in service - a return is permitted only on property which is "used and useful" for the purpose of providing a utility service. Since new facilities often take several years to complete, and tie up large amounts of capital, utilities are allowed to claim an interest expense (called "interest during construction"), which becomes part of the cost of a facility and enters the rate base when equipment is placed in service.

To state this in a more sophisticated fashion, the following is a quotation by Frederick C. Huebner, administrator of the Utility Accounts and Finance Division of the Wisconsin Public Service Commission, during a rate case in that state:

"PUBLIC UTILITIES HISTORICALLY HAVE BEEN INVOLVED AT ALMOST ALL TIMES IN THE DUAL CAPACITY OF CONSTRUCTING AND OPERATING PUBLIC UTILITY PLANT. AS THE AMOUNT OF CAPITAL TIED UP IN CONSTRUCTION WORK IN PROGRESS IS OFTEN SIGNIFICANT, A COMMON ACCEPTED PRACTICE, CURRENTLY AND HISTORICALLY, BECAUSE OF THE DIRECT RELATIONSHIP BETWEEN RATE BASE AND RETURN, AND THE NECESSITY OF SHOWING REASONABLE STABLE RETURNS ON CAPITAL INVESTED IN PUBLIC UTILITIES IS TO RECORD AS A PART OF THE CONSTRUCTED COST OF UTILITY PLANT AN IMPUTED ALLOWANCE FOR COST OF CAPITAL TIED UP DURING THE CONSTRUCTION PERIOD. THE METHOD USED, GENERALLY SPEAKING, IS TO CAPITALIZE INTEREST DURING CONSTRUCTION AT A RATE SOMEWHAT LESS THAN THE ACTUAL COST OF CAPITAL AND CREDIT INCOME IN THE ACCOUNTING PERIOD WITH AN EQUIVALENT AMOUNT OF INTEREST. THIS INCREASES RATE BASE OVER THE LIFE OF THE PROPERTY."

Accordingly, the Uniform System of Accounts, which utilities must use for their bookkeeping, provides for interest during construction (or an "allowance for funds used during construction") which is defined to include the net cost for the period of construction for borrowed funds used for construction purposes and a reasonable rate for other funds when so used.

Many utilities, plagued by long construction delays, are now asking that they be allowed to place "construction work in progress" (CWIP) in the rate base. This essentially would allow a return for facilities that are not yet in service. Financially it is to the utility's advantage because inclusion of CWIP increases the utility's "cash flow": The "interest during construction" is set at 7% by the Pennsylvania Commission (using Federal Power Commission guidelines), whereas the normal rate of return on the rate base is, say 9%. Naturally, the utilities would prefer to calculate CWIP into the rate base to get the higher return than to receive a lower "allowance for funds used during construction".

In several recent cases, the Pennsylvania Public Utility Commission, in seeming contradiction to the "used and useful" rule, has allowed a portion of construction work in progress to be included in the rate base of the past "test year" which is used as an example for setting new rates.

It has done so because it feels that a public utility must engineer and construct plant in advance of actual consumer needs and cannot be denied a reasonable return thereon unless it can be shown that the investment was improvident and imprudent.

We recommend the addition of a portion of CWIP to the rate base, thus including it in the calculation of the return, as long as the amount allowed for funds used during construction is commensurately reduced. It must be assured that rate payers do not pay for an allowance for funds used during construction and for CWIP. These same principles have in fact recently been endorsed by the Federal Power Commission.



Our findings indicate that such allowance of CWIP up to 10% of net investment rate base is fully justified. The Wisconsin Public Service Commission has in fact allowed the same percentage of CWIP in the rate base in recent years.

We recommend further that the percentage for construction work in progress be increased by an additional 10% (i.e., up to 20%) as the Commission deems appropriate for any utility in direct proportion to its need and its success in accomplishing energy conservation.

To this end, we recommend that every utility seeking the additional 10% of CWIP to be included in its rate base be required to demonstrate its worthiness in its annual conservation report and plan (which henceforth will be required of all regulated utilities in any event). The Commission's new Bureau of Conservation, Economics & Energy Planning will review these reports and plans, and the utility company will in effect be "graded" on its efforts and can be rewarded by an increased percentage of CWIP for its success up to an additional 10%.

We come to these conclusions in order to assure continued, reliable service to the consumer and cash flow to the utility and its investors. We believe that this approach represents a reasonable, effective compromise between two extreme solutions - adding large chunks of plant and capitalized interest to the rate base all at once at the time the plant goes into service (which has a strong upward effect on rates), or the opposite extreme of allowing a current return on construction work no matter how high a percentage of total plant it may represent.

### C. Regulatory Lag And The Use Of Future Test Years

#### 45. WE RECOMMEND THE USE OF FOWARD-LOOKING TEST PERIODS AS THE BASIS FOR ESTABLISHING NEW RATES

One of the important differences between regulated and unregulated corporations is the elapsed time between a management decision to increase prices and the point at which that decision is made effective by customers actually paying the higher prices. Normally, this period of time is much longer for the regulated firm because of the requirements for review and approval that are in the regulatory process. This extra period of time is referred to as "regulatory lag."

During periods of rapidly increasing costs, regulatory lag can materially reduce the earnings of a public utility and, as a result, can have a serious effect on its ability to provide adequate service to its customers and to attract new capital to finance expansion. This is particularly so in states such as Pennsylvania where the fair value method of determining the rate base is used.

Because regulatory lag in the long run is a curse to utilities and consumers alike, we recommend that at least one technique designed to reduce this lag be permitted by the Public Utility Law - the use of forward-looking test periods as the basis for establishing new rates.

Most regulatory agencies fix public utility rates for the future upon the basis of costs incurred during some recent past period of time, referred to as the "test period," usually the latest 12 months of actual experience. It has the advantage of being based on accounting records for rate base and operating costs - although not completely since it is almost always necessary to make various adjustments to the test year data.

Ordinarily, adjustments are made to the test period costs in an effort to reflect cost and revenue relationships likely to prevail in the future. Such adjustments, however, must now be "known and measurable."

In addition, there is often controversy concerning the extent to which the utility has been selective in the adjustments it proposes to make. Also, there is confusion as to whether the purpose of the adjustments is to restate costs for the test year on the assumption that conditions prevailing at the end of the year prevailed throughout the year, or whether the purpose is to predict.

Because of these problems and the belief on the part of some that the use of a past test period is not adequate to cope with conditions of rapidly changing costs, estimated future periods are increasingly being used as a basis for fixing rates.

We feel this makes eminently good sense in Pennsylvania because very often in a major rate case, when the decision does come, it is based in large part upon data already two years old. For example, the supporting data for a 1974 rate application is 1973 information, while the decision may not come down until 1975.

We would add one important measure: Utilities now have the ability to forecast costs for the future with reasonable accuracy. But, as a safeguard, we feel the utility in the year after the final decision should be required to demonstrate that its forecast was correct, and appropriate adjustments (up or down) should be made if the relied upon predictions were faulty.

In sum, with costs now rising because of inflation and other factors, rates based on a future test year will provide more current price signals to consumers and also help to offset utility earnings "attrition" from regulatory lag.

D. Automatic Fuel Adjustment Clauses and Affiliated Interests

46. WE RECOMMEND FORMATION OF SPECIALIZED AUDITING TEAMS WITHIN THE COMMISSION TO CONDUCT QUARTERLY FUEL ADJUSTMENT AUDITS

47. WE FURTHER RECOMMEND THAT CLEAR GUIDELINES AND PENALTIES BE ESTABLISHED TO REGULATE RELATIONS BETWEEN PUBLIC UTILITIES AND THEIR "AFFILIATED INTERESTS"

Many electric utility rate schedules contain clauses which provide for automatic increases in rates to reflect increased fuel costs. Normally, these changes may be passed on to customers in accordance with the adjustment clause without need for approval by the regulatory agency. No aspect of utility regulation has caused more public anger and hostility than these pass-on charges.

Fuel adjustment clauses are permitted by most regulatory agencies, including Pennsylvania's Commission, because fuel is a major cost element, is particularly volatile, and because it varies more directly with the quantity of energy produced than any other element of cost.

The effect of a properly designed fuel cost adjustment clause can be to minimize regulatory lag with respect to this one element of cost. We acknowledge that utilities must be able to pass on fair cost increases rather quickly to consumers. When a utility cannot pass on its costs, it is faced with the necessity of implementing some unfavorable contingencies. It can defer maintenance and expansion, favorably affecting short run costs but significantly raising long run costs, which ultimately is no favor to consumers.

However, it has been argued that such clauses reduce the incentive of the public utility to minimize its fuel cost because any increases in such costs can be promptly passed along in the form of higher rates. Some feel that incentives are needed to pressure utilities to convert from scarce, expensive fuels to lower cost ones. Others have taken the position that incentive can be maintained by permitting automatic adjustment of a

limited proportion of the total cost of fuel, say 90%. The remaining 10% would be recoverable only if the utility could verify that it obtained the fuel at the best price possible at the time, which would actually require a showing of the total fuel market at various points in time.

The present situation was aptly described to the Committee by Secretary of Community Affairs William H. Wilcox:

"IN MARCH OF 1975 THE PUC INSTRUCTED EVERY ELECTRIC AND GAS UTILITY TO HIRE AN INDEPENDENT AUDITOR TO REVIEW THE BASIS OF THE FAC CHARGES MADE BY EACH UTILITY. THE DIRECTIVE GIVES THE UTILITIES SIXTY DAYS FROM THE SELECTION OF THE AUDITOR, TO ISSUE A REPORT TO THE PUC. WHILE THESE AUDITORS WILL APPARENTLY REVIEW THE INCREASED FUEL COSTS CLAIMED IN EACH FAC, IT APPEARS THAT THESE AUDITS WILL NOT ANALYZE WHETHER THE COSTS INCURRED WERE THE RESULT OF SEARCHING AND BARGAINING FOR THE LOWEST PRICE; NOR WILL THE AUDITORS CONDUCT AN INVENTORY TO DETERMINE WHETHER THE VOLUMES OF FUEL CLAIMED WERE ACTUALLY PURCHASED, DELIVERED AND BURNED.

"THE STAFF OF THE PUC HAS BEEN CONDUCTING AN ONGOING AUDIT OF FAC'S FOR THE PAST SEVERAL YEARS. EVERY MONTH, EACH UTILITY MUST FILE A REPORT JUSTIFYING ITS FAC CHARGE AS WELL AS SUPPORTING DATA. THE STAFF OF THE PUC REVIEWS THESE FIGURES AND HAS UPON OCCASION MADE REVISIONS IN PROPOSED CHARGES. ALL REVISIONS MADE HAVE BEEN THE RESULT OF MATHEMATICAL ERRORS.

"THE SCOPE OF THIS ONGOING REVIEW IS REALLY QUITE LIMITED. THE FIGURES FOR THE VOLUME OF FUEL CONSUMED ARE BASED SOLELY ON INVOICES SUPPLIED BY THE UTILITY. THE STAFF DOES NOT ROUTINELY CONDUCT ANY REVIEW OF ACTUAL INVENTORIES. THE FIGURES FOR THE COST OF THE FUEL BURNED CAN BE AND ARE VERIFIED BY CHECKING THE QUOTATION AGAINST COPIES OF THE ACTUAL FUEL CONTRACTS. UNDER THIS AUDIT PROCEDURE, AS IN THE INDEPENDENT AUDIT, THERE IS NO ATTEMPT MADE TO DETERMINE WHETHER THE PRICE FOR THE FUEL WAS THE CHEAPEST ONE AVAILABLE."

Rather than adopting the drastic 90%-10% withholding measure, we recommend the formation of specialized auditing teams within the Commission to review all aspects of the Fuel Adjustment Clause. These teams should be comprised of a sufficient number of specially trained accountants to conduct frequent (at least quarterly) fuel adjustment clause audits.

The present method of merely checking the accuracy of the figures submitted by privately retained accounting firms on behalf of their utility clients is inadequate to protect the public interest. Field auditing procedures in the fuel adjustment area and studies within the Commission itself should commence on a vigorous basis in order that a thorough analysis can be made of the propriety and justification of all pass-on charges.

Most importantly, the Commission auditors should make every effort to analyze whether the costs incurred were the result of searching and bargaining for the lowest possible price. They should also conduct inventories to determine whether the volumes of fuel claimed were actually purchased, delivered, and burned.

As indicated earlier, the increased assessment of utilities should provide ample revenue to finance these much needed audits.

#### Affiliated Interests

During the course of this committee's hearings, much discussion was had about the possibility of "sweetheart" contracts between public utilities and their suppliers. The suggestion was made that goods and services might well be flowing to some utilities at prices above their fair market value. This was possible because many utilities have suppliers which are partially or totally owned (or indirectly or directly controlled) by them.

We believe the Public Utility Law should be strengthened to insure that the Commission can act to prevent such unfair inside dealing. The legislation we propose specifically defines what an "affiliated interest" is, establishes guidelines, and provides for penalties.

"Affiliated interests" include those who own, directly or indirectly, 5% of the voting securities of a public utility; inter-locking directorships; servicing organizations furnishing supervisory, construction, engineering, accounting, legal, and similar services, and other such relationships.

The Commission may, after investigation, include any person or organization exercising substantial influence over the policies or actions of a public utility. This would include trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers, and partnerships.

No arrangements would be valid for expense purposes (and chargeable to ratepayers) unless first filed with and approved by the Commission. The burden of proof will be upon the public utility, which, of course, is in the best position to prove the propriety of the transaction.

Above all, the Commission is placed in the position of being fully informed. It has the power to disallow costs as unreasonable and to revise and amend so as to protect and promote the public interest.

E. Natural Gas Allocation and Curtailment Procedures

48. WE RECOMMEND THAT THE COMMISSION BE GIVEN AUTHORITY IN PENNSYLVANIA TO ALLOCATE NATURAL GAS CUT-BACKS AMONG THE VARIOUS CLASSES OF UTILITY CUSTOMERS.

Whatever the alleged deficiencies in the Federal Power Commission's current policies and rulings with respect to curtailment, priorities, and the allocation of natural gas delivered to intrastate utilities by interstate natural gas pipeline companies under FPC jurisdiction, one thing is clear: Natural gas supplies are dwindling and exploration for new supplies presently is financially infeasible.

Of course, the FPC has no authority over the distribution of natural gas subject to State commission regulation and has put forward the view that use of natural gas within a state is the state's concern. But FPC policies and rulings strongly influence the way that gas is used within a state, sometimes to the disadvantage of the state.

Given this essentially Federal problem, however, we concur wholeheartedly with Stuart McMurray of the Peoples Natural Gas Company that Pennsylvania's Public Utility Law should be amended "to afford the Commission exclusive authority to determine how utility service shall be apportioned among customers of each utility in times of shortage to minimize harm to people and their jobs."

This recommendation was also made by Philip P. Kalodner, Special Counsel to the Governor for Regulatory Matters and a former Commission nominee:

"A CLEAR DIRECTION TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION TO UNDERTAKE THE MANAGEMENT OF NATURAL GAS SUPPLIES IN PENNSYLVANIA, LEAVING NO DOUBT THAT IT IS THE COMMISSION'S RESPONSIBILITY NOT ONLY TO DEVELOP A CURTAILMENT POLICY AMONG EXISTING CUSTOMERS IN THE EVENT OF A SHORT SUPPLY OF NATURAL GAS BUT THAT IT IS WITHIN THE COMMISSION'S POWER TO REQUIRE ELIMINATION OF CERTAIN CURRENT CUSTOMERS IN PRIORITY TERMS IN ORDER TO ENABLE NATURAL



GAS DISTRIBUTION UTILITIES TO MAKE NEW SALES  
IN SUCH AREAS AS RESIDENTIAL AND DIRECT  
FLAME APPLICATION WHERE NATURAL GAS IS  
REQUIRED FOR THE CONTINUED GROWTH OF THE  
PENNSYLVANIA ECONOMY."

In our judgment, this is not only vitally  
important to the continued vitality of industry in  
Pennsylvania, but to the stability of the job market  
in the Commonwealth as well.

F. Joint Resolution Mandating A Public Utility Commission Study Of Proposed Alternative Electric Rate Structures

49. WE RECOMMEND THAT BY JOINT RESOLUTION THE PUBLIC UTILITY COMMISSION BE MANDATED TO STUDY VARIOUS PROPOSED ALTERNATIVE RATE STRUCTURES AND TO DETERMINE WHAT CHANGES, IF ANY, SHOULD BE MADE

Rate design or structure is presently a subject of intense interest and heated controversy. Unfortunately, the Pennsylvania Public Utility Commission, for one reason or another, has not actively participated in this beneficial debate.

Should a customer pay more or less for a kilowatt-hour of power as his consumption increases? Should rates be constant around the clock, or should power used at peak periods cost the user more?

What should be the differential between prices charged to various classes of customers, such as residential, commercial, and industrial? Should there be a seasonal differential between peak and off-peak hours?

Are indeed the dogmas of the quiet past, primarily the so-called declining block rate structures ("the more you use the less you pay" system presently used by most utilities), truly inadequate to the stormy present?

We are particularly anxious that Pennsylvania take part in the current search for more equitable, more sane rate structures. In the short run we can only open up the process and insure the integrity of the system. In the long run we must break out of the vicious cycle of growth, heavier demand at peak periods, and monstrously expensive plant construction to meet only those peaks.

Few realize that a great part of utility plant - often 50% - lies unused except at peak periods. The utilities simply must be ready with the extra capacity to prevent brownouts or even blackouts.

Meanwhile our precious resources are squandered. Our air and water is defiled. Our technology progresses apathetically. Our utility bills soar. Our people suffer in baffled outrage.

What must be done to end this self-perpetuating insanity?

Firstly, all concerned must be shaken to the realization that times have changed and that this run away train is going to crash eventually, harming everyone. The heyday of cheap energy is gone.

Fuel costs are an international problem brought home by the much resented but necessary fuel adjustment charges. Actually, the utilities are in the middle. They are receiving the abuse which the fuel suppliers really deserve. For the time being we can do little about this, and the utilities are in no better position, although they would delight in having happy customers again.

Growth will inexorably come - historically about 7% annually - but must we keep endlessly building in response? Building to appease peak demand creates a separate vicious circle. Construction money must be obtained from investors. Wall Street must be kept happy to recommend the new issues. So the utilities unflinchingly pay stock dividends - even if the dividends paid out exceed company earnings. And if necessary new stock prices are set below book value, thus cheating every stockholder. To keep all the balls in the air the company has one choice left - a request for a rate increase. Once granted, more peak demand requires more building, and the cycle goes on.

Can we not be more efficient instead?

Can we - customer and utility alike - not tighten our belts together before impending disaster tightens them for us?

The long-run solution is to make a very basic change in the system. We must be given an incentive to conserve, to be less wasteful, to be more efficient. Utilities must make every effort to retard their need for new generating facilities. Consumers must be provided with the means of comparing what it will cost them (and society) if one or the other energy use is undertaken. They must increase building insulation, shun needless appliances, change life styles.

In short, consumers must be given a choice. If they choose the more costly alternative, they must be prepared to pay the piper. To achieve this, the declining block rate design must be discarded as wasteful and inequitable. It is hailed as the most cost-justified method of structuring rates because large users cost less to serve than small customers. But costs must be only one of many considerations in rate making when the Public Utility Law reposes in the Commission very broad responsibility for the preservation and protection of the public interest. Other factors such as value of service, competition, customer reaction, conservation, and environmental factors must be given consideration as well.

What the alternative rate design should be is, as previously indicated, the subject of heated controversy. This Committee is not equipped to mandate what the ultimate solution or combinations of solutions should be.

Accordingly, it is our recommendation that, by Joint Resolution, the Public Utility Commission be directed to study various proposed alternative electric rate structures; and to determine what changes, if any, should be made in presently constituted rate structures. including consideration of the economic and social consequences, and to report its findings and recommendations to the Legislature not later than one year from the adoption of such a measure.

Similar resolutions have stirred the regulatory Commissions in California, Maryland, and Massachusetts to thought and action. As a major industrial state, Pennsylvania should not be caught standing idly by merely because the occasion is piled high with difficulty or because the present workload is burdensome.

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Without attempting to dictate what the Commission's final recommendations should be, it would seem that any new rate structure should be designed substantially in accord with the economic concepts of "long-run incremental costs" and "incremental cost pricing."

Long-run incremental cost (LRIC) is the additional cost of building new generating capacity and providing electric service which can be reasonably anticipated over the next several years. It seems that when the price of electricity is set equal to the incremental unit costs to society of producing it, the resources consumed in its production are allocated more efficiently. Richard D. Cudahy, chairman of the Wisconsin Public Service Commission, precisely stated the concept and its rationale before the Committee:

"THE NAME OF THE GAME IS MARGINAL OR INCREMENTAL COST PRICING AS THE APPLICATION OF THE PRINCIPLE OF COST CAUSATION. COSTS ARE ASSIGNED OR ALLOCATED ON THE BASIS OF THE CUSTOMERS AND USES WHICH CAUSE THEM.

"SUCH A PRINCIPLE, OF COURSE, LEADS INEVITABLY TO THE IDEA OF PEAK RESPONSIBILITY; THAT IS, TO THE CONCEPT THAT ALL THE CAPACITY OF THE SYSTEM SHOULD BE ASSIGNED OR ALLOCATED TO THE CUSTOMERS AND TO THE USERS WHICH ARE USING ELECTRICITY AT THE TIME OF PEAK. THIS IS A RELATIVELY SIMPLE MATTER OF CAUSE AND EFFECT. IF ALL DEMANDS FOR ELECTRICITY WHICH OCCUR SIMULTANEOUSLY ON THE SYSTEM PEAK OR HIGHEST POINT OF SYSTEM DEMAND DID NOT OCCUR IN FACT AT THAT TIME, CAPACITY NECESSARY TO SATISFY SUCH A DEMAND WOULD NOT BE REQUIRED. IN OTHER WORDS, THOSE DEMANDS CAUSE THAT PEAK AND THE ATTENDANT CAPACITY COSTS. THE MORE OR LESS RIGOROUS APPLICATION OF THIS PRINCIPLE HELPS TO DEFEAT THE VERY UNECONOMIC CONSEQUENCES OF ADDING LARGE ELECTRICAL DEMANDS ON THE SYSTEM PEAK BUT FAILING TO CHARGE USERS FOR THE FULL COSTS OF USAGE AT THAT TIME. THESE UNFORTUNATE CONSEQUENCES SEEM TO FOLLOW FROM THE IMPACT OF THE TRADITIONAL ELECTRIC RATE SYSTEM AND MAY RESULT IN MORE AND MORE CAPACITY HAVING TO BE BUILT FOR WHICH CUSTOMERS WHO MAY HAVE LITTLE OR NO PEAK RESPONSIBILITY ARE DISPROPORTIONATELY CHARGED, WHILE OTHERS, WITH MAJOR PEAK RESPONSIBILITY, MAY PAY NO MORE THAN STRICTLY OFF-PEAK USERS.

"THIS LINE OF ANALYSIS LEADS DIRECTLY TO THE IDEA OF TIME-DIFFERENTIAL PRICING. IF CERTAIN TIMES OF DAY AND CERTAIN SEASONS OF THE YEAR ARE IDENTIFIED AS PERIODS WHEN THE SYSTEM IS OPERATING AT PEAK CAPACITY-- THAT IS, AT A LEVEL WHICH PLACES PRESSURE UPON THE AVAILABLE CAPACITY OF THE SYSTEM-- THE RATES IN EFFECT AT THAT TIME SHOULD BE BASED ON THE COSTS NOT ONLY OF PROVIDING SO-CALLED PEAKING PLANT CAPACITY BUT ALSO THE ADDITIONAL COSTS OF RUNNING THE SYSTEM AT SUCH HIGH LEVELS OF CAPACITY USE. THESE SO-CALLED RUNNING COSTS REFLECT THE NEED TO USE LESS EFFICIENT EQUIPMENT IN ADDITION TO THE NORMAL SO-CALLED BASELOAD EQUIPMENT AT THE TIME OF SYSTEM PEAK.

"...THE ADVANTAGES OF A SYSTEM WHICH DISTINGUISHES BETWEEN TIMES OF USAGE ON AN ON-PEAK, OFF-PEAK BASIS ARE OBVIOUS SINCE SUCH A SYSTEM DISCOURAGES USE AT PEAK PERIODS, ENCOURAGES THE DEVELOPMENT OF TECHNOLOGY TO SPREAD USAGE INTO OFF-PEAK PERIODS, MAKES POSSIBLE THE USE OF UTILITY PLANT ON A MUCH MORE ECONOMIC, RELATIVELY CONTINUOUS BASIS, REDUCES THE REQUIREMENT FOR UTILITY PLANT CONSTRUCTION, TENDS TO REDUCE RATES TO CUSTOMERS AND HAS A BENEFICIAL ENVIRONMENTAL EFFECT BY ELIMINATING THE NEED FOR SOME ELECTRIC UTILITY PLANT CONSTRUCTION AND BY CONSERVING SOME NATURAL GAS AND OIL USED FOR PEAKING PURPOSES."

New rates would therefore be designed so that each customer would begin to pay the full incremental cost properly attributable to him. This would be most accurately implemented through a peak-load pricing system such as differential electric rates between summer and winter, or higher prices for specific times during the day. For example, if customers together demanded more electricity in summer than in winter, higher costs per kilowatt-hour would be incurred to build and operate the extra generating capacity needed to provide adequate power for this peak use period. Therefore, under a new rate structure, electricity used principally for cooling in the summer would carry a higher price to reflect the higher cost of providing it.

Under a time-of-day metering system, rates could vary with the time of day to reflect the true cost of peak demand with highest rates prevailing during peak hours. Customers would thus be compelled to pay for the actual cost they are imposing on society and would be rewarded with a lower rate for shifting their consumption to an off-peak time of day. Chairman Cudahy gave the Committee an example:

"LET US ASSUME A CUSTOMER USING 1000 KILOWATT-HOURS OF ELECTRICITY PER MONTH AND PAYING A PRICE OF 2 1/2 CENTS PER KILOWATT FOR IT, RESULTING IN A BILL OF \$25. UNDER A TIME-DIFFERENTIAL SYSTEM, THE SAME USER MIGHT PAY 4 CENTS PER KILOWATT-HOUR FOR DAYTIME USAGE, SAY FROM 7 A.M. TO 8 P.M. AND 1 CENT PER KILOWATT-HOUR FOR NIGHTTIME USAGE DURING THE REMAINDER OF THE 24 HOURS. THE REVENUE DERIVED FROM A DAYTIME USAGE AT 4 CENTS PER KILOWATT-HOUR, ASSUMING THAT USAGE WAS THE TOTAL OR 500 KILOWATT-HOURS, WOULD BE \$20 WHILE THE REVENUE DERIVED FROM THE NIGHTTIME USAGE AT 1 CENT PER KILOWATT-HOUR, ALSO TOTALLING 500 KILOWATT-HOURS, WOULD AMOUNT TO \$5. THE TOTAL BILL, THEREFORE, WOULD BE \$25 WHICH IS THE SAME REVENUE YIELDED BY A 2 1/2 CENT AVERAGE RATE CHARGED FOR ALL OF THE 24-HOUR PERIOD."

Haskell P. Wald, chief of the Office of Economics of the Federal Power Commission, agrees with the concept:

"THE ANSWER TO THE RATE DESIGN PROBLEM IS ALONG THE LINES SUGGESTED BY THE WISCONSIN PUBLIC SERVICE COMMISSION WHEN IT CONCLUDED THAT, FOR MOST CLASSES OF CUSTOMERS, A RATE STRUCTURE BASED ON TIME-OF-DAY METERING IS THE ONLY LOGICAL STRUCTURE FOR UTILITIES WITH LOW LOAD FACTORS AND LARGE DIFFERENCES IN COSTS BETWEEN PEAK AND OFF-PEAK PERIODS. IT IS NECESSARY TO REPLACE THE DECLINING RATES WITH COST-BASED RATES FOR PEAK AND OFF-PEAK SERVICE IN ORDER TO MAKE ATTRACTIVE FOR CONSUMERS TO RESTRICT THEIR USE OF ELECTRICITY DURING THE SYSTEM PEAK

PERIODS BY SHIFTING SOME USES TO OFF-PEAK HOURS OR SIMPLY BY USING LESS ELECTRICITY. THAT TYPE OF INCENTIVE RATE STRUCTURE IS THE MOST EFFICIENT WAY TO CORRECT THE EXISTING MISALLOCATION OF RESOURCES IN THE PRODUCTION OF ELECTRICITY. IT WILL PERMIT EACH CONSUMER TO COMPARE THE VALUE OF HIS USE OF ON-PEAK AND OFF-PEAK SERVICE WITH ITS TRUE COST TO SOCIETY."

The Committee fully realizes that the chief obstacle to such a system is the present lack of inexpensive metering devices, but with advances in technology this obstacle might soon be substantially reduced. In the case of many small consumers, it is possible that market tests will show that time-of-day metering cannot be justified at present because the added investment in metering equipment is unlikely to be offset by the savings in generating and transmission plant and fuel cost.

Most large consumers (usually industrials), however, already have dual meters that can be easily adapted to time-of-day billing.

In fact, the available information on the potential response of large consumers to time-of-day metering is encouraging. Many types of industrial, commercial, and agricultural demands for heating, cooling, drying, and pumping can be curtailed or shut off for limited periods each day without a significant loss of production or efficiency. Recent rate increases have already stimulated the development of electronic control equipment to contain a customer's simultaneous use of electricity within desired maximum limits by curtailing certain operations in sequential steps. The installation of time clocks on electrical equipment is an inexpensive way of peak shaving that would appeal to many customers.

Time-of-day metering could also make it economical for residential consumers to install high capacity storage radiators in order to shift their space heating load to nighttime hours. There may soon be a similar potential for cold storage units to be operated at off-peak hours.



In summary, although time-of-day pricing may be the most proper approximation to LRIC pricing, the Committee recognizes that further study of this type of pricing is required to determine metering cost and its influence on customers' usage. Even the longest journey begins with a single step.

## IX. CONCLUSIONS AND ADMONITIONS

This committee spent the better part of eight months conducting this study of the Public Utility Commission. It goes without saying that there are no easy or absolute answers to the energy crisis confronting this state; indeed, this nation.

We have concluded, however, that we must attempt to come up with answers, partial though they may be. For the record is clear that unless government comes to grips with a crisis of national proportions, no one else is likely to do so.

This report is the effort of one legislative committee to propose responses we believe will address the regulatory problems which confront us. We believe these responses will, once fully implemented, prove both effective and appropriate.

But we cannot close without a word of admonition to the parties most intimately affected, namely: The Consumer, The Commission, The Utilities.

To The Consumer, we say: We offer you with this report a regulatory process which is open to you, is comprehensible to you and, above all, is designed to protect your interest. We also offer you through price redesign and energy planning an avenue to break this seemingly never-ending cycle of higher rates on higher rates on higher rates ad infinitum.

But we feel compelled, at the same time, to warn you that you, yourself, bear a heavy role to play in this effort. We warn you that electricity is no longer an energy source of unlimited supply. We warn you that electricity is no longer a source of cheap supply. We warn you that the best answer to this crisis ultimately may rest in energy conservation. Conservation will require rather dramatic alterations and limitations on the lifestyle we now experience. Without it, this battle may well prove to be winless. The choice is yours to make.

To The Public Utility Commission we say: We offer you with this report the tools to accomplish the mission you were created to accomplish--the

fair and equitable regulation of utilities in Pennsylvania. We offer you the budgetary flexibility to enhance the professionalism within your staff. We offer you greater financial incentives to apply yourselves to your tasks.

But we, at the same time, must warn you that in return, we expect leadership. We expect more than integrity and efficiency. We expect leadership. The old way of doing business is no longer adequate to the demands and challenges of the day. We must have leadership through awareness and responsiveness. You must provide that leadership.

Finally, to The Utilities we say: We offer you with this report a process which we believe will satisfy you as a fair and professional regulatory process. We offer you a process we believe will tend to substantially reduce regulatory lag. We offer you a process which will recognize and honor your right to a fair return on your investment.

But we, at the same time, must warn you, as well, that the growth syndrome of energy usage must be terminated. Energy conservation and planning must be the new order of the day. We expect you to cooperate and to participate in the establishment of this new order.

To quote Chairman Cudahy from an address he delivered to the 1975 annual meeting of the National Rural Electric Cooperative Association:

"THE...HABITS OF A HALF CENTURY ARE  
HARD TO BREAK.

"BUT HAVING STOOD AT THE...PRECIPICE  
FOR SEVERAL YEARS NOW...BOTH UTILITY AND  
CUSTOMER SHOULD BE MORE THAN READY TO  
KICK THE...HABIT IN FAVOR OF A NEW, AND  
SOUND IDEA...

"WE MUST GO FORWARD...."

Respectfully submitted,

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Franklin L. Kury  
Chairman

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John J. Sweeney  
Vice Chairman

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Robert J. Mellow

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Paul McKinney

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Edward M. Early

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Robert L. Myers III

---

Wayne S. Ewing

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Clarence D. Bell

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Thomas W. Andrews

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Robert C. Jubelirer

X Summary of report of minority members of the  
Consumer Affairs Committee:

Minority members of the Senate's Consumer Affairs Committee wish to note their concurrence in the overwhelming majority of matters considered by the members of this Committee following an extensive investigation of the Pennsylvania Public-Utility Commission and the laws governing its operation.

The path toward reform and renovation was marked with significant agreement on goals. There are, however, some significant differences in method of achievement on a few matters.

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RECOMMENDATION #1

To further the independence of the Public Utility Commission, a principal goal of the Committee, the minority members believe that the Commissioners themselves should elect from among their members their own chairman. A significant part of the effectiveness of any such organization is its ability to work cooperatively together to achieve the desired goals. It is our belief that that cooperative spirit, and the desired independence of outside influence, would be increased by permitting the Public Utility Commissioners to elect their own chairman.

Legislation to establish this system will be introduced.

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RECOMMENDATION #5

Following the same line of thinking, and to achieve the same goal, we believe that the term of office of Commissioners should be retained at ten (10) years. The Constitutional amendment permitting a governor of Pennsylvania to succeed himself could find the same individual in the Executive chair for eight (8) years. We strongly believe that the term of the Commissioners should exceed the term of the individuals involved in placing them there.

There is, of course, no need for legislation in this matter.

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RECOMMENDATION #32-38

While recognizing the problems which the majority tries to address in the legislative package dealing with the Commission and its responsibility for rail-highway crossings, the proposals raise significant questions in the mind of some Senators concerning their economic impact and the practicability of decreasing the jurisdiction of the Public Utility Commission.

In line with this philosophy, the minority strongly supports the proposal (#38) to empower the Commission with the authority to suspend crossings in addition to abolishing them. This expansion of the Commission's role is in keeping with the position of the minority Senators and is, we believe, the best way to quickly and effectively make necessary improvements at dangerous railroad crossings to protect the lives and property of the public.

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RECOMMENDATION # 41

The responsibility of the Public Utility Commission to protect the interests of all parties involved in utility matters should not be diluted.

While we have intentionally not excluded a consumer advocate from the hearing processes of the PUC, we have equally as intentionally restructured the PUC to provide substantial additional protections for the individual utility customer.

The minority believes that the question of consumer advocacy should be considered within specific legislation handling that matter--and not restricted to the utility field.

We point to our recommendations requiring full-time Commissioners, public disclosure of utility holdings and interests, restrictions on future activities of Commissioners and certain staff

members with utilities regulated by the PUC, the absolute ban on ex parte proceedings between a utility and the PUC and numerous changes in the hearing procedures to substantiate our position that the independence of the Commission from outside influence should be and will be greatly strengthened.

Therefore, we believe that there is no need at this time to establish an independent consumer advocate to deal solely with utility problems.

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#### RECOMMENDATION #42

The Committee heard no testimony concerning the extending of PUC regulatory jurisdiction to municipal corporations and their agencies supplying electric, water and gas service. Therefore, the minority believes that this matter should have extensive study before legislation is considered.

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#### RECOMMENDATION #43

The minority believes that the "Fair Value" system of establishing the rate base should be retained in Pennsylvania:

- the present staffs of the PUC and all Pennsylvania utilities are familiar with it and have used it...
- the system, which considers current replacement cost of the utility property, better reflects the realities of economic conditions caused by the continually changing financial cycles. This would, of course, be more fair to those who pay utility rates, purchase stocks and bonds of utilities and those who are daily involved with utilities...
- the system more equitably assesses the cost of utility service on the rate payers in relation to the economic cycles...

- the majority of comparable industrial states continue to use the "Fair Value" system of rate base establishment...
- there is some question in the minority's mind about the potential impact on the public of the increase in rate of return that would be necessary should the system be changed.....
- the minority believes that proposed changes in the administration and structure of the PUC will substantially decrease the regulatory lag and rate case cost attributed to the use of "Fair Value"...
- the minority believes that retention of "Fair Value" is realistic, more economically sound and more equitable to all interests.

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#### RECOMMENDATION #44

While recognizing the problem caused by the commitment of substantial sums of money to utility construction, there is a difference of opinion among members of the Committee on the yardsticks to be used to measure how much should be allocated to a utility's rate base to reflect these costs. Actually, all members agree on the allocation of the initial 10 percent of a formula permitting up to a maximum of 20 percent.

However, the minority questions the majority proposal to permit allocation in excess of 10 percent and up to 20 percent based upon information contained in an annual energy conservation report by the utilities to the PUC.

While energy conservation is of undenied importance in the entire structure of today's life, and while public utilities can--and should--play an important role in its implementation, there are significant questions in the minds of some members about the wisdom of tying such an imprecise factor to this important part of the cost consumers pay for their service. The minority is concerned that such a consideration could create a situation where rate payers are, in fact, penalized through higher utility bills, for their own or their utility's energy conservation activities.



Also, there is some question about the ability of the Commission to precisely assess external variables affecting different utilities' individual energy conservation potentials.

Recognizing the importance of energy conservation, the minority emphasizes that the basic factors of maintenance of financial stability, the immediacy of the need and the demographic characteristics of the population served must also be considered by the Commission in making such determinations.

The minority would require the Commission to establish, by rule, specific criteria incorporating all pertinent areas of concern.

31ST DISTRICT  
ROBERT L. MYERS III  
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COMMITTEES  
JUDICIARY, VICE CHAIRMAN  
AGRICULTURE  
BUSINESS AND COMMERCE  
CONSUMER AFFAIRS  
TRANSPORTATION

*Senate of Pennsylvania*

October 20, 1975

The Honorable Franklin Kury  
Senate of Pennsylvania  
Harrisburg, Pennsylvania 17120

Dear Senator Kury:

I have signed the report and recommendation of the Senate Consumer Affairs Committee to reform the PUC, which report I generally approve.

However, there are certain items in the report with which I disagree and I list herewith those matters of disagreement by number as they appear in the report.

Item A-5 - Reduce Term Of Commissioners From Ten Years To Six Years.

I feel that the PUC should remain as independent a regulatory body as possible and that maintaining the ten year term will tend to maintain that independence. In addition, the expertise and experience gained by a Commissioner can better be utilized over a ten year period rather than a six year period.

Item A-6 - Prohibit Commissioners Or Staff Of PUC From Accepting Employment With Any Utility Or Affiliate Subject To PUC Jurisdiction For Period Of One Year After Service With Commission Terminates.

I believe that this prohibition should be restricted to the Commissioners only. To make such a broad prohibition to include PUC staff would in my opinion make it much more difficult for the Commission to find qualified employees. It is my opinion that to restrict this prohibition to PUC Commissioners would adequately protect the public.

Item D-42 - Empower The PUC To Exercise Regulatory Jurisdiction Over Municipal Utilities.

The discussion in the report of municipal regulation states that it is the recommendation to empower the PUC to regulate all public utility service furnished or rendered by municipal corporations or by their operating agencies. (Page 41).

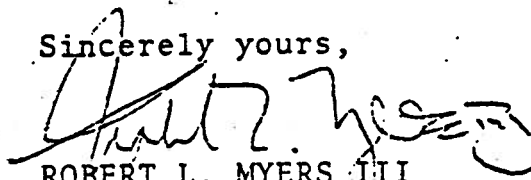
I believe that the current regulations regarding municipal utilities providing services beyond the municipal corporation limits should be retained. However, to empower the PUC to regulate all public utility services furnished or rendered by municipal corporations or by their operating agencies would add a yet additional layer of bureaucratic control over municipal governments which would be extremely costly not only to the local governments but to the Commission itself and is not justified under prevailing conditions in Pennsylvania.

To subject municipal operating agencies such as, for example, sewage treatment systems, to PUC regulation, would require a mountain of red tape and regulations to be coped with by local governments.

Item D-43 - Pennsylvania Adopt An Original Cost Method For Determination Of Rate Base.

The fair value standard would appear to be a more realistic rate base method in the volatile and inflationary economy that has been experienced, is now being experienced and is almost universally predicted to be permanent. It is my opinion because of the above, the fair value method should be retained despite the acknowledged controversy during rate cases over the determination of the fair value of a utility property.

Sincerely yours,



ROBERT L. MYERS III  
State Senator - 31st District

RLM:meh

REPORT OF CLARENCE D. BELL, SENATOR TO CONSUMER AFFAIRS  
COMMITTEE OF THE SENATE

SENATORS:

I do not concur with or dissent from any other report of this committee concerning the PUC. I submit the following for the consideration of my fellow Senators.

1. Organization of the PUC.

- a. There should be 7 full-time Commissioners.
- b. They should select their own chairman.
- c. The pay of the PUC commissioners should be \$1,000 a year less than the pay of our Common Pleas Judges. They should receive the same fringe benefits as our Common Pleas Judges.
- d. The hearing examiners should be full-time personnel paid \$5,000 less than the Court of Common Pleas Judges.

2. Conduct of Hearings.

a. In all major hearings, the matter shall be heard by one or more commissioner. The commissioner(s) should be present during the taking of all testimony and argument and with the decision/order.

b. All minor cases should be heard by the hearing examiner, who should sit and hear the testimony, argument, make findings of fact and conclusions of law and write the decision/order.

c. Appeal de novo should be permitted from the determinations of the hearing examiner unto the full PUC Board or a three commissioner Board of the PUC sitting en banc.

d. The PUC should establish by regulation the jurisdiction of the hearing examiners, single commissioner PUC hearing and multiple commissioner PUC hearing. Such regulations would also cover appeals from the examiner hearings to the partial PUC Boards and the full PUC.

3. The PUC and its hearing examiners should be considered as "quasi judicial." The PUC members and

and its hearing examiners should be held to the same code of ethics that applies to the Judges of the Common Pleas and Appellate Courts.

a. No PUC commissioner or hearing examiner shall accept or receive any earned income from any source other than his PUC salary. This includes honorariums, director fees, and all other income denied a judge of a court of record of the Commonwealth. Such PUC commissioner or hearing examiner shall not receive any gift or gratuity nor shall any member of his family to the second degree of blood relationship be employed by any individual or corporation subject to the jurisdiction of the PUC.

b. No commissioner or hearing examiner of the PUC nor any member of his family within two degrees of blood relationship shall hold appointed or elected office in any political party or elected or appointed public office.

c. A full financial disclosure shall be made by each commissioner and hearing examiners of the PUC as of January 1 and July 1 of each year. Such financial disclosure shall be filed within one calendar month in the office of the Secretary of the PUC. It shall be available for public inspection. Such financial statement shall disclose earnings and property owned by the said person and his spouse.

d. No person within two degrees of blood relationship of a commissioner or hearing examiner of the PUC shall appear in a representative capacity before the PUC commission at any level.

e. The PUC shall adopt and publish regulations defining conflict of interest for all personnel of PUC.

#### 4. Consumers' Advocate.

a. The former statutory mandate that the PUC represent the consumers should be terminated. A properly staffed consumers' advocate should be established.

b. The PUC should be restructured to transfer from it unnecessary staff personnel that may have been required by reason of its representing the consumers' interest. It is questionable that this will result in very many staff members being transferred, since it is obvious that the PUC is presently understaffed. The consumers' advocate must be properly staffed with qualified technicians so that the consumers' advocate can properly represent the public in cases which concern the consumer.

5. Staffing and Salaries. The technical staffing of the PUC is to be thoroughly re-examined. The use of computers should be encouraged. The salary structure of the technical staff should be re-examined so that it is commensurate with that paid by private industry. Sufficient and adequately paid staff technicians should be available to PUC.

6. Availability to the Public.

a. Hearings should be conducted throughout the Commonwealth. Research must be conducted to ascertain means to expedite hearings and to shorten the same.

7. Rate Structure. Electrical energy rates were structured during a period of overabundant and cheap electrical energy. This, in large part, was due to the relatively inexpensive fossil fuels.

With the greatly increased costs of electrical energy, there should be a restructuring of electrical rates to give rate reliefs to residential users of low income who cannot afford the greatly increased electrical energy rates. Any rate increases should not be based on the basic energy charge which, as a general rule, reflects the residential user paying almost 300% of that paid by a heavy volume business or industrial user. Much study and research should be given this subject by the Public Utility Commission.

8. Environmental Controls. The determination of air pollution standards of an electrical energy producer by any other state agency should be subject to the approval or veto by the Public Utility Commission.

Where Pennsylvania Air Quality Control standards are higher than those of the federal government, before such higher state standards should be applied to the electrical generating plants, the PUC must have the opportunity to study the effect on the consuming public and the general economy to determine whether or not the people of the Commonwealth can afford the high cost of extremely high standards of clean air.