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Clerk, Supreme Court of Appeals
Richmond, Va.

RECORD NO. 8102

A P P E N D I X

In The

SUPREME COURT OF VIRGINIA

At Richmond

HENRY E. HOWELL, JR.

versus

STATE CORPORATION COMMISSION

and

VIRGINIA ELECTRIC AND POWER COMPANY

From the State Corporation Commission of Virginia

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[Filed July 14, 1972]

MOTION FOR AN ORDER FURNISHING TRANSCRIPT OF PROCEEDINGS

WHEREAS, the opinion of this Commission handed down on June 28, 1972, imposes a $41,000,000.00 annual increase in the cost of electricity on those Virginia citizens who are required to purchase electricity from Virginia Electric and Power Company in the jurisdiction regulated by this Commission; and

WHEREAS, serious questions are raised by the opinion which should be passed upon by the Supreme Court of Virginia; and

WHEREAS, your intervenor as an individual and in his office of Lieutenant Governor is not funded to the extent that he can purchase a copy of the transcript of the proceedings, the cost of which is estimated to be $2,000.00; and

WHEREAS, Virginia Electric and Power Company retained a reporter and procured copies of said transcript of the proceedings all at the expense of its customers, of whom this intervenor is one and represents other citizens similarly situated;

Intervenor prays that this Commission enter an order

requiring Virginia Electric and Power Company to furnish said Intervenor with a copy of the transcript of said proceedings, or, in the alternative, that Virginia Electric and Power Company furnish to Intervenor those pages of the transcript it wishes Intervenor, as appellant, to print in the appendix the Intervenor will present to the Supreme Court of Virginia, as well as copies of those pages that may be designated by the Intervenor as appellant for inclusion in said appendix.

* * * * * * * *

[Entered July 19, 1972]

PETITION FOR REHEARING, MOTION FOR SEPARATE HEARING ON RATE SCHEDULES, AND MOTION FOR AN ORDER FURNISHING TRANSCRIPT OF PROCEEDINGS

ON JULY 14, 1972 came Henry E. Howell, Jr., Lieutenant Governor of Virginia, an intervenor in Commission Case No. 19027, and filed three motions in regard to this proceeding, consisting of: a motion for a rehearing, a motion for a separate hearing upon the rate schedules, and a motion for an order directing Virginia Electric and Power Company to furnish to the movant, without cost, a copy of the transcript of the

proceeding.

The Commission upon consideration of these motions is of the opinion that each should be denied and accordingly

IT IS ORDERED that the motions of Henry E. Howell, Jr. set forth in the foregoing documents are denied.

* * * * * * * *

[Filed July 27, 1972]

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR TO ORDER OF JULY 19,1972

NOTICE OF APPEAL

Now comes Henry E. Howell, Jr., Lieutenant Governor of Virginia, an Intervenor herein, and appeals from the Order of the State Corporation Commission entered July 19, 1972, denying Intervenor's Motion For Order Furnishing Transcript of Proceedings necessary to an appeal of this case.

ASSIGNMENTS OF ERROR

The Intervenor assigns error to the Order of the Commission in that the denial of said motion deprived Intervenor and other citizens similarly situated, who are

required to purchase electricity from Virginia Electric and Power Company, the equal protection guaranteed by the Constitution of the United States and due process of law as guaranteed by the Constitution of the United States and the Constitution of Virginia, in that customers of Virginia Electric and Power Company indirectly paid for the cost of the transcript and the daily rates incurred therefor by said Company, and the expense for a copy of said transcript is estimated to be $2,000.00, and Intervenor and other customers similarly situated are without funds to pay for the same, and the same advantages afforded Virginia Electric and Power Company should be afforded to Intervenor and others similarly situated, and that without said transcript Intervenor and others similarly situated will be deprived of meaningful due process of law in that they will be denied the right to appeal the opinion and order handed down by this Commission on June 28, 1972.

* * * * * * * *

[Entered September 20, 1972]

Opinion, CATTERALL, Chairman

On July 27, 1972, the petitioner filed a notice of

appeal from that part of the Commission's order of July 19, 1972, refusing to order Vepco to furnish him and every other customer of Vepco who wants one a free copy of the transcript of the testimony in this case. There is no evidence that the petitioner is a customer of Vepco (see Young v. S.C.C., 205 Va. 111) but we take judicial notice that he is a customer. The cost to Vepco of giving all its customers a copy of the transcript would exceed a billion dollars, the expense of which would require another emergency rate increase.

The petitioner alleges he is "without funds to pay for the Same." He does not seek to proceed in forma pauperis; and appeals cannot be taken in forma pauperis in civil cases. He alleges that a free transcript is "necessary to an appeal of this cause." The only transcript necessary to an appeal is the one referred to in §13.1-124, which section requires the clerk to collect fifty cents per page. The money collected goes into the general fund of the state treasury. The Commission has no authority to furnish that transcript without collecting the money except when the transcript is contained in a record on appeal by the Attorney

General. Whenever the Attorney General wants a transcript for use in his own office he buys it from the court reporter. The law of Virginia requires the Attorney General to protect the interest of the consumers and imposes no such duty on the Lieutenant Governor. The petitioner can study the copy on file in the office of the Commission. Since everybody has the right to examine that copy, nobody can be allowed to remove it from the office of the Commission.

BRADSHAW and SHANNON, Commissioners, concur

* * * * * * * *

CERTIFICATE

I hereby certify that three (3) copies of the within Appendix were mailed by me on November 20 , 1972, to:

Honorable Andrew P. Miller
Attorney General of Virginia
Supreme Court-Library Building
Richmond, Virginia 23219

Richard D. Rogers, Esquire
State Corporation Commission
Blanton Building
Richmond, Virginia 23219

George D. Gibson, Esquire
700 East Main Street
Richmond, Virginia 23212

HENRY E. HOWELL, JR.