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Clerk, Supreme Court of Appeals
Richmond, Va.

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD Nos. 8252-8258

COMMONWEALTH OF VIRGINIA,
ADMINISTRATOR OF GENERAL SERVICES,
CITY OF RICHMOND,
CITY OF VIRGINIA BEACH,
COUNTY OF HENRICO,
COUNTY OF CHESTERFIELD,
VIRGINIA ASSOCIATION OF COUNTIES,

Appellants,

v.

VIRGINIA ELECTRIC AND POWER COMPANY, ET AL.,

Appellees.

APPENDIX

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APPLICATION FOR DECLARATORY JUDGMENT

Virginia Electric and Power Company hereby applies to the Commission, pursuant to Commission Rule 13, for a declaratory judgment declaring that the Commission has, by virtue of the Constitution of Virginia, Article IX, § 2, the power and the duty to regulate rates charged by applicant for electric service to municipal corporations, counties, the Commonwealth of Virginia and, to the extent permitted by federal law, the government of the United States, and declaring further that any provision to the contrary in any Virginia statute, particularly Virginia Code §§ 56-232 and 56-234, is unconstitutional, void and of no effect.

Applicant is a public service corporation subject to the jurisdiction of the Commission. The jurisdiction of the Commission over the rates applicant charges for electric service is purportedly limited, however, by Virginia Code §§ 56-232 and 56-234 which provide that the Commission shall not have jurisdiction over rates charged by applicant to municipal corporations, the Commonwealth of Virginia and the government of the United States. These statutes were enacted prior to the adoption of the Constitution of Virginia of 1971. Applicant has heretofore refrained from filing with the Commission schedules of rates for electric service to municipalities, the Commonwealth of Virginia and the government of the United States because of these statutory provisions.

The adoption of the Constitution of Virginia of 1971, Article IX, § 2, conferred upon the Commission for the first time the constitutional power and the duty to regulate rates charged by electric companies. The Constitution contains no exception from this pervasive power and duty, so statutes such as Virginia Code §§ 56-232 and 56-234, to the extent that they purport to reduce this constitutionally created power and duty, are void and of no effect because they are in conflict with the Constitution.

The applicant has no other adequate remedy than to present this application to the Commission. The Commission need hear no evidence on this application, the question presented being purely one of law.

Wherefore Applicant Prays that this application be filed and docketed; that a public hearing be held at which the applicant and other interested parties may argue the legal question raised herein before the Commission; and that the Commission declare that it has the power and duty to regulate rates charged by applicant to municipal corpora-

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tions, counties, the Commonwealth of Virginia and, to the extent permitted by federal law, the government of the United States.

Dated September 11, 1972

Respectfully submitted,

Virginia Electric And Power Company

* * *

COMMISSION ORDER OF SEPTEMBER 13, 1972

On September 11, 1972, came the applicant Virginia Electric and power Company by George D. Gibson, its counsel, and presented its application for a declaratory judgment that Article IX, Section 2 of the Constitution of Virginia of 1971 imposes on this Commission the duty of regulating the rates charged by applicant for electric service to municipal corporations, counties, the Commonwealth of Virginia and, to the extent permitted by federal law, the government of the United States.

And It Appearing That the Application questions the constitutionality of certain provisions of Virginia Code Sections 56-232 and 56-234 and thereby creates a case of actual controversy;

It Is Ordered:

(1) That the application be filed and a proceeding upon it instituted and docketed as Case No. 19176; and that a hearing upon the application be set for 10:00 A.M. on November 17, 1972 in the Courtroom of the State Corporation Commission, Blanton Building, Richmond, Virginia, at which the applicant and interveners, if any, may present to the Commission oral argument on the legal question raised by the application;

(2) That the applicant file with the Commission on or before September 25, 1972, a brief setting forth the legal arguments supporting the application and mail a copy thereof to each person who has intervened by that date and subsequently to any other party who intervenes prior to the date set for hearing in this proceeding;

(3) That interveners, if any, may file briefs with the Commission on or before October 30, 1972, copies of any such briefs to be mailed

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by such interveners to counsel for applicant and all other persons who have intervened before that date;

(4) That applicant may file a reply brief with the Commission on or before November 13, 1972, a copy of any such brief to be mailed by applicant to each person who has intervened before that date;

(5) That persons desiring to intervene may do so by filing notice thereof with the Commission and mailing a copy of such notice to counsel for applicant at any time prior to the hearing;

(6) That applicant mail a copy of this order by first class mail on or before September 18, 1972 to the Governor of Virginia; to Douglas H. Hamner, Director, Division of Engineering and Buildings, Ninth Street Office Building, Richmond, Virginia; to the Commonwealth's Attorney and Chairman of the Board of Supervisors, or to the County Manager in each county having that form of government, of each county in Virginia to which applicant provides electric service and to the Mayor or Town or City Manager and the Town or City Attorney of every town and city in Virginia to which applicant provides electric service; to the General Services Administration and to each installation or office of the government of the United States to which bills calculated on rate schedules not now on file with this Commission are sent;

(7) That due proof of such mailing be made at the hearing.

An Attested Copy hereof shall be sent to George D. Gibson, 700 East Main Street, Richmond, Virginia, and to the Attorney General of Virginia.

* * *

INTERVENOR'S (CITY OF RICHMOND) PETITION AND ANSWER

In opposition to the above application for declaratory judgment filed by Virginia Electric and Power Company, the City of Richmond (hereinafter sometimes referred to as "City") says as follows:

1. That the City both buys from and sells electric power to the Virginia Electric and Power Company and that the rates to be charged for both the power bought and sold are established by the terms of a contract made by the City and Virginia Electric and Power Company.

2. That this contract was approved by an ordinance passed by the City Council of the City of Richmond on October 21, 1941. By the

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terms of this agreement, it was to continue in full force and effect for a term of ten (10) years from and after its effective date and "shall automatically renew itself from time to time for like terms unless and until it is terminated by twelve (12) months' notice in writing given by either party to the other prior to the expiration date of the original or any renewal term of this agreement." The agreement further provides that it "shall be binding upon the parties hereto and their successors and assigns during the term of this agreement or any renewal or extension thereof." (The 1941 Ordinance and amendments adopted on April 25, 1966, and March 9, 1970, are attached hereto as Exhibits A, B, and C.)

3. That undoubtedly the Virginia Electric and Power Company has made similar contracts with other governmental entities and agencies.

4. That §§ 56-232 and 56-234 of the Virginia Code require that rates charged for electric service furnished by the Virginia Electric and Power Company to the City of Richmond or to any other municipal corporation or to the State or to the federal government, whether under contract or not, be exempt from regulation by the State Corporation Commission.

5. That the provisions of §§ 56-232 and 56-234 (or any other Virginia statute) which require exemption from regulation by the State Corporation Commission for rates applicable to electric service provided to municipal corporations, or to the State or to the federal government are not unconstitutional and void since Article IX, § 2 of the Virginia Constitution expressly provides that the Commission's power and duty "of regulating the rates, charges, and services and . . . the facilities of railroad, telephone, gas and electric companies" is subject "to such criteria and other requirements as may be prescribed by law." The above provisions in §§ 56-232 and 56-234 clearly constitute "other requirements" established by law.

6. That §§ 56-232 and 56-234 of the Virginia Code (or any other Virginia statute) which require exemption from regulation by the State Corporation Commission of rates applicable to electric service provided to municipal corporations or to the State are not unconstitutional since general provisions in a constitution do not bind the sovereign, and its political subdivisions unless the intent is manifested by express words or necessary implications.

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7. That, assuming that such provisions in §§ 56-232 and 56-234 are unconstitutional and void under the new Virginia Constitution of 1971 (which the City denies), contracts relating to rates to be charged for electric service which Virginia Electric and Power Company has heretofore made with municipal corporations, the State, and the federal government are protected from impairment during their reasonable terms by Article I, Sec. 10 of the United States Constitution and Section 3 of the Schedule for the new Constitution of Virginia.

8. That regardless of whether the contracts referred to in paragraph 7 are in general protected from impairment by Article I, Sec. 10 of the United States Constitution and Sec. 3 of the schedule for the new Constitution of Virginia, the contract which the City of Richmond has with Virginia Electric and Power Company relating to the rates to be charged the City for electric service, because of its unique provisions, is protected from impairment under these constitutional provisions.

Wherefore Intervenor Prays that the Commission adjudge:

1. That the applicant is not entitled to the declaratory relief sought.

2. That §§ 56-232 and 56-234 of the Virginia Code are constitutional and valid in all respects.

3. That contracts which Virginia Electric and Power Company has made with municipal corporations, the State or federal government prior to the adoption of the new Constitution are protected from impairment during their present reasonable terms.

4. That the contract between the applicant and the City of Richmond establishing the rates for electric service provided the City is valid in all respects and binding upon the applicant until the end of its present term.

5. That the intervenor is entitled to such other declaratory relief as the Commission may deem proper.

Dated: October 18, 1972.

* * *

An Ordinance
(Approved October 21, 1941)

To authorize the Director of Public Utilities to enter into an agreement with the Virginia Electric and Power Company in relation to the interchange of electric energy between the City and the Company and the purchase by the City from the Company of street, highway and traffic lighting service and for the supply to the City of miscellaneous light and power service by the Company.

Be It Ordained By The Council Of The City Of Richmond:

1. That the Director of Public Utilities be and he is hereby authorized to enter into an agreement with the Virginia Electric and Power Company in relation to the interchange of electric energy between the City and the Company for the purchase by the City from the Company of street, highway and traffic lighting service and for the supply to the City of miscellaneous light and power service by the Company, which agreement shall be substantially in the following words and figures:

This Agreement, made this day of 1941, between the City Of Richmond, a municipal corporation of the State of Virginia, acting by and through its Director of Public Utilities, party of the first part, hereinafter referred to and designated as "City"; and Virginia Electric And Power Company, a corporation organized and existing under the laws of the State of Virginia, party of the second part, hereinafter referred to and designated as "Company":

Whereas, the City and the Company entered into a certain written agreement dated June 3, 1925, providing for the sale and interchange of electric energy between the City and the Company; and

Whereas, the City and the Company entered into a certain other written agreement dated January 1, 1929, relating to the interchange of electric energy between the City and the Company; and

Whereas, the City and the Company now desire to terminate the agreements of June 3, 1925, and January 1, 1929, and to enter into a new agreement for the interchange of electric energy between the City and the Company and for the purchase by the City from the Company

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of street, highway and traffic lighting service, and for the supply to the City of miscellaneous light and power service by the Company.

Now, Therefore, This Agreement Witnesseth:

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid by each of the parties hereto unto the other, the receipt whereof is hereby acknowledged, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto contract and agree each with the other as follows:

Part I

Interchange Of Electric Energy

1. That the agreements of June 3, 1925, and January 1, 1929, are hereby cancelled and superseded by this agreement.

2. That the Company will deliver to the City during the term of this agreement, and any extension or renewal thereof, all electric energy required by the City, which it may not be able or may not desire to supply from its own electric power plants and for which it has not provided, for the following purposes:

(a) Lighting of streets, alleys, parks and other public places within the corporate limits of the City as the same now exist or may hereafter be established.

(b) Use in the operation of public schools in the City.

(c) Use in all public buildings owned or leased by the City.

(d) Operation of water and gas production and distribution, plants, facilities and systems, playgrounds, sewage disposal and pumping plants, airports, marine terminals and other enterprises owned or leased by the City and operated by it or operated by others under contracts or leases with the City, as the same now exist or may be hereafter constructed, acquired or leased by the City, whether within or without the corporate limits of the City as the same now exist or may be hereafter established.

(e) Use for all other municipal purposes.

4. That electric energy delivered to the City by the Company under the terms of this agreement shall be delivered through the electric connections between the City and the Company as the same now exist.

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or may be hereafter installed or constructed, which shall be maintained and operated by the respective owners thereof, the said existing connections being as follows:

- (a) The City's Trafford booster station in William Byrd Park.
- (b) The City's gas works on Williamsburg Avenue.
- (c) The City's Hollywood electric plant at the foot of Tredegar Road.
- (d) The City's Moore Street gas booster station at Graham and Moore Streets.

5. That electric energy shall be delivered and metered to the City at 13,200 volts, three phase and 60 cycles at the Trafford booster station in William Byrd Park, the gas works on Williamsburg Avenue and the Hollywood electric plant at the foot of Tredegar Road, and shall be delivered and metered to the City at 2,300 volts, three phase and 60 cycles at the Moore Street gas booster station at Graham and Moore Streets. The voltage at which electric energy shall be delivered to the City under Part I of this agreement may be changed from time to time by mutual agreement of the Company and the Director of Public Utilities of the City.

6. That all substations and transformers at said points of connection owned by the City shall be operated and maintained by it.

7. That the City may install at its own cost and expense such additional connections to the distribution system of the Company within or without the corporate limits of the City, as the same now exist or may be hereafter established, including all necessary transformers and other equipment at the said points of connection, to provide sufficient transforming capacity at all times for delivery to the City by the Company of the entire electric requirements of the City for the purposes hereinbefore enumerated.

8. That electric energy delivered to the City under Part I of this agreement shall not be sold by the City, except to such extent as may be necessary to operate airports, marine terminals, sewage disposal and pumping plants and other enterprises owned or leased by the City and operated by the City or by others under contracts or leases with the City.

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9. That the City may deliver to the Company during the term of this agreement and any extension or renewal thereof all electric energy generated by the City at its electric plant or plants and not required for the purposes of the City, provided such maximum quantity at any time does not exceed approximately 2,000 kilowatts.

10. That electric energy delivered by the City to the Company under the terms of this agreement shall be delivered through the electric connections between the City and the Company, as the same now exist or may be hereafter installed or constructed, which shall be maintained and operated by the respective owners thereof, the said existing connections being as follows :

(a) The City's Trafficord booster station in William Byrd Park.

(b) The City's Hollywood electric plant at the foot of Tredegar Road.

11. That electric energy shall be delivered and metered to the Company at 13,200 volts, three phase and 60 cycles at the Trafford booster station in William Byrd Park and the Hollywood electric plant at the foot of Tredegar Road. The voltage at which electric energy shall be delivered by the City to the Company under Part I of this argeement may be changed from time to time by the mutual agreement of the Company and the Director of Public Utilities of the City.

12. That the Company shall supply, operate and maintain during the term of this agreement all necessary meters and metering equipment at the aforesaid points of connection and delivery, as the same now exist or may be hereafter installed, for the purpose of measuring the quantity of electric energy delivered to each party hereto by the other under this agreement.

13. That the City shall pay to the Company for all electric energy delivered to it by the Company and the Company shall pay to the City for all electric energy delivered to it by the City, under the terms of this agreement, in accordance with the following schedule of rates :

(a) During the months of October to March, inclusive, for all electric energy delivered between the hours of 4:00 P.M. and 8:00 P.M., Eastern Standard Time, each day, each party shall pay to the

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other at the rate of 1 cent per kwhr, and during all other hours of the day in the said months the rate shall be $4\frac{1}{2}$ mills per kwhr.

(b) During the months of April to September, inclusive, for all electric energy delivered between the hours of 8:00 A.M. and 4:00 P.M., Eastern Standard Time, each day, each party shall pay to the other at the rate of 1 cent per kwhr, and during all other hours of the day in said months the rate shall be $4\frac{1}{2}$ mills per kwhr.

14. That all meters shall be read by the Company at the end of each calendar month and a detailed bill rendered to the City by the Company showing all meter readings and amounts of electric energy delivered either by the City or the Company at each point of connection, together with the net amount of money due from either party to the other.

15. That settlements for electric energy delivered to each party by the other under Part I of this agreement shall be made on an annual basis on the 15th day of January covering the preceding calendar year, and when settlements are not so made, then the creditor shall have the right to discontinue the delivery of electric energy under Part I of this agreement.

Part II

Street And Highway Lighting Service

1. (a) The Company agrees that during the term of this agreement it will, at its own expense, install, keep installed and in operation Incandescent Mazda Street Lights including the necessary poles, fixtures, wiring, and apparatus (except traffic signals, all of which are to be installed and maintained at the cost and expense of the City) at the locations in the public streets, alleys, highways and public places of the City and the public parks located within the City where such lamps are now being operated by the Company, and will install and keep in operation additional Incandescent Mazda Street Lights, including the necessary poles, fixtures, wiring, and apparatus at such other points as from time to time may be mutually agreed upon. The Company further agrees to supply the necessary electric energy for the operation of said lamps, and to operate, maintain, keep clean, and renew the same

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throughout the term of this agreement upon the terms and subject to the conditions and limitations herein set forth.

(b) That the Company will provide the City with a list showing the location and character of each lamp installed on the date this agreement becomes effective and will revise said list from time to time so that such information will be at all times available to the City.

2. The rates to be charged by the Company and paid by the City for the lamps of the various types and sizes for street and highway lighting purposes herein specified, all of which are to be operated by the Company from its overhead distribution system, are as follows:

(a) Overhead Series Systems—General Service (All Night—Approximately 4,000 hours per year)

1,000 Lumen: First 100 @ \$18.00 per lamp per year
All Excess @ \$15.00 per lamp per year

2,500 Lumen: First 100 @ \$24.00 per lamp per year
All Excess @ \$21.00 per lamp per year

4,000 Lumen: First 50 @ \$30.00 per lamp per year
All Excess @ \$27.00 per lamp per year

6,000 Lumen: First 50 @ \$42.00 per lamp per year
All Excess @ \$39.00 per lamp per year

(b) Overhead Series Systems—Whiteway Service (All Night—Approximately 4,000 hours per year)

1,000 Lumen: First 100 @ \$26.00 per lamp per year
All Excess @ \$23.00 per lamp per year

2,500 Lumen: First 100 @ \$38.00 per lamp per year
All Excess @ \$35.00 per lamp per year

4,000 Lumen: First 75 @ \$44.00 per lamp per year
All Excess @ \$41.00 per lamp per year

6,000 Lumen: First 60 @ \$53.00 per lamp per year
All Excess @ \$50.00 per lamp per year

10,000 Lumen: First 40 @ \$70.00 per lamp per year
All Excess @ \$60.00 per lamp per year.

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(c) Overhead Series Systems—Whiteway Service (Midnight—Approximately 2,000 hours per year)

2,500 Lumen @ \$20.00 per lamp per year
4,000 Lumen @ \$25.00 per lamp per year
6,000 Lumen @ \$30.00 per lamp per year
10,000 Lumen @ \$50.00 per lamp per year

(d) Overhead Series Systems—Sodium Vapor (All night—Approximately 4,000 hours per year)

6,000 Lumen @ \$70.00 per lamp per year
10,000 Lumen @ \$75.00 per lamp per year

(e) The Company reserves the right to substitute 75 watt (1,073 lumen) multiple lamps for 1,000 lumen series lamps; 150 watt (2,580 lumen) multiple lamps for 2,500 lumen series lamps; 300 watt (5,760 lumen) multiple lamps for 4,000 lumen series lamps; 400 watt (7,600 lumen) multiple lamps for 6,000 lumen series lamps; 500 watt (10,050 lumen) multiple lamps for 10,000 lumen series lamps, wherever it may desire for any reason to make such substitution.

(f) For the operation of any lamp installed during a contract year and not in operation for all of such contract year, the rates and charges shall be determined on a pro rata basis at the yearly rates herein specified.

3. The Company agrees that it will from time to time during the term of this agreement, furnish such street lights in addition to those referred to in section 1, Part II, of this agreement on existing lighting circuits or extensions to the same as hereinafter provided for, together with the necessary poles, fixtures, wiring and apparatus, and will operate and maintain such additional street lights at the same rate per lamp for the types and sizes hereinabove specified, provided, however, the Company shall not be required to furnish or install additional lamps, poles, fixtures, wiring and apparatus, within one year

next preceding the date of expiration of this agreement or any renewal thereof.

4. The Company agrees that it will, at its own cost and expense, make such extensions to said street lighting system and erect and maintain such additional street lights as may be desired by the City, provided, the Company's cost and expense of labor and material for each installation requested, including extension of its overhead lines or circuits, and all poles, fixtures, wiring and apparatus, is not greater than three times the annual revenue to be derived by the Company from each such additional installation. Where such cost of said extension exceeds the amount ascertained as above, the excess shall be paid by the City to the Company, but any extension so constructed shall be the property of, and maintained and operated by, the Company.

5. The City agrees to furnish or assist in obtaining, without cost to the Company, the necessary authority and right-of-way satisfactory to the Company for the erection of any pole or poles, wiring, fixtures or other apparatus required, and to obtain the consent of or right from any property owner, where such consent or right is necessary, for the location, maintenance, and operation thereof, together with the further right to trim, cut, and thereafter to keep clear all trees, limbs, undergrowth, or other obstructions along said lines or adjacent thereto, that may, in the Company's opinion, endanger or interfere with the proper and efficient operation of the same, and there shall be no obligation upon the Company to make any such extension or extensions of lines until the necessary authority, right-of-way or consent is so obtained by the City and proper evidence thereof filed with the Company. Provided, however, where the Company owns or controls a right-of-way which could be used for such extension or extensions, then so much of such right-of-way as may be used in supplying service under this agreement shall, so long as the Company may have the right to use the same, be used for purposes of fulfilling this agreement, without cost to the City for such right-of-way.

6. The lamps to be furnished by the Company under this agreement for all night service shall burn under normal conditions, each and every night during the year from dusk to dawn, or approximately four thousand (4,000) hours each year, and lamps to be furnished for mid-night service shall burn each and every night from dusk to midnight or

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approximately two thousand (2,000) hours each year, during the entire term of this agreement.

7. (a) The City will report to the Company, as promptly as possible, any and all lights that are out or not burning properly, and if the lights so reported shall not be repaired and relit as soon thereafter as practicable, then the City may make a pro rata deduction at the rate of the compensation provided for herein covering any substantial period of time during which any of the lamps shall fail to burn. An accurate account of such time shall be kept by the Company and by the City. Any difference between the two accounts shall be equitably adjusted.

(b) The Company shall restore service with reasonable promptness after any interruption due to Acts of God, or public enemy, sleet, storms, or unavoidable accidents or any other cause.

8. In order that the City may be in position to avail itself of the benefits of any and all improvements in electric lamps or fixtures during the life of this agreement, it is agreed that the said City may, at any time from the date on which this agreement shall become effective, require the Company to install, in lieu of the lamps or fixtures, either or both, at that time installed and in use, other lamps or fixtures, either or both, which will not consume a greater amount of energy per hour of use; provided that, in the event of substitution of such lamps or fixtures, either or both, the City shall reimburse the Company the actual cost and expense to the Company occasioned by such substitution.

9. All payments to be made by the City to the Company under Part II of this agreement shall be made monthly on or before the 15th day of each month for services rendered during the month next preceding the date of payment and upon default in making such payments by the City the Company shall have the right to discontinue such service.

Part III

Traffic Lighting Service

1. The Company agrees that, throughout the life of this agreement it will supply to the City and the City agrees that it will purchase from the Company, electric energy for the operation of traffic signals, all

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of which are to be installed by and maintained at the cost and expense of the City.

2. The rates to be charged by the Company and paid by the City for the electric service for the lamps of the various signals of the various types and sizes are as follows:

(a) Traffic Signals—Used 24 hours or less each day.

Each lamp 60 watts or less @ \$2.00 per lamp per year

Each lamp 100 watts @ \$4.00 per lamp per year

Each lamp 150 watts @ \$6.00 per lamp per year

(b) Caution Signals—Used 24 hours or less each day.

Each lamp 60 watts or less @ \$ 6.00 per lamp per year

Each lamp 100 watts @ \$10.00 per lamp per year

Each lamp 150 watts @ \$15.00 per lamp per year

Each lamp 200 watts @ \$20.00 per lamp per year

(c) Traffic Officers Light—Used only when officer is on duty

Each 500 watt lamp @ \$20.00 per lamp per year

(d) The monthly minimum charge for such services rendered for each intersection of streets, alleys or other public places shall be \$1.00.

(e) The Company reserves the right when traffic signals are not of standard makes or do not meet the above classifications to meter the service and bill it on applicable rates.

3. All payments to be made by the City to the Company under Part III of this agreement shall be made monthly on or before the 15th day of each month for services rendered during the month next preceeding the date of payment and upon default in making such payments by the City the Company shall have the right to discontinue such service.

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Part IV

Miscellaneous Light And Power Service

1. The Company agrees that, throughout the term of this agreement, it will supply to the City, and the City agrees that it will purchase from the Company, such electric energy required by the City as shall not be delivered to the City pursuant to the provisions and under the conditions set out in Part I of this agreement, for the following purposes:

(a) Lighting of streets, alleys, parks and other public places within the corporate limits of the City as the same now exist or may be hereafter established.

(b) Use in the operation of public schools in the City.

(c) Use in all public buildings owned or leased by the City.

(d) Operation of water and gas production and distribution plants, facilities and systems, parks, playgrounds, sewage disposal and pumping plants, airports, marine terminals and other enterprises owned or leased by the City and operated by it or by others under contracts or leases with the City, as the same now exist or may be hereafter constructed, acquired or leased by the City, whether within or without the corporate limits of the City as the same now exist or may be hereafter established.

(e) Use for all other municipal purposes. All such electric energy shall be metered by standard meters to be owned, furnished, and maintained by the Company. All wires, fixtures, lamps, and appliances, used for the aforesaid purposes shall be installed, owned, maintained, and operated by the City at its own cost and expense.

2. The Company shall not be obligated to construct or own any line extension or other facilities to provide the City with such energy, the cost of which shall exceed three times the annual revenue reasonably to be expected by the Company from any such extension.

3. It is agreed between the parties hereto that the energy purchased under this contract shall not be resold by the City except to such extent as may be necessary to operate airports, marine terminals, sewage disposal and pumping plants and other enterprises owned or leased by the City and operated by the City or by others under contracts or leases with the City.

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4. It is agreed between the parties hereto that the Company shall charge and the City shall pay to the Company for all electric energy furnished by the Company under Part IV of this agreement at the rate of one cent (1¢) per kwhr.

5. All payments to be made by the City to the Company under Part IV of this agreement shall be made monthly on or before the 15th day of each month for services rendered during the month next preceding the date of payment and upon default in making such payments by the City the Company shall have the right to discontinue such service.

Part V

Light And Power Service For Housing Projects

1. The Company agrees that, throughout the term of this agreement, it will supply to the Housing Authority of the City of Richmond such electric energy as may be required by said Authority for use in housing projects constructed and operated by it under the "housing authorities law" (Acts 1938, p. 447) upon the following conditions:

2. That all such energy shall be metered by standard meters to be owned, furnished, and maintained by the Company; and that all wires, fixtures, lamps and appliances used for purposes of said Authority shall be installed, owned, maintained and operated by the Authority at its own cost and expense.

3. That the Company shall not be obligated to construct or own any line extension or other facilities to provide said Authority with such energy, the cost of which shall exceed three times the annual revenue reasonably to be expected by the Company from any such extension.

4. That no portion of such energy shall under any circumstances be resold by said Authority, nor used outside of the confines of any project of said Authority, nor used in any building or other part of any project of said Authority if the ownership, management or operation of such building or other part has been transferred to some other party.

5. That the Company shall charge and the Authority shall pay to the Company for all electric energy furnished by the Company under Part V of this agreement at the rate of one cent (1¢) per kwhr.

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6. That all payments to be made by said authority to the Company shall be made monthly on or before the 15th day of each month for services rendered during the month next preceding the date of payment and upon default in making such payments by said Authority the Company shall have the right to discontinue such service.

Part VI

Term Of Agreement And Cancellation Thereof

This agreement shall continue in full force and effect for a term of ten (10) years from and after the day of, 1941, and shall automatically renew itself from time to time for like terms unless and until it is terminated by twelve (12) months' notice in writing given by either party to the other prior to the expiration date of the original or any renewal term of this agreement. This agreement shall be binding upon the parties hereto and their successors and assigns during the term of this agreement or any renewal or extension thereof.

In Witness Whereof, the City has caused its name to be subscribed hereunto by its Director of Public Utilities and its corporate seal to be hereto affixed and attested by its City Clerk, pursuant to an ordinance of its Council approved on the day of, 1941, and the Company has caused its name to be subscribed hereunto by its Vice-President and its corporate seal to be hereto affixed and attested by its Assistant-Secretary.

II. This ordinance shall be in force from its passage.

* * *

An Ordinance No. 66-71-73
(Adopted April 25, 1966.)

To authorize the City Manager, for and on behalf of the City of Richmond, to enter into an agreement with Virginia Electric and Power Company, supplementing the agreement between the City and the Company of October 21, 1941, so as to fix rates to be charged for electric service for the operation of gaseous source traffic lights or signals.

Patron—City Manager

Approved as to form and legality by City Attorney

The City Of Richmond Hereby Ordains:

§ 1. That the City Manager, for and on behalf of the City of Richmond, is authorized and directed to enter into an agreement with Virginia Electric and Power Company as follows:

This Agreement, made this day of, 1966, by and between City Of Richmond, a municipal corporation of the Commonwealth of Virginia, party of the first part, hereinafter referred to as "City," and Virginia Electric And Power Company, a corporation organized and existing under the laws of the Commonwealth of Virginia, party of the second part, hereinafter referred to as "Company";

Witnesseth:

That the City and the Company covenant and agree, each with the other, as follows:

That paragraph 2 of Part III of the agreement between the City and the Company entered into on October 21, 1941, authorized by ordinance adopted by the City's Council and approved October 21, 1941, is hereby amended and supplemented as follows, it being the purpose and intent of this agreement to fix rates to be charged by the Company

and paid by the City for electric service for the operation of gaseous source traffic lights or signals :

2. The rates to be charged by the Company and paid by the City for the electric service for the lamps of the various signals of the various types and sizes are as follows :

(a) Traffic Signals—Used 24 hours or less each day.
Each lamp 60 watts or less at \$2.00 per lamp per year
Each lamp 100 watts at \$4.00 per lamp per year
Each lamp 150 watts at \$6.00 per lamp per year

(b) Caution Signals—Used 24 hours or less each day.
Each lamp 60 watts or less at \$6.00 per lamp per year
Each lamp 100 watts at \$10.00 per lamp per year
Each lamp 150 watts at \$15.00 per lamp per year
Each lamp 200 watts at \$20.00 per lamp per year

(c) Traffic Officers Light—Used only when officer is on duty.
Each 500 watt lamp at \$20.00 per lamp per year

(d) *Gaseous Source Traffic Lighting Service.*

*Gaseous Source Traffic Lighting used 4000 hours per year or less.
Each volt ampere of billing load—4¢ per year*

*Gaseous Source Traffic Lighting used more than 4000 hours per year.
Each volt ampere of billing load 8¢ per year*

If the nameplate rating of the City's equipment is not available or is considered by the Company to be incorrect, Company shall establish the billing load by suitable test to determine the instantaneous maximum load.

(e) The monthly minimum charge for such services rendered for each intersection of streets, alleys, or other public places shall be \$1.00.

(f) The Company reserves the right when traffic signals are not of standard makes or do not meet the above classifications to meter the service and bill it on applicable rates.

In Witness Whereof, the City has caused its name to be subscribed hereunto by its City Manager and the Company has caused its name to be subscribed hereunto by its duly authorized officer.

* * *

An Ordinance—No. 70-37-58
(Adopted March 9, 1970)

To authorize the City Manager to enter into an agreement with Virginia Electric and Power Company concerning the installation, operation and maintenance of street, highway and traffic lighting service supplementing and revising portions of agreement authorized by ordinance approved October 21, 1941, interchange and purchase of electric energy and services.

The City of Richmond Hereby Ordains :

§ 1. That the City Manager be and is hereby authorized to enter into an agreement with Virginia Electric and Power Company in relation to the installation, operation and maintenance of street, highway and traffic lighting services supplementing and revising portions of agreement authorized by ordinance approved October 21, 1931, interchange and purchase of electric energy and services as follows.

This Agreement, made this 1st day of January, 1970, by and between the City of Richmond, a municipal corporation of the Commonwealth of Virginia, party of the first part, hereinafter referred to as "City," and Virginia Electric and Power Company, a corporation organized and existing under the laws of the Commonwealth of Virginia, party of the second part, hereinafter referred to as "Company";

Witnesseth:

That the City and the Company covenant and agree, each with the other, as follows:

That paragraph 2 of Part II of the agreement between the City and the Company entered into on October 21, 1941, authorized by ordinance adopted by the City's Council and approved October 21, 1941, is hereby amended and supplemented, it being the purpose and intent of this agreement to fix rates to be charged by the Company and paid by the City for Street and Highway Lighting Services—Mercury Vapor. Paragraph 2. (f) of Part II is hereby changed to 2. (g) and the following schedule of rates for mercury vapor units will hereby be incorporated into the agreement of October 21, 1941, as paragraph 2. (f):

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2. (f) Street and Highway Lighting Service—Mercury Vapor:

(1) Overhead System—All Night

3,300 lumen—at \$ 21.00 per lamp per year
7,000 lumen—at \$ 32.00 per lamp per year
11,000 lumen—at \$ 45.00 per lamp per year
20,000 lumen—at \$ 65.00 per lamp per year
33,000 lumen—at \$ 95.00 per lamp per year
53,000 lumen—at \$130.00 per lamp per year

(2) Overhead System with Special Poles—All Night

7,000 lumen—at \$ 60.00 per lamp per year
11,000 lumen—at \$ 70.00 per lamp per year
20,000 lumen—at \$ 90.00 per lamp per year
33,000 lumen—at \$125.00 per lamp per year
53,000 lumen—at \$155.00 per lamp per year

(3) Underground System—All Night

7,000 lumen—at \$120.00 per lamp per year
11,000 lumen—at \$130.00 per lamp per year
20,000 lumen—at \$150.00 per lamp per year
33,000 lumen—at \$180.00 per lamp per year
53,000 lumen—at \$215.00 per lamp per year

(4) If more than one fixture is mounted on a pole, one fixture will be billed at the appropriate overhead, overhead with special pole, or underground rate, as the case may be; the other fixtures on such pole will each be billed at the appropriate overhead rate.

(5) In areas normally served through overhead distribution systems, the City may elect to pay the appropriate rate in (1) above, for the types of service listed under (2) or (3) above, provided the City agrees to pay all costs for each installation to be billed under (2) or (3) above, in excess of seven times the annual revenue to be derived by the Company from each such installation; any provision of paragraph 4. of Part II of the agreement between the City and the Company dated October 21, 1941, respecting cost-revenue ratios to the contrary notwithstanding.

In Witness Whereof, the City has caused its name to be subscribed hereunto by its City Manager and the Company has caused its name to be subscribed hereunto by its duly authorized officer.

§ 2. This ordinance shall be in force and effect on January 1, 1970.

* * *

MOTION (CITY OF RICHMOND)

The City of Richmond, intervenor herein, moves the Commission to postpone generally the hearing upon Virginia Electric and Power Company's application for declaratory judgment until such time as a printed and indexed copy of the debates before the House of Delegates on the new Virginia Constitution is available to intervenors.

The City of Richmond also moves the Commission to postpone until a reasonable time after such printed and indexed copies of the House Debates are available the date by which intervenors must file their briefs.

These motions are being made on the ground that the applicant is asking the Commission to declare unconstitutional two Virginia statutes and to abrogate contracts for electric service involving millions of dollars and that therefore both the intervenors and the Commission should have available to them any material which would significantly aid in interpreting the language used in Article IX, Sec. 2 of the new Constitution.

The City of Richmond respectfully requests an opportunity to be heard on this matter.

Dated: October 18, 1972

* * *

COMMISSION ORDER OF OCTOBER 24, 1972

On October 18, 1972, the City of Richmond, by counsel, moved that this case be continued generally.

The Commission is of the opinion that a prompt decision of the constitutional question raised by Virginia Electric and Power Com-

pany is necessary in the interest of the consumers of public utility services and ought not to be delayed. Therefore, it is

Ordered

That the motion for a continuance be, and it is, denied.

Attested copies of this order shall be mailed to James R. Saul, counsel for the City of Richmond, 300 City Hall, Richmond, Virginia, to George D. Gibson, 700 East Main Street, Richmond and to the Attorney General.

* * *

LETTER TO R. T. CATTERALL OF NOVEMBER 21, 1972

City of Richmond
Department of Law
Richmond, Virginia 23219
November 21, 1972

* * *

Dear Sir:

Our Xerox file copy of page 17 of the October 21, 1941 ordinance which was attached as Exhibit A to the City of Richmond's petition and answer did not contain the last one and one-half lines on that page. In view of the fact that both the City of Richmond and VEPCO have stipulated, for the purposes of this proceeding, that this ordinance and its amendments set forth the essential terms of the service contract between these parties, the City encloses an additional page 17 to be sure that both the Commission and counsel for VEPCO have a complete copy of the ordinance.

The City conceded near the end of the hearing on November 17 that § 56-234 imposes no duty on VEPCO to provide electric service to the Commonwealth or its political subdivisions. As Senator Gray indicated, these governmental entities would have to look to the common law for this duty. However, the City would like to make it clear that it still maintains that the provisions of §§ 56-232 and 56-234 constitute a requirement that rates charged governmental entities by public utilities be exempted from regulation by the State Corporation Commission. The City submits that the evolution of § 56-234 indicates that the word "herein" in the third sentence of that Code Section refers to

Art. 2, Chapter 10 of Title 56 and not just to § 56-234. Further, the City also maintains that §§ 56-232 and 56-234 authorize these governmental entities to enter into inviolable contracts for service at specified rates for reasonable periods of time.

Thank you.

Respectfully yours,

/s/ James R. Saul

James R. Saul
Assistant City Attorney

* * *

TRANSCRIPT OF PROCEEDINGS BEFORE COMMISSION
(November 17, 1972)

[80]

* * *

Mr. Saul: * * * Now, the City, of course, hopes that the Commission will decide in favor of the interveners on the issue of the constitutionality of the statutes in question here.

However, if the Commission should hold to the contrary, the City asks the Commission to grant the further relief requested in its petition and answer.

There is no need to repeat here the contentions made by the City in its brief with regard to its contract with VEPCO and with regard to the contracts of governmental entities in general.

It is sufficient that the City renews its prayer for relief and stands on the argument made in its brief.

The City has been unable to locate its copy of the 1941 agreement and the amendments to that agreement. But we hope that further search [81] will uncover it. The City represents that its files indicate that the 1941 agreement was dated October 22, 1941, and that the copies of the ordinances attached as exhibits to the City's petition and answer set forth the terms of that agreement.

I believe that the Counsel for VEPCO are willing to stipulate that, for the purposes of this proceeding that that is true.

Commissioner Bradshaw: It looks like they can start charging what they want to.

Mr. Saul: Therefore, the City feels that the Commission is in a position to declare that its contract with VEPCO, is in a position to declare that the contracts of governmental entities in general in Virginia as to rates are not subject to being abrogated prior to the expiration of their reasonable terms. And particularly that the City's contract, because of its unique provisions, is not subject to abrogation prior to its expiration of its present term.

COMMISSION ORDER OF DECEMBER 12, 1972

On September 11, 1972, came Virginia Electric and Power Company, by George D. Gibson, its counsel, and presented its application for declaratory judgment that Article IX, Section 2 of the Constitution imposes on this Commission the duty of regulating the rates charged by applicant to all its customers.

By its order of September 13, 1972, the Commission set the case for hearing on November 17, 1972, after notice to the State, the United States and all counties, cities and towns that are customers of the applicant.

The hearing was held on November 17, 1972, at which the following appeared in opposition to the application:

Henry M. Massie, Jr., Assistant Attorney General for the Commonwealth.

Charles G. Bernstein, for Government Services Administration.

James R. Saul, Assistant City Attorney, for the City of Richmond.

William J. O'Brien, Jr., Attorney for the City of Portsmouth.

J. Dale Bimson, City Attorney, for the City of Virginia Beach.

Frederick T. Gray, for the County of Chesterfield.

R. D. McIlwaine, III, for the County of Henrico.

C. F. Hicks, for the Virginia Association of Counties.

A. W. Wood, for the Virginia League of Municipalities.

On consideration of the arguments and briefs of counsel, and for the reasons set forth in the majority opinions, Bradshaw, Commissioner, dissenting, it is

Adjudged

That the Constitution and the statutes passed in pursuance thereof require the State Corporation Commission to require the applicant to furnish adequate service at just and reasonable rates, to all its customers without discrimination between governmental and other customers.

An attested copy of this judgment together with copies of the opinions shall be sent to each of the counsel hereinabove named.

* * *

OPINION—CHAIRMAN CATTERALL

The applicant requests a decision on whether § 56-234 of the Code conflicts with the second paragraph of Section 2 of Article IX of the Constitution. On its face, a more direct conflict would be hard to imagine. The Constitution commands the Commission to regulate the rates of railroad, telephone, gas, and electric companies. The statute says the Commission shall *not* regulate the rates of public utilities to municipal corporations, the State or the United States. The words “the rates” in the Constitution means “the rates” and cannot be interpreted to mean “some of the rates.” If “the rates” was intended to mean less than all rates, the limited class of rates to be regulated would have to be spelled out affirmatively or the exceptions would have to be inserted. Otherwise it would be impossible to identify the line between those that are and those that are not to be regulated.

The word “the” followed by a noun designating a group necessarily and always means all members of the group. When Sec. 2 of Art. IX refers to “the consumers of the Commonwealth” it means all the consumers and not just some of them.

When § 2.1-133.1 made it the duty of the Attorney General to appear before this Commission to “represent the interests of the people as consumers” certainly “the people” means all the people and not just some of them.

Counsel argued that this Commission has no authority to decide whether a statute is or is not constitutional. Before it can enforce any law it is the duty of the Commission to decide whether that law is constitutional. In *Commonwealth v. Atlantic Coast Line Railway*, 106 Va. 61 at page 63, the court said:

The learned Attorney-General, as the highest law officer of the Commonwealth, urged upon the Commission that in this pro-

ceeding it was invested with all the powers, and had imposed upon it all the responsibility, of a court of record. He earnestly contended that the Commission not only had the judicial authority to pass upon these constitutional questions, but that it was its manifest duty to do so, in so far as it was necessary to reach a final conclusion. This position of the Attorney-General was not combatted by the learned counsel for the defendant company, but was conceded to be correct. Indeed it is no longer open to question.

Indeed, every officer who takes the oath to support the constitution, is duty-bound to support it.

Ex Parte LaPrade, 289 U.S. 444, 77 L.ed. 1311, involved a suit to enjoin the Attorney General of Arizona from enforcing an unconstitutional state statute. The court held at page 458:

Plaintiffs did not allege that petitioner threatened or intended to do anything for the enforcement of the statute. The mere declaration of the statute that suits for recovery of penalties shall be brought by the attorney general is not sufficient. Petitioner might hold, as plaintiffs maintain, that the statute is unconstitutional and that, having regard to his official oath, he rightly may refrain from effort to enforce it.

We are fully aware that a statute should not be declared unconstitutional unless it is unconstitutional beyond a reasonable doubt, and that a constitutional question should not be decided if a matter can be disposed of without deciding it. We base our decision, not on the conflict between § 56-234 and the Constitution, but on the ground that § 56-235 is the controlling statute. That was the course followed by the court in the *Town of Victoria* case, discussed below.

§ 56-234 reads in relevant part:

§ 56-234. *Duty to furnish adequate service at reasonable and uniform rates.*—It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same, and to charge uniformly therefor all persons or corporations using such service under like conditions . . . But nothing herein contained shall be construed as applicable to schedules of rates, or

contracts for service rendered by any telephone company to any municipal corporation or to the State government, or by any other public utility to any municipal corporation or to the State or federal government

The second paragraph of Section 2 of Article IX of the Constitution reads:

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

§ 56-234 originated with Chapter 340 of the Acts of 1914, which contained a paragraph reading:

But nothing herein contained shall be construed as applicable to schedules of rates, or contracts for service rendered by any such company, to any municipal corporation, or to the State or federal government.

To the extent that that paragraph covered telephone companies, it apparently conflicted with the 1902 Constitution to the same extent that § 56-234 appears to conflict with the present Constitution. In recognition of that fact, Chapter 95 of the Acts of 1914, entitled "An act to provide for the supervision and control of telephone companies by the State Corporation Commission" provided in paragraph 3:

3. Upon complaint made by any telephone company, or by any complainer, that any rate, charge or practice established or provided for by any municipal ordinance, franchise or other contract, is unreasonable, unjust, insufficient or discriminatory, the State corporation commission shall order a hearing, and if, upon such hearing, it shall find that such complaint is well founded, the said commission shall prescribe and enforce just and reasonable rates, charges or regulations, in lieu of those complained of.

Evidently, the two 1914 statutes were drafted by different draftsmen. Their failure to get together resulted in the direct conflict between them. Perceiving that conflict, the 1918 General Assembly cleared it up by enacting Chapter 407, Section 1 (b) of which provides:

(b) It shall be the public duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same and not engaged in a similar business, and to charge uniformly therefor all persons or corporations using such product under like conditions, and not in competition with such furnishing company.

But nothing herein contained shall be construed as applicable to schedules of rates, or contracts for service rendered by any such company, to any municipal corporation, or to the State or federal government.

To make sure that telephone rates and services were not included in that unconstitutional prohibition the legislature placed at the end of the Chapter the sentence:

The power of the corporation commission over the rates of telephone companies shall be as defined by an act approved March thirteenth, nineteen hundred and fourteen, entitled an act to provide for the supervision and control of telephone companies by the State corporation commission. (Acts nineteen hundred and fourteen, chapter ninety-five, page one hundred and seventy-four).

The clarifying cross reference is now § 56-241:

§ 56-241. *Rates of telephone companies.*—The power of the Commission over the rates of telephone companies shall be as defined by this chapter and by chapter 15 (§ 56-458 et sey.) of this title.

And the specific clause about telephone rates is now § 56-481.

§ 56-481. *Rates established by municipal corporations subject to revision by Commission.*—Upon complaint by anyone aggrieved that any rate, charge or practice of any telephone company doing business in this State, established or provided for by any municipal ordinance, franchise or other contract, is unreasonable, unjust, insufficient or discriminatory, the Commission shall

order a hearing, and if, upon such hearing, it shall find that such complaint is well founded, the Commission shall prescribe and enforce just and reasonable rates, charges, or regulations, in lieu of those complained of.

The Constitution makes it the duty of the Commission to regulate all the rates and services of the enumerated public utilities.

The words of Section 2 of Article IX applicable to electric companies are:

Subject to such criteria and other requirements as may be prescribed by law, the Commission shall be charged with the duty of regulating the rates of electric companies.

Under the old Constitution there was no requirement that electric rates be fixed by any governmental action, and until 1914 they were not fixed by law but by private contract.

When the General Assembly imposed on the Commission the duty of fixing the price of electricity it enacted the criterion that the rates must be "reasonable and just."

In short, the General Assembly cannot itself fix the rates. It could not enact a statute fixing electric rates at 7.5 mills per kilowatt hour. And in establishing criteria it could not require rates that would be confiscatory in violation of the due process clause. Also it could not make the rates subject to contract between the company and its customers. To do that would abridge the "police power" in violation of Section 6 of Article IX.

In addition to the criterion of "reasonable and just," the legislature can and does prescribe numerous "other requirements." For example:

§ 56-236 requires the utility to file its rate schedules. And § 56-237 forbids any change in a rate schedule except after thirty days' notice to the Commission and to the public unless the Commission authorizes "a less time." In order to combat the evils attendant on "regulatory lag" § 56-238 limits to twelve months the time within which the Commission can keep the filing under investigation, and § 56-240 provides that at the expiration of the time limit the rates "shall go into effect as originally filed by the public utility, upon the date specified in the schedule." The court held, in *Fairfax County v. C. & P.*, 212 Va. 57 that § 56-240 had the effect of letting a telephone company fix its

own rates and was, to that extent, inconsistent with the duty to fix rates imposed on the Commission as well as being inconsistent with § 56-478 specifically requiring Commission approval of telephone rates.

§§ 56-242 and 56-243 authorize the Commission to prescribe a temporary reduction in rates for not more than twelve months without a full-scale rate hearing.

§ 56-244 provides that if it appears in the next full-scale rate case, that the temporary reduction was excessive, the Commission must allow the company to amortize and recover its losses by temporarily charging "over the rates and charges finally determined."

§ 56-245 contains similar provisions for a temporary increase in rates, with provision for refunds if the temporary rates exceed the rates "finally fixed and determined by the Commission."

Section 2 of Article IX concludes with a provision that the Commission must regulate the "*facilities*" of railroad, telephone, gas and electric companies as authorized by general law. The statute law has always dealt in great detail with the regulation of "*facilities*" in connection with the regulation of services. This feature of the new Constitution conforms to the provision in the last paragraph of Sec. 156 (b) of the old Constitution that, apart from fixing rates, the Commission's "authority to prescribe any other rules, regulations or requirements . . . shall be subject to the superior authority of the General Assembly."

The leading case on abridgment of the police power is *Town of Victoria v. Victoria Ice, Light and Power Company*, 134 Va. 134. At page 146, the court said:

The authority to regulate and prescribe rates, it is conceded, rests in the police power of the Commonwealth, and is a legislative function. How, then, by this obscure language can we successfully maintain that it is clear that the State has thereby undertaken to surrender to the municipalities the authority to secure by contract rights which are paramount to the police power and legislative functions which under sections 159 and 164 the State has declared shall never be either abridged or surrendered?

And, at page 149:

There is doubtless a presumption that such franchise contract rates are reasonable. Until abrogated by the State, they are obligatory

upon the contracting parties, but neither the State nor the public are parties thereto, and the State is free at any time to intervene and exercise its reserved power for the common good.

Since the new Constitution expressly requires the Commission to regulate the rates of electric companies it follows that contracts abridging the police power cannot abridge the duty of the Commission to regulate the price of electricity.

In *Town of Victoria*, the court relied on Sec. 4071 of the Code of 1919 as evidence that the legislature did not intend by any of the provisions relating to local franchises to surrender any part of the State's police power. That statute is now § 56-235, which provides:

§ 56-235. *When Commission may fix rates, schedules, etc.—*

If upon investigation the rates, tolls, charges, schedules, or joint rates of any public utility operating in this State shall be found to be unjust, unreasonable, insufficient or unjustly discriminatory or to be preferential or otherwise in violation of any of the provisions of law, the State Corporation Commission shall have power to fix and order substituted therefor such rate or rates, tolls, charges or schedules as shall be just and reasonable.

§ 56-235 is clear and unambiguous. It implements Section 2 of Article IX of the Constitution. The *Town of Victoria* case considers the problem of apparently contradictory statutes and holds that Section 56-235 (§ 4071 of the 1919 Code) must prevail, because it carries out the constitutional mandate and prevents any abridgement of the police power.

The court did not hold § 56-234 to be unconstitutional. It construed the then existing statutes (which are the same as the now existing statutes) to mean that, regardless of any contract or franchise rates, the Commission retains the power to substitute therefor just and reasonable rates.

Applying the law as declared in that case to the present case makes it unnecessary to decide whether § 56-234 is or is not unconstitutional. The many references in that case to the Constitutional provisions served as a guide to the interpretation of the statutes. The legislature never intends to pass laws in conflict with the Constitution, and the court used that fact as a guide in construing the *intent* of the legislature. The court found that the legislature did not intend to surrender to the localities the

power to fix the rates charged by utilities. No statute expressly authorizes the localities or the executive branch of the State government to regulate the rates of utility companies by fiat or by contract in such way as to defeat the statutory requirement of just, reasonable and non-discriminatory rates fixed by the Corporation Commission.

The arguments advanced by the City of Richmond in the present case dealing with an electric company are the same arguments that it advanced in *Richmond v. Virginia Railway & Power Co.*, 141 Va. 69 dealing with a transportation company and were answered by the court in that case. The court said, beginning at page 79:

It is contended, however, that section 125 of the Constitution "qualifies section 156-c and confers upon the plaintiff the power to enter into an inviolable contract with defendant to establish rates."

That this contention is untenable is made manifest by the illuminating discussion in the decision adverted to [*Town of Victoria*] on pages 143, 144, 145, 146, 147, 148, wherein the distinction between section 125 and section 156-c is clearly drawn.

Commenting on Section 125, Judge Prentis says:

"Scrutinizing this language and its context, we observe that it appears in a section, the prime object of which is not to grant power but to restrict municipalities in the methods by which their power to grant the use of their streets (otherwise conferred) is exercised. We further observe that it appears therein not in direct connection with the power to grant, but only in immediate connection with the right to acquire the plant and property of the utility at the termination of the grant—this being the precise language of the clause: 'Every such grant shall specify the mode of determining any valuation therein provided for, and shall make adequate provision, by way of forfeiture of the grant or otherwise, to secure efficiency of public service at reasonable rates, and the maintenance of the property in good order throughout the term of the grant.' Such safeguarding provisions might prove quite desirable to a municipality which contemplated the acquisition of a plant operated under a franchise which is about to expire at a time when the grantee might have a selfish motive to allow the property to deteriorate and the service to become inefficient. Then observe again the nature of the provision itself, which is to 'make adequate provision by way of forfeiture of the grant or otherwise.' Forfeiture

would be neither desired nor desirable if relief against excessive rates were the chief end sought; for, if provided for by contract, such relief would doubtless be best secured by requiring specific performance, and if not then by public regulation. It must not, however, be overlooked that it is conceded that the authority to make such contracts cannot rest in doubtful disputations. The power claimed must be clearly conferred, and if not so conferred, the power of the State to regulate and prescribe such rates is undiminished. The language here relied on appears to be so inconclusive and of such doubtful import as to create a doubt which discussion and reflection do not remove. This doubt being fair and justifiable denies the power.

Let us, then, also consider some of the constitutional provisions and statutes which expressly deny the power claimed by the town.

“It is everywhere conceded that the authority to prescribe rates is a governmental legislative function, which is exercised under the police power of the State. Constitution, section 159, has this with reference to the police power: ‘* * * the exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.’

“Then there is Constitution, section 164, which reads: ‘The right of the Commonwealth, through such instrumentalities as it may select, to prescribe and define the public duties of all carriers and public service corporations, to regulate and control them in the performance of their public duties, and to fix and limit their charges therefor, shall never be surrendered or abridged.’

“A consideration of these sections leads to the conclusion that the convention which adopted them could hardly have intended to be so inconsistent as at the same time, by section 125, either to surrender or to authorize the General Assembly thereafter to surrender to the cities and towns the unlimited power by contract to specify the rates for certain public service corporations, and thus to abridge the right of the State which had been so carefully and specifically reserved by section 164. To so hold is to construe section 125 as authorizing municipalities by contract to nullify three other sections of the Constitution. If section 125 does nevertheless

authorize such a surrender of the public right so carefully reserved, then all will agree, for this is fundamental, that the language relied on, when put in apposition to the language used in sections 156-c, 159 and 164, should be so clear, definite and positive as to deny and overcome their implications and leave no fair doubt upon the mind. This then leads us again to section 125 to a further scrutiny of the language there used as contrasted with the other three constitutional provisions just cited, in order to ascertain whether the convention, nevertheless, did thereby surrender the public right as to such municipal franchise contracts. The authority to regulate and prescribe rates, it is conceded, rests in the police power of the Commonwealth, and is a legislative function. How, then, by this obscure language can we successfully maintain that it is clear that the State has thereby undertaken to surrender to the municipalities the authority to secure by contract rights which are paramount to the police power and legislative functions which, under sections 159 and 164, the State has declared shall never be either abridged or surrendered?

And at page 87, quoting with approval from the opinion of the State Corporation Commission:

“With reference to the provisions of the charter of the city of Richmond, section 19-i, relied upon as conferring the power to prescribe under the proviso of section 156-b, it is sufficient to say that in the opinion of the Commission the language is not capable of the construction claimed by the city, and even if it were the fact of having made what the city claims to be binding contracts, and admitted to be so by the petitioner *quoad* the city and the petitioner, any right to prescribe, however clearly conferred, would be in abeyance during the life of the contract and 156-b of the Constitution would not apply and the power to prescribe, if it exists at all, as we think it does, would be where it ordinarily resides in the absence of application of the proviso, namely, in the State Corporation Commission, which has, by the provisions of 156-b of the Constitution of 1902, paramount power as to rates of transportation and transmission companies. We think, therefore, that the proper construction of all applicable provisions of acts and charters is that no right to prescribe rates has been conferred upon the city of Richmond, and even if the charter granted since the Constitution

of 1902 does do so by section 19-i, such right to prescribe does not exist in the city at this time in view of its having tied its hands by contracts binding as to itself."

The court thereupon reaffirmed and following the *Victoria Case*, overruling the *Virginia-Western Power Co. Case*.

Section 125 of the old Constitution is embodied in Article VII, Section 9 of the new Constitution. What the court said about old Sec. 125 applies with equal force to Article VII, Section 9. And the new Constitution puts electric companies in the same category as transportation companies.

In *Town of Vinton v. City of Roanoke*, 195 Va. 881, the court laid down the law at page 894:

A municipality in Virginia does not have unrestricted power to fix the rates of public service corporations. The reservation to the State of the police power, and the express right to regulate and prescribe such public utility rates in sections 156, 159 and 164 of the Constitution cannot be defeated or abridged by any contract made by a municipality; but such contracts must be construed as subordinate to the reserved power of the State. *Town of Victoria v. Victoria Ice, Light & Power Co.*, 134 Va. 134, 155, 114 S.E. 92; *C. & P. Tel. Co. v. Com.*, 147 Va. 43, 136 S.E. 575.

It follows that it is the duty of the Commission to regulate the rates and services of electric companies and to treat municipalities on the same footing as other consumers receiving similar services.

The provisions of § 56-234 that are said to prevent the Commission from regulating the rates and services to municipal corporations would violate the Constitution were it not for the explicit provisions of § 56-235 that harmonize the Code sections with the Constitutional mandate.

The Attorney General argues that, although the Constitution undoubtedly requires the Commission to fix rates charged for electricity to the municipalities, it does not require it to fix the rates charged to the State itself. His argument is based on the fact that the Constitution does not mention the State by name, and, therefore, the State cannot be subject to regulation. The Commission, of course, cannot regulate the State. Its regulation is directed only at Vepco. Certainly it can require Vepco to furnish adequate service to the State. Otherwise Vepco

could refuse to render electric service to the State, and would be in the same position as a fuel oil dealer that refused to sell fuel oil to the State. The regulation by the Commission of rates charged by Veeco to the State goes hand in hand with the regulation of services to the State. It is a regulation of Veeco for the protection of the State.

Article IX, Section 2 says:

The Commission shall in proceedings before it ensure that the interests of the consumers of the Commonwealth are represented . . .

The Commonwealth is one of the consumers for whose benefit the protection is provided. When prices are fixed by law, it regulates the sellers for the benefit of the buyers. It in no way regulates the buyers. No statute compels buyers to buy.

On July 20, 1972, a three-judge Federal District Court in *United States of America v. State Corporation Commission*, 345 F.Supp. 843, had before it a claim of sovereign immunity similar to the claim advanced by the Attorney General in the present case; and held that the State Corporation Commission could fix the telephone rates charged the federal government by C. & P.

The court said (p. 846):

Telephone rates in Virginia are established by the State Corporation Commission on the basis of (a) the value of the Company's property used in its intrastate service, (b) gross revenues, and (c) operating costs, all as reflected to allow a reasonable rate of return on investment. Virginia customers are then charged on the basis of the rates so determined. The equipment, its service and maintenance at the Pentagon are all owned and furnished by the Chesapeake and Potomac Telephone Company of Virginia, and included in the rate making formula affecting Virginia customers. It would be manifestly a rank discrimination to have those Virginia customers pay higher charges to underwrite a less than fair rate charged to the United States, a rate based on telephone property values, incomes and costs in Washington, D. C.

As to the Supremacy Clause in the Federal Constitution, the court said (p. 846):

This clause was intended to eliminate the right of any state to regulate operations of the Federal Government, without its express

consent *McCulloch v. Maryland*, 4 Wheat. 316 (1819). There is no claim by the United States, here, that the State Corporation Commission is seeking to directly tax or regulate Federal Governmental operations in a discriminatory manner. The Government pays the same rate as all others and no less than that of a basic subscriber in the same "Oxford Zone."

The brief filed by counsel on behalf of the United States does not raise any federal question, and cannot very well do so in view of *United States v. State Corporation Commission, supra*.

His first point is that the Commission does not have the power of a court of record to render a declaratory judgment. Because of the controversy over whether the ordinary customers should be compelled to pay millions of dollars to subsidize lower rates for governmental customers, this is a typical case for a declaratory judgment. A declaratory judgment will enable the parties to know how to prepare for future rate cases. A declaratory judgment is designed to establish the extent of the liability of litigants engaged in a controversy so that they will know how to proceed. We believe that this is the proper time to resolve the controversy. The parties who argued so earnestly on behalf of governmental favoritism cannot be heard to say that there is no actual controversy or no actual antagonistic assertion and denial of right.

His second point is that Section 56-234 has been repeatedly left in the Code of Virginia. To that, the answer is that Section 56-235 has also been left in the Code of Virginia. The Virginia Supreme Court has repeatedly held that, because 56-235 is in harmony with the Constitutional requirement, Section 56-235 prevails over anything to the contrary in 56-234. Leaving both sections in the Code means that the interpretation of them by the Supreme Court remains the law of today.

Counsel for Chesterfield County made much of the fact that his constituents are taxpayers as well as consumers, and that if Chesterfield is required to pay just and reasonable rates for electricity, the County will have to raise taxes to pay the difference between just rates and unjust rates. At present the consumers all over the state are subsidizing those lower rates for the benefit of the county and to the detriment of everybody else. The fact that the local taxpayers are also consumers throws no light on the proper interpretation of the law.

When the Commission ordered C. & P. to bill the United States at the same rates that the regular customers pay, it transferred about

five million dollars from the shoulders of the unprivileged telephone customers to the United States Government taxpayers. The present case involves much more than five million dollars. So far as equitable considerations have any relevancy to statutory construction, the equity would appear to be on the side of the ordinary consumers of electricity. The ordinary consumers did not take part in the argument, and the Office of Consumer Counsel, whose duty it is to represent them, argued that the State Government is entitled to preferential and discriminatory rates. As we read the Constitution, the statutes passed in pursuance thereof, and the decisions of the Virginia Supreme Court, discriminatory rates are forbidden, and it is the duty of the Commission to substitute nondiscriminatory rates.

It follows that Vepco will have to serve all its customers, including the municipalities, the State and the United States at reasonable, just and nondiscriminatory rates.

OPINION—COMMISSIONER SHANNON

The applicant, Vepco, seeks a declaratory judgment from this Commission determinative of the constitutionality of Virginia Code §§ 56-232 and 56-234. Specifically, Vepco wants to know whether this Commission has the power and duty of regulating the retail rates charged by electric companies to municipal corporations and to the State and federal governments.

I am in complete accord with Judge Catterall's conclusion that the aforesaid sections are not unconstitutional and that § 56-235 makes it our duty to prescribe just and reasonable and nondiscriminatory rates in all cases. However, I believe the nature of the proceeding justifies additional comment with reference to the two questioned Code provisions.

Intervenors argue that Code §§ 56-232 and 56-234 exempt from S.C.C. jurisdiction schedules of rates or contracts for service rendered by any electric company to any municipal corporation or to the State or federal government; that such exemption enunciates a legislative policy prevailing for fifty-eight years. In his opinion, Judge Catterall, accepting that premise, says, "The statute says the Commission shall not regulate the rates of public utilities to municipal corporations, the State or the United States," but concludes that present Code § 56-235 gives the S.C.C. overriding power over such contracts if and when the antecedent conditions of that statute are met.

I disagree with the argument of intervenors and cannot concur in the assumption that § 56-234, by its terms, prohibits Commission regulation of rates charged to municipal corporations or to the State and federal governments. I call it an assumption because the petitioner and all the intervenors, including the Attorney General, have acted on that assumption and it was that assumption that prompted the Attorney General to introduce a bill to clarify the section. The pre-1971 decisions of the Supreme Court have considered that section so often and have so often held that § 56-235 takes precedence over § 56-234 that the reenactment of the two sections necessarily carries with it the interpretation put on them by the Supreme Court. The 1970 reenactment merely changed the word "products" to the word "service" in order to tie it in with the statutory definition of service, and inserted the requirement that the charge for service shall be the lowest applicable rate contained in the filed schedules.

In my opinion, Code § 56-232 says only that the subject contracts are not to be considered "schedules" as defined elsewhere in the statute. This is significant only as "schedules" appear in subsequent sections providing for filing of schedules with the S.C.C., for changes therein, and for suspension thereof.

With reference to § 56-234, it must be remembered that it first appeared in Section 1 (b), Chap. 340 of Acts of 1914 as part of the legislation placing utilities other than telephone and telegraph companies under the control and supervision of the S.C.C. for the first time. In my opinion, its meaning, whatever interpretation it has received in the past by Vepco and the intervenors, is not to authorize the subject contracts, *ab initio*, nor to limit S.C.C. jurisdiction except by the procedural requirements of § 56-235.

In the first place, a contract is a mutual understanding. If one is forced to "contract," it is no contract. Suppose Vepco and the State or federal government cannot agree on rates. Does the statute say they must? In the case of municipal corporations, Vepco must agree to the terms of the former if the utility is to obtain a franchise. See Article VII, Sections 8 and 9 of the 1971 Constitution, implemented by Code §§ 15.1-307 through 15.1-316 and § 15.1-375. But no parallel provisions provide for State or federal "franchise contracts." Therefore, the proviso in § 56-234 can only affect such agreements as existed at the time of original passage.

The key to understanding § 56-234, in my judgment, is found in *Com'th v. Shenand'h R. L. Corp.*, 135 Va. 47 (1923). Quoting from the S.C.C. opinion under review, the Supreme Court observed:

“ ‘Prior to the enactment of the utilities act, all rates of public utility companies were the result of agreement, express or implied, between those companies and their customers, and if, therefore, all such rates were beyond the control of the Commission, the jurisdiction conferred by the act would have been practically *nil*. We can not believe or hold that the legislature contemplated a result so futile and absurd.’ ” *Id.* on 55-56.

It is clear that when the utility act was passed in 1914, there were outstanding schedules of rates *and* contracts for service to municipal corporations and others; the two were not the same. The question then arises, what effect did the new act have on such schedules and contracts? The answer is provided by the Supreme Court in *Com'th v. Shenand'h R. L. Corp.*, *supra*, on p. 70:

“This underlying principle can be thus stated: The State in the exercise of its sovereign power may abrogate such contracts in the public interest when, using the language of the Virginia statute (Code section 4071 [now section 56-235]), the rates so contracted for are ‘found to be unjust, unreasonable, insufficient, or unjustly discriminatory, or to be preferential or otherwise in violation of any of the provisions of law.’ The language of the statute, however, clearly indicates the limiting conditions precedent which must be found to exist before this great sovereign power will be exercised. Notwithstanding the existence of this power of the State, which cannot now be fairly doubted, such contracts are not lightly to be abrogated. When fairly entered into between parties competent to contract they are usually enforced.”

The opinion continues on pp. 72-73:

“The statute which controls the Commission, when either the Commission or a public utility essays to change rates which have been theretofore lawfully established by contracts, is Code, section 4071 [partially quoted above, now Code section 56-235], . . .”

* * *

“In cases like this, when it is shown that there is an outstanding contract by which the rate involved was established, then the Commission should suspend the proposed rate which contravenes such a contract for such reasonable time as is requisite for the submission of the evidence and the completion of the necessary investigations and hearings provided for by the statutes . . .”

In that case the new rates filed by the utility had become effective automatically because the Commission failed to suspend the rates under Acts of 1918, page 675, now Code § 56-240, and the court held that § 4071 (now § 56-235) must be complied with in cases “when it is shown that there is an outstanding contract by which the rate involved was established.” So-called “carrier-made” rates could not abrogate existing contracts because, in such cases, the requirements of § 56-235 has to be followed.

It seems obvious that the first sentence of Code § 56-234 constitutes a mandate, to the utilities, promulgated for the first time in Chap. 340 of Acts 1914, setting forth their public obligations. The second sentence is a “saving” provision which says that the passage of this act is not intended, *per se*, to vitiate either existing “schedules of rates” or “outstanding contracts for service” with municipal corporations or State or federal government. Such schedules and contracts could be altered only by meeting the prerequisites of present § 56-235.

It is my opinion, that upon expiration of those contracts of service named in the 1914 legislation, which legislation stays on in the present Code, the State and federal governments were subject to such S.C.C. approved rates as might be applicable. Prior to the expiration of such contracts, they were subject to change only upon a showing that the rates were unlawful as defined in present Code § 56-235. In short, under either the Constitution of 1902 or that of 1971, all of the rates for service charged by any electric company were and are subject to regulation by the S.C.C., and the present authority of any utility to contract is as provided in Article VII, Sections 8 and 9 of the present Constitution, as implemented by the statutes above noted. In no event are the rates to be, or to remain, in violation of Code § 56-235.

* * *

OPINION—COMMISSIONER BRADSHAW

I am in accord with the goal the majority view seeks to attain. But reluctantly I must disagree with their holding that the Commission has the authority and duty to regulate electric rates charged by Virginia Electric & Power Company to the various governmental entities.

As I read the constitutional section and the statutes in question, the conclusion seems inescapable that such regulation is off limits to Commission regulation.

This has been the firmly held assumption by the utilities and the Commission itself for a half century or more. The General Assembly never questioned the verities of these assumptions. In fact, the legislature amended the subject statute sections eleven times since they were first enacted in 1914, always preserving the language that excluded from regulation the municipal corporations and the state and federal governments.

The legislature reinforced this obvious legislative intent (to except the governmental entities) at the 1972 Session when it defeated a bill (S.B. 385) that would have removed the exceptions from the statutes.

In *Crook v. Commonwealth* (174 Va. 593) the court took judicial notice of a bill that failed to pass as an indication of the legislative policy of Virginia.

Article 9, Section 2 of the Virginia Constitution, effective July 1, 1971, gives to the State Corporation Commission the authority and duty to regulate "the rates, charges and services" of the electric utilities. But is this authority all inclusive as the majority contends?

In my opinion such authority is not absolute but is restricted by constitutional language in the same section which says: ". . . except as may be otherwise authorized by this constitution or by general law."

Thus it is apparent that the legislative framers of the constitution reserved to themselves a portion of the regulatory power that it has delegated to the Commission.

Dean v. Paolicelli, (194 Va. 219) reinforces this reasoning in this observation by the court:

"The purpose and object sought to be attained by the framers of the constitution is to be looked for, and the will and intent of the people who ratified it is to be made effective."

Professor A. E. Dick Howard who played the major role in draft-

ing the new constitution had this to say, insofar as any appreciable shift in the Commission's authority was concerned:

"The constitutional status of the SCC is retained, and no essential change is made in its basic structure, membership, terms of office, methods of selection, or *jurisdiction*." (Emph. added.)

The purpose sought to be attained in the new constitution appears clear: it was to continue the Commission's authority to regulate the utilities while excluding the governmental entities from such regulation.

Why the sudden turnabout by the utility company which never in the past or during the 1972 rate hearings had suggested we had the authority to regulate rates charged to government? Was it a sudden shining shaft of revelation that brought the hitherto unknown into clear focus? If so it is unapparent to me as it apparently was to the framers of the constitution, the Code Commission which scrutinized the statutes for conflicts with the new constitution and other responsible legal authorities.

Accordingly, I offer this dissent from the majority view. We have the authority to regulate the rates of the utility companies, but this authority is subject to reservations the General Assembly may express by statute law not in conflict with the state constitution.

MOTION (COMMONWEALTH OF VIRGINIA)

* * *

Whereas, by Order of December 12, 1972, in this case, the Commission found that it had the power and duty of regulating the retail rates charged by electric companies to the State; and

Whereas, by application filed with this Commission on December 14, 1972, the Virginia Electric and Power Company is requesting the Commission to set the retail rates for electricity sold the State; and

Whereas, the Commonwealth of Virginia, by her Attorney General, Andrew P. Miller, filed a Notice of Appeal to the Supreme Court of Virginia on December 18, 1972, in Case No. 19176; and

Whereas, a reversal of the decision of the Commission by the Supreme Court may render efforts taken by the Commission on the aforesaid December 14, 1972, application of the Virginia Electric and Power Company futile and ineffective;

Now Therefore, the Attorney General of the Commonwealth of Virginia moves the Commission pursuant to § 12.1-42 of the Code of

Virginia (1950), as amended, to suspend execution of the Order of December 12, 1972, in Case No. 19176 pending appeal to the Supreme Court of Virginia by the Commonwealth of Virginia.

* * *

MOTION (CITY OF RICHMOND)

Whereas, by Order of December 12, 1972, in this case, the Commission found that it had the power and duty of regulating the retail rates charged by electric companies to the State, municipal corporations and the federal government;

Whereas, by application filed with this Commission on December 14, 1972, the Virginia Electric and Power Company is requesting the Commission to set the retail rates for electricity sold the State; and

Whereas, the City of Richmond, by counsel, filed a Notice of Appeal to the Supreme Court of Virginia on December 21, 1972, in Case No. 19176; and

Whereas, a reversal of the decision of the Commission by the Supreme Court may render efforts taken by the Commission on the aforesaid December 14, 1972, application of the Virginia Electric and Power Company futile and ineffective;

Now, Therefore, the City of Richmond moves the Commission pursuant to § 12.1-42 of the Code of Virginia (1950), as amended, to suspend execution of the Order of December 12, 1972, in Case No. 19176 pending appeal to the Supreme Court of Virginia by the Commonwealth of Virginia.

* * *

COMMISSION ORDER OF DECEMBER 22, 1972

Whereas, by Order of December 12, 1972, entered in Proceeding No. 19176, the Commission found that the Constitution of Virginia and the statutes passed in pursuance thereof require Virginia Electric and Power Company "to furnish adequate service at just and reasonable rates, to all its customers without discrimination between governmental and other customers"; and

Whereas, by application of December 14, 1972, the Virginia Electric and Power Company, a public service corporation providing electric service within this State, has requested the Commission to investigate its "rates and charges to the United States Government, the Commonwealth of Virginia, municipal corporations, counties and other

political subdivisions and find the present rates and charges to be unjust, unreasonable, insufficient, unjustly discriminatory and preferential in violation of law and thereupon fix and order substituted therefor such rates and charges as shall be just and reasonable"; and

Whereas, the Commonwealth of Virginia on December 18, 1972 filed a Notice of Appeal to the Supreme Court of Virginia in Case No. 19176; and

Whereas, the Commonwealth of Virginia, by motion of her Attorney General, dated December 18, 1972, has requested the Commission to "suspend execution of the order of December 12, 1972, in Case No. 19176 pending appeal to the Supreme Court of Virginia by the Commonwealth of Virginia"; and

Whereas, the Commission, upon consideration of the foregoing, is of the opinion that the decision in Proceeding No. 19176 should not be implemented in any way pending its review by the Supreme Court of Virginia;

Now, Therefore, the Commission hereby suspends any action upon the application of Virginia Electric and Power Company requesting an investigation of its rates and charges to governmental bodies pending final disposition of the appeal to the Supreme Court of Virginia of the Commission's decision in Case No. 19176.

An Attested Copy hereof shall be sent to all parties of record in this proceeding.

* * *

**NOTICE OF APPEAL AND ASSIGNMENT OF ERROR
(COMMONWEALTH OF VIRGINIA)**

Notice Of Appeal

The Commonwealth of Virginia, by her Attorney General, Andrew P. Miller, Intervenor in the above proceeding, hereby gives notice of appeal from the Order of the State Corporation Commission of Virginia dated December 12, 1972, and entered in the above entitled case.

Assignment Of Error

The State Corporation Commission erred as a matter of law in deciding that it has the power and duty of regulating the retail rates charged by electric companies to the State.

* * *

**NOTICE OF APPEAL AND ASSIGNMENT OF ERROR
(ADMINISTRATOR OF GENERAL SERVICES)**

Notice Of Appeal

The Administrator of General Services (GSA), Intervenor in the above proceeding, hereby gives notice of appeal from the Order of the State Corporation Commission of Virginia dated December 12, 1972, and entered in the above entitled case.

Assignment Of Error

The State Corporation Commission erred as a matter of law in deciding that it has the power and duty of regulating the retail rates charged by electric companies to the United States government.

* * *

**NOTICE OF APPEAL AND ASSIGNMENT OF ERROR
(CITY OF RICHMOND)**

Notice Of Appeal

By counsel, the City of Richmond, Intervenor in the above proceeding, hereby, gives notice of appeal from the Order of the State Corporation Commission of Virginia dated December 12, 1972, and entered in the above-entitled case.

Assignment Of Error

The State Corporation Commission erred as a matter of law in deciding that it has the power and duty of regulating the retail rates charged by electric companies to municipal corporations, to the State and to the federal government.

* * *

**AMENDED AND SUPPLEMENTAL NOTICE OF APPEAL AND
ASSIGNMENT OF ERROR (CITY OF RICHMOND)**

The City of Richmond, intervenor in the above-styled proceeding, by its City Attorney, hereby tenders this amended and supplemental notice of appeal from the order of the State Corporation Commission of Virginia, dated December 12, 1972, entered in the above-styled case, and states the following for its assignment of error:

1. The State Corporation Commission erred as a matter of law in holding that it has the power and duty of regulating the retail rates charged by electric companies for electric service to municipal corporations, to the State and to the federal government.

2. The State Corporation Commission erred as a matter of law in holding that it has the power and duty of establishing retail rates to be charged by electric companies for services to municipalities of the Commonwealth in abrogation of existing contracts between such electric companies and such municipalities.

3. The State Corporation Commission erred as a matter of law in holding that it has the power and duty of establishing retail rates to be charged by Virginia Electric and Power Company for services to the City of Richmond in abrogation of the existing contract between the Virginia Electric and Power Company and the City of Richmond.

* * *

**NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
(CITY OF VIRGINIA BEACH)**

Notice Of Appeal

Notice is hereby given that the City of Virginia Beach, Virginia, Intervenor in the above-captioned case, herewith appeals to the Supreme Court of Virginia from the order of the State Corporation Commission of Virginia, dated December 12, 1972, and entered in this cause.

Assignments Of Error

1. The State Corporation Commission erred as a matter of law in deciding that it possessed jurisdiction to declare unconstitutional the statutes in question in this case.

2. The State Corporation Commission erred in deciding that it has the power and duty of regulating the rates charged by electric companies to the federal government, the State and its political subdivisions.

* * *

**NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
(COUNTY OF HENRICO)**

Notice of Appeal

Notice is hereby given that the County of Henrico, Virginia, Intervenor in the above-captioned case, herewith appeals to the Supreme Court of Virginia from the order of the State Corporation Commission of Virginia, dated December 12, 1972, and entered in this cause.

Assignments Of Error

1. The State Corporation Commission erred as a matter of law in deciding that it possessed jurisdiction to declare unconstitutional the statutes in question in this case.
2. The State Corporation Commission erred in deciding that it has the power and duty of regulating the rates charged by electric companies to the federal government, the State and its political subdivisions.

* * *

**NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
(COUNTY OF CHESTERFIELD)**

Notice Of Appeal

Notice is hereby given that the County of Chesterfield, Virginia, Intervenor in the above-captioned case, herewith appeals to the Supreme Court of Virginia from the order of the State Corporation Commission of Virginia, dated December 12, 1972, and entered in this cause.

Assignments Of Error

1. The State Corporation Commission erred as a matter of law in deciding that it possessed jurisdiction to declare unconstitutional the statutes in question in this case.
2. The State Corporation Commission erred in deciding that it has the power and duty of regulating the rates charged by electric companies to the federal government, the State and its political subdivisions.

* * *

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**NOTICE OF APPEAL AND ASSIGNMENT OF ERROR
(VIRGINIA ASSOCIATION OF COUNTIES)**

Notice Of Appeal

The Virginia Association of Counties, an unincorporated association representing the Counties of Virginia, Intervenor in the above proceeding, hereby gives notice of appeal from the Order of the State Corporation Commission of Virginia dated December 12, 1972, and entered in the above entitled case.

Assignment Of Error

The State Corporation Commission erred as a matter of law in deciding that it has the power and duty of regulating the retail rates charged by electric companies to the Counties of Virginia.

* * *

