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Report to the General Assembly

June 1994

A Sunset Review of the South Carolina Public Service Commission



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Report to the General Assembly

**A Sunset Review of the
South Carolina Public
Service Commission**

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Executive Summary

In accordance with state law, we reviewed the Public Service Commission's (PSC) statutes, regulations and policies and conclude that the agency fulfills a public need through the regulation of utilities. However, market forces in the future may lessen the need for regulation of phone service and the electric industry. In addition, we found no need for the PSC to regulate competitive businesses, such as trucking and radio common carriers (mobile phone and paging services).

PSC management has taken steps to implement recommendations from our 1988 audit.

The PSC's management has taken steps to implement recommendations from our 1988 audit. Major improvements include establishing a centralized complaint investigations department and relaxing regulation of in-state long distance telephone service. In addition, management has taken steps to help ensure that qualified employees are hired, and has promulgated regulations defining standards for entry into the motor carrier industry. The PSC has improved enforcement of statutes requiring truckers to maintain liability insurance, and promulgated regulations to increase minimum insurance coverage.

In other areas, improvements could be made. The following summarizes our review of the Public Service Commission.

Transportation

The PSC decides who can own a trucking business, where the business can operate and the amount of profits that can be earned. The PSC also decides if an existing business can expand.

In 1982, 1988, and now again in 1994, our analysis has shown that trucking is a competitive industry that does not warrant state government economic regulation. A staff report of the Federal Trade Commission also reaches this conclusion. Eight states and the federal government do not perform economic regulation of trucking and have experienced lower prices and improved service, including service to rural areas.

Proponents of continued trucking regulation have stated that economic regulation ensures service to rural areas, truck safety and stable prices. However, studies of states that no longer perform economic regulation, and studies of interstate trucking indicate that these assertions are not accurate (see p. 6).

The PSC regulates trucking in the following manner:

- The PSC decides who can enter the trucking industry, where they can operate, what size trucks they can operate and how much they can charge their customers. As a result, the PSC has prohibited

The PSC decides how much motor carriers can charge and the amount of profit they can earn.

companies with safe driving records and sufficient equipment from conducting business in South Carolina in order to protect the economic interests of existing companies (see p. 9).

- The PSC has placed detailed restrictions on trucking routes and the types of cargo trucks are permitted to carry. These restrictions increase motor carrier costs. A 1990 United States Department of Transportation study estimated the impact of state trucking regulation, in the form of higher trucking rates, at \$2.8 billion per year, nationwide (see p. 11).
- The PSC allows motor carriers to establish trucking rates collectively. This type of price-fixing is illegal in most businesses (see p. 13).
- The PSC does not consistently review carriers' financial information to determine if they need rate increases (see p. 14).
- The PSC has allowed illegal trucking businesses to operate. In March 1993, the agency identified 479 carriers which were advertising their services without PSC approval to conduct business. The PSC has not required these businesses either to cease operations or obtain approval to operate (see p. 16).

Relaxing South Carolina trucking regulations would lead to a more competitive industry, benefitting South Carolina industry and consumers.

Utilities

Changes in federal laws have led to more competition in the electric, telecommunications, and gas industries. Our review of regulation of utilities found the following:

- The PSC should more clearly address alternative wholesale suppliers of electricity for utilities in its long-range planning policy. In certain instances, an electric utility may be able to purchase electricity from another company more cheaply than building a new generating plant (see p. 23).
- South Carolina's climate for recruiting industry could improve if state law were amended to allow industry to purchase electricity competitively. This amendment would require electric utilities to lease

their power lines to industries when the lines are needed to transmit lower-priced electricity purchased from a third party (see p. 24).

Continued regulation of mobile phone and paging services is not warranted.

- The PSC has not required electric utilities to adjust rates to account for changes in fuel costs. For example, one utility's account had an average over-recovery balance of approximately \$2.1 million from July 1979 through April 1993. In April 1993, the over-recovery balance was \$16 million (see p. 27).
- In 1993, the PSC opened up short-range, long distance phone service to increased competition. Customers can now choose from a number of companies to provide this service. Unequal dialing requirements, however, may still limit the degree of competition in this market (see p. 30).
- Mobile phone service, paging service and other forms of wireless telecommunications are becoming highly competitive. For example, of the 18 paging companies in Columbia, only 1 is regulated by the PSC. Continued PSC regulation of these services is not needed (see p. 31).
- The PSC could do more to substantiate the financial data submitted by utilities to establish rates. Without adequate substantiation, there is less assurance that the rates charged by utilities are "just and reasonable" (see p. 32).

Executive Summary

Introduction, Background and History

Section 1-20-10 *et seq.* of the South Carolina Code of Laws requires that specified boards, programs and commissions be terminated on predetermined dates unless reauthorized by the General Assembly. We are required to conduct systematic reviews of regulatory agencies so that the General Assembly might be in a "better position to evaluate the need for their continuation, reorganization or termination." This is our third "sunset" review of the Public Service Commission.

We reviewed the laws and operations of the South Carolina Public Service Commission. We recommend continuation of the Public Service Commission; however, we recommend that state law be amended to replace state economic regulation of motor carriers with free market competition. In addition, we have made recommendations for improvements in the operations of the commission.

Audit Objectives

The objectives of this review are established in state law:

- 1 Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.
- 2 Determine the economic, fiscal, and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.
- 3 Determine the overall cost, including manpower, of the agency under review.
- 4 Evaluate the efficiency of the administration of the programs or functions of the agency under review.
- 5 Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.
- 6 Determine the extent to which the agency duplicates the services, functions, and programs administered by any other state, federal, or other agency or entity.

- 7 Evaluate the efficiency with which formal public complaints filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review have been processed.
- 8 Determine the extent to which the agency under review has complied with all applicable state, federal, and local statutes and regulations.

Audit Scope and Methodology

We reviewed the operations of the Public Service Commission relative to the eight sunset issues primarily for the period of FY 88-89 through FY 93-94.

We reviewed South Carolina statutes and regulations, agency policies and records, and reports from other states. We sampled agency records related to rate cases, complaints and compliance. In addition, we tested agency internal controls to ensure compliance with state laws, regulations and agency policy. The primary criteria we used to evaluate the agency's operations were agency policies and procedures, state laws and regulations and comments from the Federal Trade Commission. We followed up on major recommendations from our 1988 audit.

This review was conducted in accordance with generally accepted government auditing standards.

Background and History

Utility regulation in South Carolina began in 1878 when the General Assembly created the Railroad Commission. The Railroad Commission was responsible for regulating railroads operating within South Carolina.

In 1910, the General Assembly established a Public Service Commission, authorizing it to "fix and establish in all cities of the State rates and charges for the supply of water, gas or electricity furnished by any person, firm or corporation to such cities, the inhabitants thereof, and to prescribe penalties."

The 1922 General Assembly combined the two commissions to form the present seven-member commission. Presently, commission members are elected by the General Assembly.

The primary duties of the commission as specified by state law include:

- Regulation of investor-owned electric utilities as to rates, charges, services, facilities, practices, accounting procedures, the purchase, sale and lease of utility property and the issuance of securities. In addition, the commission administers the Rural Electric Cooperative Act, relative to territorial boundaries.
- Regulation of rates and charges, services, facilities, practices and accounting procedures of all intrastate investor-owned gas, street railway, water and sewerage companies. The commission is charged with administration of the Gas Safety Act of 1970.
- Regulation of rates and charges, services, facilities, practices and accounting procedures of all telephone companies within the state.
- Regulation of rates and charges, services, facilities, practices and accounting procedures of all radio common carriers within the state.
- Regulation of for-hire motor carriers of freight and passengers relative to rates, schedules, rules, charges and facilities; issuance and supervision of the administration of certificates of Public Convenience and Necessity.
- Regulation of express and telegraph companies.
- Regulation of rates, services, charges, schedules, and facilities of railroads and railways.

As of June 30, 1993, there were four privately-owned electric companies and four privately-owned gas companies operating within South Carolina. In addition, the PSC regulated 28 local telephone companies, 97 companies that provide long distance services, 28 companies that provide cellular phone services and 7 radio common carriers.

As of June 30, 1993, the PSC regulated 175 water systems, 94 wastewater systems and 88 combined water and wastewater systems.

Only PSC-approved motor carriers can provide services within South Carolina. As of June 30, 1993, 1,247 intrastate motor carriers were authorized to provide intrastate services. PSC also licensed 587 carriers that are domiciled in South Carolina but provide only interstate carrier services.

PSC's staff is responsible for the administration of regulations regarding motor carriers and utilities.

Regulation of Motor Carriers

Since the 1920s, the Public Service Commission has regulated intrastate motor carriers. The PSC regulates intrastate for-hire carriers of freight, household goods, petroleum, passengers, mobile homes, and various other commodities. Exemptions from PSC regulation include church buses, mail carriers, wreckers, carriers of farm-to-market products and carrier routes within municipalities. In addition, the PSC does not regulate the rates of intrastate buses.

The PSC decides who can open a trucking business, where they can operate, the type of equipment they can own, the amount they can charge, and the profits they can make.

The PSC decides who can open a motor carrier business, where they can operate, the type of equipment they can operate, the amount they can charge, and the profits they can make. Under state law, the PSC may deny applicant requests to enter the industry in order to protect the economic interests of existing businesses.

More than 1,200 intrastate carriers are authorized to operate in South Carolina. In addition, more than 31,000 certificated interstate carriers operate in South Carolina. Interstate carriers must pay the PSC a fee to operate in South Carolina, but are not subject to the PSC's economic regulation.

Economic regulation of motor carriers changed very little in South Carolina until 1984. Effective in 1984, state law was amended to relax laws which had allowed the PSC to severely restrict entry into the motor carrier industry. Before 1984, an applicant had to prove that the public was not being adequately served and that a new business would not harm existing carriers. Now the burden of proof is on a protestor to prove that the public is already being adequately served by existing carriers.

In the case of a monopoly, such as an electric utility, economic regulation can compensate for the lack of competition from other companies. For competitive industries, such as trucking, this benefit may not be as great. Two significant factors for determining if an industry, such as trucking, is competitive are market concentration and barriers to entry. Market concentration is the degree to which a few firms hold market share. Barriers to entry include financial, technological, and legal limitations which make it difficult for a new company to enter an industry. In trucking, both market concentration and barriers to entry are low. These factors indicate that trucking is a competitive industry.

Economic Regulation: Major Issues

The federal government greatly relaxed economic regulation of the trucking industry in 1980. This move was to allow market competition to regulate the marketplace.

On the state level, eight states currently do not impose economic regulations on motor carriers. Six of those states—Alaska, Arizona, Florida, Maine, Vermont and Wisconsin—deregulated after 1980. The other two states, Delaware and New Jersey, never regulated intrastate trucking.

In our previous reviews of the PSC, we discussed arguments of proponents of economic regulation. Supporters of continued economic regulation continue to advance several arguments in defense of their position. These arguments are analyzed as follows.

Destructive Price Competition

Proponents of continued economic regulation argue that regulation is necessary to prevent “cutthroat” or predatory pricing. Carriers would try to drive other carriers out of business over time by decreasing their prices to a very low level. When other carriers are put out of business, the remaining carriers would raise their prices.

The difficulty with this argument is that once prices are raised above competitive levels, other firms will enter the market and charge competitive prices. Trucking is an inexpensive business to enter, making predatory pricing difficult. The United States Supreme Court, in *Matshushita Electrical Industries Co. v. Zenith Radio Corp.*, 475 U.S. 574, 589-90, (1986), supports this analysis, stating that “predatory pricing schemes are rarely tried, and even more rarely successful.” The FTC staff found that:

. . . [s]ince predation is unlikely to be profitable or successful, motor carriers are not likely to attempt it. So long as entry by new carriers is not impeded by regulation, predatory pricing in the trucking industry appears to be little more than a theoretical possibility.

Additionally, if predatory pricing were possible, it could occur with PSC regulation. Carriers have been able to reduce their prices to any level without scrutiny by the commission (see p. 15). In addition, antitrust laws prohibit predatory pricing.

Reduced Safety

Another argument is that economic regulation is necessary to maintain trucking safety. Supporters of continued regulation argue that carriers will be forced to cut costs due to intense competition and would sacrifice safety standards. It is argued that carriers will not spend resources to keep trucks well maintained and in safe working order.

Since 1992, federal law has required all truck drivers to obtain a commercial driver's license. This license ensures that drivers are better qualified and prevents those with bad driving records from driving. This requirement has contributed to an increase in motor carrier safety.

Safety has increased after economic deregulation of interstate trucking was enacted.

In September 1988, the Congressional Office of Technology Assessment concluded that "no clear link can be established between changes in economic regulation and motor carrier safety." United States Department of Transportation statistics from June 1992 show that the number of fatal accidents nationwide for carriers of property has decreased since the federal government relaxed regulation of interstate trucking. The number of fatalities for carriers of property has declined 46% from 1980 to 1991.

In comments provided to us, the FTC staff concluded that:

. . . [t]here is no necessary relationship between economic regulation and safety. Regulating rates and entry would not ensure that profits are spent on safe operations, nor would removing economic regulation necessarily reduce expenditures on safety. Addressing safety concerns directly, through enforcement of safety regulation, would promote safety more effectively than addressing those concerns indirectly through economic regulation.

The state would be better able to focus its safety enforcement efforts by transferring the PSC's 23 regulatory enforcement officers to the Department of Public Safety (see p. 19).

Loss of Service to Small Communities

Proponents of continued economic regulation argue that regulation ensures that there is service to all markets. They claim that regulation forces carriers to serve unprofitable small communities, and make up losses in more profitable routes. Deregulation would cause the service to these small communities to decrease.

Service to rural South Carolina communities has not diminished as a result of interstate economic trucking deregulation.

In markets impacted by deregulation, studies indicate that service has improved or remained the same in small communities and shippers are satisfied with deregulation. Service to rural communities was examined in a study entitled *Transportation Service to Small Rural Communities*. This review found that from 1978 through 1985 "service quality and quantity have not diminished with regulatory reform for the vast majority of shippers in rural areas. The number of competing carriers has actually increased in rural areas." South Carolina was included in this study.

Additionally, there is no evidence that the PSC forces carriers to serve small communities in South Carolina or monitors service to these communities.

Loss of Jobs

It is argued that deregulation will cause a loss of jobs in the trucking industry. Carriers will cut their workforce in order to be competitive under deregulation. Other carriers would be forced into bankruptcy due to destructive price competition.

Even with PSC regulation, there is no guarantee that companies will be successful or maintain a certain level of employment. In FY 92-93, PSC records indicate that 327 companies had their authority to conduct business cancelled. We could not determine the number of jobs lost. Furthermore, PSC regulation can actually keep employment levels down. If a carrier wants to open or expand a business, the PSC can block it, having a negative impact on employment.

According to United States Department of Transportation data compiled in 1992, employment in the trucking industry has increased by 29% from 1980 to 1990. The United States Department of Labor estimates that employment in the trucking industry will increase 25% from 1990 to 2005.

Without the restriction imposed by economic regulation, more firms will be able to enter the trucking industry. When more firms enter the business, more jobs could be created. In addition, we could not find where a goal of the PSC is to promote jobs in the motor carrier industry.

Entering the Trucking Business

PSC may deny businesses the authority to provide trucking services in order to protect the economic interests of existing companies.

To obtain entry into the motor carrier industry, an applicant must prove that he is "fit, willing, and able." The commission must also find that the public convenience and necessity is not already being served. If a carrier passes both tests, the carrier will obtain a certificate of public convenience and necessity. This certificate will specify where the carrier can operate and what can be transported. In our review of motor carrier applications we found unnecessary restrictions on carriers who wished to enter the trucking business.

Section 58-23-330 of the South Carolina Code of Laws first requires that an applicant be "fit, willing, and able" to perform a proposed service. To comply with this statute, a carrier applying for authority must prove that he has a safe driving history and safe and adequate equipment. An applicant must also demonstrate that he will have the required insurance and will operate in accordance with the statutes and regulations. The PSC uses this information to determine if an applicant is "fit, willing, and able."

The PSC may deny the application if the "public convenience and necessity" is already being served. The PSC listens to testimony and considers the credibility of witnesses to determine if the "public convenience and necessity" is already being served. The applicant presents evidence to show that the public is not being adequately served by existing carriers. If a protestor can prove that the "public convenience and necessity" is already being served, an applicant will not gain entry. The following outlines effects of limiting competition.

Restrictions on Carrier Business

Although §58-23-330 of the South Carolina Code of Laws was amended, effective in 1984, to relax entry requirements, the PSC still restricts entry to decrease competition.

We reviewed all 26 carrier applications that were denied by the commission or amended for FY 91-92 and FY 92-93. The following examples illustrate the PSC's decisions concerning applications for trucking authority.

- In April 1992, a motor carrier applied for authority to haul waste products throughout the state. After three existing carriers intervened claiming that competition would negatively affect their businesses, the

commission denied the applicant authority, stating that the public convenience and necessity was already being served. However, the applicant presented witnesses from four shippers who testified that they could use his services.

Motor carriers seeking PSC authority sometimes modify their applications to avoid protests of existing carriers who do not want additional competition.

- In November 1991, a motor carrier applied for authority to transport household goods throughout the state. One carrier filed a protest. The applicant met the PSC's criteria for being "fit, willing, and able." However, after a hearing, the PSC only allowed the applicant permission to operate between two counties, and to and from those counties to the rest of the state.

Motor carriers seeking PSC authority will sometimes modify their applications to avoid protests from existing carriers who do not want additional competition. Of the 445 applications for authority filed in 1993, 46 (10%) had protests filed against them. Twenty-two of those applications were amended and twelve were either dismissed or withdrawn. The following examples illustrate restrictions carriers have added to their applications in order to avoid protests and obtain operating authority:

- In January 1993, a motor carrier applied for authority to transport liquid fertilizer and heavy commodities throughout the state. Another carrier protested the application claiming that it would jeopardize his financial stability. The protest was withdrawn after the applicant agreed not to haul heavy commodities. PSC then granted the carrier a certificate to haul only commodities in general with a restriction on the types of trucks to be used. Four months after the certificate was issued, the carrier applied to delete the restriction regarding the types of trucks to be used. The PSC approved the application without protest.
- In September 1992, a motor carrier applied for authority to transport hazardous wastes and materials throughout the state. Eight carriers filed protests claiming that the public interest was already served by existing carriers. The protests were withdrawn when the applicant agreed to exclude petroleum products from its authority. PSC then approved the carrier's application with the additional restriction.

Restrictions on All Carriers

PSC restrictions sometimes require truckers to drive home empty, and also may prohibit them from doing business in the cities and rural areas through which they drive.

As of June 1993, there were 1,247 regulated intrastate carriers. We reviewed a sample of 48 motor carrier certificates with restrictions ordered by the PSC. All 48 certificates stated the general categories of business which the carriers were allowed to conduct. A Class E certificate for commodities in general, for example, allows a carrier to haul "property and commodities generally, except (a) commodities in bulk in tank trucks, (b) explosives, radioactive materials, and other dangerous materials, and (c) household goods." In 39 (81%) of the 48 certificates, the PSC included more specific restrictions. The following are examples of restrictions the state places on carriers which limits their ability to compete with other carriers, and can increase shipping costs:

- The PSC restricts one carrier to hauling, in a fully loaded truck only, packages which must be picked up and delivered on the same day.
- The PSC restricts one carrier to transporting just tires, tubes, and accessories from Greenville, Sandy Springs, and Spartanburg, South Carolina, to Charleston and Fairfield Counties. The carrier is not allowed to transport anything from Charleston and Fairfield Counties back to Greenville, Sandy Springs, or Spartanburg, South Carolina.
- The PSC restricts one motor carrier to hauling only textile machinery and parts incidental to the transportation, dismantling, erection and repairing of textile machinery.
- The PSC restricts one moving company to moving household goods in Pickens County only.

In addition to those identified in our sample, we found the following restrictions placed on carriers:

- The PSC restricts one carrier to hauling commodities within a 30-mile radius of the city of Greenwood, South Carolina, and the equipment used must not exceed 1 ton in capacity.
- The PSC allows one carrier to haul commodities anywhere in South Carolina, but only on flatbed trucks.
- The PSC allows one carrier to haul sand anywhere in South Carolina, but allows it to haul fly ash anywhere in South Carolina except Orangeburg County.

- The PSC restricts one package carrier to transporting in a five county area, and only in station wagons, trucks and vans not exceeding 1.5 tons.
- The PSC allows one carrier to haul commodities anywhere in South Carolina, but restricts the locations where it can haul petroleum.
- The PSC allows one carrier to transport telephone poles anywhere in South Carolina, except Clarendon, Lee, Sumter, and Williamsburg Counties.
- The PSC restricts one carrier to hauling commodities within a 125 air mile radius of the city of Sumter, South Carolina.

Effects of Entry Restrictions Into the Trucking Business

The laws and regulations which allow the PSC to restrict the business operations of motor carriers in South Carolina have reduced both competition and efficiency. All South Carolina intrastate motor carriers' operations are restricted in some manner.

In 1990, the Committee on Government Operations of the United States House of Representatives found that state government regulation has resulted in higher shipping rates:

The direct costs of higher intrastate shipping rates are the simple result of the lack of competition fostered by regulation.

Nationwide, trucking regulations cost consumers and businesses an additional \$2.8 billion each year.

A study conducted in 1990 by the United States Department of Transportation (DOT) found that higher rates in the trucking industry imposed greater costs on the nation's economy. The DOT estimated that state trucking regulations impose higher than necessary annual costs of approximately \$2.8 billion.

We requested that the Federal Trade Commission (FTC) review the PSC's statutes for anticompetitive practices. In a letter dated February 28, 1994, the FTC staff stated:

. . . [R]elaxing restrictions on entry into motor carrier markets and permitting motor carriers to adjust their prices with a minimum of regulatory oversight benefits consumers and competition by increasing choices, improving service, and reducing prices for the transportation of goods. Studies of motor carrier regulation, both state and federal,

show that consumers benefit most when operating authorities are broad and when carriers can flexibly modify their schedules and rates.

Restricting the number of carriers allowed to conduct business results in decreased competition and higher rates in the motor carrier industry.

Recommendation

- 1 The General Assembly may wish to consider amending the portion of §58-23-330 that allows the Public Service Commission to deny an application if the public convenience and necessity is being served.

Motor Carrier Ratemaking

State law requires the PSC to determine how much an intrastate motor carrier can charge for its services. In most cases, the PSC sets the exact rate a carrier must charge. However, for some commodities such as hazardous waste and agricultural products, the commission sets only the maximum rate a carrier can charge. To establish a fair rate, the PSC reviews a carrier's financial operating ratio (expenses divided by revenues): the lower the ratio, the higher the margin of profit. For example, a 93% ratio means a company spends 93¢ to make \$1. The PSC staff uses an informal benchmark of a 93% ratio for determining if a rate request is appropriate. The following describes the agency's methods for establishing rates.

Collective Ratemaking

PSC allows two rate bureaus to establish rates collectively for its member motor carriers. Collective ratemaking allows all carriers to charge the same rates regardless of the carriers' operating costs. Although exempt from state antitrust laws, collective ratemaking is a type of price setting that discourages price competition in the trucking industry.

The PSC decides how much motor carriers may charge for their services and how much profit they can make.

A rate bureau is an organization of motor carriers who meet and discuss rates to be charged. A bureau submits the proposed rates to the PSC for approval. From December 1990 to November 1992, these rate bureaus requested 9 general rate increases affecting 257 carriers. For example, 68 household goods movers belong to 1 rate bureau. The rates they charge to move a customer within South Carolina are all the same, and the movers are prohibited by law from competitive bidding. A 1991 PSC review of seven household goods movers requesting a rate increase of 20% revealed operating ratios from 94% to 123%. The commission awarded all moving companies in the rate bureau the same rate increase, regardless of the varying need for higher rates.

The PSC allows motor carriers to discuss and "fix" rates that they can charge the public.

Section 58-23-1010 of the South Carolina Code of Laws allows the PSC to approve collectively established rates. This law states, "The commission may approve joint rates, local rates and rate agreements between two or more motor carriers" However, this law does not specifically require the PSC to approve collective ratemaking, and the commission could establish rates based on individual carrier revenue needs.

The Motor Carrier Ratemaking Study Commission was established by Congress to study the collective ratemaking process for motor carrier rates and the need for continued antitrust immunity. The commission found that:

. . . antitrust immunity raises rates above what they would otherwise be, does not prevent unjust discrimination, and does not ensure either rate uniformity or tariff simplicity.

By allowing collective ratemaking, consumers are being charged more for trucking services. Carriers may discuss and vote on rates they are going to charge the public. In other competitive businesses, such activity would be illegal.

Evaluation of Need for Rate Increases

In addition to requests for rate increases from rate bureaus, we examined individual carrier requests for increases. We reviewed all 24 rate increase requests from July 1991 through December 1992. All complete requests were approved by the commission during this period. In 19 (90%) of the 21 requests approved, the carriers submitted financial statements to justify

the increases. The PSC did not audit any of the financial statements submitted to verify the data. The following are examples of justifications submitted by carriers which were approved:

- One carrier stated, "We need this small increase even though it will not appreciably affect our financial statement."
- A package carrier requested a 9% increase because "it is long past time for a change."

Two of the rate increases were approved by the commission even though the increase brought the carrier's operating ratio below 93.

Regulation 103-191 states that motor carrier rates established by the PSC shall be just and reasonable. Regulation 103-194 allows the PSC to consider the financial need of a motor carrier requesting a rate increase. Without adequately analyzing the need for rate increases, the PSC has less assurance that rates are just and reasonable.

Rate Discounts

Although carriers can collectively establish rates to be charged, they can offer discounts from established rates. The discounts must be filed and approved by the PSC. There were 969 rate requests (increases, discounts, new filings) filed from July 1991 through December 1992. We sampled 48 requests and found that 33 (69%) were requests for discount rates. There was no documentation supporting any of these requests. The carriers request discounts in order to be competitive. Price discounting is a manner in which motor carriers are competing within an economically regulated system.

Guidelines for Determining Motor Carrier Rates

In our 1988 audit, we found that the PSC had no written guidelines to be used when determining a motor carrier's allowable costs for ratemaking purposes. In our current review, we found that the PSC has developed guidelines pertaining to allowable costs. However, commission staff had no written guidelines regarding some expenses such as equipment depreciation schedules or profit sharing plans.

Recommendations

- 2 The General Assembly may wish to consider repealing §58-23-1010 and applicable regulations requiring the Public Service Commission to fix or approve motor carrier rates.
- 3 If the General Assembly continues to require that the Public Service Commission fix or approve rates, then:
 - (a) The commission should consider establishing maximum rates that carriers can charge. Carriers should be allowed to charge lower rates without PSC approval.
 - (b) The commission should develop more complete written guidelines for determining a motor carrier's allowable costs for ratemaking purposes.
 - (c) The General Assembly may wish to consider amending §58-23-1010 of the South Carolina Code of Laws to remove the antitrust immunity granted motor carriers in the ratemaking process.

Enforcement of Motor Carrier Laws

The PSC is responsible for enforcing motor carrier statutes and regulations and reviewing carriers' operations to ensure that they are operating in compliance with PSC rules, regulations and orders. In addition, the PSC is responsible for reviewing carriers to ensure that they are operating in approved territories and carrying PSC approved cargo. These reviews examine and verify, in part, that carriers are charging PSC approved shipping rates. Our review indicated that the PSC has not strictly enforced motor carrier laws. The agency has allowed unlicensed carriers to operate and has not developed policies for its law enforcement officers regarding enforcement of laws governing intrastate carriers.

Motor Carriers Operating Without Authority

In our 1988 review of the PSC, we found that the PSC was not adequately enforcing statutes pertaining to motor carriers caught operating without PSC authority. In our current review, we again found that the agency does not adequately enforce its statutes. As a result, nonregulated carriers are able to operate and compete with regulated carriers without paying PSC license fees. In addition, there is less assurance that unlicensed carriers have adequate cargo and liability insurance.

In March 1993, as a result of our previous audit, PSC officials conducted a statewide review of carriers advertising their services to the public. According to PSC records, "[t]he review has identified four hundred seventy-nine (479) companies which have placed advertisements but are not certificated by this commission." There is no evidence the agency took enforcement action against these unlicensed carriers. However, in May 1994, the agency reported that a list of unlicensed carriers is being sent to enforcement officers. The following are examples of "unlicensed" carriers which advertise their services.

In 1993, PSC identified 479 carriers that may be operating illegally, but took no action against them.

- One company has a full-page ad in the yellow pages advertising its statewide moving services. The ad states that the company has been in business since 1964. This carrier does not have PSC authority to provide motor carrier services.
- Another carrier, when contacted by PSC staff, stated that it only provides packing services, which do not require authority from the PSC. We then contacted this company requesting information regarding a move between two counties. The company told us that it could provide this move and gave us an estimate for complete moving services.

Section 58-23-40 of the South Carolina Code of Laws requires motor carriers to obtain PSC authority before operating for compensation on South Carolina highways. Carriers who are convicted of operating without PSC authority are required by §58-23-80 of the South Carolina Code of Laws to be fined at least \$100 for the first offense, \$500 for the second offense, and \$1,000 for subsequent offenses.

Regulated motor carriers may not be treated equitably when unlicensed motor carriers are allowed to operate. Also, the state is losing revenue generated from regulatory fees. The loss of annual revenue from unlicensed carriers identified by the PSC is between \$3,500 and \$59,875 if these carriers each operate only one vehicle.

Enforcement Officers

The PSC employs 23 law enforcement officers who are responsible for enforcing motor carrier laws and regulations. These officers stop trucks on the highways to determine if they are complying with PSC laws. Only a small portion of the enforcement activities pertained to carriers operating without PSC authority or carriers charging improper rates.

A review of transportation enforcement records indicates that 541 (74%) of the 728 citations written from July 1993 through November 1993 were for violations such as non-payment of certain fees or out-of-state trucks not paying the fee to travel in South Carolina. Only 9% of the citations were written for trucks operating without a PSC certificate or trucks operating outside of their assigned territories. The remaining violations involved other types of noncompliance.

In addition, PSC management has not developed policies outlining some duties of officers. For example, when an officer stops an intrastate carrier, it is unclear if he is responsible for checking compliance with economic regulations such as determining if proper rates are being charged, or if the carrier is operating in its assigned territories.

Other Reviews of Carrier Operations

The PSC has two auditors responsible for conducting reviews of motor carriers for compliance with state laws. In our 1988 review, we found that the PSC had audited only 82 carriers over a three-year period and had no system to ensure regular reviews. In our current review, we found that the PSC has conducted more audits but still has no method of scheduling reviews. In addition, we could find no policy concerning when fines should be issued for noncompliance.

In 1993, 81 tariff and financial compliance audits were conducted. In addition, the auditors performed 32 complaint investigations, most at the request of the consumer services department. Some of the audit findings included:

- One motor carrier completed 64 trips before receiving authority from the PSC. After the authority was issued, the carrier made 148 billing errors which resulted in undercharges totaling \$16,599. Charging lower rates than those approved by the PSC is not legal; however, there is no evidence that this company was issued a fine for undercharges.

- A household goods mover who was being re-audited because of previous errors was found to have overcharges totaling \$1,395.88. There was no evidence that this company was issued a fine, as authorized by law, for overcharging.

According to agency officials, audits are scheduled with regard to size and location of the carriers. However, the PSC accounting department does not have the resources to ensure that all carriers are reviewed on a regular basis. Additionally, carriers with headquarters located outside South Carolina are rarely reviewed. In order to use resources more effectively, the accounting department should focus on complaint audits rather than regular reviews.

Duplication of Enforcement

In our 1988 review, we recommended that transportation enforcement functions be transferred to the South Carolina Department of Highways and Public Transportation. At that time, the agency had regulatory enforcement officers and safety enforcement officers. The safety inspectors were transferred to the Department of Public Safety (DPS) under the State Police Division as a result of the 1993 restructuring legislation. Regulatory enforcement officers remain at the PSC. In our current review, we found that both the PSC and the Department of Public Safety have enforcement responsibilities regarding motor carriers.

Both the PSC and the State Police have law enforcement officials assigned to stop trucks on the highways to conduct inspections.

Although the State Police and the PSC regulatory enforcement officers do not perform exactly the same inspections, they both operate at weigh stations and patrol the same highways and conduct similar jobs. For example, both agencies check trucks to ensure that various license fees are paid. If the regulatory enforcement functions were transferred to the DPS, the state could better focus its enforcement and safety efforts. One agency could better coordinate and perform all truck inspections.

Inspections

In our 1988 review, we found that the PSC had no schedule to ensure that officers worked "after hour" shifts (from 5:00 p.m. to 8:00 a.m.). The PSC now has a policy to schedule officers for "after hour" and weekend inspections. However, due to decreased funding, the off-peak scheduling policy has been reduced from 25% to 15%. Of the 15,600 off-peak work hours available from July 1993 through November 1993, PSC officers were scheduled to work only 3,139.5 (20%) hours. PSC officers are still primarily conducting inspections during normal business hours rather than varying their schedules to monitor unregulated traffic and unsafe trucks.

When PSC officers primarily work normal business hours, unlicensed and unsafe motor carriers can adjust their schedules to by-pass inspection stations.

In 1988, we also found that the PSC had not established productivity goals for its regulatory officers. During this review, we examined the number of inspections conducted by the regulatory officers. The PSC management's goal for inspectors is 160 inspections per month for inspectors and 85 inspections per month for lieutenants. From July 1993 through November 1993, there were 19 (20%) instances when an inspector or lieutenant did not meet his goal. On average, 5 (25%) of the 20 officers did not meet the goal over the five-month period.

Motor Carriers Operating Without Insurance

In our 1988 audit, we found that the PSC was not revoking the licenses of carriers operating without insurance. Section 58-23-910 of the South Carolina Code of Laws requires the PSC to ensure that carriers keep insurance in full force and effect. The PSC has instituted procedures to ensure that carriers whose insurance has been cancelled have their certificates revoked. The PSC also conducts quarterly reviews of all licensed carriers to determine if insurance is in full force and effect. We found no material problems regarding enforcement of insurance requirements.

Minimum Liability Requirements

In our 1982 and 1988 reviews, we recommended that the PSC raise minimum liability insurance requirements to the level required by the Interstate Commerce Commission (ICC). The PSC has proposed regulations to raise the minimum liability limits to \$300,000—\$5,000,000 per incident for passengers and freight. These limits are equal to the limits imposed by the ICC on interstate carriers.

Conclusion

A significant number of unlicensed companies are operating in South Carolina. According to PSC records, a substantial number of carriers are unlicensed, and the PSC has done little to enforce its laws. In addition, due to the complexity of shipping charges and the numerous routes, territories, and cargo restrictions imposed on carriers, motor carrier laws are difficult to understand and enforce. Motor carrier statutes and regulations cannot be adequately enforced with the agency's current resources.

Recommendations

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- 4 The General Assembly may wish to consider transferring the Public Service Commission's transportation enforcement officers and functions to the South Carolina Department of Public Safety.
 - 5 If the General Assembly continues to require the Public Service Commission to perform economic regulation of motor carriers, the following changes should be implemented:
 - (a) The Public Service Commission should develop and enforce written policies governing all aspects of the PSC's law enforcement activities.
 - (b) The Public Service Commission should consider discontinuing carrier audits and only review carriers when a complaint is filed.
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Conclusion

Eliminating laws which limit the entry of qualified, safe carriers into the motor carrier industry would benefit South Carolina consumers and industry. Carriers would still be required to maintain insurance, have safe equipment, and employ drivers with good driving records. We could find no material problems which have been identified in states which allow carriers to compete openly and fairly. The problems predicted by proponents of regulation have not occurred in states that do not perform economic regulation of truckers.

The practices of the PSC have, in essence, allowed a form of deregulation. For example, the agency has allowed many unlicensed carriers to operate and compete with those regulated by the PSC. In addition, the PSC allows carriers to offer discounts to certain shippers without determining the effect on small or rural shippers. Further, the PSC has devoted few resources to the enforcement of economic regulation.

Regulation of Utilities

The Public Service Commission regulates rates and services of electricity, natural gas, telecommunications, and water and sewer service.

In this chapter, we address the manner in which each of the above industries is regulated. For some of the industries, improved technology has made competition more feasible and reduced the need for rate regulation. Where continued rate regulation is currently necessary, we recommend ways in which the PSC could improve its rate approval process.

Wholesale Electric Competition

In its long-range planning policy, the PSC has not clearly addressed the use of alternative wholesale suppliers of electricity by utilities. PSC policy requires South Carolina utilities to "adequately consider cost effective third party power purchases" in their long-range planning as an alternative to building new generating facilities. However, the policy does not define adequate consideration, nor does it give criteria for evaluating bids from alternative wholesale suppliers.

According to a 1990 report by the General Accounting Office (GAO), most of the nation's electricity is produced by utilities operating as monopolies within assigned service areas. Two federal laws, the Public Utilities Regulatory Policies Act of 1978, and the Energy Policy Act of 1992, created non-utility producers which are competing with the utilities. Competition is possible by separating generation from the transmission and distribution aspects of electricity supply. According to a 1994 report by Federal Trade Commission staff, at least 20 states require their utilities to take bids from alternate wholesale producers for the provision of new generating capacity. According to a 1990 GAO report, in some cases, competitive bidding has lowered the cost of power from what it would have been if the utility constructed and operated the facilities.

PSC order 91-1002 adopted procedures for electric utilities to follow in developing and reporting their long-range energy supply plans. The order says utilities are to consider cost-effective third-party power purchases, but it does not contain procedures for soliciting and receiving bids from potential suppliers. Neither does it give criteria for evaluating bids. It is unclear what a utility must do to "adequately consider" purchasing electricity from alternative wholesale suppliers.

According to the Edison Electric Institute, some considerations a bidding system should address include:

- Establishing criteria for allowing a firm to bid.
- Determining factors to be considered in selecting the winning bid.
- Establishing a basis for the utility to receive a profit on purchased electricity since it would have no rate base for this electricity.
- Setting a time horizon for evaluating load increase, cost, and revenue projections.

Recommendation

- 6 The Public Service Commission should amend its long-range planning procedures to include specific criteria for electric utilities to follow when considering alternative wholesale suppliers of new generating capacity.

Retail Electric Competition for High-Volume Consumers

South Carolina laws impede competition in the retail electric market. High-volume electric consumers, such as industry, are restricted from purchasing lower-cost electricity from alternative retail suppliers. By removing legal barriers to competition, South Carolina's climate for recruiting industry could be improved.

Wholesale "wheeling" is high voltage transmission of electricity by one utility for another. Wholesale wheeling is common. According to a 1989 Federal Energy Regulatory Commission Task Force, over one-third of retail electricity sold in 1985 had been originally purchased and wheeled at wholesale from another electric supplier.

A retail application of the wheeling technique could make it economical for high-volume consumers, such as industry, to choose their electric supplier. In a retail wheeling arrangement, an electric company transmits power to a customer using the lines of another electric company. In this situation, market forces can determine the price paid for the electricity. The prices charged for the use of the electric company lines may need to be regulated by government to prevent the owner of the lines from exercising monopoly power.

Three sections of South Carolina law, however, impede competition for the retail sale of electricity to high-volume consumers:

- Section 58-27-620 *et seq.* of the South Carolina Code of Laws, generally give electric suppliers the exclusive right to serve customers within their assigned service areas. Under certain circumstances, a new industry may be permitted to purchase power from a supplier other than its local electric utility. However, no industrial or residential customer may *change* electric suppliers based on rate differences.
- Section 58-27-860 of the South Carolina Code of Laws requires suppliers selling electricity to the public to get PSC approval of their rates. This requirement may impede competition by reducing the flexibility of electric suppliers to meet changing market conditions.
- Section 58-33-110 *et seq.* of the South Carolina Code of Laws require anyone planning to build a generating facility of 75 megawatts or greater to get a certificate of environmental compatibility and public convenience and necessity from the PSC. By requiring that a new facility be a "public convenience and necessity," this section may limit the entry of lower cost suppliers of electricity into the market.

Industries with high electric consumption are most likely to benefit from retail competition because the PSC has set rates for industrial customers which include a higher profit than is earned on residential and other classes of service. This may present opportunities for competing electric providers to offer lower rates. Traditional rate regulation has not penalized inefficient power producers to the extent that a competitive market would.

Before the regulatory system is changed to allow competition for high-volume consumers, some major issues need to be resolved. These include:

- How can the utilities best make the transition from being monopoly providers of electricity to being competitive providers while minimizing the impact on low-volume consumers and utility stockholders?
- What are the appropriate prices for intrastate transmission services?
- How can service reliability be maintained as generation is separated from transmission and distribution?

These issues and others could be resolved through public discussions and reasoned analysis.

The electric industry is changing worldwide. According to Federal Trade Commission staff:

Technical and institutional changes have created an opportunity to introduce significant elements of competition to lower prices in one or more stages of the electrical utility business. South Carolina may wish to join other states and nations such as New Zealand and the United Kingdom in revising its public service commission statutes and regulations to recognize these opportunities.

Giving high-volume consumers the freedom to “shop” for the lowest cost power could enhance state efforts to attract new industry. Competition could ultimately reduce prices for all consumers.

Giving high-volume consumers the freedom to “shop” for the lowest cost power could enhance state efforts to attract new industry.

Recommendations

- 7 The Public Service Commission should review ways to increase the competition for retail electric sales to high-volume consumers.
- 8 The Public Service Commission should recommend to the General Assembly specific changes to state laws which will increase retail electric competition.

Electric Utility Fuel Costs

The PSC has not required electric utilities to promptly adjust rates to account for changes in fuel costs.

The PSC has not ensured that electric utilities promptly adjust rates to account for changes in fuel costs, as required by South Carolina Code §58-27-865. This has resulted in some utilities keeping large amounts of customer funds, interest free, for extended periods.

The PSC approves electric rates which include a set fuel factor per kilowatt hour of electricity sold. Section 58-27-865 specifies a procedure which adjusts this factor every six months to reflect changes in the actual cost of fuel. Electric utilities are required to account for any difference between actual fuel costs and the fuel factor costs in a special account. The balance in this account can represent either an overcharge or an undercharge to customers depending on actual fuel costs. During each subsequent six-month period, rates are required to be adjusted for the over-recovery or under-recovery of fuel costs.

The PSC, however, has not required that utilities promptly adjust rates to account for changes in fuel costs. For example, one utility's account had an average over-recovery balance of approximately \$2.1 million from July 1979 through April 1993. In April 1993, the over-recovery balance was \$16.0 million. Another utility's account had an average over-recovery balance of approximately \$2.4 million from November 1979 through November 1992. In November 1992, the over-recovery balance was \$11.6 million. The PSC reports that it has allowed these situations to occur in order to avoid multiple rate adjustments and to maintain consistent prices.

Because these over-recoveries are not subject to interest, the companies may have an incentive to overestimate their cost of fuel when calculating the fuel factor included in rates. Utilities can be required to pay interest to customers in some situations. Electric utilities pay interest on excess rates charged pending a legal appeal if the new rates are subsequently denied. Customer security deposits earn interest if held by the company longer than six months. The North Carolina Utility Commission charges the utilities as much as 10% interest on over-recoveries in the fuel account, but no interest is allowed to the utilities on under-recoveries.

Recommendations

- 9 The Public Service Commission should ensure that electric utilities promptly adjust rates to account for changes in fuel costs, as prescribed by §58-27-865 of the South Carolina Code of Laws.
 - 10 The Public Service Commission may wish to consider implementing procedures to charge electric utilities interest on over-recovery balances in the fuel adjustment accounts.
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Tele-communications

Local and long distance phone service are becoming more competitive, reducing the need for government regulation of rates. In this section we address telecommunications issues facing the PSC.

Local Phone Service

Twenty-eight phone companies in South Carolina provide local phone service transmitted by wire. Each geographic area is served by only one wireline company. The PSC regulates the rates charged for local wireline service.

Wireless telecommunications systems provide limited competition with wireline systems (see p. 31). In addition, some organizations have wireline networks which operate independently of local phone systems.

Direct competition with wireline systems is also feasible. With existing technology, it is possible for more than one company to provide wireline service in the same geographic area.

Cable television will likely enter the market if federal law is amended to permit it. Companies have been banned by federal law (47 USC §533(b)) from providing phone service in communities where they also provide cable television service. Certain areas, such as rural communities, are exempt from this ban. In a 1993 lawsuit filed in Virginia by Bell Atlantic, a federal district court ruled that the ban was unconstitutional. This decision is under appeal.

Independent of other regulatory changes, increased competition for local phone service could result in lower local phone service rates. According to PSC staff, South Carolina law does not prohibit the PSC from approving competitive local phone service.

Long Distance Access Fees

In order for a long distance call to be completed, it must usually be connected from the local system where it originates to a long distance system and then back to the local system where it terminates. The business of connecting local and long distance systems is being opened up to competition.

Local phone companies in South Carolina charge long distance companies a fee for gaining access to the local phone systems for long distance calls.

Access fees for intrastate long distance calls are regulated by the PSC. Access fees for interstate long distance calls are regulated by the Federal Communications Commission (FCC). Access fees have usually been set above cost, and added to long distance phone bills. Revenue from access fees has been used to subsidize local rates.

A 1992 order from the FCC required that larger local phone companies permit alternative companies to provide access services for interstate long distance calls. On June 10, 1994, however, in a lawsuit filed by Bell Atlantic, a federal district court scaled back the authority of the FCC to require that local phone companies make their facilities available to competitors.

Independent of other regulatory changes, increased competition for access service could result in lower long distance rates and, due to a reduced subsidy, higher rates for local service. PSC staff reported that, to date, there are no alternative access providers in South Carolina.

Long Distance Phone Service

Due to unequal dialing requirements, competition is not adequate for long distance phone service within calling zones.

Maximum long distance phone rates for calls that originate and terminate in South Carolina are regulated by the PSC. Although competition has increased since our 1988 audit, it is not adequate.

The federal government has divided South Carolina into seven calling zones which are used in the regulation of long distance phone service. Four of the calling zones are completely within South Carolina and three are partially in North Carolina and Georgia. Calls between calling zones are long distance. Calls between parties within the same zone may be either local or long distance, depending on the distance involved.

In our 1988 audit, we noted that only two companies were providing long distance service between parties *within* the same calling zone. We recommended that the PSC monitor the feasibility of relaxing the regulations which apply to this type of long distance service to allow for increased competition.

In 1993, the PSC removed limits on the number of companies which can provide long distance phone service within calling zones. The dialing requirements approved by the PSC, however, are not equal for competing companies. A call made by dialing 1 + the area code + the number of the party being called is automatically carried by the local phone company. Alternatively, a customer may select a long distance company to carry the call by dialing a five-digit code + 1 + the area code + the number of the party being called.

Although competition has increased, non-local companies are at a disadvantage, because their customers must dial additional digits. New York and Wisconsin are in the process of implementing equal access dialing for long distance phone service within calling zones.

Recommendation

- 11 The Public Service Commission should take steps to establish equal dialing access for the customers of all companies which provide long distance phone service between parties within the same calling zone.

**Wireless
Telecommunications**

We recommended in our 1988 audit that PSC regulation of cellular phone service and paging service be discontinued. In our current review, we found that South Carolina law continues to require regulation of the wireless telecommunications industry. Such regulation is unnecessary due to increasing competition. We also found that federal law has been amended to preempt state regulation as of August 10, 1994.

Section 58-11-100 of the South Carolina Code of Laws requires that wholesale cellular phone service providers in South Carolina be certified by the PSC. Maximum wholesale rates for cellular phone service are approved by the PSC, but retail rates are not regulated. The FCC limits the number of wholesale cellular phone service providers to two companies per region. South Carolina has 15 regions. There is no limit on the number of retail providers.

Section 58-11-100 also requires that certain providers of paging service receive PSC approval before doing business in South Carolina. Rates for these providers are established by the PSC. Many providers, however, are not regulated by the PSC. For example, during our review, PSC staff located 18 paging service companies operating in the city of Columbia, but only 1 was subject to PSC regulation. Due to its limited scope of regulation, the PSC has questionable impact on the paging service industry. The need for PSC regulation is also questionable due to the large number of companies competing with each other.

Alternative forms of wireless telecommunications are emerging which will provide increased competition for the cellular phone and paging markets. Three of these are:

Regulation of wireless telecommunications is unnecessary due to increasing competition.

- **Specialized Mobile Radio:** A digital version of this technology will provide mobile telephone and paging services in one pocket-size phone. Data will be transmitted on frequencies formerly used by taxi cab and trucking companies.
- **Personal Communications Services:** This technology will provide mobile phone services similar to cellular, but with higher capacity at lower cost.
- **Satellite Based Communication:** This technology will provide mobile phone service using satellites. It could be competitive in remote areas.

Increased competition in wireless telecommunications will further reduce the need for PSC regulation.

The 1993 federal Budget Act preempts state rate and entry regulation of the wireless telecommunications industry, effective August 10, 1994. Until that date, the states may petition the FCC to extend state regulatory authority if it can be shown that:

. . . market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory

The PSC has not filed a petition to extend its regulatory authority over rates and entry.

Recommendation

- 12 The General Assembly may wish to consider repealing §58-11-10 *et seq.* of the South Carolina Code of Laws to eliminate the Public Service Commission's regulation of wireless telecommunications.
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Verification of Data Used to Establish Rates

We reviewed the process used by the PSC to verify the data which are used to set rates. Utility company financial data could be more thoroughly verified.

A company seeking a rate change reports revenues and expenses for a "test year." The company also reports its investment in plant, and other assets as of the end of the test year. These assets are known as the "rate base." Company data can also include certain adjustments which will affect future periods.

We reviewed a sample of PSC audits and interviewed PSC staff. We found that PSC audit work involves ensuring that the information reported by the company agrees with the company's accounting records, and reviewing the propriety of any adjustments. However, these procedures may not adequately substantiate the reported company data.

The PSC could do more to verify the financial data submitted by utilities to justify rate increases.

For example, in a 1993 rate case, an electric company reported that its net plant and equipment as of September 30, 1992, was approximately \$2 billion. PSC staff verified that the \$2 billion was recorded on the company's books. However, they did not review a representative sample of assets to substantiate that the company owned \$2 billion of plant and equipment. Except for assets purchased during the test year, there was no indication that the PSC staff observed the assets or reviewed supporting documents (invoices, titles, contracts) to substantiate that the reported values were accurate.

One of the PSC's criteria for including assets in rate base is that the assets are "used and useful" for the provision of the service. However, since the PSC does not physically inspect a representative sample of assets, they cannot ensure that they exist and are "used and useful." This may allow the utility to earn a profit based on assets which are overvalued or do not serve the customers.

In a 1992 rate case, a telephone company reported that its 1991 directory (phone book) revenues were approximately \$3.7 million, expenses were \$3.1 million, and rate base was \$725,000. Total company revenues were approximately \$34.5 million, expenses were \$28.6 million, and rate base was \$50.1 million. PSC auditors traced the directory data to the company's financial statement. However, PSC auditors informed us that this telephone company and others do not permit access to supporting documentation relating to directory operations. As a result, directory data could not be adequately verified. Section 58-9-790 of the South Carolina Code of Laws states:

... each person employed by the [PSC] may ... inspect or audit at reasonable times the accounts, books, papers and documents of any telephone utility.

If the data reported are inaccurate, rates may be set at unjust or unreasonable levels, or companies may earn higher profits than allowed by PSC order.

Recommendation

- 13 The Public Service Commission should take steps to substantiate more fully the financial information reported by the utilities.

Natural Gas Safety

South Carolina has a program in which the location of natural gas pipelines and other underground utilities is made known to persons planning excavation or demolition. The United States Department of Transportation (DOT), however, has determined that South Carolina law relating to underground pipeline damage prevention is not adequate.

The PSC is certified by the DOT to enforce the federal Natural Gas Pipeline Safety Act. Under this authority, the PSC inspects intrastate pipeline systems. Each year, the DOT evaluates the PSC's inspection program.

In a December 7, 1993, letter to the PSC, the DOT reported the results of its 1992 evaluation, stating:

The South Carolina, underground utility damage prevention legislation needs to be improved to require operators of underground pipeline facilities to participate in the one-call notification system . . . and by the adoption of injunctive relief and civil penalties substantially the same as provided for in the federal requirements for the establishment and operation of one-call notification systems for adoption by the states [49 CFR Part 198.37(e) & (h)]. I am aware that the PSC is working with interested parties to achieve the needed improvements. I called this to the attention of the PSC last year as a part of my CY 1991 evaluation.

Recommendation

- 14 The General Assembly may wish to consider amending state law to comply with federal regulations regarding the state underground utility damage prevention program.

Sunset Issues

Section 1-20-10 of the South Carolina Code of Laws requires that we address eight issues concerning the operations of the Public Service Commission. The following summarizes our review of these issues.

Issue (1) Effects of Regulation

Determine the amount of the increase or reduction of costs of goods and services caused by the regulations promulgated by and the administering of the programs or functions of the agency under review.

We could not quantify the increase or reduction in costs caused by PSC regulation on South Carolina consumers. However, we can indicate the general effect of regulation on rates:

- Economic regulation of trucking has reduced competition. The PSC restricts entry into the trucking industry and limits the effect of market forces. According to a 1990 United States Department of Transportation study, state trucking regulations impose annual costs on the nation's economy of approximately \$2.8 billion. Lower trucking rates could foster increased economic development (see p. 12).
- Electric service generally is sold by monopoly providers. PSC regulation may be necessary to ensure that rates are just and reasonable. However, rates for high-volume users may be higher than necessary because state law restricts the consumers' ability to choose alternative providers (see p. 24).
- Local wireline phone service in South Carolina is not subject to significant competition. Each geographic area is served by only one wireline company. The PSC regulates rates for local wireline service. As a result, PSC regulation may result in lower rates (see p. 28).
- Long distance phone service within South Carolina calling zones is not a monopoly. The PSC, however, has established unequal dialing requirements among phone companies. As a result, competition may not be adequate, resulting in higher rates. The PSC regulates rates by setting the maximum price a company can charge (see p. 30).

- The wireless telecommunications industry, which includes paging and cellular phone service, is highly competitive. The PSC regulates the rates of only a portion of the wireless telecommunications companies. Due to the competition in wireless telecommunications and the limited nature of PSC oversight, rate regulation may be both unnecessary and ineffective (see p. 31).
- Water and wastewater services are sold by monopoly providers. Rates are set by the PSC. PSC regulation may result in lower rates.
- In general, local distributors of natural gas service for residential and commercial/small industrial customers are monopolies. The PSC regulates rates for this service. PSC regulation may result in lower rates.

Natural gas service for larger industrial customers is also regulated by the PSC. Service to these customers can be subject to limited competition from the interstate market and/or alternative fuels. Rates are regulated by the PSC. For one company, rates are not regulated for industrial service which is subject to interruption. Depending on the degree of competition and the specific manner in which rates are set, PSC rate regulation may result in lower rates.

In addition, in several areas in South Carolina, there has been limited competition between municipal and private natural gas distributors.

The regulation of intrastate pipeline safety by the PSC may result in higher operating costs for gas utilities. Such regulation, however, may improve safety.

In addition to the effects of regulation described above, the PSC assesses fees on the industries. These costs may be passed on to the consumer; however, it is unlikely that they significantly impact the price of services. In FY 93-94, the commission's operating costs were estimated at \$7.7 million.

Issue (2) Impacts of Deregulation

Determine the economic, fiscal, and other impacts that would occur in the absence of the regulations promulgated by and the administering of the programs or functions of the agency under review.

In general the PSC serves a public purpose by acting as a substitute for competition. However, in some areas South Carolina law impedes competition. Removing barriers to competition could lower prices to consumers and lower the cost of conducting business.

The following describes the impact of discontinuing the PSC's oversight of the industries it regulates:

- The federal government discontinued economic regulation of trucking in 1980. As a result, shippers and consumers have benefitted from increased competition, innovative service and lower prices. Other states have deregulated trucking and had similar results. We believe that South Carolina businesses and consumers would benefit from open competition in the trucking industry.
- For electric service, the absence of PSC regulation could result in higher electric rates in markets without significant competition. Regulation helps compensate for the lack of competition in providing electricity to residential and high-volume consumers. In the market for high-volume users, however, rate regulation could be relaxed and a system could be established to provide competition from alternative producers of electricity.
- For telecommunications, the absence of PSC regulation could result in higher prices in markets without significant competition. Current examples of markets without significant competition include local wireline phone service, long distance phone service within calling zones and access service. Alternatively, in markets which are competitive, such as wireless telecommunications (paging and mobile phone service), the absence of PSC regulation would not likely result in higher prices.

- For water and sewer companies, the absence of PSC regulation could result in higher prices. These services are provided by monopoly providers, and the PSC sets rates that they can charge. We could find no evidence where market competition has replaced regulation in these industries.
- For natural gas service, the absence of PSC regulation could result in higher prices in markets without significant competition. Current examples of markets without significant competition include residential and commercial/small industrial gas service. Gas service provided to large industry is subject to competition from the interstate market and/or alternative fuels. In addition, in several areas in South Carolina, there has been limited competition between municipal and private natural gas distributors.

Without pipeline safety regulation by the PSC, gas utility costs could decrease. Safety, however, could also decrease.

Issue (3) Administrative Costs

Determine the overall cost, including manpower, of the agency under review.

The Public Service Commission receives an annual appropriation from the General Assembly. PSC collects revenue for deposit in the general fund through the licensing and registration of motor carriers. Utilities are also assessed for their cost of regulation.

The Public Service Commission is not included in the professional and occupational licensing agencies that are required to generate revenue equal to 110% of their appropriations.

In FY 93-94, the Commission operated with 128 full-time equivalent positions. Table 4.1 outlines the Public Service Commission's expenditures and appropriations since FY 89-90.

Table 4.1: Analysis of PSC Appropriations and Expenditures

	FY 89-90	FY 90-91	FY 91-92	FY 92-93	FY 93-94 ^a
Expenditures					
Administration	\$1,409,005	\$1,727,312	\$2,447,429	\$2,394,068	\$2,529,506
Utility Regulation	\$1,524,904	\$1,529,443	\$976,463	\$1,569,303	\$2,776,633
Transportation	\$2,818,139	\$2,657,065	\$2,332,986	\$2,321,817	\$1,407,007
Employee Benefits	\$928,046	\$1,069,533	\$1,046,486	\$1,090,282	\$1,012,578
Total	\$6,680,094	\$6,983,353	\$6,803,364	\$7,375,470	\$7,725,724
Appropriations					
General Appropriation	\$6,865,791	\$7,278,165	\$6,973,184	\$6,817,249	\$5,907,224
Other Funds	•	•	•	\$691,281	\$1,818,500
Total	\$6,865,791	\$7,278,165	\$6,973,184	\$7,508,530	\$7,725,724

^a Estimated.

Source: State Budget Documents

Issue (4) Efficiency of Administration

Evaluate the efficiency of the administration of the programs or functions of the agency under review.

The PSC is organized into separate departments for each of the industries which it regulates. A central administrative division oversees the agency. Each department has written procedures which address some, but not all, of the regulatory requirements for that industry.

We reviewed the extent to which the PSC had written procedures for ensuring compliance with state laws and regulations. The PSC utilities division has a policies and procedures manual and each department has developed written checklists, inspection reports, and audit programs. However, we found some significant laws and regulations for which there

were no written procedures. In addition, the transportation division does not have policies concerning some aspects of its operations (see p. 43).

Issue (5) Public Participation

Determine the extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates.

We reviewed the PSC's efforts for ensuring that the public is adequately notified of commission meetings and hearings. We found no material problems.

Issue (6) Duplication of Services

Determine the extent to which the agency duplicates the services, functions, and programs administered by any other state, federal, or other agency or entity.

Several federal agencies also regulate the activities of companies regulated by the PSC. Although federal agencies may not duplicate the programs of the PSC, federal regulatory actions have an effect on the industries regulated by the PSC.

Interstate trucking regulations have been established by federal law and are enforced by the Interstate Commerce Commission. Beginning in 1992, all commercial truck drivers including those who only drive intrastate routes in South Carolina were required to obtain federal licenses. Otherwise, intrastate trucking in South Carolina is regulated by the PSC. The South Carolina Department of Public Safety also has enforcement responsibilities which may duplicate some of the activities of the regulatory enforcement officers (see p. 19).

The PSC regulates the retail aspects of investor-owned electric utilities in South Carolina. The Federal Energy Regulatory Commission (FERC) regulates wholesale electricity transactions in interstate commerce.

Interstate long distance phone rates are regulated by the FCC. Intrastate local and long distance phone rates are regulated by the PSC.

Interstate gas service sold to South Carolina customers is regulated by the FERC. Gas service sold by South Carolina local distributors and an intrastate pipeline is regulated by the PSC. In addition, the PSC enforces federal natural gas pipeline safety standards in South Carolina.

The South Carolina Department of Health and Environmental Control (DHEC) enforces regulations which also impact the electric and water/wastewater industries regulated by the PSC. DHEC regulations generally apply to the environmental aspects of the businesses regulated by the PSC.

Issue (7) Handling of Complaints

Evaluate the efficiency with which formal public complaints filed with the agency concerning persons or industries subject to the regulation and administration of the agency under review have been processed.

In our 1988 audit, we found that the PSC telecommunications department had not closed or resolved 74 of approximately 4,800 complaints received between July 1981 and June 1986. We reviewed complaint logs from the different divisions for complaints filed from January 1989 through December 1993 and found that most complaints had been closed.

In August 1991, the PSC created a consumer services department to handle complaints, enforce commission regulations, assist the commission in developing regulatory policies and increase consumer awareness of PSC. The consumer services department is responsible for receiving, investigating and resolving complaints against regulated telecommunications, electric, gas, water and wastewater companies, and motor carriers. Between July 1, 1992, and December 31, 1993, the department received 2,507 complaints.

Complaints may be addressed through informal or formal proceedings. All complaints are processed informally unless a formal proceeding is requested by one of the parties. According to PSC Regulation 103-820, "[t]he object of informal proceedings shall be to obtain a fair settlement or resolution, or

response, to any complaint or request through agreement or action by the parties.” If no agreement or resolution can be reached through informal proceedings, PSC staff must notify all parties in writing that they may request a formal proceeding before the commission. The commission could then conduct a hearing to make a determination on the complaint. In addition, the PSC has policies and procedures outlining how complaints are to be investigated and resolved.

We reviewed a random sample of 50 complaints and found that the PSC staff have not adequately investigated complaints. Additionally, the PSC staff have not always notified parties of their right to a formal proceeding. The following are examples of complaints that were closed without adequate investigation or proper notification.

- A consumer complained that a moving company damaged three items of furniture, picked them up for repair, but never returned them. PSC staff investigated the complaint and found that the company had “had sufficient time to perform [the repairs] but has failed to do so.” The consumer services investigator notified the complainant of the findings and closed the case. We could find no evidence where the parties were notified of their right to a formal proceeding before the commission.
- The owner of a carwash called the PSC to report that a power surge had destroyed two of his carwash motors. He informed the PSC staff that he thought that the cable leading to his meter was deficient and that he had the proper surge protection equipment. The power company responded that they were not responsible for power outages and that it was the customer’s responsibility to install surge protection equipment. The PSC staff did not investigate to determine if the power company had faulty equipment and we could find no evidence where the parties were notified of their right to request a formal proceeding before closing the case.

The PSC has not adequately investigated and resolved complaints.

By not properly investigating complaints or notifying parties of their right to a formal proceeding, the commission is not fully complying with its mandate to supervise and regulate the public utilities.

Recommendation

- 15 The Public Service Commission should ensure that all complaints received are adequately investigated prior to being closed. In addition, the commission should ensure that complainants are informed of their right to obtain a formal proceeding if not satisfied with PSC staff findings or if the complaint cannot be resolved at the staff level.

Issue (8) Compliance With the Law

Determine the extent to which the agency under review has complied with all applicable state, federal, and local statutes and regulations.

Laws and regulations administered by the PSC cover more than 800 pages in the South Carolina Code of Laws and are subject to frequent revision. We did not review commission compliance with each individual section of the laws. Instead, we focused on reviewing some of the major internal controls which the commission has in place to ensure compliance with laws.

Below are examples of PSC written procedures:

- The transportation division has written procedures for licensing intrastate carriers and registering interstate carriers.
- The accounting department has written audit programs for reviewing rate change requests made by utilities.
- The accounting department and the utilities division have written procedures for conducting compliance audits and reviews.
- The utilities division has written procedures for reviewing the safety of natural gas facilities.

Below are examples of procedures which are not in writing:

- The PSC transportation division does not have written procedures for ensuring that rates are "just and reasonable" as stated in Regulation 103-191. There are no written procedures for enforcing motor carrier laws. In addition, there are no written procedures to

ensure that the few remaining state rails and rail safety laws and regulations are enforced.

- Other than the procedures used to conduct public hearings, utilities division procedures for reviewing electric, telecommunications, and natural gas rate requests are not in writing.

Section 1-23-140 of the South Carolina Code of Laws requires that state agencies adopt and make available to the public a written policy statement of all formal and informal procedures. Without adequate written procedures, the PSC has less assurance of compliance with its laws and regulations or consistency in its actions.

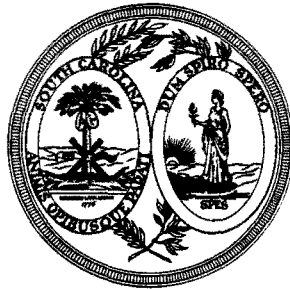
Recommendation

-
- 16 The Public Service Commission should update its written policies and procedures manual to ensure that it complies with §1-23-140 of the South Carolina Code of Laws.

Appendix

Appendix

THE PUBLIC SERVICE COMMISSION



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STATE OF SOUTH CAROLINA

June 24, 1994

Mr. George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Schroeder:

Enclosed please find the Public Service Commission's written comments to the Legislative Audit Council's Sunset Review of the South Carolina Public Service Commission dated June 1994.

The professional and courteous manner in which the auditors conducted themselves, under the capable leadership of Tom Bardin, is very much appreciated. I trust that the Commission Staff was cooperative with Mr. Bardin and the other auditors during the course of their review.

After the 1988 audit, we worked to implement a number of the Council's recommendations. The 1994 Report shows that we were successful in accomplishing this goal to a great degree.

If I can be of further service, please do not hesitate to call.

Sincerely,

A handwritten signature in cursive script that reads "Charles W. Ballentine".

Charles W. Ballentine
Executive Director

CWB:de

Enclosure:

The South Carolina Public Service Commission presents the following comments in response to the Legislative Audit Council's Report.

CHAPTER 2

REGULATION OF MOTOR CARRIERS

RECOMMENDATION

- 1 THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING THE PORTION OF §58-23-330 THAT ALLOWS THE PUBLIC SERVICE COMMISSION TO DENY AN APPLICATION IF THE PUBLIC CONVENIENCE AND NECESSITY IS BEING SERVED.

The responsibility which is placed in the hands of the Commission in this statute is great and needed. This lets the Commission evaluate testimony to determine if the addition of another carrier and the associated equipment it would place in service would be of benefit to the public, or cause excess capacity to exist, thus driving up the cost to the public for shipping the requested commodities.

- 2 THE GENERAL ASSEMBLY MAY WISH TO CONSIDER REPEALING §58-23-1010 AND APPLICABLE REGULATIONS REQUIRING THE PUBLIC SERVICE COMMISSION TO FIX OR APPROVE MOTOR CARRIER RATES.

The Commission believes that this would not be in the best interest of the trucking industry of this State or the public in general. The Commission's oversight of rates in this industry has kept the industry in our state healthy, while providing good service to the shipping public at fair prices. The Commission has no way of proving that this would rapidly disappear under deregulation, however, conversations with carriers and shippers have led the Commission to believe that continued regulation will best assure continued health in this essential industry. The Commission feels that a healthy industry should not be altered.

- 3 IF THE GENERAL ASSEMBLY CONTINUES TO REQUIRE THAT THE PUBLIC SERVICE COMMISSION FIX OR APPROVE RATES, THEN:
(a) THE COMMISSION SHOULD CONSIDER ESTABLISHING MAXIMUM RATES THAT CARRIERS CAN CHARGE. CARRIERS SHOULD BE ALLOWED TO CHARGE LOWER RATES WITHOUT PSC APPROVAL.

The Commission has established maximum rates for carriers of agricultural commodities, dump truck commodities and hazardous waste. It has in two separate hearings, considered zone rates and limited freedom for discounting on other commodities. On both occasions, the evidence convinced the Commission not to change the present method of ratemaking.

(b) THE COMMISSION SHOULD DEVELOP MORE COMPLETE WRITTEN GUIDELINES FOR DETERMINING A MOTOR CARRIER'S ALLOWABLE COST FOR RATEMAKING PURPOSES.

The Accounting Department of the Commission has long used the ICC guidelines on depreciation for motor carriers. Motor carriers are allowed to use tax depreciation rates to calculate depreciation on plant assets of motor carriers. There are no written guidelines approved by this Commission at present. The Staff is in the process of formulating guidelines for the Commission's approval. The Staff will study other expenses associated with motor carriers in order for the Commission to review and approve such guidelines.

(c) THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING §58-23-1010 OF THE SOUTH CAROLINA CODE OF LAWS TO REMOVE THE ANTITRUST IMMUNITY GRANTED MOTOR CARRIERS IN THE RATEMAKING PROCESS.

The Commission considers the rate bureaus which have been granted the antitrust immunity to be an asset to many companies and would oppose amending §58-23-1010. The Commission, using its liberal approval of discount rates, has allowed price competition while employing regulatory oversight. It should be noted that another form of competition is very much in effect in this industry: service to the customer. It should also be noted that carriers are not required to belong to one of these bureaus, but many smaller companies who do not have a rate specialist on their staff find the bureau an economical way to establish rates which are competitive and allow a fair return in an efficient operation.

4 THE GENERAL ASSEMBLY MAY WISH TO CONSIDER TRANSFERRING THE PUBLIC SERVICE COMMISSION'S TRANSPORTATION ENFORCEMENT OFFICERS AND FUNCTIONS TO THE SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY.

The Commission disagrees with the suggestion of moving the PSC's enforcement officers to the South Carolina Department of Public Safety. This has been done in North Carolina and Staff's conversations with the North Carolina Public Utilities Commission Staff indicates that North Carolina is seeing an erosion in its ability to regulate, due to lack of emphasis on enforcement. Once this has been recognized, carriers fail to ask for certification, and regulation effectiveness decreases.

5 IF THE GENERAL ASSEMBLY CONTINUES TO REQUIRE THE PUBLIC SERVICE COMMISSION TO PERFORM ECONOMIC REGULATION OF MOTOR CARRIERS, THE FOLLOWING CHANGES SHOULD BE IMPLEMENTED:

(a) THE PUBLIC SERVICE COMMISSION SHOULD DEVELOP AND ENFORCE WRITTEN POLICIES GOVERNING ALL ASPECTS OF THE PSC'S LAW ENFORCEMENT ACTIVITIES.

The Transportation Division of the Commission has written policies and procedures for most areas of enforcement and operation. These include:

Uniform and Grooming; Performing vehicle inspections at weigh-in motion scales; review of advertisements for uncertificated carriers; "fit, willing, and able" determination for carriers requesting certification; bond money collection; assuring proper retention and accounting of bond money; firearms and deadly force; inspectors operating procedures; inspectors working complaints; working off peak hours; pursuit and emergency response; uniform replacement; and monthly regulatory inspection goals. Procedures for a standardized inspection of a vehicle are being developed.

(b) THE PUBLIC SERVICE COMMISSION SHOULD CONSIDER DISCONTINUING CARRIER AUDITS AND ONLY REVIEW CARRIERS WHEN A COMPLAINT IS FILED.

Due to a recommendation made by the LAC in its 1988 report on its "Sunset" audit of the PSC, the Accounting Staff of the PSC increased the number of audits of motor carriers operating in South Carolina. These audits have not turned up large numbers of violations but have given the Commission comfort that their orders are being carried out by such carriers. By only auditing carriers with complaints filed against them would leave the vast number of carriers unaudited by this regulatory body. Without such audits of the carriers' tariffs, it is believed that there would be an increase in the number of carriers who might violate orders of this commission. This could result in shippers in this State suffering by paying incorrect rates and not knowing it. These shippers would fail to file complaints since they would be unaware that they may have been overcharged. The Commission believes that these audits do serve a purpose and should be continued.

CHAPTER 3

REGULATION OF UTILITIES

6 THE COMMISSION SHOULD AMEND ITS LONG-RANGE PLANNING PROCEDURES TO INCLUDE SPECIFIC CRITERIA FOR ELECTRIC UTILITIES TO FOLLOW WHEN CONSIDERING ALTERNATIVE WHOLESALE SUPPLIERS OF NEW GENERATING CAPACITY.

The Commission has developed a flexible Integrated Resource Process which includes procedures for the adequate consideration of 3rd party purchases and the bidding process in a manner which provides the proper atmosphere to encourage the provision of electric service in a reliable, efficient, economic, and competitive manner. Moreover, the Commission has already ordered its regulated electric utilities to develop a long-term wholesale power consideration process which includes considerations such as risk allocation, cost and benefits, financial soundness, reliability, etc. See Order No. 93-945, dated October 18, 1993 in Docket No. 93-231-E.

7 THE PUBLIC SERVICE COMMISSION SHOULD REVIEW WAYS TO INCREASE THE COMPETITION FOR RETAIL ELECTRIC SALES TO HIGH-VOLUME CONSUMERS.

The Commission will continue to monitor activity in other states concerning this issue. In addition proposals for change may be made when and if the Commission finds electric competition in the public interest.

8 THE PUBLIC SERVICE COMMISSION SHOULD RECOMMEND TO THE GENERAL ASSEMBLY SPECIFIC CHANGES TO STATE LAWS WHICH WILL INCREASE RETAIL ELECTRIC COMPETITION.

Should the Commission determine that existing electric regulation needs to be modified to facilitate retail electric competition, legislation may be proposed which will provide the opportunity for enhanced competition.

9 THE PUBLIC SERVICE COMMISSION SHOULD ENSURE THAT ELECTRIC UTILITIES PROMPTLY ADJUST RATES TO ACCOUNT FOR CHANGES IN FUEL COSTS, AS PRESCRIBED BY §58-27-865 OF THE SOUTH CAROLINA CODE OF LAWS.

The Public Service Commission has ensured that electric utilities recover only their prudently incurred fuel costs from their consumers. This has been accomplished through a review process which includes, but is not limited to a review of purchasing practices, and an in-depth review of the generating experience of all units on a six month basis. To the extent possible under the existing fuel statute the Commission will attempt to ensure that the estimated fuel cost for the future period actually predicts the actual fuel cost reducing the over and under variances.

10 THE PUBLIC SERVICE COMMISSION MAY WISH TO CONSIDER IMPLEMENTING PROCEDURES TO CHARGE ELECTRIC UTILITIES INTEREST ON OVER-RECOVERY BALANCES IN THE FUEL ADJUSTMENT ACCOUNTS.

The Commission has recently addressed this issue in a generic proceeding. This proceeding resulted in a finding by the Commission that adding interest to the over-recovery balance would unfairly penalize a Company for efficient operations. In light of the fact that the Commission will put more emphasis on approving a projected fuel factor which will accurately reflect actual fuel cost, the need for this interest provision will be minimized.

- 11 THE PUBLIC SERVICE COMMISSION SHOULD TAKE STEPS TO ESTABLISH EQUAL DIALING ACCESS FOR THE CUSTOMERS OF ALL COMPANIES WHICH PROVIDE LONG DISTANCE PHONE SERVICE BETWEEN PARTIES WITHIN THE SAME CALLING ZONE.

The Commission has ordered intra-LATA competition on a 10xxx basis effective August of 1993. In addition, the Commission will continue to monitor the availability of technology, as it becomes available, which could result in 1+ equal access calling. The Commission will also focus on the impact of providing universal service as the subsidy from intra-LATA toll service is reduced by open competition between local exchange carriers and interexchange carriers.

- 12 THE GENERAL ASSEMBLY MAY WISH TO CONSIDER REPEALING §58-11-10 OF THE SOUTH CAROLINA CODE OF LAWS TO ELIMINATE THE PUBLIC SERVICE COMMISSION'S REGULATION OF WIRELESS TELECOMMUNICATIONS.

The Commission will address this issue during its meeting of the week of June 27, 1994. Staff will recommend to the Commission that a request for waiver should not be filed with the FCC concerning the regulation of wireless services. This recommendation will result in the preemption of regulation by this Commission of wireless services

- 13 THE PUBLIC SERVICE COMMISSION SHOULD TAKE STEPS TO SUBSTANTIATE MORE FULLY THE FINANCIAL INFORMATION REPORTED BY THE UTILITIES.

The Commission has taken steps to more fully substantiate financial information from specific regulated electric utilities, and is in the process of expanding this effort to additional utilities. Procedures have been established and are now in place that will allow the Commission Staff to have access to the books and records of subsidiaries and affiliates of electric utilities.

The regulated telecommunication companies have long taken the position that the books and records of non-regulated subsidiaries and affiliates do not fall under §58-9-790 of the South Carolina Code of Laws. Such Law states: "...each person employed by the [PSC] may...inspect or audit at reasonable times the account, books, papers and documents of any telephone utility."

The telephone utilities believe that these affiliates and subsidiaries are not a utility, and do not fall under this Law. The PSC has no authority over these companies, and has not been able to get access to the books and records of such companies.

The information contained in the books and records of these non-regulated companies, such as directory services, is considered to be proprietary in nature, and the disclosure of such information may impact on the companies' ability to function in a competitive market.

The Staff will try to move toward getting more access to these records, but at this time it does not look as if such access will be obtained without legal action.

The Staff has always done a thorough job of verifying plant cost of utilities. Historically, procedures have been in place to verify cost associated with the physical plant of all utilities operating in the State. The LAC is correct that staff has not visually inspected such plant, but cost of plant items have always been completely audited as to cost to purchase or construct. The Staff is now in the process of establishing procedures for its audit programs to physically inspect plant on a sample basis.

- 14 THE GENERAL ASSEMBLY MAY WISH TO CONSIDER AMENDING STATE LAW TO COMPLY WITH FEDERAL REGULATIONS REGARDING THE STATE UNDERGROUND UTILITY DAMAGE PREVENTION PROGRAM.

The Commission has acted on this matter by proposing legislation during the 1994 legislative session to address this issue. The bill was not acted on during the 1994 session. Staff intends to work in a collaborative process with opponents of the bill and propose legislation in October, 1994 for consideration during the 1995 legislative session.

CHAPTER 4

SUNSET ISSUES

- 15 THE PUBLIC SERVICE COMMISSION SHOULD ENSURE THAT ALL COMPLAINTS RECEIVED ARE ADEQUATELY INVESTIGATED PRIOR TO BEING CLOSED. IN ADDITION, THE COMMISSION SHOULD ENSURE THAT COMPLAINANTS ARE INFORMED OF THEIR RIGHT TO OBTAIN A FORMAL PROCEEDING IF NOT SATISFIED WITH PSC STAFF FINDINGS OR IF COMPLAINT CANNOT BE RESOLVED AT THE STAFF LEVEL.

The Commission's Regulations pertaining to Practice and Procedure and the Policy Manual require the same and the Commission will comply.

- 16 THE PUBLIC SERVICE COMMISSION SHOULD UPDATE ITS WRITTEN POLICIES AND PROCEDURES MANUAL TO ENSURE THAT IT COMPLIES WITH §1-23-140 OF THE SOUTH CAROLINA CODE OF LAWS.

The Commission will update its written Policies and Procedures Manual to ensure that it complies with §1-23-140 of the South Carolina Code of Laws.

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