
Franklin D. Roosevelt — “The Great Communicator”

The Master Speech Files, 1898, 1910-1945

Series 1: Franklin D. Roosevelt’s Political Ascension

File No. 597

1929 - 1932

**Miscellaneous undated drafts of messages to the
Legislature, drafts of speeches, statements,
fragments of interviews, etc.**

The failure of the 18th Amendment and the Volstead Law, after twelve years, to bring about a greater temperance in this country, through the agency of the National Government, has convinced Governor Roosevelt that the time has come to find new methods. He personally believes that the solution is the application of the Democratic principle of the right of each State to regulate its own internal affairs within its own borders. He holds that each State must take over this problem and handle it in its own way for its own citizens, in accordance with its own local needs and requirements. He opposes the return of the old-time saloon in any part of our country; he seeks constitutional protection of any dry State in the enforcement of whatever form of regulatory or prohibitory legislation it may decide upon; and he wants ~~the~~ influence in government itself by private ~~money~~ *figure* interests eliminated.

- Housing -

N.C.
" "

1. Campaign of Renovation & improvement.
 2. Long term mortgage financing
 3. " " coordination of fed. activities.
-

1. The campaign

- (a) Nat. guidance - local management by groups.
- (b) Protection of home owners against price rises.
- (c) New financial instrument - Plan to secure low cost financing - Home owners credit insurance up to 20% - Federal Take \$200,000,000 of gov. money to insure.

Com. & Savings Bk's, Credit Unions, & Bldg. & Loan.

- (d) Min. \$200 - Max \$2,000 - min \$10 a month -
 - (e) Length Term 5 years.
-

2. Long Term Mortgage Financing

- (a) Extension of funds available & extension to building &
a. Nat. system of appraisals - uniform.

(2)
b. Create Fed. Mutual Mtgs. Corporation
tax rates - long term.

c. Gov. needs no money to do it.

d. Charter by H. L. Bk. Act.

e. Bks. who authorized to hold mtgs.

f. Insurance of mtgs on

3. Single agency un. handling -

a. Temporary agency to co-ordinate.

b. Briefly in next paragraphs.

In regard to Agriculture, as a campaign issue, I have made my position clear. I have not the advantage of having been brought up on a farm, as has been the case of so many distinguished candidates, successful and unsuccessful. Unlike the late President Roosevelt, whose devotion to the men and women who live and work upon the farm lands of the United States was never questioned, my acquaintance even with ranching is restricted to the Movies, where I observe cow-boys gallop across the stage at a hundred miles an hour. These disqualifications have not, however, made me neglect the agricultural interests of the great State over whose political destinies I have had the honor to preside. Indeed, I can unreservedly declare that at no time have these interests been absent from my mind; and I rejoice that never in my recollection have they been so prominent in the discussion of national policies which every four years engage the earnest thought of serious citizens. I have decided today to summarize very briefly the fundamental considerations which, in my judgment, the whole nation should keep in mind, if we are not to revert to the neglect of the farmer the moment his vote ceases to be an issue- quite possibly a deciding issue- in the quadrennial searching of our political consciences.

The first thing, it seems to me, we have to do is to remember that the American farmers are a large section of a great people, to whose sturdy qualities- the spirit of adventure, endurance, self-sacrifice and incessant toil we owe the extraordinarily rapid development of the Land of Promise God gave to the Pilgrim Fathers. With the application of science to every department of human life, which chiefly characterizes the age to which we belong, it was inevitable that men's minds should be increasingly concentrated upon the marvellous achievements in the realm of manufacturing industry and commerce. Science has not failed to make its due contribution to the basic industry; but the slow processes of nature cannot be expedited to a degree comparable with the progress of other occupations. Bearing these conditions in mind, we have been struggling to find means by which the farmers may be more fairly dealt with in the economic policies of the Nation.

For my own part, I think President Woosevelt showed the most profound statesmanship, when some twenty years ago he laid down that agriculture must be regarded and treated in three aspects- as an industry, as a business and, in a sense not applicable to any other occupation, as a life. His slogan for his Country Life Policy, which he took from Ireland, was Better Farming, Better Business, Better Living. He insisted that Better Business was the pivotal thing. He was right then, and everything that has happened since has confirmed his judgment.

One marked tendency of the time is the subordination of politics to business. Another is the greater importance our foremost captains of industry and leaders of commerce and finance attach to the distribution- to marketing and salesmanship- than to production. Mass production, combined with the spirit of enterprise- no doubt largely due to the abundance of natural resources in this God-prospered continent- has assured the preeminence of American manufacture, often won by a scrapping of slightly out-of-date machinery. So it comes to this. The weak spot in American farming is at the marketing end, and it is there that both parties are trying to solve the problem.

It is the duty of the Government-both Federal and State- to do its utmost to help. I am convinced that the best way for the farmers to make legislation and administration deal fairly with their interests is to perfect their co-operative organizations. Economic strength is political strength. Farmers' blocs too often merely play into the hands of the shrewder and better organized non-agricultural interests. Fiscal policies are always extraordinarily difficult to devise and administer so that they will have the intended effect. My main point is that once the farmers' business is organized nearer the level of urban efficiency, it will be far easier for governmental policy and social service to help the worker on the land to make his industry more scientific and the life of the rural community more satisfying intellectually and socially to those who resist the lure of the modern city.

Although the Safety-Responsibility Law has been before the country only two years, more than one-third of the motor vehicle owners in the United States and a half of those in Canada now operate under one or more of its essential provisions.

The State of New York, with ten per cent of the registered motor vehicles in this country, was the pioneer in adopting this legislation and it is now in effect, in whole or in part, in eleven other states, namely, California, Connecticut, Iowa, Maine, Minnesota, New Jersey, New Hampshire, North Dakota, Vermont, Rhode Island and Wisconsin, while the Provinces of Ontario and Manitoba, Canada, have enacted it en toto.

Movements are now on foot in several states which have enacted this legislation to strengthen its provisions, mainly in those which failed to include vital portions, but the fact that no state has launched a move for repeal of the law is evidence of its merit and successful application.

In addition, the Safety-Responsibility Law is being advocated now before the State Legislatures in at least twenty states, which have been watching the experience of the pioneers with this instrument for the promotion of safety, and indications are that a number will write this legislation into to statutes of their states.

When it is considered that the problem of highway safety has challenged the best minds in legislative agencies since the advent of the automobile, the endorsement of the law already evidenced, has been most cheering to the advocates of safety-responsibility and has vindicated their belief that the problem has been approached from the right angle, namely, a weapon for the control of the reckless and irresponsible minority.

Although promulgated in December, 1928, after an exhaustive investigation by a National Committee of Seventeen, headed by Owen B. Augsburger of Buffalo, N.Y., as chairman, the Safety-Responsibility Law was revised in 1930, with particular regard to administrative features in order to make these as flexible as possible.

It is not too much to say that this legislation has received nationwide indorsement as a constructive measure to promote safe driving.

In approaching the problem of dealing with safety on the highways, however, the American Automobile Association has at all times been aware of the fact that in public education intelligently directed and conducted, lies the greatest hope for traffic safety. The national organization and affiliated motor clubs have worked incessantly and earnestly in this field. Nowhere has greater success been attained than in the field of safety education in the schools. For this progress, the school boy patrol and the admission of safety posters and lessons into the curriculum of the schools is largely responsible.

Motor clubs affiliated with the American Automobile Association have spent hundreds of thousands of dollars in organizing and conducting these wholesome activities. At the present time, more than 175,000 school boy patrolmen are enrolled in this work in 10,000 schools. These schools are located in approximately 800 cities and towns throughout the country. This activity now affords daily protection to 5,000,000 school children on their way to and from the classroom.

Safety lessons and posters prepared by the national organization and supplied by AAA clubs without cost to the schools, are used by 80,000 teachers in the instruction of 3,000,000 children in the fundamentals of safety.

This is my idea of the kind
of a he statement Broderick
should make. Either as part of his
report or, better yet - separately - and
this is the kind of stuff the Foreign
press should be fed on —

Yeli

Aside from the question of the regulatory powers of the Banking Department over Private Banks, and on this point the present Statute is obviously ambiguous and defective, there can be no doubt of the right of the State to make sure that its Banking Laws are being observed, ~~and~~ ^{it} having specifically provided that all persons or corporations desiring to engage in a Banking business, as defined in the Statutes, must file a Certificate with the Superintendent of Banks and obtain permission before so doing, it is absurd to argue that the State has no power to make sure that no Companies, Persons or Associations are engaging in the Banking business without having applied for a Certificate. If this were ^{possible} ~~the~~, anybody could set up a Private Bank and by merely neglecting to file a Certificate proceed to violate the Statute with impunity, as there would be no way of bringing them to time.

I am convinced that the ^{present} Law ~~is effect~~ ^{is} ample

power to make such investigation, and for the protection of the small depositors, particularly those of foreign birth, it is my intention to proceed to make sure that the Law is not being evaded and ^{that} ~~the~~ practices forbidden except under the regulation of the Department ^{are} ~~not~~ being surreptitiously engaged in.

If this requires a greater force than is at present available, I shall not hesitate to ask for an appropriation for such a force from the Legislature, ~~but~~ ^I feel sure that my request ~~will~~ will not be denied, because it is so obviously the duty of the State, having engaged to protect its citizens from improper Banking methods by strict regulation and supervision, not to make such supervision a farce through lack of sufficient personnel. Every depositor, whether in a Private or ^{Regularly} ~~an~~ Organized Bank, is entitled to feel that his interests are being jealously safeguarded by the State, and in this investigation I feel sure the Banks themselves will most cordially cooperate

in order that there may be that general confidence in
the integrity and security of all Banking Institutions
which is so absolutely necessary in the successful
conduct of the Banking business itself.

TO THE VOTERS OF THE STATE OF NEW YORK:

You are about to decide at the polls a question of paramount importance to the future welfare of this state. You are to determine whether the forces of reaction in government are to seize the reins of control; or whether the progressive policies of Governor Alfred E. Smith are to be continued and carried on to completion. The Republican Party has consistently opposed these policies in a stubborn campaign of resistance which succumbed only when you yourselves, on Governor Smith's appeal, interfered and forced your wishes on your legislators.

Your opportunity has again come to express your approval of business-like, humane, forward looking government. A vote for our candidate will be a mandate from you not to drop back into the dark period of neglect and reaction which accompanied Governor Smith's immediate ^{Republican} predecessors.

I urge you to vote to keep good government in this State.

Sincerely yours,

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HUDSON RIVER BRIDGE

A remote glacial age was responsible for the canyon on our eastern seaboard through which the Hudson River flows. It has been man who, through historic processes, has set up the artificial barrier of two different state governments on each side of the river. It is also man who, by his inventive genius, has made it possible to span and tunnel the act of nature. Where a century ago the river was a real barrier to intercourse between the people on either side of the stream, today we have the opportunity of removing the difficulties of intercourse.

All depends, however, on the desire of the people of New York and New Jersey to establish more bridges and more tunnels. I am very certain that unselfishness will prevail in the end and that in both states there will be definite recognition of the benefits which will come, and a growing disregard of any old desire for one state to benefit at the expense of the other.

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REPORTER: How about tomorrow night?

MR. ROOSEVELT: As far as I can tell now, I haven't made up my mind yet. Probably it will be on health and education.

REPORTER: If any candidate goes to Rochester and does not speak on water-power the public will be greatly surprised.

MR. ROOSEVELT: The only difficulty with Watertown is that we want get a statewide radio hookup. It would be an ideal place for that.

REPORTER: But it is a big speech?

MR. ROOSEVELT: I want to get a radio hookup on that. How do you think that complicated labor clause went over night?

REPORTER: Wonderful. I heard the other speech when I was with Ottinger. There is no comparison. He is unfortunately handicapped by inability to get his audience.

REPORTER: Are you going to talk any more at all on bigotry.

MR. ROOSEVELT: No.

REPORTER: You probably won't discuss prohibition, but you are going after water power; that is about the situation?

MR. ROOSEVELT: Yes.

REPORTER: There will be no reference to prohibit on at all?

MR. ROOSEVELT: I can't tell.

REPORTER: I think maybe when you get to New York that might be the subject of a speech.

MR. ROOSEVELT: Not a major speech. The situation is pretty clear on that.

REPORTER: Your position on water power is the same as the governor's, of course?

MR. ROOSEVELT: Yes, always has been. The water power speech will of course not only cover the state of NY situation on water-power but also with reference to the national end of it.

REPORTER: And this health speech is going to be with reference to the hospital situation, construction of hospitals for the insane, etc.?

MR. ROOSEVELT: Of course, but particularly with reference to rural health. Health will have even a greater part in that speech, because we have only just scratched the surface on the question of facilities for rural health.

REPORTER: That will of course bring in possibly some of the milk question?

MR. ROOSEVELT: No. The district nursing system, etc.

Mr. Hoover, in his acceptance speech, favors the 1890 quota which is favorable to the Germans and Scandinavians and less favorable to the English than the National Origins Law based on the 1900 census.

Mr. Hoover does not wish to open up the quotas. He is content with the existent quota as of 1890. This quota is doubtlessly aimed to restrict the number of immigrants from Southern and Eastern Europe who came into the country in large numbers since 1890.

Governor Smith's position on immigration is similar to Mr. Hoover's, first, on his objection to the separation of families and second, on the existence of the present restricted policy. It differs from Mr. Hoover's insofar as the quota of 1890 was aimed to discriminate against certain nationalities.

By inference the Governor favors a juster distribution upon the basis of the existing population and not of a census taken thirty eight years ago. Justice is on his side, for it defeats discrimination against any race or nationality.

The differences in either case are so small that it ought not to awaken any opposition to the Governor's position even by fair-minded representatives of the Nordic elements. It does, however, show the Governor in a more humane and liberal light and on that account should appeal to all who are in favor of an impartial distribution of the 150,000 immigrants permitted per annum.

Nothing in his acceptance speech which is inconsistent with his approval of the National

Quincy Review

Mr. Hoover, in his recent speech, favors the 1890 quota which is favorable to the Germans and Scandinavians and less favorable to the English than the National Origins law based on the 1900 census. Mr. Hoover does not wish to open up the question. He is content with the existing quota as of 1890. This quota is definitely aimed to restrict the number of immigrants from Southern and Eastern Europe who come into the country in large numbers since 1890.

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Nothing in his speech
which is
in support of the
quota of 1890

*File
Sketches:
Revision*

Date ?

TO THE LEGISLATURE:

Sept

Over one hundred and fifty years ago before the invention of the steam engine, telegraph, telephone and automobile, when rural communities were separated from each other without speedy means of communication and when the problems of different communities were separate and distinct from the problems of their neighbors, there were established forms of town and county government which in the main are still with us. The structures of these governments are obviously out of date. Modern inventions and existing methods of speedy inter-communication have rendered completely obsolete our forms of county and town governments.

A great many town functions should be made county functions. The duties of a great many town officials can better be exercised by county officials. The powers and functions of town officers overlap with each other and with county and state officers. They are expensive to the communities which support them; and it is a well known fact that a large proportion of the expenses of local governments is caused by the maintaining of numerous unnecessary local officers and the carrying out of useless local functions.

I believe that the counties as at present geographically constituted should remain undisturbed; but I am convinced that the time has long since arrived when the structure of county government should be radically changed. I believe that the short-ballot system should be instituted in county elections, with the ~~appointing~~ appointing power of subordinate officials vested in a responsible executive county head. Numerous other reforms are necessary to bring our county and town governments up to date. Our state is now witnessing the beneficial results of the recent reorganization of its framework of state government. I believe that in the interests of scientific government, the form of local county and town administration should be also reorganized.

There is pending before your honorable bodies legislation to create a commission for the purpose of investigating the whole question of local county and town government and recommending changes to make its operation more economical and efficient.

I am sure that there is a widespread demand all over the state for such an investigation in order to improve the machinery of our local governments; and I urge upon you the passage of this legislation.

MAJORITY PROGRAM HAS ALREADY BROKEN DOWN

THE REPUBLICAN BILLS are based on the general theory that something is wrong with utility regulation in New York State and that it can be remedied if the utility lions will lie down peaceable with the consumer lambs.

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The following summary of points made in the Donovan Report represents the point of view on which the Majority based their recommendations:-

- (1) Something wrong with the utility regulation.
- (2) Rate determination is largely a matter of guess work.
- (3) Publicity preaching cooperation fruitless when utilities seek to exploit their privileges against the interest of the public which granted them.
- (4) If utility leaders do not look upon themselves as economic servants of the public then regulation is impossible and the only feasible alternative is public ownership.
- (5) Upon the problem of valuation depends the future of public utility management.
- (6) Valuations must be determined not alone on the basis of economic values but also with reference to the partnership rights of the public.
- (7) Realization of this is the test by which to know whether utility leaders have banished the attitude of exploitation and insistence upon the letter of the law and are ready to co-operate toward the development of a feasible policy of rate making.
- (8) Without such a change of heart the success of contract plan of valuation is impossible.
- (9) Some utility managers may be expected to accept the plan because they fear the possible results of serious deflation or because they realize the difficulty and expense involved if the Public Service Commission seriously attempts to vigorously

attack the valuation process along the lines laid down by the courts.

This was the theory underlying the whole structure of the majority program. It rested absolutely upon the necessity of a change of attitude on the part of the utility leaders to one in which they would not insist upon the letter of the law but would recognize the partnership rights of the public and banish exploitation.

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THE COMPLETE HOPELESSNESS of this point of view and of the program, supposed to have been drawn up carefully on it as a basis, ^{was} ~~was~~ demonstrated at the hearings before the Senate Committee. The stenographic minutes show just two of the bills got by without arousing the hearty objection of the utility representatives. These were the bill suggesting that assistant counsel, where possible, serve as hearing deputy, and providing for the head of a rural electrification division, and the bill providing that joint action of the Public Service and Transit Commissions be taken at a joint meeting.

Every bill purporting to deal with the ineffectiveness of regulation ^{met} ~~was~~ with disapproval. The modifications made in the bills as a result have rendered them unimportant or prejudicial to the consumers interest.

Referring to Donovan's suggestion that the utilities must come to a new view point if regulated private ownership is to continue, Bonbright commented on the attitude of the utility representatives as follows:

"I think the performance of today and yesterday shows that they have not come to any such point of view. I think it show they regard themselves as entirely private enterprises."

Bonbright pointed out further that during the entire discussion of methods for reforming this ineffective system of regulation the utilities had not offered a single constructive suggestion as to how regulation could be made really effective.

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The bills objected to by the utilities included:

1. Bills giving to Commission wider control over utility financing.
2. Bills giving to Commission greater control over accounting entries and depreciation charges.
3. The bill giving to Commission authority to check contracts between utilities and affected interests.
4. The bill giving the Commission authority to trace the affiliations of utilities through stock ownership.
5. The bill creating a people's counsel.
6. Bills providing for notifying consumers of changes in rates a month in advance of such changes.
7. The bill creating a bureau of valuation and research.
8. The bill providing for reparations to consumers in case of overcharge through excessive rates.
9. The bill providing for a statewide valuation of utility properties.
10. The bill providing for stabilization of such values through contracts.
11. The bill providing for regulation of submetering.
12. The bill providing for review of Commission decisions in the state courts prior to appeal to the federal courts.

THIS RECORD is the clearest evidence that the utilities do not want effective regulation and that any program which does not include a club in the closet will not work. It supplements the convincing evidence in the Minority Report showing that the utilities will evade regulation and that they have the resources to make their evasion effective.

EVIDENCE OF THE ATTITUDE OF THE UTILITIES INCLUDES:

(1) Recourse to over capitalization, or its modern form, over valuation to justify excessive profits.

(2) Dependence on the courts to support extreme private property claims

(3) Pressure to maintain a uniform system of accounting which does not lend itself to the determination of unit costs.

(4) Utilization of such devices as to coal surcharge and lowering the quality of gas to impose heavier charges on consumers than actual rates warranted

(5) Manipulation of financing and service contracts under holding companies and super-holding companies, in such a way as to weaken Commission regulation of control security issues and costs.

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All these methods have been used in the past and there is no indication in the present program that they will not be used in the future to undermine the effectiveness of regulation.

THE HEART OF THE REPUBLICAN PROPOSALS ^{was} the state-wide valuation bill with the contract bill by which it was intended these valuations would be utilized. We are justified in calling ~~this~~ fundamental because the majority report says:

"There is no problem confronting the utility managers and the public today in any way comparable to the problem of valuation. Upon its proper solution, as upon nothing else, depends the future of public utility supervision and control." p 16

THEREFORE THE SUCCESS OF THEIR SOLUTION MAY BE JUDGED BY THESE TWO BILLS. (Print Nps. 2305 and 2293.

Donovan in the Executive Session of the Commission said of this plan:

"Now the essence of it is that there would be no compulsion in it; that the utilities would be perfectly free to come in or not, as they saw fit, and, of course, if they did not come in, that we would be obliged to proceed in the manner now laid down by the courts." (February 28, Minutes p 4)

In other words the plan, as embodied in the bills as originally drawn, left the utility companies free to choose the new contract basis or the old basis according to which seemed most profitable to them.

Senator Thayer very pertinently asked:

"Do you think any corporation would enter into a contract of that kind, without their getting the best of it?"
(Minutes, February 28, p 13)

Bonbright put it even more vigorously. He said that the plan would put the utilities in the position of saying:

"Take it or leave it. If you don't accept our terms

as to valuation, and our terms as to rate of return, why, to hell with you!" (February 28, Minutes p 50)

Speaking before the Seante Committee, Bonbright said:

"The objection which I have to the Majority proposal is that, recognizing as it does the unfairness to the public of the existing system, recognizing that it is a system which permits companies in many cases to get for more than a reasonable profit, it still proposes to give the company the option of continuing under this system if they like it or of choosing another system if it happens to promise them more profit."

(Senate Hearing p 199)

This plan has been made even more favorable to the corporations. Following the Senate Hearings it was apparently rewritten to suit them. As it now stands the companies can to all intents write any conditions into the contracts which they choose and so freeze for 10 years the most favorable basis for rate determination against possible deflation or a swing of court opinion against their present excessive claims.

Public Competition is the only club which has proved effective in forcing the utilities to adopt a different attitude.

Donovan, at the outset of the Executive Session which dealt with valuation, said:

"If you cannot work it out on a basis of cooperation, then the only remedy to my mind is public ownership."

(Minutes, p 2)

Walsh suggested that there was a middle ground - public competition. He cited the testimony as tending to show that taking the country as a whole there is little difference in rates on account of the varying attitudes of the various Commission but that the rates are lower where there is municipal competition.

Donovan actually says that the utilities have the choice of changing their view or facing public ownership. The Minority says set up the possibility of public competition and it may help the utilities to make a choice which will preserve regulated private ownership.

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The contrast between the republican and democratic utility programs is fundamental.

The republican party proposes a very costly statewide valuation of utility properties and a voluntary contract plan by which these valuations will be the basis for determining utility profits only to the extent that their use favors the corporations as against the consumers.

The democratic party proposes a similar statewide valuation, made once for all, to provide a constitutional start for a rate making system in which the profits of utility companies will be limited to a return on money actually and prudently invested. It proposes, in addition, to make possible public competition, when authorized by a referendum vote of any municipality, as a practical alternative if utilities resort to the courts to evade the proposed basis of rate regulation.

VALUATION AND CONTRACT BILLS

ORIGINALLY

SENATE INT. NO. 1433 Provided for a statewide valuation of all utilities except railroads and street railroads in order to provide a known rate base in terms of which rates could be adjusted by a simple accounting process.

SENATE INT. NO. 1599 Provided for the stabilization of valuations and rate making through voluntary contracts between the Public Service Commission and the utility companies.

AS PASSED

Pr. No. 2501
SENATE INT. NO. 1433 Provides that the Public Service Commission may make valuations of utility properties whenever it deems it necessary or desirable.

Pr. No. 2502
SENATE INT. NO. 1599 Provides that municipalities may make cost of service contracts with public utilities serving them.

SIGNIFICANCE

The final form of these most important bills represents:

- (1) No appreciable change in the existing deplorable condition.
- (2) A complete abandonment of the recommendations of both the Donovan and the Majority Reports.
- (3) A complete acknowledgement of failure to meet the outstanding problem of regulation
- (4) A last minute change of front in which entirely new bills appeared and were railroaded through without their contents being thoroughly considered even by the party voting for them.

VALUATION AND CONTRACT BILLS

Reveal bankruptcy of majority program

The bankruptcy of the entire majority program for meeting the crisis in public utility regulation is revealed in their vain attempt to deal with the problem of valuation for rate making purposes. Both the Donovan and the majority reports acknowledge this to be the primary problem to be met, with the Donovan report emphasizing that failure to solve it would leave public ownership as the only alternative.

The two bills dealing with this problem, as finally passed by the republican majorities in both branches of the Legislature, would simply perpetuate a system of regulation which does not regulate. They would perpetuate a system so devoid of any compulsion on the utilities that it leaves them free to take advantage of every opportunity for speculative profit, free to give their common stocks speculative qualities which were supposed to have been eliminated from the field of public service.

These bills, in their final form, are not based on any of the reports which issued from the Revision Commission, they are not based on evidence submitted before the Commission, they have not been considered in any public hearing, and they were passed without members of either branch of the Legislature having advance knowledge of their contents.

The two bills make no pretense at lighting the process of rate making out of the hopeless mess of controversy and litigation into which the "present law" theory has plunged it. They mean no progress toward a stable rate base by which rate regulation could be reduced to a simple accounting process. They offer the consumer no protection against high rates which he does not already enjoy under the present law.

Original bills were condemned by all

As originally introduced these bills were heartily con-

demned as expensive futility. They drew the fire of the utility corporations, of consumer organizations, of municipal officials and of the New York Bar Association. Even after considerable modification in the direction of making them more acceptable to the utilities they still failed to secure a majority in the senate.

In the last hours of the sessions these bills were thrown out bodily and entirely new ones introduced. These were drawn along entirely different lines representing no real alteration in the present system.

Those who support such bills as a cure for the present ills of regulation clearly stultify themselves. If allowed to become law they will add to the complexity without rendering regulation more effective. They will add to the false sense that the public interest in the utility industry is being cared for.

Valuation bill, Senate Int. No. 1433 Pr. No. 2501

This bill originally provided that the Public Service Commission should forthwith proceed to make a valuation of all the utility properties in the state except railroad and street railroad property, this valuation to be made on the lawful basis for rate making. It provided for revaluation from time to time as circumstances might require.

This bill was objected to on the ground that it would cost the public far more than it would be worth. The direct cost was estimated at from \$3,000,000 to \$10,000,000 and the indirect cost at from \$20,000,000 to \$25,000,000. The result would be valuations based on the same disputed theories as those which are causing the present resort to litigation with no provision for their use except through a voluntary contract between the Public Service Commission and the utilities. Such contracts would be for a maximum of 10 years with the prospect of the whole expensive process beginning over again at the end of that period.

The final bill, under the same introductory number, is an entirely new bill. It provides that the commission may make a valuation of any utility property whenever it deems it necessary or desirable, that no such valuation shall be adopted except by order after public hearing, and that municipalities served by such companies shall be notified and considered parties to such proceedings. It makes it the duty of each such utility, when so directed, to file with the Public Service Commission inventories in such detail as the Commission may require. The valuation is to be fixed on the lawful basis for rate making.

Adds little to present powers

In actual practice this adds little to the present powers of the Commission, except as it establishes it definitely that municipalities shall be considered as parties. Apparently, also, the Commission may, if it sees fit, establish valuations for properties not actually involved in a rate case. But to the extent that this is extended to approach the valuation of all the utilities in the state along the lines of the original bill, it is open to the same objections as applied to that bill.

On the whole this bill does not represent a material change in the regulatory situation while it practically gives legislative sanction to the valuation theory which caused so much confusion and controversy.

Contract bill, Senate Int. No. 1599 Pr. No. 2502

This bill, as originally introduced, aimed at stabilization of valuations and rate base through voluntary contracts between the Public Service Commission and the utilities. In this form it professed the same objective as the minority bills although it would have effected such stabilization for only 10 years instead of ending the valuation problem for all time, and would have left the

utilities free to accept the new basis or not as they chose.

The first revision of this bill in response to utility criticism weakened it materially, eliminating especially the provision that during the 10 year period of the contract additions to the rate base should be on the basis of actual investment. As a result the determination of rate base was left in the vague condition which is causing the present problem of regulation. In addition the corporations were given the privilege of substituting a favorable situation for 10 years by contract.

The Majority leader was unable to put over this emasculated bill.

The final bill, under the same introductory number, is an entirely new bill. It no longer provides for contracts between the commission and the utilities. It provides rather for contracts between municipalities and the utility companies which serve them. Such contracts may be made, with the approval of the Public Service Commission, providing that for 10 years rates, etc., shall be adjusted up or down in accordance with the excess of revenues over and above all necessary costs including depreciation and return on the value of the property.

Presumably the value of the property to be used in such contracts would be the valuation found under the previous bill although this is not specified nor is any basis established to cover additions during the year in which the contract runs.

Proposal has been tried and found futile.

There is absolutely nothing new in this proposal. It has been tried in connection with street railways in the state and has proved practically useless.

This bill is based practically word for word on subdivisions 9, 10 and 11 of section 49 of the present Public Service Commission law which provides that such cost of service contracts may be made between municipalities and the street railway companies serving them. Rochester alone has taken advantage of the provision and is reported ^{ready} to give it up when its present contract expires.

In their original valuation and contract bills the majority failed to meet the fundamental issue. Instead of providing any compulsion which would induce the utilities to change their attitude toward regulation, they provided a very expensive basis for offering the utilities a choice between the present system and one which might prove more advantageous. The final bills practically leave the present condition untouched.

Donovan and Majority assert valuation is major problem.

Both the Donovan and Majority reports agree on the importance of the valuation problem. All agree that upon its solution depends the revival of effective regulation,

The Donovan report says:

"There is no problem confronting the utility managers and the public which is more complex than the problem of valuation. Upon its proper solution depends the future of public utility management." (p 50)

It says further: "Rate determination is largely a matter of guess work. In some cases experienced guess work, but guess work nevertheless. x x x x xx The reasonableness or unreasonableness of rates can never be accurately ascertained unless there is a definite rate base for every utility in the state."

(pp 8 and 9)

But Donovan went even further, stating practically that unless the utilities cooperated in establishing stable rate bases along the lines which he indicated, public ownership was the only alternative. Summarizing a discussion of the problem of valuation his report says:

"The above discussion indicates (1) that valuation must be determined not alone on the basis of the economic values involved, but also with reference to the partnership rights of the public; and (2) that the process of fixing values must be simplified so that definite data are currently available, for all utilities. It is contended that if the first requirement is realized it means the banishment of the attitude of exploitation, of insistence upon the letter of the law, of secrecy and manipulation through involved corporate structures and it finally means that the enlightened utility leaders will cooperate toward the development of the second objective, namely a workable and feasible policy of fixing base values, without such cooperation the plan outlined below will obviously fall short of accomplishment." (p 67)

He says also:

"Leaders of utilities must look upon themselves as economic servants of the public as state officials are the political servants of the public. If this is only an Utopian idea, then in my judgment regulation is impossible. The alternative is no coercion, because that can only bring resort to the courts with the resultant resentment and bitterness. The only feasible alternative is public ownership with whatever its attendant evils may prove to be." (p 13)

The Majority report echoes Donovan on to preeminent importance of the valuation problem. It says:

"There is no problem confronting the utility managers and

the public today in any way comparable to the problem of valuation. Upon its proper solution, as upon nothing else, depends the future of public utility supervision and control. (p 160)

The majority bills must therefore stand or fall according as they afford a solution of the valuation problem.

Actually, the Donovan proposals, which formed the basis of the original majority bills, have been absolutely thrown overboard under bitter fire from the utilities. The present bills completely ignore the real issue and offer no way out of the wilderness. Consequently Donovan must be prepared to move toward the only alternative which he admits, public ownership.

Danger in present bills

The municipal contract proposal means that municipalities may make contracts with huge combinations of utilities serving scores and even hundreds of cities and villages. On the one hand there is no prospect of such a giant's making a contract with any one of the municipalities which it serves unless such a contract appears distinctly to its advantage. On the other hand is the possibility that some municipal officials might be persuaded to make a contract which would be detrimental to its citizens.

In the long run, there is no probability that a great concern like the Niagara Hudson Power Corp. or the Associated Gas and Electric Co. will bind itself for 10 years by hundreds of separate contracts with the municipalities served.

Killeen, representing certain Associated Gas and Electric Co. properties in Western New York, refers to the futility of the service at cost contract provision. He says:

"As far as the railroads are concerned there has been a

provision in the law since 1922 for service at cost contracts between a railroad and the city. How many of them have been made? Why, the municipalities won't even enter into contracts. What is the use of providing about these contracts if nobody is going to make them? You have had one in 10 years, just one made, and I am told that the city of Rochester will terminate that contract as soon as they reach the end of it." (Minutes of Senate Committee Hearing, p 155)

Thayer hits the nail on the head

In the Senate Committee Hearings over which he presided Senator Thayer summed up the situation when he asked:

"Can you imagine any public utility entering into a contract unless they were satisfied that they were getting the best end of it?"

Bonbright answered:

"I cannot imagine their entering into a contract unless they felt that they were getting something better than they were getting by the only alternative that presents itself." (p 198)

VALUATION AND CONTRACT BILLS PERPETUATE FATAL
DEFECT IN PRESENT REGULATION

The valuation and cost of service contract bills (Senate Int. Nos. 1433 and 1599) would perpetuate the use of physical valuation of property as a basis of rate control.

This theory of rate control represents the greatest single weakness of the existing system of public utility regulation. Unless this fatal defect in regulation is overcome any attempt to revise the Public Service Law must fail to reach the root of the trouble.

The chief support of this unworkable theory comes from the utility companies which believe that it serves their interest. They use it as a means to undermining effective regulation by inflating the rate base and so securing the right to swollen profits.

The following summary based on the Minority analysis of the evidence submitted before the Revision Commission shows the nature of the problem which the majority bills have failed to meet.

Original intent of theory ^{revised} revised.

Originally the present or fair value theory was intended to establish a minimum below which rates should not go. Today circumstances have so changed that it actually establishes a maximum below which most rates are voluntarily fixed by the companies themselves.

Originally it was intended to leave a large degree of discretion to the legislative and administrative branches of the government in fixing rates that were not merely nonconfiscatory but socially expedient. Actually it now leaves a large degree of discretion to the companies in fixing rates which are

expedient from the point of view of maximum profits.

This basis of rate making rests on a highly indefinite and unobjective standard of "present value" or "fair value". Neither the courts nor the members of the Public Service Commission are able to define exactly this basis.

No clear out conception of meaning of fair value.

The evidence presented before the Revision Commission shows that no one of the Commissioners has a clear out conception of the meaning of fair value, that they cannot account satisfactorily for inconsistencies in the methods of valuation in recent cases, that they have no definite standard with respect to such factors as depreciation or going value and that in general the Commission tends to follow the line of least resistance which in the long run favors the companies.

It is inevitable that such indefiniteness in the fundamentals of rate control should produce constant controversy and litigation. It is this constant controversy which has broken down the existing scheme of rate control and it will continue to break it down if the majority bills represent the only solution.

Unwarranted cost of continued reappraisal.

Whether these valuations are made for all the utilities in the state at ten year intervals, as originally proposed by the majority, or recurrently for individual properties as at present and under the bills passed by the Legislature, the result would be a chronic burden of huge proportions paid by the taxpayers and consumers of utility services. The perpetuation of such costs for reappraisals is unwarranted.

But the direct money costs of reappraising public utility properties are not by any means the greatest costs. Of far more significance are the intangible costs resulting from

the perpetual controversy which this method of rate making produces. How much of the millions spent by the utilities for advertising and propaganda really represents an attempt to undo the harm created by such controversies.

Great inducement to retain obsolete plant.

The present value standard must rest fundamentally on the reproduction cost of a substantially identical plant. This provides leeway for grossly inflated balance sheets in which reproduction costs are not sufficiently written down in recognition of obsolescence, inadequacy or physical depreciation in the property.

The "present value" theory offers the companies great inducement to retain in service plant and equipment which has become obsolescent and inadequate, for as long as such property remains in service it can be included in the rate base. In practice courts and commissions tend to make no such thorough-going deductions for obsolescence as the "present Value" doctrine really requires.

Present value theory promotes utility speculation

The primary effect of the present value theory is not to protect the investors, most of whom hold fixed return securities, but to render public utility common stocks highly speculative. As most of the common stocks are now held by holding companies which are beyond regulation the whole thing is really foreign to the conception of utility property.

The object of minimizing the speculative element in utility securities is not primarily to benefit investors, but rather to make it possible for consumers to secure public utility service without paying the high returns on capital which must be paid in connection with a risky enterprise.

The "fair value" basis for rate adjustment is satisfactory to the utilities just because it is uncertain and flexible. It may be made to justify almost any rate or charge which a court or commission can be persuaded to allow.

Utility executives show folly of theory.

A most serious indictment of the "present value" basis of rate regulation is to be found in the testimony of President Cortelyou of the Consolidated Gas Co. and President Sloan of the New York Edison Company. Both testified that their companies were charging and that it was their policy to continue to charge rates lower than those to which they would be entitled under the doctrine of "reasonable return on fair value". Both companies have a record of great prosperity and enjoy an almost unparalleled credit position.

What can be said for a system of rate regulation which gives public utility companies the constitutional right to charge higher rates than the nation's premier gas company and premier electric company find it expedient and necessary to charge in the most prosperous year in public utility history?

And yet the majority bills would simply perpetuate such a system of regulation.

Telephone company case is example of futility.

The New York Telephone Co. has given the best illustration of all the bad points in this method of rate determination.

The controversy over the fair valuation and fair return for this company has lasted upwards of 10 years and is still in progress. Before it was reopened before the Public Service Commission it had run to 62,864 pages of testimony and 4,323 exhibits and had probably cost the taxpayers and telephone users of the state upwards of \$10,000,000.

The attempt to guess at the fair value of the company's property used in intrastate business on June 30, 1926, resulted in six different conclusions ranging from \$367,000,000 up to \$615,000,000. The company itself produced two different guesses about \$100,000,000 apart.

The company's claim that it had the right to capitalize something like \$60,000,000 of money collected for consumers as depreciation charges in excess of the amount of observed depreciation which they held existed in the property reveals the unfair uses to which this method of rate regulation lends itself. If the courts eventually allow this claim consumers will be forced to pay interest on the very money which they had themselves paid over to the company as a contribution to depreciation reserves.

Definite rate base is essential.

These factors in the breakdown of regulation cannot be corrected without changes in the law which fix a definite rate base determinable by accounting rather than by guess work, and which require that in the future the amount of depreciation to be deducted from the rate base must conform precisely to the amount of depreciation reserve that the companies are permitted or required to charge to operating expenses.

The companies must be compelled to accept this definite method of rate determination. They have shown too clearly their readiness to take advantage of the consumer whenever the flexibility of the standard permits it.

Going value is another intangible which the companies have introduced into the valuation problem which is so uncertain as to assist in the process of overcharging the consumer. Members

of the Public Service Commission testifying before the Revision Commission were hazy as to the nature of going value and as to how they arrived at a figure in any specific case. Prendergast attributed its determination to "a kind of inner feeling supplemented by what has become the practice throughout the country." Such a vague concept is utterly subversive to the whole scheme of effective regulation. To adduce proof or disproof of a thing that has no more definite meaning is simply to go through a process of mumbo jumbo.

Actual cost basis offers only solution.

There is only one way to get away from this uncertainty and controversy which is defeating regulation and that is to get an actual cost basis. If it is impossible to get on an actual cost basis, then public ownership is the only alternative. The actual cost basis means rates adjusted on the basis of the costs of the service including depreciation and a return on the capital actually invested. [If the cost of service contracts between the municipalities and the corporations serving them, proposed in the contract bill, were based upon such a prudent investment rather than the old value basis there might be some argument in its favor. If it were coupled with provision that where corporations refused to accept this basis the municipalities might be instructed by referendum to go into the business themselves, it might afford a real solution. For the prospect of municipal competition has proved to be the only real incentive capable of persuading the utilities not to turn to the courts for the right to charge higher rates than actual costs would warrant.

As pointed out by Dr. Bonbright in the Minority Report, this basis of rate regulation has the support of Mr. Justice Brandeis of the U. S. Supreme Court, of many economists including W. Z. Ripley and John Bauer, of such legal authorities as Goddard and the late

Gerard C. Henderson, of such business executives as Owen D. Young, Chairman of the General Electric Co., and recently of all but one of the Interstate Commerce Commission.

Sloan proves cost basis practical.

Perhaps the strongest testimony to the soundness of the actual cost basis of rate control is that of President M. S. Sloan of the New York Edison to the practical effect that he adhered to that policy while President of the Brooklyn Edison and that under that policy the company prospered. He said:

"In practically every rate reduction that I made in the Brooklyn Edison Company, I gave no consideration to the question of the value of the property. It was simply whether we were earning and paying the eight per cent. return on the outstanding stock of the company. And by making those reductions the Brooklyn Edison Company has grown and prospered so that over a period of time from 1919, when I went there, up to 1929, the property has grown to the extent that today we are earning something like a gross revenue of about \$42,000,000 as compared to \$8,000,000 in 1919."

Minority bills cover two essentials.

Bills have been introduced by the minority providing the two essentials to restoring the effectiveness of regulation. These two bills provide:

(1) A method or transition to the prudent investment or actual cost basis of rate control - that is to the basis of rate control followed as a practical policy by Mr. Sloan as President of the Brooklyn Edison.

(2) A method by which municipalities can resort to competition in case utilities refuse to accept the actual cost basis of rate control.

Anything more than these changes is unnecessary and by adding to the complexity of regulation tends to reduce its effectiveness.

Anything less than these changes is inadequate and fails to meet the crisis revealed by the evidence submitted before the Revision Commission.

Coercion is necessary.

The element of coercion is necessary because of the obvious lack of any disposition on the part of the utility companies to enter into a contract that would deprive them of their asserted legal claim to a judicially determined "reasonable return on the fair value" of their property. The evidence before the Revision Commission revealed clearly the intent on the part of the utilities to fight on this issue to the last ditch. The whole tenor of their testimony reflects the insistent determination to hold to the strategic position they now occupy under the "present value" doctrine.

This defiant attitude is due to the fact that the dominant leadership in the utility field comes from persons who represent the speculative interest in these enterprises rather than the investment interest. And any change in the law which strengthens regulation will strengthen the security of the nonspeculative investor but will frankly deprive the companies of the almost limitless opportunities for speculative profits to which they have been accustomed under the present system.

The bills before us do nothing to get away from the hopeless "fair value" method of regulation which has produced the breakdown of public control. If they represented the only conclusions as to effective regulation derivable from the Commission's investigation there would be a single answer. - Public Ownership.

VALUATION BILLS

SENATE BILL NO. 2305

To amend the Public Service Commission Law, in relation to a statewide valuation, by the Public Service Commission of public utility properties, with exceptions.

PURPOSE: To provide a known rate base for every utility, except street railroads and rialroads, on the basis of which rates can be adjusted by a simple accounting procedure.

ORIGIN Based upon recommendations of the Mosher Research Staff of the Revision Commission, as outlined in the Donovan Report. To a considerable extent an adaptation of the Bauer plan which also is the basis of the valuation bill proposed in the Minority Report.

DISAGREEMENT The policy to be followed in establishing a stable rate base is one of the outstanding recommendations on which the Majority and Minority of the Revision Commission split. But the disagreement was chiefly concerned with the method of enforcing these valuations and their duration rather than on the basis for the initial valuation. In most respects the Majority Bill as originally framed corresponds closely with the Bonbright-Bauer Bill so far as the valuation future is concerned. It is not so precisely drawn as the Bonbright-Bauer Bill, and since its modification in response to utility criticism, it is considerably weakened.

DISCUSSION

The bill provides that the Public Service Commission shall complete, with all convenient speed, a valuation of all the property in the state actually used and useful in the public service by utility companies whose rates, charges,

prices or rentals are subject to the control of such commission, except railroad and street railroad property.

The bill provides in rough outline the basis for making these valuations. Three changes have been made since the original draft which are distinctly favorable to the companies.

(1) The words "and useful" have been added after "used" in the definition of the property to be valued (page 2 line 4). The inclusion of property which may vaguely be termed useful has proved in the past to open a wide door for the introduction of inflation in valuations. It may enable utilities to include in the rate base obsolete property under the term "stand-by plant" or excessive provision for future development.

(2) The words "fair value" have been introduced in subdivision 2 of section 106, (p 3 line 2) to define the basis on which the commission is to fix the value of the properties. This is the term under which the corporations have been able to advance all their exorbitant claims for additions to the rate base. It has been called a mythical concept.

(3) The sentence "In any hearing, etc. (quote p 3 or original bill lines 17-23 as marked) has been left out of the final draft of the bill. In the original bill it immediately preceded the last sentence of subdivision 2 beginning "Proof of any such valuation" (p 3 line 14). The object of the sentence was to place the burden of proving the commission's valuation wrong upon the person or corporation questioning it.

Representatives of the utility corporations appearing before the Senate Committee, except LeBoeuf, representing the Niagara Hudson Power Corporation, opposed this bill requiring a state wide valuation. Ransom contended that it would cost the taxpayers directly \$5,000,000. and that the burden on the companies for inventories and appraisals would be upwards of \$20,000,000. He said:

It is inconceivable to me that you could bring about the thing which this bill proposes for less than a burden of \$25,000,000 to \$30,000,000 upon the taxpayers and the customers of public utility service in this state." (hearings p. 22)

Ransom suggested that the experience of the Interstate Commerce Commission shows the futility of such a procedure as a wholesale valuation. (Minutes p 25)

According to Ransom, the position of the companies is "that in the long run flexibility is desirable" and that "the best rules that have been made by any body on the subject of the fair safeguards around investment in the public utility enterprises are the rules which are from time to time laid down ~~th~~ by the highest courts of the state and the nation."

Ransom, speaking for the Consolidated Gas group of companies, and LeBoeuf for the Niagara Hudson group, controlling between them more than 89 per cent of the electric power distributed in New York State, agreed on a point which is worthy of consideration. Both agreed that the resulting valuations would, in very many instances, justify higher rates than are now in effect.

Ransom pointed out that most gas companies and many electric companies were not charging rates warranted by a fair return on such valuations and asked "what would you do with your valuation when you had imposed on investors and customers an expense of millions and millions of dollars, followed by an expense which we may say would run up to five millions on the part of the taxpayers themselves?" (p 23).

LeBoeuf frankly favored such a statewide valuation on the ground that it would prove the Niagara Hudson systems rates low (p 293). He said the carrying out of this bill (including the contract feature) would mean a substantial increase in rates, at least throughout the Niagara Hudson system." (p 310).

In this connection it should be recalled that Prendergast testified that most rates in the state were based on book values and that to raise the valuation question, where the companies were content to let it lie, would mean rate increases.

These statements should not be taken as proving that consumers are not entitled in many instances to lower rates, but rather as recognizing the fact that, with the companies in control of the books and present court theories of valuation, the valuation road offers a very questionable solution to the problem of regulation.

Further discussion of the valuation bill should follow analysis of the bills providing for the use of valuations so arrived at. It is on the method of making such valuations effective that the majority and minority split.

SENATE BILL NO. 2325

Making an appropriation to pay the cost and expense of a statewide valuation, by the Public Service Commission, of public utilities properties, with exceptions.

PURPOSE: To pay the cost of the statewide valuation program during the balance of the present fiscal year and the fiscal year ending June 30, 1931.

QUESTION: Whether this does not show clearly how lightly the majority view their valuation program. It is estimated that the valuation will cost from \$3,000,000 to \$5,000,000. On the basis of this appropriation it would take ten years. At the end of that period the majority plan calls for a new valuation on a statewide basis along similar lines.

ORIGINAL MEMORANDUM
(Prior to final amendment)

RATE BASE CONTRACT BILL

SENATE BILL NO. 2293

To amend the Public Service Commission Law, in relation to stabilization of valuations and rate base by contract.

PURPOSE To lift the determination of valuation for rate making purposes out of realm of controversy for a period of years.

ORIGIN Probably developed from Prendergast's theory that a new valuation plan should be introduced through agreement with the companies. Contract plan appears as a proposal in the Donovan Report (p 67).

DISAGREEMENT The disagreement between the Majority and Minority is not on the purpose but on the method by which it can be accomplished. The Majority would have a revaluation every ten years and would give the companies the option of entering a contract to accept it for such period or not. The Minority would never have another valuation but would from now on keep the property up-to-date on the basis of actual prudent investment, and would directly or indirectly compel the companies to accept this basis for rate determination.

CHANGES WEAKEN THE BILL

This bill, as originally drawn, would have established very nearly the same rate making basis for the first ten years as that projected in the Bonbright-Bauer Bill. But, following the attack on it by utility executives in the Senate Committee hearings, large sections of it have been cut out, leaving it vague and flexible enough to enable the utilities to write into the contracts such

terms as suit them.

The revised bill is weakened, as compared with the original bill, as follows:

(1) "May" be substituted for "shall" in connection with the terms suggested as the basis for the proposed contracts. Thus the bill becomes merely suggestive of the circumstances which the Commission may consider rather than declaration of what it shall consider.

(2) The initial valuation, provided for in Senate Bill No. 2305, ceases to be the basic factor in the rate base and becomes merely one of many factors which may be considered.

(3) Provision that additions to the rate base during the life of the contract shall be in the basis of actual investment is eliminated and along with it provision that increases in return shall be based on the actual and necessary charges for such new capital. These factors become merely facts which may be taken into consideration.

(4) Definite provision for an equalization reserve and for a compulsory readjustment of rates when the reserve reaches a certain maximum figure is left out.

(5) Provision that the return to which a corporation is entitled shall be diminished by the amount of reduction of its charges due to retirement of securities, to be balanced by increases due the issuance of new securities or the investment of corporate earnings, is eliminated.

As a result of these changes the revised bill offers no material change in the present vague and ill-defined state of affairs, except that it permits a corporation, if it chooses, to take advantage of a most favorable arrangement it can obtain and then, if the future appears less favorable, to fix that favorable arrangement for a period of ten years.

(3) On the basis of this fake contract bill there is no justification for the expensive determination of valuation provided in Senate Bill No. 2305. The combinations represent something approaching a fraud at the expense of the public.

DISCUSSION

This bill really provides the test for the entire Majority program. It reveals the basic difference of the Majority and Minority.

All reports agree that "Valuation for rate making purposes" has been the rock on which regulation has been wrecked. All agree that a solution of the valuation question is necessary before regulation can be effective.

The Majority program is based on the theory that the utility companies will agree to a more workable theory of rate regulation. The Minority program is based on the theory that regulation implies coercion and that the utilities must be coerced into accepting it.

The greater part of the Minority Report is concerned with proof of the fact that the utility corporations do not want effective regulation and have always tended to resort to every possible service to evade it. It provides ample ammunition for demonstrating the unsoundness of the basic assumption of the Majority that the effectiveness of regulation can be restored by agreement with the corporations.

WATER COMPANY REGULATION BILL

(Senate Int. No. 1750, Pr. No. 2504)

The original bill amending the Public Service Commission law in order to bring water supply companies under the control of the Public Service Commission really represented a move against the extension of municipal operation of water systems. Revised in the last hours of the session to exempt municipal operations from control it passed the senate but died in the assembly.

Revision Commission testimony does not support bill.

The testimony before the Revision Commission was by no means convincing as to the advisability of extending elaborate regulation to private water companies and was certainly strongly against forcing municipalities to secure a certificate of convenience and necessity before paralleling a private system. In fact Mr. Thomas F. Murphy, Counsel for the New York Water Service Corporation, suggested that the best evidence of the lack of need for such regulation was the change from private to public ownership in the State.

Actually only 13% of the state's population is served by private water companies. Such private water companies do not enjoy exclusive franchises. Thus a municipality, if it feels that rates are unjust or conditions unsatisfactory, may resort to condemnation or authorize some other company to come in and parallel the existing system or may itself go into the business and parallel the existing system provided the company itself refuses to seal out at a satisfactory figure.

Municipal competition has force of regulation.

Thus the availability of municipal competition provides a very satisfactory check on the appetite of the private companies for profits. To go back on it would represent a step in the wrong direction. Yet the republican bill really aimed to substitute regulation under an exclusive franchise along the lines prevailing

in other utility industries.

Murphy was the chief witness on water company regulation, appearing first before the Revision Commission and later before the Senate Committee. He stated that the water companies were divided about 50 - 50 on the question of whether they wanted regulation but they were agreed unanimously that any regulation of private water companies should be extended to municipally operated systems.

Few water rate cases taken to courts.

Murphy called attention to the fact there were very few water rate cases taken to the courts. He explained it as follows:

"I call your attention to the fact that there are very few water rate cases. Now I think it is worth while to consider why that is true. I think it is because of the effectiveness of the condemnation statute, the effectiveness of the non-exclusive franchise, and the constantly overhanging threat of having someone come along and take the property away from you. * * * Suppose we go all through the Court of Appeals with a water case, we might win the case and just as soon as the decision is granted the community might decide - there is nothing to prevent them condemning your property, and we could not collect for the cost of the litigation."

This suggests that the controversies and litigations of the other utilities might profitably be approached from this angle rather than having the methods of regulation which are working far from successfully in other fields extended to our water systems.

Local bodies probably desire to retain control.

Murphy also made a point which might well have been taken into account by those who proposed the bill when he said:

"The point I make is that these other matters that are covered by orders of the Commission in other states where there is Commission control are covered by contract between the municipality and the water company in New York State. There is no doubt in my mind that there might be some worthy consideration given to the fact that some local bodies would not want to give up to any state body that authority which has been recognized and which has sort of grown into the jurisprudence of the State." (2537)

Corporation Counsels recommend limited control.

The Committee of Corporation Counsels, speaking through Joseph T. Mc Caffrey of Oswego, recommended:

"That the Public Service Commission be given jurisdiction to determine and fix reasonable rates for water distributed by private water companies, except in instances where municipalities now have such regulatory power."

But they showed definitely that they wanted such regulation of private water companies limited and that they did not want Commission control of municipally operated water systems.

Original bill required municipalities to secure certificate,

The original bill, as noted hereafter, specifically required a municipality that desired to develop its own water system in a territory served by a private company to secure a certificate of necessity and convenience, from the Public Service Commission.

The bill went further. It permitted the Commission to prescribe a uniform system of accounting for municipal water works and elaborate annual reports. It provided that the accounts of such municipality should be so kept as to show the cost and expense of maintaining the water system separately from the other cost and expense of municipal administration; and that any general or overhead municipal expense, covering in part the maintenance of such system, should be apportioned, for the purpose of such accounts, according to a rule ordered and approved by the Commission.

Provided that Commission publish annual report on each municipal operation.

The bill further provided that the Commission should make an annual field audit of the fixed capital and operating

expense accounts of all municipalities owning and operating water supplies and should publish a report thereon once a week for three successive weeks in a newspaper of general circulation in the municipality.

All these provisions directed against municipal operation were stricken out in the final draft of the bill and the following was substituted: "The provisions of this article shall not apply to the owning, maintaining or operating of such a municipality, of a water system, not the selling, furnishing or distributing of water by it."

The original bill was distinctly obnoxious and it is a question whether the elaborate control of private water companies serving only 13% of the population provided in the final draft of the bill is necessary in view of the check on private companies implicit in the availability of public competition.

ORIGINAL MEMORANDUM
(Prior to final amendment)

Senate Pr. 2504

REGULATION OF PRIVATE WATER COMPANIES BILL

SENATE BILL NO. 2314.

To amend the Public Service Commission law, in relation to the regulation and supervision of water supply companies and providing for supervision and regulation of accounting systems and annual reports of municipal water systems.

PURPOSE - To subject private water companies to state regulation in the same manner as other utilities. To render it more difficult for a municipality to undertake to supply its own water where a private corporation is already operating in the territory.

ORIGIN - Donovan Report recommended that private water companies should be subjected to state control with regard to:

- "(a) Rates. All tariffs for water should be placed on file with the Commission and the Commission should be given power to order changes.
- (b) Service.
- (c) Financing. The issuance of securities should be subject to the jurisdiction of the Commission.
- (d) Uniform Accounts.
- (e) Annual Reports.
- (f) Suspension, Annulment or Cancellation of Certificate.
- (g) Investigation of Complaints."

AGREED - All members of the Revision Commission apparently agreed to this outline and included in their vote the idea that municipal water companies should not be affected except to the extent that they should be required to file annual reports.

MAJORITY report practically followed this understanding, clearly specifying:

"We recommend that there be no control over municipal systems except that they should be required to file an annual report and install such a uniform accounting system as the commission may prescribe." (p.47)

POSSIBLE JOKER - In view of these recommendations and understandings it appears that Section 89, which defines the jurisdiction of the Public Service Commission over municipal systems, contains jokers which are designed to render it much more difficult for municipalities to go into the water business where it appears to their interest to do so, and which may provide private interests with specious arguments against municipal operation.

DISCUSSION

The first and most serious feature of the bill, which has no basis in the majority report or in the action of the commission, is the requirement that a municipality cannot develop its own system in territory served by a private water corporation without a certificate of convenience or necessity from the Public Service Commission.

Section 89-1, subdivision 2, of the Public Service Commission Law, if this bill is passed, will read:

"2. No municipality shall build, maintain, or operate for other than municipal purposes any water system nor shall it issue or cause to be issued any bonds or incur any bonded indebtedness for a water supply, or for such system, for other than municipal purposes without first having filed with the public service commission a certified copy of any and every order, required by law, of the water power and control commission authorizing the taking or using of the water supply therefor and the construction of such system; and if it shall appear that the water system proposed to be built, maintained and operated by such municipality shall be designed to parallel any then existing water-works corporation's system or to serve any territory or part thereof already served by such water-works corporation, for the service of which territory such water-works corporation is then duly enfranchised, such municipality shall not build, maintain or operate any water system, or issue any bonds or incur any bonded indebtedness therefor, unless and until a certificate of authority for the construction, maintenance and operation of such municipal water system also shall have been granted by the public service commission after due hearing, whereby the commission determines and certifies that such construction, maintenance and operation is necessary or convenient for the public service. If the certificate of authority is refused, no further proceedings shall be taken by such municipality before the commission, but a new application may be made therefor after one year from the date of such refusal.

This represents a backward step at a time when there is a growing feeling that the availability of municipal competition is one of the most important adjuncts to effective regulation. In this connection the reference in the minority report to the testimony of Thomas F. Murphy, Counsel for the New York Water Service Corporation is important.

Murphy stated to the Revision Commission that one of the reasons why the consumer does not need the protection of regulation in the matter of water rates charged by private water companies is "the nonexclusive aspect of the franchise with respect to a water company." Murphy said:

"Nowadays, checks afforded by condemnation, non-exclusive franchises, have been particularly effective in New York State and I think that the strongest evidence of that is the change that has been effected from private to municipal ownership in this State * * *. The transition from private to municipal ownership has been a very effective check with regard to rates."

For full reference to Murphy's testimony see Minority Report, Pages 154 - 156.

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Some of the requirements imposed upon municipal water systems by subdivisions three and five of Section 89-1 seem unnecessarily burdensome. They also appear to go somewhat beyond the scope of the majority report.

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CHANGES IN DRAFT OF BILL

In the second draft of the bill the sentence: "The burden of proof to justify every accounting entry questioned by the Commission shall be on such corporation, and the Commission may suspend a charge or credit pending submission of proof by such corporation." (Page 10, Lines 8 to 11)

Has been revised to read:

"At any such hearing the burden of proof shall be on such corporation to establish the correctness of the accounts in which such outlays and receipts have been entered, and the Commission may suspend a charge or credit pending submission of proof by such corporation." Page 10, Lines 8 to 12.)

This corresponds to changes in bills applying to other utility industries and somewhat weakens the authority granted the Commission in the first draft of the bill.

On page 11, Lines 23 to 24 the phrase "Unless the Commission otherwise orders" has been inserted since the first draft.

On page 12, Lines 7 to 10 of the revised bill, the sentence "The Commission for good cause shown may allow changes without requiring the thirty days notice under such conditions as it may prescribe." is substituted for the following sentence in the original bill: "A copy of such notice also shall be mailed or delivered to each consumer of water furnished by such corporation thirty days before the time when, as stated, the change will go into effect."

A similar sentence was cut out of the original drafts of Senate Bills, 2292 and 2308, in response to protests by utility representatives.

Two other provisions which appeared ~~in the original bills~~ were omitted in the final draft, corresponding to similar changes in security authorization bills 2297, 2299, 2300 and 2301. These ~~sentences~~ were

"and aggregating, together with all other notes and evidences of indebtedness payable in less than twelve months, not more than five per cent of the stated value of the securities of the corporation then outstanding"; (Page 20, Lines 3 to 6)

"No change shall be made in the priority or voting rights of the capital stock of a water works corporation without the approval of the Commission, even though such change involved no change in the total stated capitalization of the corporation." (Original bill Page 21, Lines 6 to 9)

PEOPLE'S COUNSEL BILL

(Senate Int. No. 1429)

The republican bill providing for a people's counsel appointed by the Attorney General emphasizes and tends to perpetuate the false idea that the Public Service Commission is a judicial body in the nature of a utility court.

The weight of the evidence presented before the Revision Commission is overwhelmingly against this theory and in favor of re-emphasizing the aggressive administrative function of the Public Service Commission.

The testimony before the Revision Commission shows that sentiment in favor of a people's counsel was due almost entirely to temporary characteristics of the Public Service Commission under the Prendergast administration. Commission initiative steadily declined and there was lack of hospitality to consumer complaints.

This temporary need for an official to impersonate the Commission's proper aggressive interest in the public welfare has really been met by the change in the personnel. The present personnel may be expected to resume the initiative and to assist consumers in the presentation of their view point.

Prendergast testifies Commission has duty to take initiative.

Prendergast himself testified that the Commission has ample authority to initiate proceedings for the fixing of just and reasonable rates. (p 62). He testified further that municipalities have the right to assume that under the statute it is the duty of the Commission to undertake the presentation and prosecution of valuation questions, or rate cases involving these questions. (p 121)

Attwill of the Massachusetts Commission and Ellis of the Indiana Commission both stressed the importance of Commission initiative on behalf of the public interest. (pp 1551 and 3000) Evans, former member of the Pennsylvania Commission went even further in expressing this view point. He said that regulation was to take the place of competition which formally existed and that Commissioners must have the attitude that they are to take the place of the force of competition.

The Commission, according to Evans, should handle important cases on its own motion and should carry the burden of presenting the public's case with such aid as the complainants can afford (4134)

Jeffe, representing about 4,000 industrial users of electricity, expressed the belief that the appointment of a Public Service Commission which will truly represent the people would prove a more effective relief for existing conditions than revision of the law. He suggested that a consumer's legal adviser might be attached to the Commission and that if a complaint were found to be well founded "then the Commission could use its legal and engineering staff to prepare and present the case." (2378)

Counsel Tingley says people's counsel should be part of Commission.

Most important is the testimony of Tingley, former Maryland people's counsel, who indicated that the people's counsel idea in Maryland was merely an embodiment or extension of the Commission's own initiative in prosecuting rate cases on behalf of the public interest. Originally this official was simply the assistant counsel of the Commission assigned to such work.

Tingley said specifically that the people's counsel should not be independent of the Commission. He asserted that part of the executive powers of the Commission are the institution of rate proceedings and other proceedings in the interest of the public(1433)

Bills encourage mistaken trend.

Such testimony before the Revision Commission emphasizes the fact that the function which the People's Counsel Bill aims to transfer to the Attorney General's Office is really a proper function of the Commission itself, and that, to the extent that it is segregated, the responsibility for protecting the public which is the primary function of regulation, will be divided. This represents an encouragement to a trend in the wrong direction which has been going on for a number of years with the result that the New York Commission came to act simply as a judicial body. The present bill would thus tend to transform the Public Service Commission into another court in which the people would have to fight their unequal battle against the huge resources of the corporations.

If it proves desirable to have such an official representing the Commission's initiative on behalf of the public, the Chairman of the Commission can designate an assistant counsel to perform that function without any amendment to the present law being necessary.

ORIGINAL MEMORANDUM

PEOPLE'S COUNSEL BILL

To amend the Public Service Commission law in relation to creating the office of people's counsel.

SENATE BILL NO. 1659

PURPOSE - To provide an official specifically charged with the responsibility of representing the consuming public, whether individual consumers or municipalities, in connection with utility problems.

ORIGIN - First suggested in Donovan questioning of Prendergast, who was opposed to the idea. Facts developed in testimony of Tingley, former People's Counsel of Maryland. Constantly brought up as counter to judicial tendency of commission.

RECOMMENDED, in both Majority and Minority Reports.

DIFFERENCE, question of appointment. Majority recommended appointment as a Deputy Attorney General. Minority recommended appointment by the Governor. Vote in Commission 5-2 against Minority recommendation. Majority recommendation adopted by 5-2 vote with Walsh and Bonbright in the negative (Feb. 28, Minutes p 133)

The Bill is based on the majority proposal as contained in the Majority Report p. 31.

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The Minority recommendation was: "

"(3) Provide for a People's Counsel, appointed by the Governor of the State, with authority to initiate and handle cases in the interest of the public before the Public Service Commission and if necessary in the courts. Provide for his full cooperation with municipalities or other consumer groups. Place at his disposal the full engineering, accounting and statistical staffs of the Public Service Commission."

Boubright in Senate Committee hearings referred to this amendment as a makeshift of which he didn't expect much. (Minutes p. 181)

(Add to People's Counsel Bill)

PEOPLE'S COUNSEL MATERIAL

Prendergast testified that the Commission has ample authority to initiate a proceeding for the purpose of fixing just and reasonable rates . (p 62)

Prendergast testified that municipalities have the right to assume that under the statute it is the duty of the Commission to undertake the presentation and prosecution of valuation questions, or rate cases involving those questions. (p 121)

Tingley, Former Maryland People's Counsel, testified that the people's counsel idea in Maryland was merely an embodiment or extension of the Commission's own initiative in prosecuting rate cases on behalf of the public interest. It was simply that the assistant general counsel to the Commission, to whom was assigned the work of appearing before the Commission in the public interest, became popularly known as the "people's counsel" (pp 1411 - 12)

Tingley said that beginning in 1915, instead of rate matters and other complaints being instituted on behalf of the members of the public, they came to be instituted by the Commission itself. The Commission would enter a complaint of its own motion and the "people's counsel" would appear on behalf of the public and would try the public's case. These assistant counsels appearing as representatives of the public used the technical assistance of the Commission both as advisers and witnesses. (p 1412)

No change in the present New York law appears necessary to provide for such a development.

Tingley said that the people's counsel should not be independent of the Commission. He asserted that part of the Executive powers of the Commission are the institution of rate proceedings and other proceedings in the interest of the public. (p 1433)

Consequently the bill for creating an independent people's counsel as a part of the Attorney General's Office really runs counter to the most important testimony offered on the subject.

Commissioner Atwell of Massachusetts also stressed the importance of Commission initiative in rate matters. (p 1551)

Commissioner Ellis of Indiana, testified that in Indiana the Commissioner in charge of a hearing has the added duty of working out the method of presenting the case against the company concerned. (3000) Similarly he testified that Indiana Commissioners go to the extreme limit in attempting to assist the petitioners in the presentation of their cases, frequently adopting the role of attorney for them in helping them to get what they want into the record. (p3021)

Such testimony before the Revision Commission emphasizes the fact that the function which the People's Counsel Bill aims to transfer to the Attorney General's Office is really a proper function of the Commission itself, and that, to the extent that it is segregated, the responsibility for protecting the public which is the primary function of regulation, will be divided. This represents an encouragement to a trend in the wrong direction which has been going on for a number of years with the result that the New York Commission came to act simply as a judicial body. The present bill would thus tend to ~~transform~~ ^{transform} the Public Service Commission into another court in which the people would have to fight their unequal battle against the huge resources of the corporations.

The Prendergast regime was largely responsible for the demand for a people's counsel. It was characterized by a decline in the Commission initiative on behalf of the public and by a lack of hospitality to consumer complaints. This temporary need for an official to press aggressively the public interest has really been met by the change in the personnel of the Commission. The present personnel may be expected to resume the initiative and to assist consumers in the presentation of their view point.

Testimony of E. F. Jaffe, before the Revision Commission adds to the general weight of evidence on favor of a changed attitude on the part of the Commission rather than such a change in the law as is contemplated by the proposed appointment of a people's counsel outside the Commission.

Jaffe, representing 4,000 industrial users of electricity, testified that the attitude of the existing commission seemed to be to discourage complaints against the utility companies. He advocated a consumers' legal adviser attached to the Commission. If the complaint was found to be well founded "then the Commission could use its legal and engineering staff to prepare and prosecute the case" (p 2378)

Jaffe said: Let us not look to the revision of the Public Service Commission law for relief from present conditions, but rather let us look to the appointment of a Public Service Commission which will be the true representative of the people - a Commission which will place at the disposal of the consumer all of its utilities (p 2390)

Cited New Jersey where the counsel for the Commission went over their case and from that time on the case was presented by the counsel of the Commission. (p 2408)

Jeffe suggested that consumer complaints should be made informally before the Commission and that the Commission should then use its engineering and legal staff to determine whether the complaint had merit. If it had not, the Commission should not entertain the complaint. If it had, then the Commission should draw up the formal complaint and prosecute it. (p 2420)

Harold Evans former member of the Pennsylvania State Public Service Commission says:

Now, regulation as I understand it, was to take the place of competition which formally existed either in practice or in potentiality between utilities, and if regulation is to take the place of competition, in my judgment the Commissioners themselves must have the attitude that they are to take the place of the force of competition in regulation of the Public Service companies. (4131)

(Again emphasize the fact that republican bill goes against the weight of evidence.)

Thinks the most important cases should be handled by the Commission on its own motion, with such assistance as the complainant or public can afford, but that the burden of carrying these cases cannot be laid on the public. (4132)

Evans says: "That the most effective way to make regulation succeed is not so much by aiding the complainant, whether they be municipalities or private complainants, as it is to get a change to procedure by which the Commission itself, in the important cases coming before it, takes the initiative."

Now, my thought is that the burden on the complainants should be merely to establish a prima facie case to the Commission which makes it determine that it is desirable for it to proceed, and that after that the Commission should proceed on its own initiative with such aid as the complainants can afford.
(4134)

Thinks what is needed is not so much a people's counsel as it is the sense of responsibility in the Commission itself for representing the public. (4136)

MOTOR BUS REGULATION BILL

(Senate Int. No. 1826, Fr. No. 2386)

The motor bus regulation bill was framed with considerable disregard of the interest of municipalities and other local governments in the operation of buses within their limits. It was based largely on the recommendations of representatives of the motor bus industry who testified that the development of the industry was hampered by the attitude of certain local governments.

The bill was dropped when division in the republican ranks, due to opposition from Buffalo and Rochester, rendered its passage through the Senate impossible.

Representative of bus industry favors control.

The most extensive testimony on motor bus regulation was given by Raymond Cornwall, representing the New York Motor Transportation Association and the Colonial Motor Coach Association. Cornwall said:

"Public Service Commission under existing laws has no jurisdiction to regulate motor vehicle lines, except by virtue of the broad definition of common carriers, although the Commission does have authority to grant certificates of public convenience and necessity but this is derived through the Transportation Corporations Law.

"Such authority has no place in the Transportation Corporations Law and should by legislation be taken out of that law and reenacted in modified form in the Public Service Commission law." (p 3864)

Buffalo resents commission interference.

As noted hereafter, testimony from representatives of the city of Buffalo, shows that the power of the Public Service Commission to issue certificates of convenience and necessity has blocked efforts of that city to carry out its transit ideas.

From the point of view of local governments Cornwall's most important recommendation called for the doing away with local consents in cases where bus lines pass through more than one local unit. (3865)

He agreed that cities should retain their power to grant or refuse consents in cases where transportation is confined within the city limits. But even then he believed that certificates of convenience and necessity should be required. (4197)

Cornwall advocates commission veto.

He indicated that cities should have the primary regulatory power with sufficient veto power in the Public Service Commission to prevent oppression by the city. (4254)

For full list of his recommendations see Cornwall memorandum (pp 3864 - 3869)

In the course of Cornwall's testimony Donovan submitted a bill prepared by Charles Hyneman of the research staff, based on the bill originally known as the Thayer bill and the model motor carrier law adopted by the National Association of Railroad & Utility Commissioners in 1923.

Inadequate discussion in Revision Commission.

All members of the Revision Commission agreed to the proposition that control of the motor bus industry should be regularized under the Public Service Commission. But the discussion in the executive session was entirely inadequate to serve as a basis for drafting a bill involving so many issues of state vs local autonomy.

Bonbright expressed the specific reservation that such extension of the Commission's jurisdiction over motor buses should not apply to intra city operations. As shown in subsequent pages, however, the bill actually gives the commission extremely wide powers over intracity bus operations.

Bill gives local authorities limited authority.

So far as intercity bus lines are concerned the local authorities retain ^{little} ~~some~~ beside the right to make conditions with respect to rate of speed and protection of the safety of their inhabitants.

In addition to arousing the hostility of Buffalo and Rochester, this bill drew forth a strong denunciation from Mayor Walker of New York City.

MOTOR BUS REGULATION BILL

SENATE BILL NO. 2326

To amend the Public Service Law in relation to state regulation of omnibus lines.

PURPOSE To give the Public Service Commission explicit statutory authority to regulate the motor bus industry, and to clarify and bring into one article all of the laws relating to regulation of such motor carriers.

ORIGIN Sponsored by the Public Service Commission in the form of the Thayer Bill, which received the approval of both houses of the Legislature but was vetoed pending the report of the Revision Commission. Present bill follows recommendations of Donovan Report based on memorandum by Dr. Charles S. Hyneman of the Research Staff.

AGREED to by all members of the Revision Commission on motion by Stone seconded by Bonbright. But Bonbright asked before seconding it "We understand among us, that does not apply to intracity?" and Donovan answered "No". The bill as drawn apparently applies to intracity bus service.

DISCUSSION

Discussion in the hearings before the Revision Commission and in the reports has centered largely around the question of the rights of local government units through which the motor buses operate. Representatives of the industry emphasized the extent to which the development of the industry was hampered where local governments:

- (a) unreasonably delayed or withheld consent
- (b) limited the duration of such consent to such an extent as to render financing difficult.

(c) attached to the granting of such consent conditions detrimental to the industry.

Representatives of the City of Buffalo brought up an issue connected with this bill at the hearings in that City. The city is in constant conflict with the International Railway Co. over fares and service. It has attempted to help the situation by sanctioning bus operation according to an approved plan but has been prevented by the refusal of the Public Service Commission to grant the bus companies a certificate of convenience and necessity.

Mr. Morgan, public utility statistician for the city testified that the Howe Co. had a bus layout which would have met the situation, but that its application was rejected by the Public Service Commission on the ground that it was inadequately formed, although the city thought otherwise.
(Record - 3381)

Mayor Schwab testified "The Council has given permission on many occasions to bus lines to operate, and when the application came before the Public Service Commission, through some entanglement in the law and in some way, there was no legality attached to it and we could not serve the public and could not run bus-lines busses." (Record pp 3382 - 3)

There seemed a general feeling in Buffalo that cities should have more control over the operation of busses within their limits.

The Majority recommendations, embodied in the bill, follow the Donovan Report. They are:

References. Donovan Report pp 175 - 191

Majority Report pp 44 - 46

REGULATION OF MOTOR CARRIERS

We recommend:

(1) That legislation be enacted to confer explicit statutory authority for regulation by the Public Service Commission of motor carriers to be included in the Public Service Commissions Law.

(2) That provision be made for an adequate number of inspectors on the Commission's staff to make periodic inspections of motor buses.

(3) That a certificate of convenience and necessity from the Public Service Commission should be required, as it is now and in this connection the Commission should have power:

(a) To refuse a certificate unless reasonable regulatory conditions are complied with in respect to franchise provisions.

(b) To revoke a certificate in the event of noncompliance with any of its provisions or a failure to comply with an order of the Commission or for violation of any provision of law.

(c) To approve or disapprove the transfer or assignment of such certificate.

(4) That cities, towns and villages should be proper parties to any proceeding in regard to a certificate of convenience and necessity.

(5) That the Commission should have the same authority as to rates, service and security issues as it now possesses for other utilities, including the power to approve securities evidences of indebtedness or long term debts, outstanding or to be issued.

(6) That in regard to buses operating through two or more local government units:

(a) The Commission should have power to issue a certificate of convenience and necessity without local consent if such consent is unreasonable refused or withheld, or if unjust or unreasonable conditions are attached to

the granting of such local consent. In such event the Commission should have the power to order such terms and conditions as it may deem just and reasonable.

(b) All towns and villages coming by resolution under the terms of section 66 of the Transportation Corporations Law (as provided in section 67 of said law), should be required to file notice to that effect with the Public Service Commission.

(c) Consents for inter-city bus service should be transferable for an unlimited period.

(d) Local authorities should not be permitted to impose a charge for granting the consent to inter-city buses, but should receive a payment from the bus operator in the form of a tax.

(7) That there should at present be no regulation of motor trucks as a public utility.

SUBMETERING REGULATION BILL

(Senate Int. No. 1600, Pr. No. 2408)

The bill providing a modified form of Public Service Commission regulation for companies submetering electricity to tenants of large buildings would postpone settlement of the real issue namely the controversy between the New York Edison Co. and the big real estate owners over the continuance of submetering.

The New York Edison Co. may be held largely responsible for the development of submetering. It offered builders of large office buildings and apartment houses the opportunity to buy wholesale, and retail to their tenants in the face of the possibility that otherwise these buildings would be equipped with private generating plants.

Potential competition led Edison to encourage submetering.

In other words, faced with potential competition, the Edison Co. felt it necessary to offer these large buildings current at least as cheap as they could generate it themselves.

These large buildings buy current from the Edison Co. at 4¢ or less per kilowatt hour, use 50% more or less of what they purchase for the operation of the building and retail the remainder to their tenants at 7¢ a kilowatt hour through wiring which they have installed and through meters either installed by themselves or by submetering companies.

Now wants to abolish it.

The New York Edison Co., under the leadership of Mr. Sloan, wants to abolish submetering in order to sell directly to these tenant consumers. Sloan contends that they represent the cream of the business because they can be served cheaper than domestic customers living in less concentrated quarters. He contends that the excess profits derived from the spread between the wholesale rates at which their current is sold to the buildings and the 7¢ retail rate would make possible a

\$14,000,000 reduction in rates if submetering were abolished.

The real estate men contend that the margin between what the service costs them and what they charge tenants is reckoned into the general income of the building and that rents are established accordingly. They further urge that large property rights have been established on the basis of submetering and that large damages would result from its abolition.

In connection with the present bill the Edison interests sought indirectly to ~~accomplish to~~ end submetering either by having submetering companies declared electrical corporations subject to all the regulatory provisions of the law including the obligation to secure a certificate of convenience and necessity or by having their charges regulated on the basis of a reasonable return on the capital invested in the business.

Reduction in Edison rates might accomplish purpose.

Under the proposed law the Edison Co. would have had one way open to render submetering unprofitable. Testimony indicated that it thrives on the wide and unjustifiable spread between wholesale and retail rates. If the Edison Co. should cut its retail rate to 5¢, the proposed law would require the submeterers to meet that cut and their wide margin would vanish.

Bonbright, in the executive session, referred to submetering as a vicious system which ought to be abolished. In view of the Consolidated Gas Company's original commitment to the system, however, he felt it advisable to dodge the issue.

The bill under discussion, which passed the Senate but died in the Assembly, is based upon the proposals of the President of the Real Estate Board of New York and consequently may be considered favorable to the submetering people. Their representative before the Senate Committee supported the bill and vigorously replied to the attack of Ransom, representing New York Edison.

SUBMETERING REGULATION BILL

To amend the Public Service Commission law, in relation to the regulation of submetering companies.

SENATE BILL NO. 2389

PURPOSE to provide protection as to rates and service for consumers who secure their electricity through submetering companies without abolishing submetering.

ORIGIN. The bill in its present form is based upon the proposals of Peter Grimm, President of the Real Estate Board of New York, and consequently represents the view point of those who favor a continuation of submetering.

AGREED. The recommendations embodied in the bill were approved without objection, Walsh, however, asking that the record show that he did not take part in the discussion or vote.

In connection with Bonbright's vote, however, his statement is enlightening as to his position. It is included in the following dialogue taken from the record of the February 28th Executive Session, pages 127 - 128, discussing the recommendation on submetering:-

THE CHAIRMAN: It does not go very far.

MR. DONOVAN: You have some pretty hard problems here, hard to deal with.

MR. STONE: How much further would you go, unless abolishing them?

THE CHAIRMAN: You could limit their charges for electricity, based upon reasonable net return.

MR. DONOVAN: We are making a start on something pretty new and pretty green. This is about as you can go.

MR. BONBRIGHT: If it were not for the vested interests of real estate in this vicious system, I should say we ought to vote to abolish this entire sub-metering system. The Consolidated Gas Company has gotten itself into this difficulty, and there is

some question whether it should fairly proceed at once to go back on its original understanding. Therefore, I am inclined to think we had better dodge the issue in this report, but I do not want to leave the impression that I am doing anything else but dodge it, because this won't solve the problem. The whole problem is up for solution somewhere else.

MR. DONOVAN: Upon the determination of the ultimate issues, this is done to deal with the situation that now demands attention.

Mr. Bonbright: Yes, I think it is good.

DISCUSSION

Grimm's proposals, as summarized in the Donovan Report, were:

(1) That submetering companies should be prohibited under the law from charging more than the going rates set for like service by the local electrical company; (2) that the legal rate of interest should be paid upon deposits of consumers; (3) that electrical meters should be subject to the inspection of the Public Service Commission, are desirable from the point of view of public interest, if the present situation continues.

Some facts about submetering brought out in the Donovan Report may be summarized as follows:

(1) The problem of submetering arises from the spreads between the wholesale and retail rates for electricity, giving landlords a good profit on buying wholesale and retailing to tenants.

(2) Sloan of New York Edison said he would be able to reduce rates by \$14,000,000 if submetering was abolished.

(3) The problem is complicated by the fact that until recently the N. Y. Edison Company has encouraged companies engaged in constructing large apartments and office buildings to adopt submetering in order to prevent their installing private plants.

(4) More than 50% of the current purchased by these large

buildings is used for the operation of the building (elevators, etc.), the balance being resold to tenants.

(5) Public Service Commission^s in 8 states forbid landlords to submeter, in 5 states it is permitted and in two of these the Commissions indicate that they would treat submetering as a public utility subject to commission control.

(6) If landlords engaged in submetering were treated as part of the distributing system and subjected to the rule of reasonable return it would doubtless result in reduction of rates to submeter tenants below the prevailing rates for domestic consumers.

(7) Sloan contends submetering business constitutes the cream of the business.

(8) Sloan proposes that submetering be eliminated by subjecting submetering companies to the necessity of securing certificates of convenience and necessity.

(9) Subjection of submetering to full commission regulation would burden commission with large amount of added work and would involve a more discriminating system of cost accounting.

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The discussion shows that the proposals represent a frank desire of all members of the Commission, including Counsel Donovan, to avoid the real issue - or to postpone its final settlement. Assemblyman Stone, questioning Treanor who represented the Real Estate Board before the Senate Committee, appeared to lean to the view that in justice submetering companies should be subjected to the same rule as to reasonable rates and return on investment as applies to other electrical corporations.

Treanor expressed approval of the entire bill in principle and suggested a few modifications in wording (Minutes of Senate

Committee Hearing pp 398 - 400)

Percival R. Moses, appearing before the Revision Commission on this subject, referring to the rate of 4¢ a kilowatt hour or less charged to buildings which submeter to their tenants, said:

" I personally can see no justification for the differential why our tenants should pay, say 7¢ and we should pay, say, 4¢. If there is a profit to us in buying it and reselling it, the company should be able to resell it direct to them, at 4¢, plus a very minute fraction" (p2439*)

Moses contended that the middle man functions today only because of the unfair rate structure "which has grown upon the basis of charging what the traffic will bear". This suggests that the New York Edison Co. could automatically solve the problem by dropping its maximum domestic rate to 5 ¢ a kilowatt hour.

ACQUISITION OF STOCK BILL

To amend the Public Service Commission law in relation to the acquisition and holding of stock of utility companies.

SENATE BILLS 2290, 2296, 2298, and 2328.

PURPOSE. To stop up loopholes in the commission's control over the acquisition by outside interests of control over operating utilities.

ORIGIN. This was first recommended by Prendergast and later by Fitzpatrick as representing the view of the Public Service Commission. It does not represent a new departure but a bringing of the law into line with the practice of the commission.

AGREEMENT. The provisions of this bill were adopted without objection by all members of the Revision Commission. (Minutes Feby. 27th, pp. 103-114) They are discussed in the Donovan Report pp. 127 to 130, and in the Majority Report, pp. 39-41.

WEAKNESS. The provisions of the Public Service Commission law requiring the approval by the Commission of the acquisition of 10% or more of the total capital stock of a utility corporation will be changed to refer to 10% or more of the voting stock. In this the bill follows the Majority Report. It is a question whether the new wording should not rather follow the Donovan Report which says:

"In view of the possible complications that may result from changing voting powers of stock and the doubt as to how completely the Public Service Commission can control such changes which do not affect total capitalization, it would seem better that, if the suggested change is to be made, the words "more than ten per centum of the total capital stock" be allowed to remain and that the words "or more than ten per centum of the voting capital stock" be added."

Application. Bill No. 2290 applies to railroads, street railroads and other common carriers; Bill 2296 to steam corporations; Bill 2298 to gas and electric corporations, and Bill 2328 to telegraph and telephone corporations.

GENERAL DISCUSSION

These bills include four separate amendments to the public service commission law.

(1) Placing telegraph and telephone companies on the same basis as other utilities with respect to acquisition of stocks of other telegraph and telephone companies by adding the proposed new sentence at the beginning of Section 100, as indicated in Senate Bill 2291.

(2) Providing that the requirement of Public Service Commission approval of the acquisition of stock in utility corporations be extended to refer to acquisition of 10% or more of the voting stock.

This is another amendment precipitated by the deal by which the Associated Gas and Electric Company was able to transfer control of the Staten Island Edison Company to the will of the Public Service Commission. According to the Donovan Report:

"This change is proposed to meet the situation created by the decision of the Appellate Division (Third Department) of the New York Supreme Court in the New York Electric Co. case, to which reference has already been made. Under this decision, if sustained in the Court of Appeals, where it is now pending, The Associated Gas & Electric Co. will be able to evade the previous orders of the Commission sustained by the decision of the Appellate Division in the New York-New Jersey Super-Power Connecting Corporation case, which heretofore prevented that company from

from placing the control of the Staten Island Edison Corporation in a foreign corporation."

Killeen, speaking for Associated Gas & Electric interests in Western New York before the Senate Committee, contended that every one of these bills on the transfer of stock was economically unsound. He said the ownership of the stock made no real difference to the public. (Minutes pp. 137, 148, 245).

Le Boeuf, on the other hand, speaking for the Niagara Hudson Power Corporation, in general approved of this provision. (Minutes, p. 282.)

(3) Providing that the consent of the Commission shall not be given to the acquisition of any stock of a public utility corporation for which its consent is necessary unless it shall have been affirmatively shown that such acquisition is in the public interest.

This is apparently an attempt to state as legislative policy the policy which the Public Service Commission contends it follows in approving applications for the purchase of stock. The statement, as contained in the bills, was strenuously opposed by the utility representatives before the Senate Committee. LeBoeuf, for Niagara Hudson Power, would have the Commission approve "unless it were affirmatively shown to be contrary to the public interest."

The Donovan Report suggests that the latter language would be more likely to stand up in the courts. He says:

"Mr. Brewster (of the Public Service Commission) pointed out that the Maryland Court in passing upon the Maryland statute, similar to the New York Statute, ruled

that the Commission was required to show such acquisition unless it were affirmatively shown to the contrary to the public interest. He also stated that the decision of the Appellate Division (Third Department) of the New York Supreme Court, in the New York Electric Company case had implied that the discretionary power of the Commission in a case of this kind was limited."

The bills, in this particular, follow the wording of the Majority Report. Although the subject came up in the executive sessions of the Revision Commission it was never critically considered or formally voted on.

(4) Providing that a stock corporation shall not increase its proportion of the voting stock of a utility corporation in the process of the reorganization of such corporation without the consent of the commission.

This appears to have originated outside of the various reports. It is included in Senate Bills 2296, 2298 and 2328, but not in 2290, which applies to railroads, street railroads and other common carriers.

As a whole the bill provides against exceptional abuses and does not touch the fundamentals of the ineffectiveness of regulation.

SECURITY AUTHORIZATION BILLS

To amend the Public Service Commission law in relation to the issuance and sale of stocks and other securities.

SENATE BILLS 2297, 2299, 2300 and 2301

PURPOSE - to strengthen the control of the Public Service Commission over the financing of the public utilities.

ORIGIN - practically all the suggestions originated either with the members or the staff of the Public Service Commission.

AGREED to by both Majority and Minority Members of Revision Commission.

FAIL in final form to include 3 of more important proposals under this head in majority report.

Recommendations which failed to register are:

(1) Provision putting telegraph and telephone companies under same limitation as to commission control of security issues as the other utilities.

(2) Provision against change in priority or voting rights of the capital stock of utility corporations without the consent of the commission.

(3) Provision extending the control of the commission over excessive issues of short term notes.

These three important provisions appeared in the original bills but were eliminated as a result of the protests of utility representatives at the hearings before the Senate Committee.

REFERENCES Donovan Report pp 118 - 125

Majority Report pp 37 - 39

GENERAL DISCUSSION OF THIS GROUP OF PROPOSALS

Majority report, p 38, says in regard to the original amendments proposed under this head.

"The changes in the law recommended above are designed to bring about the strengthening of the control of the security issues of public utility corporations and to make the provisions of the law relating to the securities of different classes of utility corporations more nearly uniform."

The suggested changes in the law relative to security authorization originated largely with Mr. Fitzpatrick, Chief of the Accounting Department of the Public Service Commission. They were recommended in the Donovan Report, pp 118 - 125, with extensive discussion based on a memorandum by Scharff of the research staff. They were generally adopted without disagreement by all members of the Revision Commission at the February 27th executive session, without much discussion, (Minutes pp 69 -78) and were incorporated bodily into the Majority Report pp 37 - 39.

These proposals may be briefly summarized as follows:

(1) That section 69 of the Public Service Commission law be amended so as to change the period within which a gas or electric corporation can apply for issue of securities for reimbursement purposes from 10 to 5 years.

This change will not only make these sections uniform with sections 55 and 101 in this respect, but it will tend to encourage more prompt application for reimbursement, and will facilitate accounting control. It originated with the Public Service Commission, appears in the Donovan Report p 119, and was agreed to by all members of the Revision Commission. This change is provided for in Senate bill 2301.

(2) That section 101 of the Public Service Commission law be substantially uniform with sections 55, 69 and 82 by eliminating the sentence, "no telegraph corporation or telephone corporation shall be required, however, to apply to the Commission for authority to issue stocks, bonds, notes or other evidence of indebtedness except for the acquisition of property, the construction, completion, extension or improvement of its facilities, or the improvement or maintenance of its service within the state, or the discharge or refunding of obligations or reimbursement of moneys actually expended for such purposes."

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This proposal originated within the Public Service Commission and appears in the Donovan Report, pp 119 and 209.

According to the discussion this sentence permits telegraph and telephone corporations to issue stock dividends since there is no prohibition in this section against it and the wording is entirely different from that contained in other sections of this statute relating to similar powers of other utilities. Assemblyman Stone raised the question why they should have any extraordinary privilege here and the entire Commission agreed that the sentence should be stricken out. (February 27, Minutes pp 22-23)

The first draft of the amending bill, Senate No. 1639, carried out this proposal and ^{deleted} ~~selected~~ the exceptional sentence. But in the final draft, Senate Bill No. 2299, this sentence is restored and so the intention of the Commission and the Majority Report is not carried out.

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(3) That sections 55, 69, 82 and 101 of the Public Service Commission Law be amended so as to provide that the commission shall not authorize the issue of any securities in payment of dividends or for any purpose other than those enumerated in the statute. Donovan Report, pp 119 - 20. Discussed February 27, pp 69 - 71 and adopted by members of Revision Commission without objection.

This change merely gives explicit legal sanction for precedent already established by the Public Service Commission which has gone on the assumption that it could not legally authorize stock dividends.

This is included in Senate Bills Nos. 2297, 2299, 2300, 2301 and 1414

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(4) That sections 55, 69, 82 and 101 of the Public Service Commission Law be amended to provide that no change shall be made in the priority or voting rights of the capital stock of any corporation within the jurisdiction of the respective sections without the approval of the Public Service Commission even though such change may involve no change in the total stated capitalization of the corporation.

The Majority Report says of this proposed amendment:

"This will strengthen the control intended to be granted to the Commission by law over the acquisition of interests in the control of public utility corporations and will add to the protection of investors in utility stocks by preventing the shifting and qualification of voting rights and the changing of priorities, which have occurred in other types of corporations, from being practiced by public utility corporations". p 38.

The importance of this extension of control is illustrated particularly in testimony before the Commission on Revision concerning the financial juggling carried on by the Associated Gas and Electric Companies and its subsidiaries. (See Donovan Report p 143 for suggestion) Through a shift in the voting rights of certain stock the Associated Gas and Electric Co. was able to turn over the control of the Staten Island Edison Co. to a foreign corporation without the consent of the Commission.

This significant amendment appeared in the first drafts of the majority bills but is deleted in the final drafts.

This was a Fitzpatrick suggestion, see Donovan Report p 120. It was generally agreed to by all members of the Commission (February 27, pp 72 - 76) after change in language to suit Dunmore.

Discussing the importance of this amendment in the basis of the record (p 3126) Mr. Scharff of the research staff said:

"One of the reasons the Commission is interested is that a subsidiary of the Associated Gas and Electric Co., by changing capitalization on the voting rights of its stock in the New York Electric Co., case, have succeeded, as far as the case has progressed in the courts at the present time, in carrying out a plan of placing the Staten Island Edison Corporation under the control of a foreign corporation, which it had previously failed to do directly in the New York Superpower case." (Executive session, February 27, 99 72-73)

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(5) That sections 55, 69, 82 and 101 of the Public Service Commission Law be amended by adding the words "or receivers certificates" after the words "after the date thereof" in the fourth fifth and sixth lines of such sections.

This is not a significant amendment. It appears in the final draft of the majority bills. It was generally agreed to by all members of Revision Commission (February 27, pp 75 - 78)

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(6) That sections 55, 69, 82 and 101 of the Public Service Commission Law be amended by adding a provision that the issue of securities as referred to therein, shall include the sale by a corporation of securities previously issued in accordance with the terms thereof and subsequently reacquired by such corporation.

Discussion of importance of this change by Mr. Scharff, February 27, Executive Session, pp 77 - 78)

Approved without objection and included in present bills as previously referred to.

(7) That sections 55, 69, 82 and 101 of the Public Service Commission Law be amended by adding to the phrase "excluding from the jurisdiction of the Commission short term notes of evidence of indebtedness payable in less than one year, the words "and aggregating (together with all other outstanding notes and evidence of indebtedness payable in less than one year) not more than five per centum of the stated value of the securities of the corporation then outstanding, and by adding also a provision that within 10 days after the issue of any such notes or evidence of indebtedness, the corporation issuing the same shall file with the Commission a certificate of notification in such form as may be prescribed by the Commission.

This is an important recommendation from the Donovan Report pp 121 - 123 where it is discussed at considerable length with citations from the testimony. It brings the control of the New York Commission over short term securities into line with the Interstate Commerce Commission Act. After citing figures showing the magnitude of these short term loans and the frequently high rates of interest, the Donovan report says:

The accumulation of so large a floating debt as to threaten the maintenance of service might also result from unrestricted loan operations without notice to the Commission except as disclosed in annual reports." P 122

It also says: "This amendment, together with more frequent field audits and more active exercise of its powers of accounting control, might help to remedy the present weaknesses of Commission regulation with respect to short term loans." p 123.

Both these suggestions were adopted without objection. February 27 - Minutes p 78 - and were given considerable importance in the Majority Report. They were both included in the original drafts of the bills.

The final drafts of these bills, however, included only the provision for notification of the Commission within 10 days. The important part limiting the short term notes over which the Commission has no jurisdiction to 5 % of the state value of the

outstanding securities is missing in the majority bills in their final form.

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(8) That the Public Service Commission Law be amended so as to prohibit any utility corporation from crediting a portion of the proceeds of the sale of non-par stock to capital, and a portion to surplus; and also from transferring any portion of its stated capital to surplus.

This follows the suggestion of Fitzpatrick which was incorporated in the Donovan Report p 123 with the suggestion, however, that the present authority of the Commission is adequate to cover this matter. For 22 years the Commission has covered the matter with an accounting rule which has never been questioned.

In the discussion, Executive session February 27, pp 78-80, both Bonbright and Donovan expressed the opinion that there was enough doubt as to the sufficiency of the Commission's authority to warrant the adoption of the amendment. It was adopted without objection and appears in the Majority Report - p 39. It is incorporated in a separate bill, Senate No. 1658.

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(9) That sections 55, 69, 82 and 101 of the Public Service Commission Law be amended so as to provide that whenever any securities are issued in accordance with the approval of the Commission under the provisions of this section, the issuing corporation shall, within 10 days after such issue, file with the Commission a certificate of notification relative thereto in such form as may be prescribed by the Commission.

This is a Fitzpatrick suggestion, modelled after the Interstate Commerce Act. It is discussed in the Donovan Report pp 124-5. It was passed over without formality in the Executive Session.

SECURITY AUTHORIZATION - II

February 27, p 81, and incorporated in the Majority Report
p 39. It is in the bills.

JUDICIAL ENFORCEMENT BILL

SENATE BILL NO. 2387

To amend the Public Service Commission Law, in relation to judicial enforcement of rate fixing orders.

PURPOSE To enable the Commission to take advantage of section 266 of the U. S. Judicial Code in order to have rate decisions passed on by the State courts before going to the Federal courts on appeal by the corporations.

ORIGIN Donovan Report (pp 148-165)

Agreed to buy all members of the revision commission (Feb. 28, Minutes p 146).

DISCUSSION

The substance of the bill is expressed in the Majority Report as follows:

"That it shall be provided by the Legislature that whenever a suit is brought in the Federal District ~~and~~ Court praying for interlocutory injunction to restrain the enforcement of a Commission order, the Commission may bring a suit to enforce its order in the Appellate Division of the Supreme Court of the state at any time before the final hearing on the application for an interlocutory injunction in a suit in the Federal District Court. When such suit is brought the Appellate Division shall grant a stay of proceedings by the Commission to enforce its order pending the determination of such suit in the courts of the State."

The Donovan Report describes the plan to be followed under the proposed amendment as follows:

"Such a plan has been suggested. It contemplates a provision by statute whereby the Commission in making

a determination relative to the rates, shall not at once issue an order, enforceable by penalties as provided under present statutes, but shall make certain findings as to rates. These findings shall be presented to the utility concerned and a definite period of time shall be provided within which they may be accepted or rejected by the utility. If accepted, the Commission shall issue an order for the institution of such rates having all the force and effect of an order issued under present statutes. Formal acceptance by the utility might be required in language which would preclude the raising of any later objection. If formally rejected, no penalty shall attach and no binding or enforceable order shall be issued until the commission shall have brought a petition in the Appellate Division of the Supreme Court of this State for judicial determination of the merits of the claims of the commission and the utility as to such rates. Upon such judicial determination, the Appellate Division shall either affirm the findings or remand them to the commission for further consideration. If affirmed, the commission thereupon may issue an enforceable order pursuant to these findings. From such determination, an appeal will lie to the Court of Appeals."

There appears to be some doubts as to the legality of this plan. The objections are treated in the Donovan Report (pp 160-164). As stated in that report "Definite assurance that this plan will accomplish its purpose can be finally determined only by the courts".

MINOR DEFECT BILL

SENATE BILL NO. 2289

To amend the public service commission law, in relation to correcting minor defects and adapting procedure to actual practice.

ORIGIN. Practically all the changes proposed in this bill were suggested by Prendergast and represent the views of the Public Service Commission staff.

AGREED to by all members of the Revision Commission except as noted below.

Page 3, line 14. Insertion of "typewritten or" before "printed" in connection with the commission record of proceedings. The advisability of this change was questioned by Commissioner Walsh. He said: "That is a very important amendment, and one which I think we ought not to make. I don't think it would be much expense. It would give the people a chance to know what they were doing, and it could be sent to different parts of the state if demanded." Chairman Knight then railroaded it through without a vote. (Feb. 27, Ex. Ses. p. 7-8)

Page 6, lines 1 and 2. Application for a subpoena where "a person in attendance before a commission or a commissioner or an officer or employee especially authorized to conduct an investigation or hearing, refuses without reasonable cause to be examined or to answer a legal and pertinent question or produce a book or paper, when ordered so to do."

The original recommendation of the Public Service Commission was that "the commission may apply" be stricken out and there be substituted the words "application may be made by the commission or by any person aggrieved

thereby."

The Donovan Report, P. 206, expresses the feeling that this amendment is necessary. It was adopted in this form by the Revision Commission without dissent. Chairman Knight said: "It seems to be a good amendment." But protests from the utilities led to its modification to the extent of the elimination of the phrase "or by any person aggrieved thereby." This practically destroys the original intent of the proposed change.

Page 6, line 20, to page 7, line 18, amendment to section 22 to expedite rehearings and permit final closing of cases with more expedition.

Prendergast originally recommended the insertion "but any such application must be made within 30 days after the service of such order, unless the commission for good cause shown shall otherwise direct" (lines 23 to 25). He also recommended that the sentence beginning "An application" (p.7, line 5) and ending "by order direct" (p. 7, line 9) be stricken out.

The second recommendation aroused considerable argument both in the original Revision Commission hearings and in the executive session (Feby. 27, pp. 9-12), the question being raised whether it would not weaken the authority of the commission. The question was never acted upon by the revision commission.

The remaining amendments in this act are not significant and were generally accepted without comment as mere technical changes. Sections 53-a (p. 15, line 4) and 67a (p. 21, line 20) are slated for repeal because they have been declared unconstitutional.

BILLS COVERING CHANGES IN TITLE AND NUMBERING

SENATE BILL NO. 1492. Changes of name and title of the law and defines a utility company and a utility corporation.

Change of name to "Public Service Law" with corresponding changes was suggested by Prendergast and agreed to by all members of the Revision Commission.

The two new subdivisions inserted in section two were not referred to in any of the reports, and were not discussed or voted on by the Revision Commission. Their numbering appears to be wrong as there is already a subdivision 22 in this section. There is also a question whether the proposed definitions of "company" and "corporation" do not conflict with those in subdivisions 2 and 3.

SENATE BILL NO. 1493. Provides merely for changes in numbering of articles and sections in terms of proposed amendments to the law.

MISCELLANEOUS BILLS

(No Vital Issues Involved)

SENATE BILL NO. 1637

To amend the Public Service Commission law, in relation to sale and transfer of property of street railroad corporations and telephone corporations.

PURPOSE: To correct the defect in the law, by which street railway and telephone companies can sell any part of their property, which does not affect their franchises, to another utility, or a non-utility, without action by the Commission. It places these companies on the same basis as gas and electric corporations.

SUGGESTED by Fitzpatrick and recommended in both the Donovan Reports (p. 127) and the Majority Report (p.40). It was adopted without objection by the members of the Revision Commission.

OBJECTED to by Killeen who said: "Why in the world should that corporation have to come down here and get permission to sell its property as long as you permit the road to operate?" (Senate Committee Hearings, P. 154)

SENATE BILL NO. 1640

To amend the public service commission law, in relation to jurisdiction of the Commission with respect to telephone companies of less than ten thousand dollars property value operating for profit.

PURPOSE: To subject such small telephone companies

to the supervision of the Public Service Commission, which would set up a simplified system of accounting and reporting suitable to the character of the companies regulated.

RECOMMENDED by Majority Report (p. 47) following Donovan Report (p. 194). Unanimously adopted by commission February 27, (Minutes p. 63).

Accomplished by striking out clause exempting them and by adding a new subdivision 3 to section 95 to provide for simplified system of accounts. Applies to 350 to 400 independent telephone companies in small villages. Does not apply to farmer cooperative lines.

SENATE BILL NO. 1661.

To amend the public service commission law, in relation to joint orders of the public service commission and the transit commission.

PURPOSE. To provide that joint orders shall be "made at joint sessions" where the act gives joint jurisdiction over street railroad fares.

RECOMMENDED by Prendergast.

OBJECTED to by Walsh. No reason given. Action postponed but matter was not taken up again. (Feb. 27, Minutes pp. 16-17)

SENATE BILL NO. 1905

To amend the Public Service Commission Law, in relation to hearing assistants and rural electrification.

HEARING ASSISTANTS. The bill in no sense carries out the original suggestion contained in the Donovan Report (pp 46-47). The report suggested the appointment of four hearing deputies at a salary of \$10,000 each, with the statement that this would add materially to the efficiency of the Commission. The Majority Report recommended provision for one or more such deputies (p 32). The bill merely recommends that so far as practicable assistant counsel be assigned to conduct such hearings.

RURAL ELECTRIFICATION The bill provides for the appointment of the head of a RURAL ELECTRIFICATION DIVISION in the Commission, to conduct a research and hold hearings with a view to promoting such electrification. Senate Bill No. 2340 provides a salary of \$4,500 for the head of such a division and \$2,400 for an assistant.

The Donovan report discusses rural electrification (pp. 200-204) and recommends such a division with funds for research. The Majority Report (pp 49-50) adopts this recommendation. The proposal was apparently passed by the Commission in Executive Session without discussion (Feb. 28 Minutes p 126).

SENATE BILL NO. 1906 To amend the Public Service Commission Law, in relation to reparations to the user or consumer of public service, in the case of excess charges.

PURPOSE: To provide for refunds to consumers where public utility companies file schedules of increased

rates or charges which the Commission later holds excessive.

This proposal originated with representatives of shippers who appeared before the Commission. The Donovan report recommends amendment following the Interstate Commerce Act (pp 97-98). The Majority Report follows this recommendation which was adopted without dissent in the Executive Session. (Feb. 27 Minutes p 69)

NOTICE OF PROPOSED CHANGES IN RATES BILL

SENATE BILLS 2292 and 2306

To amend the Public Service Commission Law, in relation to publication and service of notice of proposed changes in rate schedules of utility corporations.

PURPOSE To give consumers advance information relative to proposed rate changes in order to afford them an opportunity to take such action as they desire.

ORIGIN Prendergast recommended a provision requiring mandatory publication of notice of proposed change in rate.

AGREED to by all except Dunmore that such notice should be published at least once in each week for four successive weeks in a newspaper of general circulation in the territory affected, and that in addition a notice should be mailed to each customer, presumably with his bill, a month in advance of the effective date of the proposed change.

DISCUSSION

The bills, in their first draft, contain both these provisions but after the hearings before the Senate Committee, and apparently in response to protests by the utility representatives the following sentence was omitted:

"A copy of such notice also shall be mailed or delivered to each consumerthirty days before the time when, as stated, the change will go into effect."

The original idea at the time the matter was discussed by the Commission was that ~~it should~~ such notice would simply be stamped on the bills.

HOLDING COMPANY BILL

To amend the public service commission law in relation to holding companies and of transactions between affiliated interests and public utility companies.

SENATE BILL No. 2295.

PURPOSE. To extend the jurisdiction of the Public Service Commission over holders of voting capital of public utility companies, over affiliated interests having transactions with utility companies and over contracts between such affiliated interests and the companies under the jurisdiction of the commission.

ORIGIN. The problem of holding company development, as adversely affecting regulation, was considered one of the outstanding subjects for investigation by the Revision Commission. It figured largely in the testimony before the commission as well as in the independent investigation of the research staff. It is emphasized in all three reports issuing from this investigation. (See Donovan Reports, pp. 131-145, particularly pages 136-139; also majority report pp. 26-28, and minority report, pages 120-126).

The general problem was discussed at considerable length at the executive sessions of the commission February 28th. (Minutes, pp. 134-140) and the proposals for extending the jurisdiction of the Public Service Commission along the lines embodied in the bill were adopted without objection.

GENERAL DISCUSSION

The bill in its present form follows almost word for word the recommendations of the majority report except for

subdivision 3, page 4, line 4. In the original draft of the bill, this subdivision also followed the recommendations of the report, but following protest by utility representatives at the hearings before the Senate Committee, it was modified so as to permit contracts between utilities and affiliated interests to become effective when filed with the commission instead of when approved by the commission.

This bill was strenuously objected to by Ransom, Killeen and other representatives of the utilities. Ransom suggested that it should be gone over to prevent the unwarranted invasion of the papers, records, accounts and affairs of individuals, financial institutions, supply concerns, etc. He stressed the enormous number of contracts that would have to be passed as imposing an unwarranted burden upon the Public Service Commission. He suggested that such provisions would open up an endless series of disputes and controversies and litigation, not on questions whether the rates were too high but about details of business unrelated to any matter of rates or service.

Bonbright, answering Ransom before the Senate Committee said:

"On the whole I think this bill is a good thing. I think the agreement of our commission was unanimous. I think that the stock argument of the utility companies to the effect that holding companies, not being public utilities, are not a matter of public concern, is extremely specious. I do not recall a single dissent from that point of view.

"The bill as here presented is a feasible effort, necessarily, in the present state of the law, to go as far as we can toward preventing more obvious evils resulting from connections between operating companies and affiliated holding companies and other companies." (Testimony pp. 168-9.)

Bonbright points out, in answer to Ransom's statement that the commission would be swamped by hundreds of thousands of contracts, that the bill applies only to transactions between operating companies and affiliated companies where some governmental control is necessary to see that fairness is observed. He says:

"I have not a doubt in the world that this bill, if it is passed, will make more difficult a large number of transactions between public utility companies and affiliated companies. To my mind that is the very best thing that could be said for the bill".

Donovan's report says:

"Opportunities for abuse obviously exist as a result of these transactions between interests which are not in fact independent. Nor can the Public Service Commission even determine whether the interests dealing with each other are or are not independent, unless the identity of all the interests involved is completely disclosed.

"Furthermore, no commission can be in a position to judge as to the existence or non-existence of unwarranted profits without complete information as to every detail of such transactions."

Citing the testimony of Hopson of the Associated Gas and Electric Company as the strongest possible argument for such extension of jurisdiction as is proposed in this bill (Senate No. 2295), Donovan says further:

"The above illustrations indicate that holding company activities are so interwoven with operating company management and finance that complete information on all of these relationships, services and transactions is essential to effective regulation."

The full discussion of this problem in Donovan's report leaves the impression that effective regulation should go even further than the provisions of this bill. It raises the question whether there should

not be special provision where foreign holding companies are involved, and also the question whether security issues of holding companies owning fifty per cent. or more of the voting stock of a utility corporation should not be subject to commission control.

The Majority Report, after noting that 98.5 per cent. of all the electric power sold in New York State in 1928 was distributed by holding company groups, goes so far as to say:

"The domination of utility companies by holding companies may, in some instances, be so complete that the holding company is actually engaged in public utility operation, in which case it should be subject to regulation as a public utility corporation."

DISCLOSURE OF STOCKHOLDINGS BILL

To amend the public service commission law, in relation to the disclosure of identity of the persons owning substantial interests in the voting capital stock of corporations under the jurisdiction of the commission.

SENATE BILL No. 1657

PURPOSE. To compel utility corporations to include in their annual reports to the Public Service Commission all real owners of one per cent. or more of their stock in order to facilitate the disclosure of affiliations or relationships between such companies and holding companies or service agencies.

ORIGIN. Prendergast, discussing New York City transit cases in which the owning interests hid behind nominees, suggested that the commission be authorized to require the disclosure of the real owners of stock, and when stock is held under trust agreement, to require a copy of the trust agreement.

IMPORTANCE EMPHASIZED in both the Donovan Report (pp. 105-6) and the Majority Report (pp. 34-35).

AGREED to by all members of the Revision Commission, on motion by Walsh. Discussion, Feby. 27, (Minutes pp. 87-91)

GENERAL DISCUSSION

The bill adds a new section 111 to the law, requiring that the annual reports of all utility corporations reporting to the Public Service Commission or the Transit Commission state the following facts:

- (a) Names and addresses of, and number of shares

held by each holder of one percent. or more of its voting stock.

(b) Names and addresses and respective interests of beneficial owners where 1% or more of the voting stock is held by intermediate agency.

(c) Names and addresses of officers and directors of any corporation holding 1% or more of the voting stock, together with the names and addresses of the holders of 1% or more of the voting stock of such corporation.

(d) Certified copy of each trust agreement or other instrument under which any voting stock of the reporting corporation is held.

Where information specified in (b) (c) and (d) is not available from the records of the reporting corporation, the commission is given power to require the holder of 1% or more of the voting stock of a utility corporation to file a sworn statement setting forth all the information specified.

Where all the above fails to disclose the desired information this amendment gives the Commission authority, by order, to require similar sworn statements from any person or corporation who or which can give the necessary information.

The Donovan Report, proposing approximately the substance of the above outlined amendment, says:

"It needs no elaboration of argument to point out that it might well be in the public interest in considering transactions between operating companies and holding or affiliated service companies to know actually the identity of the persons owning directly or indirectly substantial interests in the stocks of those companies." (p. 105)

The Minority Report says:

"The actual identity of the persons owning directly or indirectly, substantial interests in the voting capital stocks of companies under the jurisdiction of the Commission, should be fully disclosed in order that their relationship may be more clearly understood." (p.34)

(Note. The powers granted in this bill appear so extremely broad as to render it questionable whether they could ever be successfully exercised. It is certainly open to question how they would be treated by the courts. And it is further problematical whether if they could be exercised they would not mean efforts far beyond the worth of the gains which would accrue to consumers from the results obtained.)

BUREAU OF VALUATION AND RESEARCH BILL

SENATE BILL NO. 2294

To amend the Public Service Commission Law, in relation to creating a bureau of valuation research, in the state division in the department of public service.

PURPOSE: To provide for constructive inquiry as a background for the practical work of the Commission.

ORIGIN First proposed by Prendergast and later concurred in by all members of the Public Service Commission who testified.

DISCUSSION

The creation of a research bureau was recommended in the Donovan Report, especially for the purpose of studying rate structures and the equitableness of rates as between different classes of customers. The subject was mentioned in the Executive Session February 27, but was not discussed or acted upon.

The Majority Report (p 32) recommends the appropriation of \$55,000 for a research division to be responsible both for the valuation of utility properties and for study of the "long run problems" of regulation.

Bonbright, appearing before the Senate Committee, expressed the opinion that it was a mistake to attempt to combine valuation and research in the same bureau.

Since its introduction the bill has been slightly modified, cutting the director's salary from \$10,000 to \$9,000 and (p 2 line 10) and adding "and useful" to the definition of property to be valued (p 2 line 26).

ACCOUNTING CONTROL BILLS

SENATE BILLS 2302, 2303, 2304 and 2307

To amend the Public Service Commission law, in relation to control by the commission as to accounting entries of public service corporations.

PURPOSE - To place the burden of proof on the corporation to establish the correctness of the accounts in which outlays and receipts have been entered, and to permit the commission to ~~suspend~~ a charge or credit pending submission of proof.

ORIGIN - The proposal incorporated into these bills first appeared in a section of the Donovan Report prepared by Scharff of the Commission Research Staff (pp 103-4)

NO RECORD of how the members of the commission voted on this although it was apparently passed over without objection. The discussion in Executive Session was most inadequate (Feb. 27, Minutes p 87).

DISCUSSION

The proposal in the Majority Report and the bills as originally drawn were more drastic than the bills in their present form. The Majority Report says:

"We recommend that the Public Service Commission Law be amended so as to place the burden of proof upon the utility company to justify every accounting entry that may be questioned by the commission; and to authorize the commission to suspend any such charge or credit pending the submission of such proof." (p 33)

The bills as originally drawn followed this language:

Ransom, speaking for Consolidated Gas, said they considered these bills, as originally drawn, one of the most objectionable of the Majority proposals. (Senate Committee Hearing p 37) Killeen contended that it gave the Public

Service Commission a veto on utility expenditures (p 142). LeBoeuf of the Niagara Hudson Power Corporation also objected to this feature (p 292).

Bonbright, at the hearings before the Senate Committee, answered this company contention, as follows:

"It seems to me there is reason for placing the burden of proof upon the company, notably so where you have an affiliated interest concern. The disbursement of \$500,000 to E. L. Phillips Company, E. L. Phillips Co. being a Management Company, is not subject directly to control by the Public Service Commission. It cannot be compelled to give up its books to the Public Service Commission, but the operating company can be compelled to show that \$500,000 was reasonable.

"If you put the burden of proof on the commission to show that \$500,000 was unreasonable, the commission cannot approve it because it has not the books with which to approve it and it cannot subpoena those books. So I would let that bill stay right there with the utmost confidence that under reasonable reasonable administration it would not be a serious burden on the companies. You have got to assume that the commission is acting within reasonable common sense or abandon the idea of commission control.

Actually the majority has given way before the utility criticism and has taken the kick out of the measures by making it apply only to the account to which an expenditure is charged rather than to the item itself.

With this change the bills mean nothing in the way of strengthening regulation. They are duds.

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SENATE BILL NO. 1665

To amend the Public Service Commission law, in relation to accounting control of reserves charged to operating expenses of utility companies by commission.

PURPOSE - To give the Public Service Commission full authority over the method of computation and amounts of all charges to operating expense accounts and offsetting credit to reserves for any purpose, including provision for depreciation or retirement.

ORIGIN - The proposals embodied in this bill originated with the Research Staff of the Revision Commission, especially with Dr. Mosher and Mr. Scharff.

APPROVED in principle by all members of the Revision Commission Feb. 27 (Minutes p 99-100).

DISCUSSION

The Public Service Commission at the present time, according to Prendergast testimony, has authority to prescribe uniform methods of accounting with respect to depreciation, but has been held in one court case to have no authority to approve or disapprove the actual method of computation of the amount so charged. The proposed bill aims to give the commission authority to control the method of computation and the amount charged to operating expense for depreciation and retirement, and the credit to reserve.

The problem is rendered important by the fact that companies, notably the New York Telephone Company, have accumulated depreciation reserve far in excess of the depreciation which they are willing to acknowledge to exist in their properties. They accumulated these reserves by charges

to operating expenses and then claim that the deduction for depreciation in determining the rate base must be linked to what they term observable depreciation. The difference consequently enters the rate base, so that they are really forcing consumers to contribute capital on which they will be later called upon to pay a profit. In the New York Telephone case this difference amounted to more than \$60,000,000.

The Donovan Report discusses this problem of accounting control at some length (pp 111-117) referring to the extensive testimony on the subject by Prendergast, Riggs, Forstall, Dickerman and Olson. According to this report the proposed legislation is in line with the amendment to Section 20 of the Interstate Commerce Act, added by Transportation Act in 1920. The Donovan Report, however, says:

"In the face of conflicting views, it is perhaps expecting too much to ask that this commission, the Legislature or the Public Service Commission lay down any final, universal rule, particularly until the Interstate Commerce Commission shall have completed its proceedings relative to steam railroad and telephone depreciation"(p 116).

"Such specific control over depreciation is provided more definitely in the Minority Bill, representing Park III of the Minority Report. This portion reads as follows: "

"The properties of each company shall be fully maintained through current charges to operating expenses for ordinary maintenance and depreciation. The annual allowance for depreciation shall include all causes which reduce the service life of property, and shall be so determined as to include proportionately in operating the various unites of property during their normal service life. The Commission shall have power

to fix depreciation rates and charges so as to carry out the purposes of this Act. The annual depreciation allowance for each company shall be accumulated in a separate reserve, to which shall be credited the current accruals, and from which shall be deducted the initial valuation or actual cost of each unit of property withdrawn from service. The reserve shall be credited also with all recovery of salvage upon the disposal of property, and shall be charged with the cost of removal of property, unless such costs are included directly in operating expenses."

The bill as originally framed by the Majority has been somewhat modified in the face of criticism by the utility representatives. It still appears rather loosely drawn, especially in the first sentence. It adds a new section 108 to the Public Service Commission Law.

The aspect of regulation which this bill aims to cover is important.