

## THE ALABAMA PUBLIC SERVICE COMMISSION: ASLEEP AT THE SWITCH OR CREATING WINDS OF CHANGE?

There is an arm of Alabama Government that has a tremendous impact on our lives but tends to operate in silence. This quiet State Agency is called the Alabama Public Service Commission.

The Internet has changed our lives, but is it available to everyone in Sumter County? Why not?

Each time we fill up our cars with gas, the increasing cost of energy is fresh on our minds. First it cost an arm, now a leg, and soon our first born child. Where are the electric cars and why are we energy captives to foreign countries who want to hurt us?

As you will see, the Alabama Public Service Commission is the Agency in our State best positioned to cure these problems, if only we have the right leadership.

### I. MISSION AND HISTORY

There are three elected Commissioners who regulate companies that provide electricity, gas, water and telephone service. Unlike many Alabama agencies, this one operates in the black, running on inspection and supervision fees paid by the companies it regulates, and actually giving extra money to the Legislature to spend each year. This is in refreshing contrast to our Alabama Education Fund, which is in proration again this year with our sagging economy.

Today our three Commissioners are Jim Sullivan, the Commission President, and Jan Cook and Susan Parker, the Associate Commissioners. Commissioner Sullivan's seat is up for election in the Fall of 2008, he has served for 24 years, and he is retiring. So, there is an opportunity for new leadership. Commissioner Cook and Commissioner Parker won't be up for reelection until 2010.

Let's define a couple of terms used in this article:

A utility is a privately owned company, like Alabama Power or BellSouth, the two biggest in our state, that provides a basic commodity, such as electric power or telephone service. Utilities, historically, were monopolies, which means one provider, and had no competitors.

If you are a monopoly, who keeps you from charging whatever price you want? That is why you have government, Public Service Commissions at the state level, and the Federal Energy Regulatory Commission (FERC) and the Federal Communications Commission (FCC) at the Federal level: They review the utility's financial records and determine a fair price for its services, in lieu of competition, which serves this fair price setting role when you don't have a monopoly.

Regulation of monopoly utilities is a complex and time-consuming process, but it is necessary to protect the consumer, while providing the utility a fair rate of return on its investment.

Incumbent Local Exchange Companies or “ILECS” are BellSouth, Centurytel, which bought out Verizon in Alabama in 2000, and a few dozen smaller ones in Alabama. The ILECS were formerly monopoly telephone service providers traditionally using land lines, we call them, over telephone poles, and wires to your home. They provide what is called local service, where you make a call across town, and long distance service, which is where you call across the state or across the world. They have distinct, non-overlapping territories, and they were natural monopolies before 1984, when, pursuant to a Federal Court Order, AT&T, the long distance telephone service arm of Bell was spun off, and serious telephone competition began with MCI, Sprint and DeltaCom.

These MCI-type competitors, called Competing Local Exchange Companies, or “CLECS”, as well as cell phone companies, largely using radio waves instead of telephone lines and poles to provide service. Other alternative phone service providers are Internet companies and cable companies.

In 2005, the old monopoly ILEC telephone companies were largely deregulated in Alabama, because the Legislature decided they had adequate competition to substitute for regulation of their rates.

The major groups of utilities regulated by the Public Service Commission are energy, telecommunications, and transportation, and there is a Division of the Public Service Commission for each one. There is also a Consumer Services Division, which handles customer complaints, an Advisory Division that provides the three Commissioners with alternatives on how to solve regulatory issues, and a Legal Division, which has two judges to serve as hearing officers for utility cases brought before the Commission.

Historically, this agency dates back to 1881 when it only regulated railroads, with electricity, telephone service and natural gas services coming later.

These services became regulated as Alabama grew in the early 1900s, with truck and bus service being added in the 1920s.

As often happens, the scope of the Agency’s authority and the rules under which utilities operate here have not kept up with the times. Here are a couple of important examples:

A. The Alabama Utility Elephant in the Room: Outrageous Property Tax Rates:

Under the 1901 Alabama Constitution, utilities pay 1 ½ times the property taxes of other businesses in Alabama. Constitution § 217, the Lid Bill. Why this marked difference? In 1901, when our current Constitution “may” have been passed (the vote was tainted), the Alabama railroads had almost bankrupted the State with bond issues. Therefore, the Constitutional Convention took

revenge on the railroads and taxed them at 1 ½ times that of other businesses. Now, telephone companies, like BellSouth, and energy companies, like Alabama Power, still pay this exorbitant tax. In fact, BellSouth and Alabama Power have more property than any other companies in Alabama.

In the meantime, BellSouth and other ILECS have to compete with cable telephone companies, cellular telephone companies and Internet telephone providers for the same customers, while BellSouth pays 1 ½ times the property tax rate of these competing providers. Likewise, Alabama Power will one day compete with Texaco for automobile customers, who will choose between gasoline and electric. Why does Alabama Power have its hands so tied behind its back in trying to provide Alabama energy at a low cost?

Why not equalize the property taxes paid by utilities, in exchange for them helping Alabama solve some major policy problems? We are not suggesting that the total amount of property tax collected from Alabama businesses should be reduced, but only that all competing businesses pay at the same rate. The resulting tax rebate will allow our utilities to better serve their customers and our state, in ways described below.

#### B. Unlevel Playing Field.

Also, some utility providers are regulated by the Alabama Public Service Commission while others get off scot free. Charter Cable provides telephone service but is not regulated by the Commission. Thus, if you happen to move from one house to the next, and Charter cuts off your telephone service prematurely, and you don't have service for a week, the Consumer Services Division of the Commission can't handle your complaint.

If the same thing happened with BellSouth or CenturyTel, the two largest telephone providers in Alabama, the Alabama Public Service would do something about it, because the Commission regulates their services. How does this make sense?

As you can see, then, a big issue which the Public Service Commission needs to address as soon as possible is to have the same rules for all providers of the same services, be they BTUs versus kilowatts or Internet telephone service competing with incumbent telephone land line service.

This will take Legislation and much courage.

## II. TELEPHONE REFORM.

### Bridging the Digital Divide.

Internet has already changed our world. Ask Barack Obama, who has out-raised any other Presidential candidate in political contributions by using the Internet. Or talk to your teenager, who

lives by e-mail. Through the Internet, a child in Wilcox County might be able to have the same teacher as a child in Mountain Brook. In Alabama, though, there is currently a digital gap, in which not everyone can get Broadband Internet Service.

What is broadband? It's high-speed Internet service, usually using fiberoptics, necessary for reliable and rapid Internet connections. You need it to rely on the Internet as a communications source for education and business, for example.

To accelerate development of broadband service nationwide and other rural telephone development, there is a \$7 billion annual fund administered by the FCC, with the focus being on schools and libraries in rural areas.

To enhance this program, Alabama might consider earmarking the property tax rebate for its telephone companies, as described above, for a broadband initiative. The education dividends for our children would be tremendous.

### **III. ENERGY REFORM**

#### **A. Rate Stabilization and Equalization Plans (or "RSE"): A Good Idea or Falling Down On the Job?**

These plans were implemented by the Alabama Public Service Commission in the 80s, after there were power rate hearings that lasted many weeks and in which monopoly utilities had to prove what a proper rate for their service is. As discussed, regulation of a monopoly results in a guaranteed rate of return on the utility's investment. But, because RSE was established 20 years ago, when, for example, bank C.D. rates were in the teens, the rates of utility return that are guaranteed now look especially high. For example, for Alabama Power, the rate of return can be between 13% and 14.5% on equity, for Alabama Gas Company, 13.15% to 13.65% and for Mobile Gas, 13.35% to 13.85%.

How do these returns look in today's economy? Because of these high returns and increased utility fuel costs, such as coal used to generate energy, Alabama's electricity rates have increased 30% in the last five years, according to a December 9, 2007 Montgomery Advertiser article.

In 2007, Alabama consumers paid more for power than in any state in the South, except Florida and Georgia. Alabama's rate of return for electricity of 13% - 14.5% is higher than that of Mississippi, being 9% - 10.5%, or in Georgia, which is 11.25%. Because of this RSE Plan, power utility rates are set by a formula and there is not much that can be done to modify them, unless the RSE formula, itself, is revisited by the Commission. Indeed, a representative of one of the Public Service Commissioners recently indicated in the Montgomery Advertiser article that he cannot recall when a Commissioner has ever objected to a power company rate under RSE. The Commission hasn't reviewed the RSE formula for 20 years. Does this sound like responsible regulation?

So how do we help the consumer here? It is simple. We need to revisit the RSE Plan and determine the rate components that would be appropriate in today's economic climate.

B. Sav-A-Watt.

Here are Alabama Power's energy sources: 69% coal, 19% nuclear (the Farley Plant on the Chattahoochee near Dothan), 8% natural gas, and 4% hydroelectric, no wind, switch grass, agricultural waste or solar.

There is now a bill before the Legislature to encourage alternative clean sources of energy, such as hydroelectric, but Alabama has no incentives to save energy. In a household, to balance a budget, you don't just make more money, but you need to reduce your expenses. Alabama should do the same with energy consumption. Here's how.

A Sav-A-Watt plan is being pursued by the North Carolina Utilities Commission, where Duke Energy is headquartered. Duke Energy and Southern Company, which owns Alabama and Georgia Power, are the two largest electricity utilities in the South. Under the North Carolina Commission's regulation plan for Duke Energy, this utility is paid not just based on how much energy it sells, but for steps Duke takes (i) to provide the cheapest way to generate clean emissions-free power; (ii) to encourage consumers to save energy; and (iii) to incentivise its customers to reduce their energy bills by, for example, having their home heat and air conditioning automatically turn off during office hours when they are not home and having companies do their manufacturing at night during non-peak usage.

In short, energy efficiency is a fifth fuel, after coal, gas, renewables and nuclear. It is the lowest cost alternative and it is emission-free.

If Alabama also had a Sav-A-Watt system in place, not only would our electric bills drop, but Alabama Power could wake up every morning thinking of how to squeeze more productivity out of new technology for energy efficiency, instead of welcoming high air conditioning bills in the Summer or high heating bills in the Winter to increase its revenues.

This will help Alabama produce a more energy efficient infrastructure, our lakes won't be drawn down as much in the Summer for hydropower, our power bills would be reduced and both utilities and we will be accountable for a greening of our state: doing more with less energy.

By keeping energy demands in check, we will also help cure a problem looming on the electricity horizon: U.S. electricity demand is growing at twice the pace that new supplies are being added, an imbalance that will lead to supply problems in a couple of years unless we go green with Sav-A-Watt.

C. An Electric Car Initiative.

Growing up, I bet you remember how Alabama Power was big in the electric appliance business. We all know that Alabama Power is a very good, very savvy company, doing well in its enterprises.

You have probably heard of the famous Davos, Switzerland annual meeting of the smartest people around the world. At the one held this January, the head of Dutch Shell said that oil will not meet demand within seven years. In fact, oil production peaked in July 2006 at 85.5 million barrels a day. Production, since then, has not come close. Is the world running out of oil or is it OPEC, which tries to hoard the supply? Perhaps the answer doesn't matter. When you are addicted to something, you are at the mercy of the pusher.

Who's the addict and who is the pusher in this picture? Even though Toyota and GM have begun to roll out hybrid cars and Renault, Nissan and Honda are building all-electric ones, none of the major automakers is proposing to abandon internal combustion engines any time soon. We need leadership to solve the problem.

The bottleneck seems to be the inability to make a battery suitable for electric cars, so that they can travel more than 50 miles. Why couldn't Alabama Power, with the right incentives, such as eliminating the punitive Alabama property tax as suggested above, create efficient lithium battery stations and offer its consumers low-priced electric cars?

#### IV. CONCLUSION

In summary, the Alabama Public Service Commission is faced with tremendous challenges and opportunities. Will it push for a Constitutional Amendment to level the utility tax playing field with other competitors, so as to bridge the digital Internet divide for all Alabama children and spawn an electric car explosion in Alabama, or will Alabama continue to sit passively and let the future pass it by? You, the voter, will decide.

In the Fall, vote for a Commission President for change and not for the status quo.