

Neither will the attempt, although it is understandable, to brush aside the Virginia commission's refusal to shirk its statutory duty in a similar situation. In that case the Virginia commission refused to approve an issue of securities by an electric utility on the ground that the facilities to be financed thereby would not be "in the public interest." If I understand their position correctly, the members of the majority imply the case is "inapposite" because that Commission possessed the power to issue or deny certificates of convenience and necessity when it held that the issue was not "in the public interest" as determined under its security-approval statute! The majority have misread the case.

The case involved the 1934 Public Securities Law of Virginia (7 Va. 56-75). "The 1934 statute is concerned only with the issuance of securities," the Virginia commission explained, and it "says this commission must grant the authority applied for unless it finds that the loan is not 'reasonably necessary' to carry out one or more of the [public utility] purposes set forth in the application" (emphasis supplied). The Commission then went on to find that the application "filed December 12, 1949," and on which "public hearings began April 24, 1950," was not "in the public interest" (emphasis supplied).

It is true that the Virginia Code now provides the Virginia commission with the (additional) power to issue certificates of convenience and necessity. Specifically, it states at Section 50 - 265.2 that --

"It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service . . . without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege. Such certificate shall be issued by the Commission only after formal or informal hearing and after due notice to interested parties."

But below, at Section 56 - 265.8, the law unequivocally states that such certificating authority --

" . . . shall not apply to or in any way affect any proceeding before the . . . Commission on or before July first, nineteen hundred fifty;" (emphasis supplied.)

One has only to read that date and compare it with the filing date and date of commencement of hearings before the Virginia commission to agree with my statement that in the particular case, the Virginia commission was "armed only with the power of approval or disapproval