SPEECH BY ROBERT MORGAN
ATTORNEY GENERAL OF NORTH CAROLINA
ROLE OF THE ATTORNEY GENERAL ON BEHALF OF THE USING AND CONSUMING PUBLIC IN UTILITY RATE CASES
SOUTHERN ATTORNEYS GENERAL CONFERENCE
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ROLE OF ATTORNEY GENERAL ON BEHALF OF USING AND CONSUMING PUBLIC IN UTILITY RATE CASES

I. Introduction

A. Thanks for opportunity to speak

B. Resources of my office devoted to this task

C. Belief in free enterprise - open market, generally - utilities no exception because of (1) need to guarantee public adequate service at reasonable cost, (2) adequate return on investment to utility

D. Constitutional guarantees apply to public and utility company

II Role of State regulating agency in rate making

A. Require utility to prove to satisfaction of agency need for increase rate, change in service

B. Decision of agency must be based on competent evidence; otherwise, utility is denied due process.

III Utility's role in rate making

A. Present only evidence favorable to itself.

IV A.G. Role in rate making

A. Represent interest of consuming public

1. hearings are financially and economically complex
2. expert counsel needed - are few and usually employed by utility

V Can the regulating agency adequately represent the public?

A. Yes - they have expert investigators and staff and experience.

B. I say "No" because (1) regulating agency would "wear two hats", as advocate of public and impartial judge;

(2) public unaware of any greater effort which might be made on its behalf

(3) belief in advesary system - "hallmark of our way of justice."

(4) importance of cross-examination. Expert witness testimony - need for cross-examination: inaccuracies of testimony brought out.

VI Role of Attorney General is

A. to represent public at hearing, not as enemy of utility

B. bring out all facts

C. recognize utility entitled to fair return based on good management.

VII Public attitude toward utilities.

A. Suspicious why?

a result: B. Socialization or nationalization in some countries

C. Nationalization of Railroad talked in U. S.

D. Metcalf bill in US Congress -

narrowly defeated last vote

1. dangers of it - bureaucrats would represent public
2. Attorney General directly responsible to people should represent public AG is accessible to public; bureaucrats not.
3. Utilities probably prefer public interest to be represented on State level. "states right" - good.

Fred Fletcher TVS in audience

VIII Attorney General representation of public before regulatory agency can:

A. Better enable agency to reach proper conclusion as to rates and services.

B. Remove suspicion, hence, fed. intervention

C. Through cross-examination, rules of evidence, etc., cause industry to seek only essential rate increases.

IX Conclusion

A. 1969 legislation for Attorney General to represent public requested and approved.

B. State action to represent public will forestall federal legislation.

1) Support material - ½ good
   ① Duke Power example
   ② Metcalf Bill example

2) Summary - no
   Remotivation - not used
   Conclusion - hard + concise

Start : 1:38 PM
Stop : 1:59 PM. Meeting broke up right on schedule.

ROLE OF THE ATTORNEY GENERAL
ON BEHALF OF THE USING AND CONSUMING PUBLIC
IN UTILITY RATE CASES

By Robert Morgan, Attorney General of North Carolina

I appreciate the privilege of being with you today and sharing a part on your program. I particularly appreciate the opportunity of expressing my views on what I consider to be the roll of a State Attorney General on behalf of the consuming public in utility rate cases, a subject to which I have given considerable attention and committed the resources of my office since becoming Attorney General of North Carolina.

I know that each of you here today shares my strong belief in the American free enterprise system which has brought us to today's level of economic prosperity and material abundance. We believe that generally a man or any group of private investors should have the right to enter into any business that he or they may choose and to operate such business in an open and competitive market. However, we also recognize that such open and competitive business operation is simply not practical or economically feasible in the field of public service industries such as electric power companies, telephone companies, motor freight carriers, and liability insurance companies, the conduct of which business enterprises is regulated by state regulatory bodies because of the vital interest of the consuming public in these enterprises and because of the granting to them of franchise area monopolies dictated by economic necessity.

The regulation of these public service industries necessitated because of the granting to them of exclusive service areas or monopolies is, as you know, designed to accomplish essentially two things. First,

it is designed to give the consuming public, within the franchise service area of the utility or public industry, adequate protection with regard to quality of service rendered and with regard to the cost of such service, such regulation being necessary to afford the protection which would be available in a competitive market wherein no monopoly existed. Second, it is designed to give or insure to the regulated industry a fair return on the investment made by its owners. We often tend to forget that these regulated industries for the most part are still within the realm of private business and property ownership, and all of the constitutional guarantees available to the owners of private property and business apply to these industries with the same force and effect as the constitutional guarantees apply to any other private citizen engaged in the conduct of a nonregulated enterprise.

Basically, in the regulation of these public service industries, we require them to come before a public regulatory body and prove to the satisfaction of such agency, sitting in a quasi-judicial capacity, that due to required expansion, investment in new equipment and upgrading in quality of service or other such reason, it is in the public's interest that rates be increased or that a given type of service be eliminated or that the quality thereof be changed or decreased. In the consideration of such application for increased rates or change in service by any such regulated industry, the regulatory agency involved is under a duty to the private owners of such industry to base its determination solely upon proper findings of fact based upon competent evidence introduced at the public hearing held to consider such application.

If a regulatory agency attempts to deny the relief requested by an industry without proper evidence and findings of fact that the rate increases are not justified, or that the change in services required or requested by the industry are not in the public interest, then the regulatory agency is, in fact, denying the industry and the owners thereof the use of its property without due process of law. Due process requires that the industry be given an opportunity for full, fair, impartial, and complete hearing on the evidence it presents to justify its request for additional rates or change in service.

Now it is equally clear that when the industry makes its application to the regulatory body for additional rates or a change in the services rendered, such application is made in the light of self interest, and, as you well know, our system of jurisprudence requires only that the industry applying for the relief shall advocate its own cause and marshal its evidence in a manner most favorable to itself in order to justify its petition for additional revenue or change of service. In light of this fundamental principle of American jurisprudence that no man or industry as a litigant is required to prepare or present a case against itself, I feel that it is vital that we consider the position or plight of the consuming public, the consensus of which when faced with such application may well be that the rates then presently charged by the industry are more than adequate or even excessive in light of the quality of service then being rendered by the industry.

I feel strongly that in order for this regulatory process to work for the benefit of both the public service industries involved and the public, the interest of the public must be presented in evidence and in argument in juxtaposition to the industries' position. The initial and most crucial point in the administrative and legal process in which the public's interest can be voiced effectively through evidence and argument is in the initial hearing upon the application before the regulatory body.

Now it is unnecessary for me to tell you that such administrative proceedings, concerning a general rate increase for a public service industry, involve matters of considerable financial complexity and economic importance. Adequate representation of a client in a utility rate proceeding requires exceptional legal ability and, at the very least, a considerable comprehension of accounting and corporate finance and engineering terminology and testimony. It does not therefore take much reflection to conclude that the man on the street or the consuming public is not likely to find adequate means of representation, even assuming the possibility of a properly initiated class action, through privately employed counsel. This is particularly true in view of the fact that the relatively few competent practitioners in this field are almost always retained or are regularly employed by and represent the regulated industry or industries involved.

Now it is sometimes argued, and I have experienced the argument in my representation of the public in rate cases in North Carolina, that the regulatory body itself can adequately represent and protect the interest of the consuming public while at the same time sitting as the sole and supposedly impartial arbiter or trier of the facts and judge of the law. It is argued by advocates of this approach that although frequently the only evidence presented to the regulatory agency where the public is not represented by counsel is the industries' evidence supporting a rate increase, these regulatory agencies, such as the Utilities Commission in North Carolina, have staff investigators which can be called upon to produce independent evidence which may represent the public interest.

On the contrary, it is my belief that an administrative hearing upon an application for a rate increase wherein the regulatory body purports to represent the interest of the consuming public is not in the best interest of either the utility involved or the consuming public for three basic reasons. First, the regulatory body attempting to act in such a situation is placed in the irreconcilable position of acting as a committed advocate in support of a position or interest and at the same time as an impartial judge of the issue presented. Second, the consuming public which is not openly represented by counsel will for the

most part remain totally unaware of any effort which might have been made or any point which might have been raised in support of the interest of the consuming public. Third, the consuming public, without representation by its own counsel at such hearing, is denied the benefit of the adversary system which has been and still is the hallmark of our way of arriving at truth and justice.

With respect to truth and fact finding, cross-examination, as you know, is our tried and proven method to most effectively expose not only false testimony but, more frequently in utility rate cases particularly, inaccuracies of testimony. It is not uncommon in utility rate cases to find expert witnesses, under the skilled direction of corporate counsel, delivering testimony which, although not false, is couched in terminology which, if subjected to cross-examination by an advocate equally familiar with such terminology, would afford a more complete picture and a different impression from the one intended by the witness. It has been said that two adversaries, approaching the facts from entirely different perspectives and objectives and functioning within the framework of an orderly and established set of rules, will uncover more of the truth than would investigators, however industrious and objective, who are seeking to compose a picture of statistical data and other factors thought relevant to the issue presented.

Now, I would like to emphasize that in acting as a public advocate in public utility rate cases, we consider that it is the Attorney General's role to participate not as the enemy of the utility, but solely as the representative of the public which has no other representative in the matter. We are simply trying to make sure that all points of view have been fairly represented before the regulatory body, and we are not seeking to prevent any company from receiving a fair return on its money. We fully recognize that a public utility is entitled under the law to charge rates which, under good management, will enable it to earn a fair rate of return on the fair value of its property and thus to be financially able to attract on reasonable terms the capital which it needs for an ever growing business.

While we must recognize and protect the rights of these regulated industries, we must acknowledge and give consideration to the increasingly obvious fact that the general public is beginning to look with suspicion on our larger industries and especially those which enjoy State granted privileges. Such public attitude in many other countries has taken the form of and has resulted in outright socialization or nationalization of many of the larger industries such as the railroads, the airlines, gas and

electric generating and distributing industries, telephone and broadcasting industries. While such government involvement in business is foreign to the American concept, we must not succumb to any illusion that we are immune to such practices in this country. We have recently heard increased talk and advocacy of the nationalization of our railroads in this country. Many of you are aware of the METCALF bill now pending before Congress. This bill offered by Senator Metcalf of Montana proposes that a federal agency be established to represent the consuming public before any federal or state regulatory agency which is considering any matter or matters which may affect the consuming public.

Now, I do not have to elaborate on what this means to the concept of states' rights. It would simply mean that the bureaucrats from north of the Potomac, purporting to represent the public's interest, would descend upon our respective states and appear before any and all regulatory agencies, bodies or commissions established by our state governments wherever and whenever they feel like it. I believe that we as State Attorneys General, who are directly responsible to the voters of our respective states--voters who have the right to remove us from public office whenever our actions displease them, are in a much better position to represent the interest of the public in our respective states than are bureaucrats

from Washington who are completely removed from the will of the people. I also believe that the regulated industries concerned would much prefer that the public interest be represented on a state level rather than from Washington.

I believe that with sincere and active representation of the general public's interest in proceedings initiated before a state regulatory agency by a major industry, we can accomplish the following things:

(a) We will better enable the regulatory agencies to reach balanced conclusions between the interests of the regulated industries and the public with regard to both rates and services rendered by the regulated industries.

(b) We can in large measure remove any aura of suspicion held by the general public that its interests are not being adequately protected by the regulatory agency and/or the regulated industries.

(c) By placing stringent requirements of proof under evidentiary rules of law upon the regulated industries,through active and competent representation of the public's interest by the Attorney General's Office as an advocate at the administrative hearings, I believe there will be a tendency for the industries to reevaluate their positions and to request only such increases and

changes which are essential to and consistent with both their continued growth under a fair return and their continuing obligation to render vital services to the public.

Because of these beliefs and objectives, and pursuant to a campaign promise made to the people of North Carolina, in 1969, I requested that the General Assembly of North Carolina enact legislation authorizing and directing my office to appear for and on behalf of the using and consuming public before the various State and federal regulatory agencies when regulated industries appeared before them asking permission to increase rates charged to the general public or to reduce the quality of service to be rendered to the public. This legislation received bipartisan support and passed with little or no opposition.

It is my belief that if the states will fulfill their responsibility to the general public in this area, if the states will do what they are entitled to do, and should do, then we will have little to fear from federal legislation, but unless these responsibilities are undertaken throughout the states, I predict we are going to find more and more creeping federal bureaucracy imposed upon us in lieu of our own state governments.