FINAL REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

RESTRUCTURING OF THE ELECTRIC UTILITY INDUSTRY

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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Joint Subcommittee Studying
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To
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TO: The Honorable James S. Gilmore, III, Governor
and
The General Assembly of Virginia

I. INTRODUCTION

Overview.

Senate Joint Resolution 259 of 1997 (Appendix A) continued the General Assembly's examination of electric utility industry restructuring. The study was initially begun pursuant to Senate Joint Resolution 118 of 1996 to determine whether restructuring the retail electricity market is feasible and in the public interest. Retail restructuring, as envisioned by its principal proponents, would permit industrial, commercial and residential electricity customers to purchase electric generation services from the providers of their choosing, leaving regulated local distribution of electricity.

Members appointed.

The following General Assembly members who served on the SJR 118 subcommittee were reappointed to serve on the SJR 259 joint subcommittee: Senators Reasor of Bluefield, Holland of Windsor, and Norment of Williamsburg appointed by the Senate Committee on Privileges and Elections; and Delegates Woodrum of Roanoke, Watkins of Midlothian, Plum of Reston, and J.C. Jones of Norfolk, appointed by the Speaker of the House. Senator Reasor chaired the joint subcommittee, and Delegate Woodrum served as its vice-chairman.

Work of the subcommittee in 1997.

A key provision in SJR 259 requested the Virginia State Corporation Commission (SCC) to develop a restructuring plan for Virginia to be presented to the joint subcommittee in November 1997. In preparing to receive that report, the joint subcommittee (i) examined restructuring developments at the federal level and

in other states, (ii) reviewed technical constraints on retail competition, (iii) received reports and recommendations from public utilities, electric cooperatives, large industrial customers, consumer and environmental groups, and other individuals and organizations with a stake in the outcome of this debate, and (iv) examined restructuring's likely impact on state and local tax revenues.

Activities in other states.

The joint subcommittee learned that virtually every state is studying this issue. While no restructuring plan is fully operational at this time, California will begin retail competition in April 1998. Other states, such as New Hampshire and Pennsylvania, are in the process of conducting or evaluating retail competition pilot programs in which percentages of customer classes are permitted to purchase their electrical generation from sources other than their local public utilities. By the end of 1997 over a dozen states had adopted some form of restructuring plan, either through legislation or through regulations adopted by state public service commissions.

Federal activities.

Federal restructuring activities continued to be a significant part of the joint subcommittee's discussion in 1997. The Energy and Natural Resources Subcommittee of the House Commerce Committee included Richmond in its tour of U.S. cities in which public hearings were held on electric utility restructuring. An April 1997 public hearing was convened at the Henrico County Government Center by the subcommittee's chairman, Congressman Dan Schaefer of Colorado, and Congressman Tom Bliley, the Commerce Committee's chairman—both of whom advocate retail competition.

Senator Jack Reasor, the joint subcommittee's chairman, appeared before this congressional subcommittee in August (as part of a panel of state representatives from California, Idaho, New Hampshire, New Mexico and Virginia). Senator Reasor expressed his view that the states were capable of developing restructuring plans and urged the subcommittee to focus its attention on removing federal statutory and regulatory barriers to restructuring, rather than on imposing federal control over the retail distribution and sale of electricity.

State and Local Taxation.

An emerging issue in the restructuring debate is the potential impact of retail competition on state and local tax revenues generated by taxation of electric utilities' gross receipts. The principal problem is the questionable constitutionality of levying gross receipts taxes on out-of-state generation providers. In a comparable context, the U.S. Supreme Court has disapproved state taxation of out-of-state

companies' mail order sales where the companies' sole presence in the taxing state is marketing activities.

The largest component of an electric bill is the generation component. Thus, losing the ability to assess gross receipts tax on out-of-state generation sales could have an adverse impact on tax revenues to the general fund and localities. The state's General Fund currently receives approximately $95 million from gross receipts taxes paid by Virginia's electric utilities; localities receive about $27 million in gross receipts taxes imposed on electric utilities through local license taxes.

A secondary taxation concern is the potential reduction in tax revenues tied to locality taxation of utility assets (at property tax rates) if electric utilities' installations or operating centers are idled due to the forces of competition and their property assessments for local tax purposes reduced proportionately.

The joint subcommittee appointed a twelve-member task force to look at restructuring tax issues. The task force, led by Delegate (now Senator) John Watkins, included representatives from the Department of Taxation, the Virginia State Corporation Commission, the Office of the Attorney General, the Virginia Municipal League, the Virginia Chamber of Commerce, the Virginia Association of Counties, investor-owned utilities, electric cooperatives, and independent power producers. The taxation task force was appointed in March 1997 and met several times during the year to develop a plan for maintaining taxation of electric utility activity on a revenue neutral basis without changing the proportions of taxes currently paid by customer classes.

Task force members addressed the out-of-state generation provider issue by endorsing a "declining block" end-user tax in combination with a corporate net income tax. Under such a plan, generation companies' locations would no longer be of concern; electric energy would be taxed at the point of consumption. This would not constitute a new tax since the gross receipts taxes paid by electric utilities are currently embedded in customers' utility rates. Additionally, companies engaged in the generation of electricity within Virginia would pay Virginia corporate income taxes if their activities in Virginia would otherwise require them to pay Virginia state income taxes. The distribution of electricity would not be subject to taxation under this proposal. Taken as a whole, the combination of the consumption tax and corporate net income tax was viewed as the mechanism most likely to succeed in keeping post-restructuring state and local utility tax revenues at their current levels.

SCC Report to the joint subcommittee; stakeholder responses.

The joint subcommittee's November 7 meeting featured the SCC's presentation of its suggested restructuring plan for Virginia. The multi-phased

model contained a study phase from 1998 to 2001 in which rate experiments, pilot programs and independent system operator (ISO) and regional power exchange (RPX) formation would take place. Phase II (2000 to 2002) called for a decision-making period in which both regulatory and legislative review of the results of Phase I would determine whether to proceed beyond that point. In the third phase (2002-2005), restructuring could commence, to be concluded by 2005.

Stakeholder responses to the SCC plan ranged from general endorsement to broad reservations. The American Association of Retired Persons (AARP) and the Virginia Citizens Consumer Council (VCCC) supported the SCC's deliberative approach to restructuring, while others, including representatives of electric cooperatives and Virginia's natural gas industry, expressed concern about the absence of SCC direction on stranded costs formulas and stranded cost mitigation. The Southern Environmental Law Center, a Charlottesville-based environmental organization, said that the SCC's plan identified some of the environmental problems posed by restructuring, but failed to identify or propose specific solutions to them.

Proponents for restructuring, including the Alliance for Lower Electricity Rates Today (ALERT) and the Committee for Fair Utility Rates, criticized the plan for moving too slowly toward competition. They also rejected the SCC notion of restricting competitive sales to those made through exclusive regional power exchanges. They urged the alternative availability of direct, bilateral contracts between power suppliers and customers, contending that exclusive pools could have the effect of encouraging power suppliers to engage in market price manipulation—thereby capturing large profits on all dispatched plants.

The heaviest criticism of the SCC plan came from an organization representing apartment and office building owners in Northern Virginia and metropolitan Washington, D.C. The Apartment and Office Building Association of Metropolitan Washington (AOBA) told the subcommittee that the plan was deficient in its failure to (i) specifically address a stranded costs recovery formula, (ii) advocate pilot programs large enough to make data generated by such pilots meaningful, and (iii) include electric consumers in the planning and development of ISOs and RPXs.

Final Pre-Session Meeting.

At the joint subcommittee's December meeting prior to the legislative session, its members endorsed a resolution continuing the study in 1998 for the purpose of developing a comprehensive restructuring plan for Virginia. Included in the resolution were proposed "sense of the General Assembly" statements encouraging SCC initiatives such as retail competition pilot programs. The resolution also declared that net stranded costs should be recovered.

Additionally, Senator Reasor, the subcommittee's chairman, told the subcommittee members that he intended to introduce a comprehensive restructuring bill in the 1998 Session, but would not seek the subcommittee's endorsement of the measure. He also suggested that all restructuring-related bills introduced in the 1998 Session be introduced solely for the purpose of consideration in a "carry over" status by the joint subcommittee in 1998—this included restructuring bills addressing state and local taxation.

Legislative activity in the 1998 Session.

Several restructuring bills were introduced in the 1998 Session, including two comprehensive restructuring bills introduced by joint subcommittee members Senator Reasor and Delegate Plum (SB 688 and HB 1172, respectively). Additionally, Senator Watkins introduced two bills and two resolutions addressing state and local taxation issues: SB 619, SB 620, SJR 45 and SJR 46. And, Senator Reasor introduced SJR 91 continuing the joint subcommittee's work in 1998.

Senate Bill 688 (the Reasor bill) prescribed a five-year, phased transition to full retail competition in the electric utility industry, with preliminary activities beginning in 2000 and retail competition fully phased in by 2004. State and local taxation bills introduced by Senator Watkins included SB 619, which eliminates electric utilities' obligation to pay state gross receipts taxes, the SCC special assessment tax, and locality gross receipts taxes. Substituted for these taxes in the bill was a declining block consumption tax paid by residential, commercial, and industrial users of electric power. A companion bill (SB 620) made electric utilities' income from generation services subject to Virginia's corporate income tax. All three bills (SB 688, SB 619, and SB 620) were carried over to the 1999 Session in the Senate Committee on Commerce and Labor. They were referred to this restructuring subcommittee for review in 1998.

Senator Watkins also introduced SJR 46 which would, via constitutional amendment, effectively authorize the SCC to assess the real and tangible property of all sellers of electricity for the purpose of creating tax assessment parity between public service companies (currently assessed by the SCC) and independent power producers (IPPs), whose real and tangible property is assessed by localities. SJR 46 was carried over to the 1999 Session in the Senate Committee on Commerce and Labor; it was also referred to this joint subcommittee for review in 1998.

Bills passed in the 1998 Session.

The General Assembly approved SJR 91, continuing the joint subcommittee's activities in 1998, and directing the joint subcommittee to develop a comprehensive restructuring proposal for Virginia's electricity market. The resolution also

expresses the sense of the General Assembly that Virginia's electric utilities should recover "legitimate stranded costs."

Also approved was SJR 45 (introduced by Senator Watkins) memorializing Congress to carefully consider the state and local tax revenue impact of any federal restructuring legislation. The resolution also requests a federal grant of authority to state and local governments to continue imposing and collecting taxes from all generators of electricity selling electricity within their respective jurisdictions, without regard to the corporate location of such businesses.

The General Assembly also approved HB 1172 (introduced by Delegate Plum) which established a broad outline for Virginia's transition to retail competition in the sale of electricity. HB 1172's provisions (i) establish 2001 as a target deadline for establishing ISOs and RPXs for the dispatch and sale of generation, (ii) begin the transition to retail competition in 2002, and (iii) establish 2004 as the target date for the completion of transition to retail competition.

HB 1172, signed by the Governor on April 15, 1998, does require additional legislation and regulatory activity before retail competition comes to Virginia. However, the bill signals the commencement of significant restructuring activity in Virginia as the Commonwealth enters the next century. HB 1172, along with SJR 91, will guide the joint subcommittee's activities in 1998.

II. POLICY OVERVIEW

Retail competition in the sale of electricity would eliminate the exclusive service territory structure through which Virginia's electric utilities currently market and deliver power. Most restructuring models under consideration deregulate electrical generation, leaving transmission and distribution regulated by federal and state utility regulatory agencies. Virtually every state is examining retail competition and, to date, over a dozen states have adopted various retail competition plans. At the federal level, several bills mandating retail competition are pending before the House and Senate.

Retail competition, as typically proposed, would permit the competitive sale of electric generation at the retail level, releasing electricity customers—industrial, commercial, and residential customers alike—from their local public service companies to purchase generation in a nationwide electricity market. Virginia's industries, businesses and residents currently buy their power from investor-owned utilities like AEP Virginia, Potomac Edison and Virginia Power; electric cooperatives; municipal power suppliers; and public power authorities, such as the TVA. According to the SCC, Virginians enjoy electricity rates well below the national average. Recent statistics show that Virginia's residential customers pay, on average, seven cents per kilowatt hour; commercial customers pay five cents; and industrial customers pay about four cents per kilowatt hour. By way of comparison

in New Hampshire (a state engaged in restructuring) power customers pay an average of 13 cents per kilowatt hour for residential use, 11 cents for commercial, and eight cents for industrial.

ALERT and other restructuring proponents contend that restructuring will lower the price of electricity for everyone—by up to 17 percent, according to one source—while critics say the benefits of retail competition would be enjoyed by a narrow class of large industrial customers, leaving open the possibility of rising electricity prices for others. Aside from price, there is considerable debate about the interstate transmission system's capacity to handle the increased load flows anticipated in a competitive market. And, SCC staff have repeatedly urged the joint subcommittee to focus on the overall reliability of the Commonwealth's electricity delivery system in competitive market, including its capacity to ensure sufficient generation reserves over the long run.

Several broad policy questions have emerged from this discussion. First, some electric utilities fear capital investment losses if retail competition produces market rates below regulated rates; generation facilities and equipment may decline in value. These economic losses are referred to as "stranded costs," and a vigorously debated question is whether a utility's customers should help reimburse the utility for these losses during a transition to retail competition. A related question: how should such transition costs be calculated?

Taxation issues are also a part of this debate. The transition to retail competition could significantly reduce the $90 million in gross receipts taxes the Commonwealth currently receives from electric utilities. The reason: possible constitutional barriers to imposing this tax on out-of-state suppliers of electricity. One idea considered by the joint subcommittee is switching from a gross receipts tax to a corporate net income tax, in combination with a end-user consumption tax. The consumption tax would not be a new tax since gross receipts taxes are currently embedded in electric rates established by the SCC.

Consumer protection is also part of the discussion. Representatives of consumer, low-income, and senior citizen groups told the SJR 259 joint subcommittee that low-income residential consumers and senior citizens are most at risk in any restructuring scenario. Unlike business and industrial customers, these electricity customers lack the market power to negotiate cheaper rates; they are unlikely sales prospects for power marketers. Advocates for these groups recommend that any restructuring bill contain adequate provision for "suppliers of last resort" to ensure service to these customer groups.

Virginia's largest industrial and commercial customers are retail competition's principal advocates. Acting through ALERT and the Virginia Committee for Fair Utility Rates (an organization representing Virginia Power's largest industrial and commercial customers), these large customers have proposed

that retail competition be fully phased in by the year 2001. In contrast, the SCC's utility staff supports a more deliberate approach. As will be discussed later in this report, in November 1997 the SCC staff outlined for the joint subcommittee a five-year phased plan for transition to retail competition. The plan would include extensive analysis, including retail competition pilot programs, during the first three years comprising phase one. If phase one results support a transition to retail competition, Virginia's electric utilities would then file retail competition plans with the SCC to begin the final transitional phases.

Practical questions also persist in this debate. First, what will a "live" retail competition market look like, and will it furnish electricity to retail customers at just and reasonable rates? While California is poised to *begin* full-scale retail competition in April 1998, there is no place for Virginia's legislators and regulators to look for information and assurance about such a system's success in operation. Second, in replacing franchised service territories with two-tier service separating deregulated generation and transmission from regulated distribution systems, how will the General Assembly and the SCC ensure adequate generation and generation reserves? The issue is particularly pressing if generation is furnished through ISOs and RPXs regulated by the Federal Energy Regulatory Commission.

Also, to the extent that the allure of retail competition to large industrial and commercial customers is the hope of direct, bilateral contracting between such customers and electric generation suppliers, can a bilateral contract option be engrafted to the central dispatch and sale architecture of independent system operators and regional power exchanges?

All of these complex issues were before the joint subcommittee as it began its second year of activities.

III. WORK OF THE JOINT SUBCOMMITTEE

The joint subcommittee examined legislative activity in states such as New Hampshire and Pennsylvania where restructuring bills have passed and restructuring pilots are underway. The subcommittee also investigated federal restructuring activities and the technological reliability of restructured delivery systems.

A. ACTIVITIES IN OTHER STATES.

Nearly every state is looking at electric utility restructuring, and thus far, over a dozen have enacted retail competition legislation or adopted restructuring regulatory plans. In 1996, legislatures in New Hampshire, Rhode Island, California and Pennsylvania passed bills authorizing retail competition. In 1997, legislatures in Oklahoma, Montana, Maine, Illinois and Nevada enacted retail competition laws.

William Spratley, a utilities market analyst and publisher of The Leap Letter (a restructuring newsletter), noted in remarks to the joint subcommittee that the scope and details of the restructuring bills enacted to date vary widely (Appendix B). Some states, like New Hampshire and Pennsylvania, have initial pilot programs in their legislation (in which a percentage of electricity customers may shop for their electric supplier), followed by phase-in periods to a date in which retail competition is available to all customers statewide. However, a New Hampshire public service commission representative describing the New Hampshire restructuring experience to date told the joint subcommittee that, while recent survey results showed that the pilots were popular with power customers, the pilots were expected to indicate very little about likely price trends in a restructured market.

California addressed restructuring's commencement in that state by simply establishing January 1, 1998, as a start date for all customers in every class—later revising that to April 1, 1998, to allow for the completion of its power exchange. Oklahoma's 1997 bill directs its public service commission to develop a retail competition plan. Furthermore, the Oklahoma bill conditions any such plan on the development of an acceptable strategy for dealing with restructuring's potential impact on state and local tax revenues from electric utility taxation.

A critical variable in all of the legislation under consideration, as well as that approved to date, is the treatment of stranded costs. In California, for example, that state's public utility commission will determine stranded costs related to generation assets, and will permit recovery through severance fees paid to incumbent electric utilities (those currently furnishing service in regulated markets) by departing customers, and through "competitive transition charges" (CTCs) paid by utilities' remaining customers. CTCs will end for most customers in 2001. In New Hampshire, on the other hand, "interim recovery charges" will be allowed for up to two years, but no entry or exit fees will be paid by customers leaving or returning to incumbent utilities. Pennsylvania's public utility commission will determine just and reasonable stranded costs through nonbypassable CTCs. Since stranded costs will not be realized, if at all, except in competitive markets, many states require periodic stranded costs "true ups," or recalculations to determine the extent to which actual market prices have prompted actual losses related to generation assets.

Market structure and market power of incumbent utilities are addressed in some states' legislation. In Montana, that state's public service commission is required to order vertically integrated electric utilities to functionally separate supply, transmission, and distribution. However, it may not order or prohibit divestiture. In contrast, Maine requires investor-owned utilities to divest all generation assets and generation-related business on or before March 1, 2000. Pennsylvania's legislation, on the other hand, stipulates that the Pennsylvania

Public Utility Commission may permit, but cannot require, divestiture or other corporate reorganization of its incumbent electric utilities.

Another critical variable is the matter of customer protection—particularly the protection of residential and small business customers. The most significant concern is eliminating the potential for consumer fraud or misrepresentations. Virtually all states with legislation on the books have included provisions requiring all generation suppliers to register with state public service commissions. Some states, such as Pennsylvania, require these suppliers to post bonds or furnish other security; others, like Maine and Montana, require proof of financial security and responsibility. Other requirements include the obligation of public utilities (under the supervision of state utility regulators) to educate consumers about the meaning and implication of customer choice in a restructured market.

B. FEDERAL ACTIVITIES.

The momentum for legislative study on the state level is unquestionably driven by the strong possibility of federal legislation preempting state authority over electric competition. Federal intervention in the interstate electricity market began in 1978, when Congress passed the Public Utilities Regulatory Policies Act (PURPA) requiring public utilities to purchase power from independent power producers if the latter could produce it as cheaply as the former. And, a federal electric utility policy favoring open markets was declared in earnest with the passage in 1992 of the National Energy Policy Act (EPACT). EPACT and a consequent Federal Energy Regulatory Commission order (FERC Order 888) opened the transmission system to independent power producers for wholesale power sales. EPACT did not, however, permit FERC to implement retail competition, leaving that issue to the states.

Several federal legislators are eager to quickly open up the retail market. Congressman Dan Schaefer of Colorado introduced H.R. 655 in 1996 which mandates full retail competition in all states by the year 2000 (Appendix C). Whether Congress has constitutional authority to mandate state implementation of retail restructuring is open to interpretation, however, following the U.S. Supreme Court's 1997 decision in Prinz v. U.S. The Prinz decision suggests that federal authority to direct state implementation of federal legislation must rest upon clear preemptive authority granted by the U.S. Constitution over the legislation's subject area—an authority not yet determined vis-à-vis the retail electricity market.

A restructuring consensus in Congress has not emerged in any event. Bills such as H.R. 655 (Schaefer's bill), H.R. 1230 (mandating full, nationwide retail competition by 1999), and others before the House Commerce Committee are in conflict with another view of restructuring in Congress, represented by S.21 pending before the Senate Energy and Natural Resources Committee. That bill presents a pro-state view emerging in the Senate empowering retail competition in

the states, but without federal mandates. Consequently, while both Senate and House committees continue their work on this issue with frequent committee hearings and workshops, no agreement between the two chambers appears imminent. Adding further complication is the Clinton administration's commitment to unveiling its own federal restructuring plan.

C. RESTRUCTURING AND TRANSMISSION SYSTEM TECHNOLOGY.

The joint subcommittee also focused on restructuring and the electric power transmission system. Subcommittee members toured the Virginia Power System Operations Center to observe that utility's computerized generation, dispatching and transmission management system, and also received a presentation from an Electric Power Research Institute (EPRI) representative concerning ongoing research and development work in the field of electric transmission technology (Appendix D).

Transmission technology research is critical to restructuring, the EPRI representative emphasized, because power generation and transmissions related to wholesale power sales result in power flows in all directions across the interconnected electrical transmission network, and not just in direct lines from sellers to purchasers. Thus, generation resulting from an interstate sale of electricity from an electric utility in Montana to a distribution system in Ohio, for example, will most probably add load to adjacent transmission lines in all directions. Neighboring utilities could be required to reduce generation in order to prevent transmission line overload resulting from generation outside their control.

Wholesale power transactions, frequently uncoordinated through any centralized operations system, can potentially overload transmission lines resulting in their shutdown and—in a severe case—cascading shutdowns of adjacent lines to which power is shifted. According to EPRI's representative, at least one significant recent power outage on the West Coast may have resulted from line overloading relating to wholesale wheeling. EPRI's representative's said that while these line problems were not caused by retail competition, uncoordinated power flows resulting from numerous retail competition transactions could overwhelm the interstate transmission system.

To address these and related load-flow issues, EPRI is participating in the development of a computerized regional communications network designated as the Open Access Same-time Information System, or OASIS. OASIS, currently in testing stages, will be used by system control centers to determine accurate system status, safe networking operating limits, network overload capabilities, and the impact of power transactions in near real-time. A related system under development (the Flexible Alternating Current Transmission System, or FACTS) is likely to replace generation control as a means of controlling power flow over

transmission lines. Computerized electronic "valves" will boost power flows on specified transmission lines as a means of ensuring transmission system integrity.

EPRI's representative also emphasized that regional power generation is essential to steady state voltage security. Large regions importing virtually all of their power, he said, would have great difficulty maintaining steady state voltage—essential to the safe and efficient operation of electrical equipment. Unstable voltage outside certain tolerances can result in damage to electrical systems and sensitive industrial equipment.

D. Reports received concerning SCC Activities.

The SCC's public utilities staff reported on the work of staff-coordinated work groups examining five restructuring topics: (i) a model for a restructured industry, (ii) reliability issues from both a generation and transmission perspective, (iii) stranded costs and stranded margins associated with potential transition to a more competitive generation market, (iv) the costs and benefits associated with the introduction of more competition into the generation sector, and (v) the potential impacts of a restructured industry on the environment.

The work groups, comprised of representatives of investor-owned utilities, electric cooperatives, independent power producers, major industrial electricity customers, environmental groups, and others with a stake in this issue met extensively in 1997. The work groups were established to help the SCC continue its examination of restructuring and to prepare its recommendations for a Virginia restructuring model.

Models.

The models work group examined and critiqued legislation or models proposed or implemented in other states (including Texas, Indiana, Pennsylvania, New Hampshire and California), and members were furnished opportunities to propose and explain models of their own design. Significant models-related issues included concern about price levelization in an open retail market which could result in rate increases in regions currently served by low-cost utilities. Additionally, group members debated whether regulated local distribution companies should be required to be a generation service supplier of last resort, and whether any restructuring should be accomplished through pilot programs and transition periods.

Reliability.

The reliability group focused on reconciling customer choice with the physical realities of electrical flows—an issue highlighted in EPRI's presentation to the joint

subcommittee. This group also identified critical ancillary services such as frequency control and voltage regulation—all essential to the provision of reliable electric service in any market, but particularly so in a competitive one. Mandatory generation reserves—a feature of the current, regulated generation system—proved to be a contentious area. Transmission grid users can theoretically rely on the reserves of other generators to assure reliability, and may have little incentive to individually provide for sufficient reserves. Reserve cost-sharing in a competitive market may, however, be necessary to ensure generation reliability.

Environment.

The environmental group was unable to reach consensus about the effects of retail competition on air pollution; some members predicted that competition will cause older, high emission coal plants to be run more often, while others asserted that the mandates of the federal Clean Air Act will minimize emissions. A related issue: potential competitive disparity between new plants that must be built with expensive, pollution control technologies and those plants built prior to 1978 and subject to less stringent emissions standards. The group also addressed concerns about the impact of restructuring on the future of utilities' current conservation and load management programs. Minimizing the construction of new generation and transmission facilities through such programs is thought by some to be at odds with the concept of retail competition, while others suggested that competition may promote energy efficiency.

Stranded Costs.

The stranded costs group confronted one of the most difficult issues presented by retail competition. Stranded costs or margins are characterized as the differences between the market value of utilities' generation-related assets in a competitive environment and their book value. In a restructured market, older, high-cost nuclear plants, for example, may not be competitive with newer, more efficient generation units, and the nuclear units' value may be substantially reduced as a result.

For some, such as Virginia Power, for example, long-term purchased power contracts with non-utility generators (a by-product of federal PURPA legislation) at prices currently above market represent their stranded cost exposure. These contracts have the same cost effect on a utility as undepreciated generation units. On the other hand, low-cost investor-owned utilities, such as AEP Virginia and Potomac Edison, have existing plants that are fully depreciated. These utilities may have net stranded margins or minimal stranded costs at most, the SCC staff reported.

Utility recovery of stranded costs from ratepayers was the key issue before this work group. The justification offered for this recovery is found in the concept of a "regulatory compact" said to exist between franchised public utilities and their regulators. It suggests that stranded costs are essentially sunk investments which the utilities made to fulfill their legal obligation to provide adequate service to all consumers within their service territories.

Some work group participants advocated full recovery from ratepayers, while other suggested that these costs should be shared equally between ratepayers and utilities' shareholders. Those in the latter camp contend that shareholders have explicitly assumed the risk of potential regulatory and statutory reform within the industry. One important consensus: the difficulty of projecting stranded costs, a fact underscored by national estimates of utilities' potential stranded costs ranging from $50 billion to over $500 billion.

The work group favored a time-specific, non-bypassable "wires charge" as a mechanism for recovering stranded costs, if they are to be recovered at all. The group also agreed that utilities should be obligated to mitigate the extent of their stranded costs. In that vein, the California and Pennsylvania restructuring legislation offers up stranded cost "securitization" as a means of mitigation. Securitization enables low-cost debt refinancing of potentially stranded utility assets, securing that debt with legislation establishing a ratepayer-produced stranded cost recovery income stream.

IV. SCC RESTRUCTURING PLAN

A. PLAN OVERVIEW.

At its November meeting, the SCC presented its proposed restructuring plan to the joint subcommittee (Appendix E). The plan encompasses a two-phase restructuring process beginning in 1998. In Phase I (1998-2001), the rates of all electric utilities would be thoroughly examined, retail pilots would be conducted, and the SCC would pursue such key ingredients such as ISO formation. Phase II (beginning in 2002) would inaugurate actual retail competition—if the SCC and General Assembly agreed that retail competition was in the public interest—and Virginia's electric utilities would be required to file retail competition plans.

Phase I.

According to SCC staff, the Phase I rate examination is essential since these rates could be in effect for an extended period of time during a transition to competition. Virginia Power and AEP Virginia have rate/alternative regulatory plan cases currently pending before the Commission (Virginia Power's case is set for

hearing in early 1998) and Allegheny Power is expected file a rate case as early as 1998. Thus, in some respects, Phase I has already begun.

The rate reviews proposed by the SCC would (i) determine whether current rates reflect costs and (ii) undertake preparatory work for a competitive model. The review would include examination of such issues as inter-class subsidies, unbundled rates and bills, stranded costs and margins, transition and transaction costs, and consumer services.

SCC staff believes that the formation of a regional independent system operator is critical to the success of any significant level of retail access. In concept, ISOs would provide centralized generation dispatch coordination in a competitive market. The report proposes ISO formation (coordinated with other states and the federal government) during Phase I and concurrent formation of a regional power exchange to develop a spot market for electricity.

Pilot programs.

Phase I would also include retail access pilot programs and studies (lasting up to two years) to be conducted by Virginia's investor-owned utilities (such as AEP Virginia and Virginia Power) and at least two electric cooperatives. SCC staff hopes that these pilot programs will produce useful information in several areas including information technology requirements, generation supply and load matching, time-of-use metering, marketing and rate information, rules governing utility affiliates, and consumer protection.

The staff cautioned the subcommittee, however, that the pilots probably would not produce concrete information about electricity prices or reliability in a competitive market. However, SCC staff said that pilot programs would help develop information about technology requirements and consumer impacts.

Stranded costs.

A key restructuring issue is stranded costs, or possible capital losses resulting from electric utility generation asset devaluation in a competitive market. Some electric utilities are concerned that regulated rates may be the only means of ensuring sufficient rates of return on some electricity generation plants. New coal-fired plants with the latest in federally-required emissions control technology may fall into this category. Nuclear power plants as well power purchased from nonutility generators (NUGs) may be in this category as well.

The SCC's report raises many questions about stranded cost recovery, while providing no proposed formula for their calculation. These questions include ones about mitigation, equitable cost sharing between shareholders and ratepayers,

recovery periods, and allocation among customer classes—to name just a few. The staff told the joint subcommittee that its plan included no recovery formula to avoid prejudicing ongoing discussions between Virginia Power and its NUGs, with whom Virginia Power has purchase power contracts said to be currently above market—and potentially the source of stranded costs. These discussions resulted from a November 1996 SCC order directing Virginia Power to conduct negotiations with its NUGs to determine whether the contracts could be renegotiated to reduce this utility's potential stranded cost exposure.

Phase II Features.

In Phase II (denominated the "decisional phase"), the SCC and General Assembly would jointly review the pilot program results, ISO/RPX formation progress, and retail competition in other states. They would also review reliability issues and the transaction and transition costs associated with restructuring. A cost-benefit analysis would be undertaken as part of this review to determine whether the benefits of retail competition outweigh its costs. If the review supports the development of retail competition, all electric utilities would be required to file retail competition plans.

The electric utilities' retail competition filings would be required to detail the following:

- Generation reliability.
- ISO/RPX development.
- Likely rate impact on customer classes.
- Necessary information and metering technology.
- Market power issues.
- Necessary consumer protection measures and their implementation.
- Proposed implementation period.
- Stranded costs and margins.
- Environmental impact.

The SCC would conduct public hearings on these submissions, ensuring that each approved plan meets the above standards, and that net benefits would accrue from its adoption. If transition proceeds smoothly, the SCC could choose to accelerate the phase-in pace; if it does not, the phase-in period could be extended.

The SCC staff believes there are several possible models for competition in Virginia, including a *wholesale* competition model, and a *retail* competition model that encompasses (i) an expanded wholesale model, (ii) an ISO/RPX model and (iii) straight bilateral contracts. Essentially, the SCC's wholesale model would encourage market pricing by basing electric utilities' return on new capacity (where they choose to build rather than buy) on wholesale market prices and not on

traditional rate base pricing. An expanded or modified wholesale model would permit large retail power purchases by a limited number of industrial customers, the logic being that these purchases are indistinguishable in size and magnitude from the direct, wholesale purchases (from the supplier of their choice) currently made by municipal power suppliers and electric cooperatives.

The ISO/RPX model is key to the SCC's view of a functional competitive retail market. An RPX would provide dispatch logic for generation and a competitive spot market for electricity based on generation owners' bids for generation at specified times of the day. An ISO would then direct generation dispatch using RPX-developed load curves reflecting projected loads at different times of the day.

The electricity customer fits into this model by having the *equivalent* of retail access. This is accomplished—assuming the local distribution companies have appropriate information technology—by customers exercising "contracts for differences." Straight, bilateral contracts could be accommodated within this model for a limited number of large customers. However, the SCC staff believes that the ISO/RPX model diminishes the logic or need for such transactions. Moreover, the straight bilateral contract model (one between a retail supplier and purchaser) does not, in the SCC staff's estimation, provide for effective access to competitive suppliers for many classes of customers.

Need for legislation.

The SCC plan identified two narrow areas where legislation may be needed to support retail competition's evolution. First, the SCC recommended legislation authorizing construction of "merchant plants" (essentially NUGs) in incumbent utilities' service territories to counterbalance the utilities' potential market power. The SCC also suggested legislation to address issues associated with eminent domain and merchant plant's construction and siting. SCC staff strongly recommended that this and all other legislation associated with restructuring be done without any attempt to anticipate federal legislative activity in this area. While some federal bills under consideration offer "grandfathering" to states with restructuring plans enacted prior to the federal bills' effective dates, the staff noted that such grandfathering ultimately requires conformity with the federal enactment.

B. Stakeholder Responses.

The responses of restructuring stakeholders to the SCC plan ranged from general endorsement to strong reservations. The American Association of Retired Persons (Appendix F) and the Virginia Citizens Consumer Council (Appendix G) supported the SCC's deliberative approach to restructuring. Representatives of the

Virginia Poverty Law Center and the Virginia Council Against Poverty also voiced support for the SCC plan, although they, and VMH, Inc. (an entity furnishing energy services to low-income consumers) expressed hope that any eventual plan would provide more explicit assurances of protection for low-income residential customers. The International Brotherhood of Electrical Workers—representing electrical workers in the Commonwealth—also expressed support for the SCC plan's phased approach.

The electric cooperatives (Appendix H) took issue with the SCC plan's suggestion that transition to retail competition begin with a rate review. They believe that unbundling rates for each electric utility into their generation, transmission and distribution components should be first on the agenda. The electric cooperatives also expressed concern that the SCC proposal lacked guidance concerning stranded costs. And, while the electric cooperatives favor ISO and RPX formation, they also expressed concern about the potential market power that could be exercised by companies like Virginia Power with limited import capacity in their present transmission system (Virginia Power, for example, currently has less than 4,000 megawatts of such capacity).

Virginia's oil and gas producers (Appendix I) expressed concern about the absence of SCC direction on stranded costs formulas and mitigation. Washington Gas responded by promoting its plan for restructuring in which all energy providers (electric and natural gas, alike) could participate in a two-year retail access pilot program (1998-2000), followed by a three-year phase-in (2000-2002) to full retail customer choice. This company emphasized the importance of including the natural gas industry in the transition to electric industry restructuring, since the emergence of full-service energy companies selling both products will, in their estimation, have significant roles to play in Virginia's deregulated energy future. Washington Gas emphasized that the natural gas industry is presently gaining experience in restructuring; proposed retail pilots for Virginia's natural gas customers are pending before the SCC.

The Municipal Electric Power Association of Virginia (MEPAV), representing Virginia's localities (such as Harrisonburg and Blackstone) with municipal power supply systems, told the joint subcommittee that MEPAV supports the SCC's plan to proceed with caution to retail competition. MEPAV urged the subcommittee to ensure that any restructuring plan (i) permits no bypass of existing distribution systems, (ii) allows no existing electric utility to utilize the constraints in the capacity of its current bulk power system to exercise unregulated monopoly power in a deregulated market, and (iii) becomes effective in concert with necessary federal legislation facilitating the creation of regional independent system operators, ensuring transmission reliability, and minimizing potential market power exercise by incumbent utilities.

The Southern Environmental Law Center said it generally supported the SCC's plan, agreeing that the proposed phase-in was appropriate; that pilots programs should precede full-scale competition; and that ISOs should be used to coordinate generation. However, Center representatives told the joint subcommittee that the plan should have contained a specific date for retail competition commencement, and was deficient in omitting to suggest specific environmental protection provisions (Appendix J). The Center suggested that, at a minimum, retail customers should be provided environmental disclosures from generation suppliers concerning each supplier's fuel mix and emission rates. Additionally, the Center said, an independent non-profit entity should be established to administer funding for a program promoting greater energy efficiency and renewable technology development. Energy Consultants, Inc., a company furnishing energy utilization management technology, also addressed energy efficiency and its potential for reducing air emissions. It recommended that the SCC incorporate test programs, during any pre-restructuring evaluation phase, that would include examinations of the interrelationships between energy efficiency programs and environmental and health benefits.

Proponents of restructuring criticized the plan as moving too slowly. The Alliance for Lower Electricity Rates Today (Appendix K) and the Committee for Fair Utility Rates (representing large industrial area commercial users) (Appendix L) also challenged the plan's suggestion that competitive generation sales be limited to those coordinated by regional power exchanges. They urged the alternative availability of direct, bilateral contracts between power suppliers and customers. ALERT and the Committee argued that such exclusive pools could have the effect of encouraging suppliers to engage in market price manipulation to capture large profits on all dispatched plants.

The Apartment and Office Building Association of Metropolitan Washington criticized the plan on several fronts (Appendix M). AOBA, whose members are large commercial users of electricity, called for broader participation by electric consumers in the formation of ISOs and RPXs—a job that AOBA contended the SCC plan left principally to incumbent electric utilities. The group also criticized the SCC's failure to recommend a specific competitive model while offering model options which included—from AOBA's perspective—options leaving open the possibility that retail competition would be available to large industrial consumers (presumably, under the SCC's "expanded wholesale" model) while leaving out commercial and other classes of electricity customers.

AOBA joined other critics in noting the absence of SCC specificity in the area of stranded costs. AOBA stated emphatically that rigorous, up-front calculation of stranded costs was a hurdle that must be cleared prior to initiating significant customer choice. The group also discounted the value of any retail pilot programs *unless* the pilots were of a large enough scale to generate meaningful data. To that

end, AOBA recommended that pilots should be (i) large enough to represent a substantial portion of each utility's total service requirements (10-20 percent); (ii) implemented without participation incentives or cost subsidies; and (iii) sufficiently long in duration (at least three years) to discourage marketers from offering service at a loss to gain market share.

Virginia's largest investor-owned utilities also responded to the SCC model. Virginia Power criticized the additional study time advocated by the SCC; it urged the enactment of restructuring legislation as soon as possible (Appendix N). It questioned the practicality of conducting retail pilots given the SCC staff's belief that the pilots would produce little useful pricing information. It also stated that the report's principal shortcomings were in its failure to endorse a legislative restructuring framework in 1998, and omitting to provide a strong position on parameters for stranded cost recovery—an issue Virginia Power believes to be "the single most critical issue in the electric restructuring debate." Deferring restructuring in Virginia while undertaking additional and extensive SCC-coordinated study may harm Virginia's utilities (and ultimately its customers) in the financial markets. This would result, Virginia Power said, from leaving uncertain the future of Virginia's electric industry.

AEP-Virginia told the joint subcommittee that it generally agreed with the SCC's staff findings. While expressing little formal opinion about the SCC's plan, this utility did, however, urge that stranded costs and other transition issues be resolved with the objective of beginning a transition period in 1999 (Appendix O). AEP-Virginia also advocated significant SCC participation in the development of one or more ISOs to serve Virginia as part of the transition to retail competition.

V. WORK OF THE TAXATION TASK FORCE

The joint subcommittee established a task force comprised of restructuring stakeholders (including investor-owned utilities, electric cooperatives, municipal-owned utilities, power marketers and independent power producers, and industrial and commercial customers) and governmental officials (such as the Virginia State Corporation Commission, the Office of the Attorney General, and the Department of Taxation), directing its members to examine the potential impact on state and local tax revenues resulting from electric restructuring.

Conceivably, restructuring could have a huge economic impact on the Commonwealth and its localities. Electric utility gross receipts taxation furnishes over $90 million annually to the Commonwealth's general fund. Localities receive almost $300 million annually from consumer utility taxes, real property taxes, and local gross receipts taxes paid or collected by regulated providers of electricity (Appendix P).

The work of the task force centered on two concurrent tax policy goals: (i) sustaining the current level of revenue for the Commonwealth and localities, and (ii) maintaining the current apportionment of tax burden among residential, commercial and industrial electricity customer classes. A restructured environment would allow out-of-state producers of electricity access to Virginia's customer base. Introduction of competition affects the revenue received from gross receipts taxes in two ways.

First, many analysts feel that the introduction of competition will result in significantly lower electric costs for all classes of consumers. Lower electricity prices impact negatively on a taxation method based on gross receipts unless a proportional increase in consumption accompanies these lower prices. Several different economic studies suggest that consumption increases, expressed as "elasticity factors," will result, but the task force reached no consensus on the average usage increase resulting from lower electricity prices.

The second way that competition impacts revenue collected by the Commonwealth from gross receipts taxes is that collecting this tax from providers of electricity located outside the Commonwealth may not be legally permissible. The subcommittee's extensive discussion of the "nexus" issue left the constitutional question of the Commonwealth's ability to tax out-of-state generators unresolved. A Pennsylvania public service commission representative told the task force that that state's restructuring bill imposes the gross receipts tax on all persons supplying electricity to Pennsylvania customers—in or out of state. The taxing nexus is presumably established through the bill's requirement that all suppliers register with the public service commission. However, the bill does contain a safety valve: in the event gross receipts taxes cannot be imposed on out-of-state suppliers, any consequent revenue deficit is made up through an end-user consumption tax.

The task force discussed various replacement taxation schemes, including replacing the gross receipts tax with a corporate income tax. The recommendation of the task force was to impose a tax on the income derived from the generation of electricity. Income derived from transmission and distribution would not be taxed. However, such a replacement by itself would result in a decrease in the current tax revenue collected by gross receipts tax by the Commonwealth by approximately $66 million.

The task force explored many different variations of a consumption tax to make up the $66 million shortfall. These approaches included (i) an *ad valorem,* or sales tax approach; (ii) a per kilowatt hour, or kWh-based, tax levied at the distribution rather than retail level; and (iii) a unique end-user tax method developed for the task force that imposed a kWh-based tax on electricity consumption using a "declining block" method. The task force ultimately endorsed the declining block method (Appendix Q).

The declining block proposal taxes electricity consumption at three tax rates, with the highest for the first 2,500 kilowatt hours consumed each month; the second and lower rate on consumption between 2,501 and 50,000 kWh, and the third and lowest rate is imposed on kilowatt hours consumed in excess of 50,001 kWh per month. The task force developed these consumption blocks for discussion purposes only; they are broad approximations of electricity consumption levels in the current residential, commercial, and industrial customer classes. This tax would not be assessed against local, state, and federal governmental entities.

The task force also discussed the potential impact of restructuring on the taxes imposed by localities on electric utilities, including real property taxes, local gross receipts taxes, the special regulatory assessment collected by the State Corporation Commission, and the local consumer utility tax. The declining block model incorporates the local gross receipts tax and the special regulatory assessment, but not the consumer utility tax.

Legislation establishing the end-user declining block scheme in combination with a corporate net income tax for electric utilities (in lieu of the gross receipts tax) was recommended by the task force for introduction in the 1998 session of the General Assembly. At the time this proposal was endorsed, it was generally understood that this legislation, if introduced in the 1998 Session, would be carried over to the 1999 legislative session, and studied by the restructuring subcommittee along with other restructuring bills carried over for consideration between the two legislative sessions.

The task force also endorsed a proposal to amend the Constitution of Virginia to allow a central state agency, as prescribed by law, to assess real estate and tangible personal property. The Constitution currently authorizes a central state agency to assess the real estate and tangible personal property of public service corporations that pay a tax based on gross receipts or gross earnings. Finally, the task force also recommended memorializing Congress to give careful consideration to the state and local taxation revenue impact of any federal restructuring legislation, prior to its enactment.

All of the task force's recommendations were reported to the joint subcommittee, and were introduced in the 1998 legislative session by Senator Watkins, the task force chairman. All were carried over and referred to the restructuring subcommittee for study, with the exception of the resolution memorializing Congress concerning state and local tax impacts of federal restructuring bills. That resolution was passed by the Senate and House.

VI. OTHER MATTERS BEFORE THE JOINT SUBCOMMITTEE

A. UTILITY ENTRY INTO UNREGULATED MARKETS.

One feature of an evolving electric utility industry is the actual or proposed entry of regulated utilities (those regulated as public service companies) into unregulated markets—directly, or through affiliates or subsidiaries. In Virginia, public service companies' activities are restricted by statute to their public service activities such as providing telecommunications and electric power generation and distribution. However, they may also engage in business activities "related and incidental" to that public service.

Since 1996, the joint subcommittee has had before it the issue of whether furnishing services usually supplied by contractors in the heating, ventilation, air conditioning, cooling and refrigeration (HVACR) trades are "related and incidental to" an electric utility's principal public service activities. This resulted from an ongoing dispute between Virginia Power and representatives of a coalition composed principally of HVACR contractors and petroleum jobbers brought to the joint subcommittee's attention. The coalition's main concern is that Virginia Power would use its size and market power in entering the HVACR market to achieve market penetration sufficient to harm the livelihood of HVACR concerns and other businesses. The two parties were requested by the joint subcommittee to review and negotiate the issues before them, and to report their progress at this meeting.

Virginia Power and the coalition reported to the joint subcommittee that they had reached agreement on a statement of intent and proposed standards of conduct restricting certain Virginia Power activities during the transition to retail competition (Appendix R). Key areas include structural and operational separation of Virginia Power's unregulated subsidiaries. The agreement also addresses issues of customer information sharing between parent and subsidiary, and the subsidiary's use of the parent's name or logo in marketing and sales activities.

B. IMPACT OF RESTRUCTURING ON DEMAND CONTROL.

An issue frequently raised in the restructuring debate is retail competition's potential impact on energy conservation achieved through demand management programs. One such program approved in Virginia by the Virginia State Corporation Commission is customer use of a billing rate option called Schedule 1S. This option separates the charge for electricity into two parts: one for monthly kWh consumption, and the other for peak demand placed on the power company during the month. The option has been available to residential customers since 1978.

Energy Consultants, Inc., an energy consulting company furnishing computerized demand control equipment to approximately 2,000 residential and 30 small business and church electricity customers in Virginia, testified before the

joint subcommittee. In a residential setting, the company's equipment manages the electrical loads for heating and cooling, hot water heaters and electric clothes dryers—uses representing about 80 percent of typical residential usage. The bulk of savings comes from reductions in peak usage demand, with some customers reportedly saving up to $600 per year. The energy consulting company noted that the Virginia Power's alternative rate plan (pending before the SCC) makes no provision for demand management involving electricity customers with small loads. The company asked for the joint subcommittee's support for demand management programs in any restructuring transition period, and thereafter. One suggestion the company had for a Virginia restructuring plan: permit demand control users to negotiate demand-based billing rates (Appendix S).

VII. PRE-SESSION AND SESSION ACTIVITIES

A. FINAL PRE-SESSION MEETING.

At the joint subcommittee's final meeting prior to the legislative session, its members endorsed a resolution continuing the study in 1998 for the purpose of developing a comprehensive restructuring plan for Virginia. Included in the resolution were proposed "sense of the General Assembly" statements concerning encouragement of SCC initiatives such as retail competition pilot programs, and the recovery of net stranded costs.

Subcommittee members were also advised that Senator Reasor intended to introduce a comprehensive restructuring plan in the 1998 Session, but did not plan to seek the subcommittee's endorsement of the plan. He suggested that all restructuring-related bills introduced in the 1998 Session be introduced solely for the purpose of consideration in a "carry over" status by the joint subcommittee, including bills addressing state and local taxation.

B. LEGISLATIVE AND SUBCOMMITTEE ACTIVITY IN THE 1998 SESSION.

Several restructuring bills were introduced in the 1998 Session, including two comprehensive restructuring bills introduced by joint subcommittee members Senator Reasor and Delegate Plum (SB 688 and HB 1172, respectively). Additionally, Senator Watkins introduced three bills addressing state and local taxation issues. And, Senator Reasor introduced SJR 91 which would continue the joint subcommittee's work in 1998.

Senate Bill 688, introduced by Senator Reasor (Appendix T), prescribed a five-year, phased transition to full retail competition in the electric utility industry with preliminary activities beginning in 2000 and retail competition fully phased in by 2004. The bill was introduced and referred to the Senate Commerce & Labor committee, where it was carried over to the 1999 Session and referred (on an

advisory basis) to the restructuring joint subcommittee continued pursuant to SJR 91.

State and local taxation bills introduced by Senator Watkins were designed to address several objectives, including electric utility tax revenue neutrality in the event of restructuring. SB 619 (Appendix U) would eliminate electric utilities' obligation to pay state gross receipts tax, the SCC special assessment tax, and locality gross receipts taxes. Substituted for these taxes in the bill was a proposed declining block consumption tax paid by residential, commercial, and industrial users of electric power. A related bill, SB 620, (Appendix V) would make certain electric utilities' income from generation services subject to the corporate net income tax.

Senator Watkins also introduced SJR 46 (Appendix W) which would effectively authorize the SCC to assess the real and tangible property of electricity producers who are not public service companies, e.g., independent power producers, thereby creating tax assessment parity between public service companies (currently assessed by the SCC), and IPPs whose real and tangible property is assessed by localities.

SB 688, SB 619, SB 620 and SJR 46 were all referred to the Senate Committee on Commerce and Labor and, at the request of their chief patrons, were carried over to the 1999 Session and referred (on an advisory basis) to the SJR 91 joint subcommittee for additional study.

C. BILLS PASSED IN THE 1998 SESSION.

The General Assembly passed SJR 91 (introduced by Senator Reasor), continuing the joint subcommittee's activities in 1998 and directing the joint subcommittee to develop a comprehensive restructuring proposal for Virginia's electricity market (Appendix X). It directs the joint subcommittee to review, in detail, the restructuring legislative proposals it has received to date, as well as such other proposals as it may receive. Significantly, the resolution also expresses the sense of the General Assembly that Virginia's electric utilities should recover "legitimate stranded costs" (as such costs may be defined by the General Assembly) in the event of restructuring. The resolution also increases the size of the joint subcommittee from seven to 11, and provides funding for technical assistance.

Also passed was SJR 45 (introduced by Senator Watkins) which memorialized Congress to carefully consider the effect on tax revenue for the Commonwealth and its localities prior to enacting any federal electric industry restructuring legislation (Appendix Y). The resolution also requests federal authorization for state and local governments to continue imposing and collecting taxes from generators of electricity, even if such generators are not physically located within that state.

The General Assembly also approved HB 1172 (introduced by Delegate Plum) which established a schedule for Virginia's transition to retail competition in the sale of electricity (Appendix Z). In a special meeting of the SJR 259 joint subcommittee convened on February 5, 1998, the subcommittee approved by a vote of 5-2 a redraft of HB 1172 which formed the foundation for the bill finally approved by the House and Senate. As passed by the General Assembly, HB 1172's provisions (i) establish 2001 as a target deadline for establishing ISOs and RPXs for the dispatch and sale of generation, (ii) begin the transition to retail competition in 2002, and (iii) establish 2004 as the target date for the completion of transition to retail competition.

HB 1172 addresses the critical stranded costs issue, stating that "[J]ust and reasonable net stranded costs shall be recoverable and appropriate consumer safeguards related to stranded costs and considering stranded benefits shall be implemented." Its provisions are declared to have no effect on pending cases before the Virginia State Corporation Commission (SCC). Finally, the bill provides that restructuring's direction will come from the General Assembly with regulatory implementation by the SCC. The Governor signed the bill on April 15, 1998.

D. ANTICIPATED LEGISLATIVE AND REGULATORY ACTIVITY FOLLOWING THE 1998 SESSION.

HB 1172, along with SJR 91, will serve as the foundation for the joint subcommittee's activities in 1998, which are expected to culminate in comprehensive restructuring. Meanwhile, important regulatory activities are also occurring. The SCC has entered a 1998 restructuring-related order directing Virginia Power and AEP-Virginia to develop retail access pilot programs in their service territories. Proposed programs must be filed with the SCC by August 1, 1998. The order also encourages other electric companies and electric cooperatives to develop pilot programs in their service territories as well.

The SCC has also entered 1998 orders concerning the development of regional ISOs and RPXs. The order directs all investor-owned utility companies to file, by April 15, 1998, reports of current and future activities concerning ISO and RPX development.

With the passage of SJ 91 and HB 1172 in the 1998 Session, this joint subcommittee will begin its third year of work, focusing on the development of a comprehensive restructuring plan for the Commonwealth. The joint subcommittee anticipates a series of joint subcommittee meetings to address the specific policy questions restructuring raises, including stranded costs, market power, transition dates, and consumer protection. The subcommittee will report its work—slated to include a comprehensive restructuring bill—to the Governor and the 1999 Session of the General Assembly.

Respectfully submitted,

Jackson E. Reasor, Jr., Chairman
Clifton A. Woodrum, Vice Chairman
Richard J. Holland
Thomas K. Norment, Jr.
Jerrauld C. Jones
Kenneth R. Plum
John C. Watkins

SENATE JOINT RESOLUTION NO. 259

Continuing the joint subcommittee examining the restructuring of the electric utility industry.

Agreed to by the Senate, February 20, 1997
Agreed to by the House of Delegates, February 20, 1997

WHEREAS, more than 40 states now have under consideration restructuring in the electric utility industry; and

WHEREAS, significant efforts involving retail competition are in various stages of study, planning and implementation in the various states; and

WHEREAS, there are legislative proposals pending in the United States Congress directing the implementation of retail competition for electricity by dates certain in the near future; and

WHEREAS, the General Assembly in 1996 approved Senate Joint Resolution No. 118 (1996), establishing a joint legislative subcommittee that has commenced its study of such restructuring and retail competition; and

WHEREAS, the joint subcommittee conducted public hearings to hear from the providers and consumers of electricity; and

WHEREAS, the staff of the State Corporation Commission (SCC) has just completed its initial overview of such restructuring of the electric utility industry and retail competition; and

WHEREAS, it is in the best interest of the residential, industrial, commercial and governmental electricity consumers in Virginia to have reliable electricity at the most competitive cost while protecting environmental quality; and

WHEREAS, the Commonwealth should be prepared for the potential of retail competition for electricity in Virginia and have the necessary information to make decisions regarding such potential competition; and

WHEREAS, the SCC and its staff possess the expertise to develop a model plan for the restructuring of the electric utility industry in Virginia that will provide for reliable, competitive electricity; and

WHEREAS, restructuring of the electric utility industry may have a significant impact on small businesses and residential consumers within the Commonwealth; and

WHEREAS, the joint subcommittee study and the SCC staff examination should be continued and coordinated both with each other and with the various impacted parties such as electricity suppliers and electricity consumers in the Commonwealth; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the joint subcommittee studying restructuring in the electric utility industry be continued. The joint subcommittee shall also study the impact that restructuring in the electric utility industry may have on small businesses and residential consumers in the Commonwealth.

The members appointed pursuant to Senate Joint Resolution No. 118 (1996) shall continue to serve, and any vacancies shall be filled as provided in the resolution. Staffing shall continue to be provided by the Division of Legislative Services.

The SCC staff is requested to provide to the joint subcommittee by November 7, 1997, its draft of (i) a working model, which may also include experiments and pilot programs, most appropriate for the Commonwealth of Virginia for the future structure of the electric utility industry to provide reliable, competitive electricity and meet the demands of a changing industry while protecting environmental

quality, (ii) any statutory or regulatory changes considered appropriate under such model, and (iii) the appropriate timetable and transition for the model to be implemented. In conducting its analysis and preparing its recommendations, the SCC staff shall work in a collaborative fashion with representatives of electricity suppliers, consumers of electricity in the Commonwealth, and other parties of interest in this issue.

All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The direct costs of this study shall not exceed $4,200.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

Go to (General Assembly Home)

Overview of Current Electric Retail Competition Activities in State Legislatures

Bill Spratley, LEAP Letter Publisher
Virginia Joint Subcommittee Studying Restructuring
of the Electric Utility Industry
General Assembly Building, Richmond - July 15, 1997

10 Trends in State Legislation on Retail Electric Competition

1. Legislative/Regulatory Restructuring Studies Trend Prevails: More States Reject Retail Competition as 4 Enact 1997 Laws

• The **28 special state legislative committees or task forces specifically charged to study for electric industry restructuring** are the prevailing trend from 1994 to 1997 (see **Map 1**) These state legislative study committees are the majority approach of states in all four regions of the United States (see **Exhibit A**). State utility regulatory commissions also embarked on a number of parallel study efforts of retail electric competition and restructuring also.

• Only 5 States rejected legislative study committee proposals during 1995-1997: **Colorado** (SB 149, SJR 21, SJR 1030, HB 1318); **Georgia** (SR 439); **Florida** (HB 1203); **South Carolina** (HJR 3700, SB 578); and **Vermont** (SB 27, HB 100) (see **Map 1**).

• Standing committees of state legislatures later considered the various **recommendations of special study committees and the experience from the study effort appears to prepare state legislators to succeed in enacting restructuring laws more often than where no study committee existed.**

Where study committees existed and later took part in major restructuring bills in 1996 and 1997, the bills passed in **New Hampshire, Rhode Island, Maine, California, Nevada,** and **Oklahoma**, but failed after passing one chamber in **Illinois.**

During the same period, in the study committee states of **Connecticut** and **Texas**, major restructuring bills died in committees after appearing set for passage in 1997. The study committee recommendations in **Massachusetts** may yet yield a new law by the fall of 1997.

States with no special study committees enacted restructuring (after standing committee consideration only) in **Montana** and **Pennsylvania,** with bills failing after passing one chamber in **New York** and **Vermont** (where a new 1997 joint study committee has since been set up) (see **Exhibit B**).

• **Why so much state study?** Complexity of the issues is the reason. A three-part front-page series of articles by the St. Paul, Minnesota Pioneer Press was needed just to explain to the public what the 1997 state legislatures confronted on the retail competition issues, stating:

"Legislators face a multimillion dollar battle over utility deregulation that will affect you every time you open the monthly electric bill. Will you know enough about this complex issue to influence the outcome?

"Four states that already have passed utility deregulation offer case studies for Minnesota as it considers a free-market approach to electricity.
"Utility deregulation is so complex that no state legislature has been able to learn about the topic, form legislation, debate it and pass it in a single year - and it seems unlikely Minnesota will break the pattern." - Jan. 5, 6, 7, 1997 *"Power Struggle: Who Will Pay?"*

• Legislative studies are progressing as **dramatically more state bills were introduced in 1997 on the electric restructuring issue.** The Sept./Oct. 1996 LEAP Letter recorded 164 legislative measures in 36 states introduced in 1995 and 1996. By the Jan./Feb. 1997 LEAP Letter the number of bills introduced in January 1997 alone jumped to over 300 measures in almost every state.

• **Another factor driving state scrutiny of electric restructuring is the potential for federal legislation pre-empting state authority over electric competition.** The July 1996 proposal by Cong. Dan Schaefer setting a Year 2000 deadline for full retail access prompted states to look at the issue. By July 1997 more than a half dozen federal bills are pending in the U.S. Congress.

• Despite legislative study committees in a majority of states, the flood of restructuring bill introductions, and more federal legislation **in 1997, the bottom line is that restructuring bills died or were left pending in 18 states.** Looking at the 1997 state legislative actions by regions, **Maps 2, 3, 4,** and **5** show that **on a region-by-region basis 2 to 5 states rejected retail access for each state that enacted retail access legislation in 1997.**

3. Retail Access Timing: Pilots, Phase-Ins or "Orderly Roll-Out"

• **The 8 state electric restructuring laws** in 1996 and 1997 and their **dates for the start of retail electric competition range between Oct. 1997 and Jul. 2006** as summarized in **Exhibit E** by region, high or low-cost state and legislative enactment.

• **Retail Access Pilot Programs are now underway or planned in 13 states with pilot discussions or proposals in another 11 states** (See **Exhibit F, Map 7**). **Pennsylvania** may become the "Mother of Pilots" with 6 electric utilities retail access pilot programs for 12 megawatts or 5% of peak load extending potentially to over 235,000 customers - mostly residential - by Fall 1997 (see **Exhibit G** for Pennsylvania Pilot Order of Jan. 16, 1997, Pilot Goals and LEAP Letter accounts of pilot implementation).

• **Lessons Learned from Retail Access Pilot Programs** in New Hampshire, Illinois, Massachusetts and New York from the perspective of utility consumer advocates from those states is shown in **Exhibit H**. These observations come from Iowa Office of Consumer Advocate, "Competition and Restructuring of the Electric Industry: Pilot Project Review and Status of Electric Restructuring in Various States, January 1997", Dawn Geiger, Legal Assistant (available as expert paper at http://www.spratley.com/reach)

• **Disclosure to retail access consumers of standardized price, fuel mix and environmental emissions appears important.** In a series of 6 focus groups of consumers who participated in the New Hampshire and Massachusetts pilots most participants wanted standardized price information stated as price per kWh. While many participants said that environmental attributes of electricity were not too important to them, they wanted with some disclosure such as fuel mix or emissions facts (See National Council on Competition in the Electric Industry, "Information Disclosure for Electricity Sales: Consumer Preferences from Focus Groups, May 1997 at http://www.spratley.com).

• **California Public Utilities Commission's "Orderly Roll-Out of Direct Access"** in a May 6, 1997 decision moved away from its previous 5-year retail access phase-in approach stating: "For direct [retail] access to be a real alternative, it must be widely available, accessible, and convenient. In

• The Eastern and Western region remain the most active in adopting retail electric competition laws, while the Southern and Midwestern states have yet to act beyond a single state.

2. High-Cost States Moved First, Then Several Low-Cost States, Now 8 Laws, All States Considering Electric Competition

• In **1996** state legislators in **New Hampshire, Rhode Island, California,** and **Pennsylvania** adopted the first comprehensive electric industry restructuring laws on retail competition. **High electric costs is the common characteristic of the first 4 states enacting retail competition in 1996** (Also, low-cost **Alabama** adopted a law on for a stranded costs "exit fee" in 1996 viewed as a bar to early retail competition).

• The direct relationship between high-cost states and enactment of retail competition laws in 1996 is shown by Sally Hunt's May 1996 graph presented in July 1996 at the Florida Public Service Commission's Energy Forum (see **Exhibit C**).

• **By early July, 1997** state legislators adopted comprehensive electric industry restructuring laws with retail competition in **Oklahoma, Montana, Maine,** and **Nevada. By 1997 the first low-cost states adopted electric industry restructuring laws, however, date of retail access was pushed farther ahead in time** (See **Map 6** showing **State Electric Restructuring Laws, July 15, 1997**).

• **Which states will act next?** By the fall of 1997 many expect **Massachusetts** to pass a law **with retail access starting Jan. 1, 1998,** especially in view of the 10% rate reduction negotiated by the Attorney General's Office and the New England Electric System as a basis for restructuring. **Illinois** legislators may also come back into a fall 1997 veto session and reconsider the restructuring bill (SB 55) passed by the House in May 1997. The Illinois bill is the only state legislation so far to reach a floor vote in the Midwestern region.

• **States can act quickly on restructuring. The South Carolina** example of the **Electric Lite's proposal to consumers to sign-up for a 20% rate cut if a new retail access law could be passed by the state legislature shows how quickly events can change in a state** (see **Exhibit D**).

the absence of a showing of operational or other technical constraints, no phase-in is required." As an alternative to a phase-in or pilot approach or what the PUC termed "open season," "lottery," or "land rush type of mentality," the PUC concluded that "By allowing customers to choose when they are ready for direct access, the number of customers seeking early direct access will be reduced naturally without the need for imposing a complicated rationing mechanism."

4. Up-Front Consumer Rate-Cuts or Rate Freezes Touted While Untold Story Is Industrial Special Rate Discounting

• The state retail wheeling issue began as retail access proposals only for large industrial customers of electric utilities. **The Federal Energy Policy Act of 1982 left retail access to the states** by barring the Federal Energy Regulatory Commission (FERC) from ordering retail competition, while FERC was directed to facilitate wholesale competition in electric markets by open access transmission (later FERC Order 888 in 1995).

• The first state law in 1993, SB 231 in **Nevada** was never implemented as an attempt to attract a Minnesota-based steel company to Nevada by offering lower rates through retail access. In early 1994 the **Michigan** Public Service Commission approved a retail wheeling pilot program limited to large industrial firms. This **"industrial strength" retail access raised concerns about cost-shifting to the remaining utility consumers in the commercial and residential classes if only industrial retail access occurred.**

• **Biggest Untold Story** of the ongoing retail electric competition debate is the **pervasive state regulatory (and sometimes legislative) approval of special rate discounts of 30% or more for large industrial customers of utilities** (see Public Utilities Fortnightly state-by-state comparison of special rates from June 15, 1996 in **Exhibit I**). Will residential consumers be content with 10% rate reductions by comparison? (see **Exhibit J** San Francisco Examiner, Apr. 3, 1997: "At the State PUC, Those Big Dogs Eat First."

• By 1995 and 1996 the "industrial strength" version of retail access changed, principally at legislative forums, to retail electric competition beneficial to **all** customer classes. **Most of the first 8 state retail access**

laws refer to rate reduction or rate freezes, especially for small commercial and residential consumers as shown in **Exhibit K.**

• **The tension between "industrial strength" retail access and up-front consumer rate cuts still exists, especially in the Midwest.** Case on point is the House-passed SB 55 by **Illinois** in May, that provides residential base rate reductions totaling 15% by Oct. 1, 2000 with retail access phased-in over next 5 years and completed by 2002 for the residential class. Retail access would occur for large industrial customers by Oct. 1999 and all other industrial and commercial customers by end of 2000.

5. Stranded Costs Mostly Recoverable Subject to Mitigation, Initial Securitization of Stranded Costs, States Take Closer Look

• **Strandable costs** are the difference between the cost for generation under cost-of-service rate base regulation and the price for power in the new competitive market. Stranded costs are also called "stranded investments" or "transition costs." For a quick definition of stranded cost issues see **Exhibit L** from the Mar/Apr 1997 LEAP Letter Guest Perspective "Stranded Cost Overview" by William B. Marcus, JBS Energy.

• **The estimates of the electric industry's stranded costs nationally have varied from $16 billion to well over $200 billion.** Estimates vary due to different projections of market prices, comparisons of market and regulated prices, including assets and liabilities in the analysis and the time period used to estimate revenue losses. Examples of stranded costs above the market prices of generation given by Marcus in **Exhibit L.**

• **The amount of stranded cost recovered by utilities is the central stumbling block** in tailoring a transition to retail competition. **If 100% of stranded costs are paid by consumers** under retail competition, **then consumers will see no benefit from retail competition** until after the utility recovers all of its stranded generation costs. **Economists, like Marcus, argue that utility shareholders and consumers should share stranded costs "since shareholders have already been compensated for riskiness of utility stock through a risk premium"** noting further that "The utility should be required to write off the percentage of stranded costs not recovered by ratepayers. This gives the utility a structural incentive not to overstate stranded costs, because overstatement increases its write-off."

• The new state restructuring laws use differing approaches to stranded cost recovery. **While the laws allow most stranded costs to be recovered, the utilities are encouraged to mitigate those costs.** For example, **the latest state restructuring law, AB 366 enacted by Nevada on July 5, 1997 provides that the Nevada Public Utilities Commission (PUC) will determine the recoverable, mitigated stranded costs and assures shareholders must be compensated fully for such costs.** Sec. 46 1. of the new Nevada law states, in part, that:

The commission shall determine the recoverable costs associated with assets and obligations that are documented and allocable to a particular potentially competitive services . . . . Shareholders of the . . . utility must be compensated fully for all such costs determined by the commission. In determining the recoverable costs, the commission shall take into account:

(a) The extent to which the utility was legally required to incur the costs . . . ;

(b) The extent to which the market value exceeds the cost . . .;

(c) The effectiveness of the efforts of the utility to increase the market value and realize the market value of any assets, and to decrease the costs of any obligations. . .; [mitigation]

(d) The extent to which the rates previously set by the commission compensated shareholders for the risk of not recovering the costs. . .;

(e) The effects of the difference between the market value and the cost, including tax considerations . . .; and

(f) If the utility had the discretion to determine whether to mitigate the costs, the conduct of the utility with respect to the costs of assets and obligations when compared to other utilities with similar obligations to serve the public.

The Nevada statute also provides that the PUC may require direct cost recovery from ratepayers for the "portion of past costs . . . owed by the ratepayers." Sec. 47 also provides that "reasonable steps" are required by utilities to minimize layoffs and other adverse effects on utility employees as retail competition begins.

• **"Those who control the language control the issues"** says a consumer advocate in the June 8, 1997 San Jose Mercury article about the 1996 California restructuring law entitled: "How Industry's Baffling Lingo Clouds

Crucial Issues" in **Exhibit M**. Over one-third of the California restructuring law (AB 1890) is devoted to the public bond financing of utility stranded costs (or securitization) to obtain residential consumer rate reductions.

• **Securitization defined by an April 1997 Texas legislative proposal:** "A method of refinancing the possible stranded investment of an investor owned utility (IOU) through the removal of these stranded investments from the IOU's books and their transfer to an affiliated special financing entity and the issuance of bonds to finance the retirement of that transferred debt. THEY ARE NOT STATE BONDS, AND THE STATE DOES NOT INCUR ANY DEBT. This method immediately allows the recovery of stranded investment by the IOU's while facilitating both a rate increase and a shorter transition time. The bonds are repaid over a period of years (normally 15-20) by a fee (called a competition transition charge or CTC) attached to the bill for transmission and distribution. These are paid by all classes of customers in the IOU's service area."

• While **Pennsylvania** and **Montana** adopted securitization following **California's** lead, 1997 restructuring laws enacted in **Oklahoma, Maine** and **Nevada** are silent on securitization. **Why are legislatures now taking a second look at securitization?**

• **The recovery of stranded costs is tied to the securitization or rate reduction bonds issue in the first securitization case was filed by PECO in Pennsylvania in 1997. Exhibit N** excerpts from the Mar/Apr and May/June 1997 LEAP Letter describes the PECO request that $3.8 billion in stranded costs be securitized. The initial Administrative Law Judge recommended a zero amount and the Pennsylvania PUC eventually granted $1.1 billion for securitization. However, on June 20, 1997 the Pennsylvania Consumer Advocate filed expert testimony that only half of the PECO $6.8 billion stranded costs should be allowed resulting in a 20% rate reduction.

• **The securitization provisions were also controversial in Texas and Connecticut bills that were defeated in 1997.** Here are two examples from the May/June 1997 LEAP Letter: A **Texas** bill (SB 965) came under attack by Consumers Union with the claim that it represented "Massive New Debt for the State Without Voter Approval" as shown in **Exhibit O.** A Connecticut measure (HB 6774) also was heavily criticized for a provision allowing utilities to place lien on homes or personal property of consumers who refused to pay the stranded costs portion of their utility bill securitized

for nuclear plants that at the time were still in a long shut-down. See **Exhibit P**. Finally, see the June 1, 1997 Public Utilities Fortnightly article, "Securitization of Uneconomic Costs: Whom Does It Secure?" by Kenneth Rose stating in part: "From a public interest standpoint, a major drawback with securitization is that it effectively bypasses the regulatory process. It converts the utility's *opportunity* to recover its costs and earn a return into a *guarantee* protected by legislation."

6. "System Benefits" for Some or All as Actions Vary by State

• **Low income assistance is the common denominator of "system benefits" kept by most new restructuring laws in Rhode Island, California, Pennsylvania, New Hampshire (PUC implementation), Maine, and Montana.** See "Comparison of Consumer Protections and Universal Service Provisions of State Legislation and Commission Decisions on Retail Electric Competition," by Barbara Alexander, June 1997 at http:// www.spratley.com/reach at the expert papers page.

• **Energy efficiency and renewable energy retention as system benefits appear dependent on whether the state is active in those areas.** While recovery of energy efficiency or renewable energy costs by means of **system benefit charge** or wires charge was the preferred method in the early laws in **Rhode Island, California**, and **Montana**, the recent adoption of renewable portfolio standards in **Maine** and **Nevada** may be starting a new trend in that direction. For a discussion of the pros & cons of the system benefit charge and renewable portfolio standard as options for retaining renewable energy benefits, see "Key Questions on Photovoltaics and Restructuring," April 1997, by William Spratley at http://www.spratley. com/ncp/pvr2.html

• Vermont regulator Richard Cowart proposes a **"National System Benefits Trust"** for a federal/state wires charge to retain the $4.2 billion in system benefits now in electric rates of franchised utilities for low-income assistance, energy efficiency (demand-side management) and renewable energy. See **Exhibit Q** with Cowart's trust proposal as the Guest Perspective in the Jan/Feb 97 LEAP Letter.

7. Energy Marketers, Ads, Brand Names & Convergence

• **The number of energy marketers, aggregators, or brokers increased dramatically in both retail competition states and states still retaining regulation.** The New Hampshire retail access pilot program in 1996 attracted 30 energy marketers, including utilities marketing under affiliates firms. Advertising, on TV, radio and in print publications has increased as marketers try to establish brand name loyalty. Enron, for example, ran an ad during the 1997 Superbowl. Southern Company ads appear regularly in national newspapers. Now utility affiliates are beginning brand name ads in Pennsylvania in advance of the retail pilot programs.

• **Convergence of electric, gas, telephone and computer services** is a new marketing option as retail competition proceeds. The June 24, 1997 Wall Street Journal article "UtiliCorp and Peco, Aided by AT&T, To Launch One-Stop Utility Service" reported that:

"Two electric utilities, working closely with AT&T Corp., are set to launch a new service company that will let consumers buy their natural gas, electric, telephone, Internet and home-security services in one package.

"The new venture, owned by UtiliCorp United Inc. of Kansas City, Mo., and Philadelphia's Peco Energy Co., is the first of its kind among electric utilities struggling to preserve or expand market share in an era of deregulation. EnergyOne LLC, as the company has been named, brings together all of those annoying household bills - and dinnertime telemarketing offers - under one roof."

8. Consumer Safeguards for Retail Electric Competition

• **Consumer safeguards for electric restructuring legislation or regulation were recommended in a June 11, 1997 Resolution by the National Association of State Utility Consumer Advocates (NASUCA)** in **Exhibit R.** This combined policy statement from the state-appointed utility consumer advocates recommends safeguards including consumer information and education, benefits to all consumers, undue discrimination protection, service reliability, enforcement and complaint resolution, privacy

maintenance, and code of conduct for third-party provides and affiliated utility vendors.

9. Merger Mania Continues, Some Utility Divestiture

• **Over $200 billion in electric or electric and gas mergers are pending across the U.S. in 1997.** See LEAP Letter Maps and Tables from Mar/Apr 97 issue as **Exhibit S** showing details on mergers and acquisitions.

• **Market power and workable competition are major antitrust issues for mergers** as state regulators consider merger filings. While FERC has approved most mergers, the new FERC Merger Policy (Order 592) was relied upon in the **Primergy Merger Decision** where a $6 billion merger between Minnesota and Wisconsin utilities was scrapped 2 days after FERC found **remedies to highly concentrated market power included divestiture of generation from the integrated utility monopolies.** States have also dealt with generation divestiture in the **California** and **Maine** restructuring laws and the **divestiture non-nuclear generation by the New England Electric System** now underway.

* **Electric utilities mergers are part of a larger trend** reported in the Wall Street Journal, July 7, 1997 story, "Merger Activity Rose to Record Level in First Half" stating: "Merger activity rose to $366 billion in announced U.S. transactions in the first half of 1997, a record level fueled by a surge of takeovers in financial services, technology and basic industry. Activity rose 16% compared with the first six months of 1996, when roughly $314 billion in U.S. transactions were announced. Globally, merger activity rose to $692 billion in announced transactions, up 18% from $588 billion in the first six months of 1996, according to the Securities Data Co."

10. Utility Investments Overseas - Bounty or Backlash?

• **Will overseas utility investments create a backlash for electric industry restructuring in the U.S.?** As Rep. Mark Stiles introduced the retail access competition bill into the Texas Legislature in late February, he attacked the over $7 billion of Texas electric utility investment in Latin America as coming from windfall profits earned by Texas utilities from Texas ratepayers. This issue has arisen in other states as well as over half

the electric distributions systems in the United Kingdom are now owned by American electric utilities.

• **The question may arise whether foreign firms will eventually end up owning American electric utilities as now taking place in telecommunications** (see July 8, 1997 Wall Street Journal article, "British Telecom Purchase of MCI Cleared by Justice Department" describing "the largest-ever foreign acquisition of a U.S company" at $24 billion).

BEFORE THE

COMMONWEALTH OF VIRGINIA

GENERAL ASSEMBLY

JOINT COMMITTEE ON ELECTRIC RESTRUCTURING

WRITTEN MATERIALS

OF

EDWARD H. COMER, ESQ.

VICE PRESIDENT -- LAW

EDISON ELECTRIC INSTITUTE

JULY 16, 1997

Electric Industry Restructuring - A Federal Legislative and Regulatory Update

Edward H. Comer
Vice President – Law
Edison Electric Institute

Joint Committee on Electric Restructuring
Virginia General Assembly

July 16, 1997

Energy Policy Act of 1992

- EPAct pushed wholesale competition
  - Created a new class of power producer –Exempt Wholesale Generator (EWG)
  - FERC given ability to order wholesale transmission

FERC Objectives Order Nos. 888 & 889

- All investor-owned utilities must provide open access transmission to others under the same terms and conditions they use for themselves
- Public power, such as cooperatives, are not required to provide open access transmission

FERC's Approach

- **Separate marketing from operations**
  - "Functional unbundling" - no divestiture
- **Standardized rate schedule**
  - "*Pro Forma* tariff" - no lengthy hearings
- **Owners and users pay same price for transmission service**
  - "Comparability" - no special rates
- **Everyone gets transmission information at same time**
  - "OASIS" Open Access Same-Time Information System
- **Independently governed and operated transmission system**
  - Independent System Operators (ISO)

Other Wholesale Issues

- **Order 888 did not open up public power**
  - 1/4 of transmission not subject to same rules
  - No real reciprocity
- **Efficient competition distorted**
  - Financing advantage, i.e., new and existing generation built with tax-free or below market financing
  - Tax advantage results in tax-exempt entities unfairly competing with taxable entities
  - Annexation/condemnation advantage: Munis can defeat competition by annexation/condemnation
  - Legal/regulatory advantage: Munis virtually exempt from antitrust laws, federal and most state regulation

Stranded Cost Recovery

- Provides for recovery of "legitimate, prudent, and verifiable" stranded costs
- Must demonstrate a reasonable expectation of service
- Obligation determined using a top-down, "revenues lost" formula
- Collected from departing customers through an exit fee or transmission surcharge
- FERC is forum for municipalization and annexation
- FERC is not the forum for retail stranded costs if state has addressed issues, even if they provide for no recovery

Stranded Cost Recovery

- **FERC accepts responsibility to deal with stranded costs**
  - Requiring open access transmission "carries with it the regulatory public interest responsibility to address the difficult transition issues . . . [t]he most critical transition issue . . .is how to deal with the uneconomic sunk costs that utilities prudently incurred under an industry regime that rested on a regulatory framework and a set of expectations that are being fundamentally altered." Mimeo at 489.
- **FERC rejects arguments against recovery**
  - Requiring stranded cost recovery during the transition to competition is not a tying arrangement, that it is caused by regulatory requirement and not illegal company conditioning, and that while some customers in the short run may not reap the full potential benefits of deregulation, all customers will be better off in the long run, sooner.

FERC Merger Policy

- **New policy issued December 18**
  - Applicants must show affects of merger on competition, rates and regulation
  - FERC's principal concern is market power and the effect on competition
- **Screening test**
  - Provides an opportunity to show that the merger does not significantly increase concentration and market power
- **Failing screen**
  - Mitigation must be proposed, up to and including divestiture
  - "Interim mitigation" acceptable only on a temporary basis

Transmission Access

- City of Bristol, Virginia

Federal Restructuring Debate

- **Is comprehensive Federal legislation necessary?**
  - Preempt state programs and ability to decide
  - "One-size-fits-all" or reflect state and regional needs
  - Benefit from the experiments and experiences of the states
- **What Federal legislation is needed?**
  - Provide states with authority to ensure level playing field
  - Remove Federal barriers to competition
  - Clarify state/federal jurisdiction
  - Assure electric system reliability

Congress 1997

- Hearings held:
  - House of Representatives:
    - Commerce Committee, Energy and Power Subcommittee
    - Judiciary Committee
  - Senate:
    - Energy Committee
    - Agriculture committee
    - Finance Committee (anticipated)

Congress 1997

- Transition Issues
  - Federal mandate with a date certain
  - Stranded cost recovery
- Structure Issues
  - Residual regulation
  - Independent System Operators
  - PURPA/PUHCA
- Public Policy Issues
  - Mandatory renewable portfolio mix
  - Universal service, low-income assistance
  - Efficiency, renewables funding
- Competitive Issues
  - Level playing field
  - FERC authority to deal with market power

Bills Introduced

- **Restructuring Bills**
  - **Schaefer** (H.R.655)
  - **Bumpers** (S.237)
  - **DeLay** (H.R.1230)
  - **Thomas** (S.722)
  - **Markey** (H.R. 1960)
- **Specialized Bills**
  - **Stearns** H.R.338 PURPA repeal
  - **D'Amato** S.621 PUHCA repeal
  - **Jeffords** S.687
    - National System Public Benefits Fund
    - Renewables portfolio standard
    - Repeal of PURPA
    - National emission standards and allocations
  - **Defazio** H.R.1359
    - National System Public Benefits Fund

Overall Approach: Schaefer

- Retail choice 12/15/2000 for all customers
- States to "elect" retail choice or FERC will do so
- State discretion re dealing with stranded costs, universal service, low-income assistance
- "Grand fathering" if state meets all of bill 's requirements
- Unbundles retail services such as metering and billing
- Continued regulation of entities providing distribution service until there is "effective competition "
- Regulation of other retail electric energy & service providers is prohibited

Overall Approach: Bumpers

- Retail choice by 12/15/2003
- Requires stranded cost recovery
  - FERC to act as backstop if state denies full recovery
- States can impose universal service and other public benefit programs requirements and charges

Overall Approach: DeLay

- Retail choice by 1/1/1999
- Prohibits most wholesale and retail stranded cost recovery
- States have discretion over other aspects of retail choice programs
- Unbundles retail services such as metering and billing
- Deregulates unbundled wholesale and retail power sales

Overall Approach: Thomas

- "Empower" the states - no federal mandate for retail choice
- States have discretion re stranded costs, universal service etc.
- States can impose retail reciprocity requirements
- Deregulates future wholesale power sales
- "Modernize and streamline " federal laws that "inhibit " market-based rates

Overall Approach: Markey

- No date certain only requirement to consider by a date
- Repeals application of PURPA and PUHCA in states that continue to meet a federal retail competition standard and a public benefits requirement
- Extends FERC Order 888 to "public power " utilities
- No competitive advantage to those owning/buying from grandfathered power plants
- Provides states with authority to review prudence of any wholesale/retail costs
- Repeals ability of Register Holding Companies to invest 100% of retained earnings, cut back to 50%
- FERC approval of electric/gas utility acquisitions where acquirer gains 10%+ of book value

Markey Stds./Req 'mts

- **Federal Competition Standard** -
  - Unbundling of retail sales (including metering and billing), open competition for new generation, no competitive advantage due to regulated status, open access distribution tariffs and open local facilities.
- **Federal Public Benefits Requirements**
  - All suppliers may provide energy efficiency and renewable energy resources
  - Non-bypassable charges for low-income, renewable energy, and energy efficiency costs and investments
  - All customers share in stranded costs
  - Stranded generators need not be kept running
  - Reliability rules apply to all sellers
  - Aggregation permitted
  - Residential/commercial customers can use "net renewable metering"

Transmission

- **DeLay**
  - Requirements unclear - T&D systems "shall be operated..."
  - FERC may be given authority over local distribution
- **Thomas**
  - Extends FERC's transmission authority to transmitting utilities such as munis and co-ops
- **Markey**
  - FERC must issue rules setting tariffs for large regions, to prevent pancaking, or advantage from grid ownership
  - Self-regulated electric reliability councils such as NERC
    - All must join and meet standards of operation, directors musts reflect membership
    - FERC oversight

Market Structure

- Bumpers
  - FERC to establish ISOs
  - Extends FERC merger authority to cover impact of competition on retail generation markets
  - Extends FERC authority to cover electric and gas mergers
  - Extends FERC authority to deal with market power by retail and wholesale suppliers
  - Bumpers likely to amend provisions requiring divestiture for stranded cost recovery

Market Structure

- **DeLay**
  - FERC must ensure that "existing electric utilities" are not permitted to exercise market power in sale of electric services
  - FERC given authority to restrict sales at market-based rates or order divestiture
- **Markey**
  - No use/control of any resource to create/maintain a situation inconsistent with competition
    - FERC can prevent by divestiture, forcing "business activities to be at arm's length, ordering shared access to the assets
  - PUC approval for diversification efforts, affiliate contracts over $1 million

Treatment of Municpal Utilities, Co-ops, TVA

- **Bumpers**
  - Choice required for all consumers
  - Munis/coops can set own level of stranded cost recovery
  - Opens TVA fence
- **Schaefer**
  - Requires choice required for consumers of non-regulated utilities
  - Non-state regulated utilities can set own transition rules
- **DeLay**
  - Choice required for all consumers

Treatment of Municpal Utilities, Co-ops, TVA

- **Thomas**
  - Requires study to address issue of impact of tax provisions on retail competition
  - Congress should consider restricting government utilities with respect to facilities financed by tax-exempt debt
  - Requires reciprocity
- **Markey**
  - Requires reciprocity
  - Extends Orders 888/889 to transmitting entities but may exempt if in public interest

Renewable Energy/PURPA

- Bumpers
  - Renewable requirement for all retail suppliers
    - 2003 – 5%
    - 2008 – 9%
    - 2013 – 13%
    - 2019 – provisions sunset
  - States can add additional requirements
  - Renewables includes solar, wind, waste (except for municipal waste), biomass, hydroelectric or geothermal

Renewable Energy/PURPA

- Schaefer
  - Beginning 1/1/2001, portfolio requirement for all generators that sell electricity (as percentage of total generation in prior year)
    - 2001 - 2%
    - 2005 - 3%
    - 2010 - 4%
  - FERC to establish credit trading system
  - Hydro is not a renewable
  - PURPA §210 suspended on state by state basis

Renewable Energy/PURPA

- Markey
  - Repeals FERC's California BRPU decision
    - States can add environmental premiums to PURPA avoided cost rates to reflect environmental savings and may segment bidding by technology
  - Labeling
    - Requires FTC, EPA and DOE specified disclosures
    - May include data on generation sources, air and water emissions, prices, access and exit fees, billings, nuclear safety compliance
  - Renewable 3-10% by 2010
    - Tradable credits
    - Includes solar, wind, geothermal, biomass, but not hydro or municipal waste

Renewable Energy/PURPA

- Jeffords
  - Portfolio standard applicable to non-hydro generation facilities (as percentage of sales of electricity in a calendar year)
    - 2000 - 2.5%
    - Increases to 20% in 2020 and each year thereafter
  - FERC to establish standards to certify amount of generation from renewable sources
  - FERC to establish credit system
  - PURPA §210 repealed effective 1/1/2000

Universal Service

- Lifeline rates
- "No shut-off" policies
- Low Income Assistance
- High-cost areas
- Broadest possible participation in funding

Competition Key Issues

- Shared Benefits With All Customers
  - Assure that all customers – large and small – will benefit, or at least not be harmed from a cost, service and reliability perspective
- Open Transmission Access
  - All transmission owners and operators - U.S. government, public power, co-ops, and shareholder-owned utilities - must be required to provide non-discriminatory open access in competitive markets
- Role of States
  - Recognize the authority of and differing circumstances among the states regarding retail electric service and avoid federal mandates for retail access. Support state and regional approaches and provide state authority for reciprocity.

Common Denominators:

The system will be stressed

New Demands on the System

Power coming into system from unplanned sources

New directions for power flow

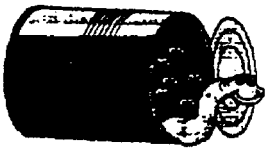
"Loop flows" no longer acceptable

Rapid increase in the number and complexity of transactions

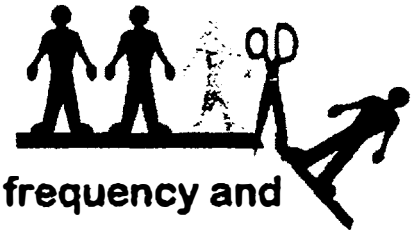
Removal of traditional control mechanisms (generation)

Operating with Risk

- Need to assess risk based on contingencies and current operating conditions
- Evaluates risk taking opportunities
- What about:
  - Operational constraints
  - Special protection systems
  - Facility additions



Load Shedding to Arrest Widespread Outages

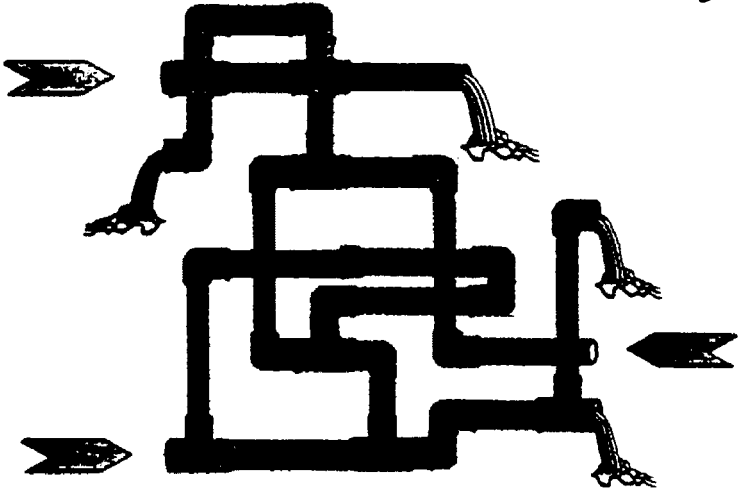


- Must consider under frequency and under voltage
- Include commercial considerations?
- Must arrest widespread voltage collapse
- Must operate as an Island

Under Development: Transmission Expansion Decision Tool

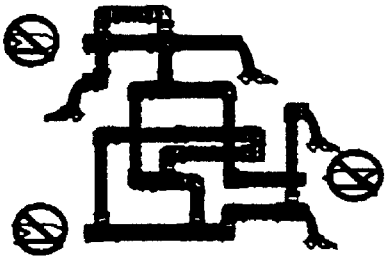
- Evaluates transmission system expansion
  - Power electronic and conventional devices
  - Cost / benefit evaluation
- Integrates VAR planning & market simulation tools
- Develop methods 9/98
- Release Beta version 12/98

Power Flows according to: the Laws of Physics



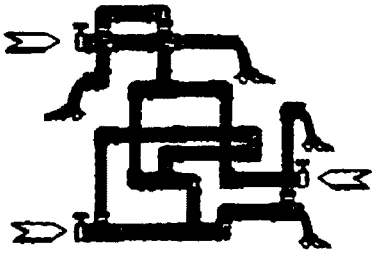
Flow control traditionally done via generation control

This may no longer be an option



The future will require more rapid and sophisticated control

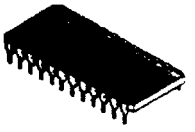
FACTS systems provide this by acting as electronic "valves"



FACTS

Flexible
Alternating
Current
Transmission
Systems

FACTS are a collection of power transmission control technologies based on very high power solid state electronic devices.



Commonwealth of Virginia

State Corporation Commission

Staff Report

Draft Working

Model for Restructuring the

Electric Utility Industry

in Virginia

November 7, 1997

Response to SJR No. 259

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INTRODUCTION

Senate Joint Resolution No. 259 requested that the Staff of the Virginia State Corporation Commission submit its draft of "... a working model, which may include experiments and pilot programs, most appropriate for the Commonwealth of Virginia for the future structure of the electric utility industry to provide reliable competitive electricity and meet the demands of a changing industry while protecting environmental quality...." This document responds to that request.

If, in fact, Virginia is to maintain a reliable and competitive supply of electricity that is produced in an environmentally sound fashion, movement to competitive generation and customer choice must be made with care and deliberation. At the outset, perhaps a statement of the obvious is in order. Electricity is unique; there is no other product or service in our economy that shares the singular qualities of electricity. It is ubiquitous. It is absolutely vital. It must be produced at the instant of consumption. The demand for electricity, while continuous, varies significantly on an hourly, daily, and seasonal basis. Electricity is provided through an integrated and physically inseparable network of generation, transmission, and distribution facilities. This network provides a service that is communal in that system reliability problems often cannot be isolated to individual utility systems or individual consumers. The production of electricity is heavily capital intensive and the availability of a reliable and reasonably priced supply of electricity is essential to the economic health of the Commonwealth.

Therefore, before proceeding with a presentation of a potential competitive model for the Commonwealth, a number of facts are worthy of reiteration. This is not meant to be a full discussion of these issues, but merely a recapitulation and summary. It is critical that these points be kept in mind as a competitive model is considered. As legislative policy relative to altering the fundamental structure of Virginia's electric industry is considered, the potential advantages and disadvantages of a competitive retail market for Virginians must be fully assessed before a final decision is made.

Price

First and foremost, there are no guarantees about what will happen to the price of electricity in Virginia in a competitive market. It should be noted that in comparison to U.S. weighted-average rates, Virginia's average total retail rate is 16 percent lower. The average rates of Virginia's residential, commercial, and industrial customer classes are lower than national averages by 15 percent, 25 percent, and 20 percent, respectively. As reflected in Appendix No. 2 to this report, Virginia ranks 20th relative to other states in terms of lowest total average rates. While the State's average residential rate ranks 22nd in comparison to other states, Virginia's commercial and industrial average rates each rank 12th. Further, much of Southwestern Virginia is served by one of the lowest cost utilities in the country. If rates across our state or region levelize, some or perhaps many of our consumers may ultimately see increases in the cost of the generation component of their bill while others may see cost reductions.

Although there are a number of studies that conclude there will be a broad-based decline in the cost of electricity both regionally and in Virginia, the Staff believes that the assumptions driving a number of these studies are flawed in that they typically ignore the stranded cost issue; they do not recognize the potential for the market price to exceed regulated rates for low cost utilities; and they do not address transmission constraints and the attendant issue of market power. Chapter 5 of this report provides specific information on a number of these studies.

It should also be recognized that industry restructuring will generate a number of transition and transaction costs. For example, there will be costs associated with establishing the market structures (ISOs and RPXs discussed later) necessary to accommodate retail access. The information technology systems that are necessary could prove very expensive and the transaction costs associated with the third-party provision of electricity are real. It must be ensured that the costs associated with moving from a competitive wholesale market, which is currently developing, to retail competition do not outweigh the potential benefits. It may be that a competitive retail market produces efficiencies that override these costs as well as any levelization effect

and, as a result, our consumers may benefit. However, it is premature to conclude that retail competition will lower rates to most or all of our consumers.

Reliability

As Chapter 2 of this report indicates, we must also be concerned about the reliability of the bulk power system if generation is to be treated as a market commodity. All markets have periods of imbalance between supply and demand. We must recognize that a market driven response to a capacity need can be expected to create such periods of demand and supply imbalance. Whenever capacity constraints exist, mandatory load shedding may be necessary, or if consumers have price information, the price of electricity may rise to a level where customers reduce load to eliminate the constraint. The concept of electricity going to the highest bidder during periods of high heating or air-conditioning demand is troubling given the essential nature of this product. On the other hand, the high cost of providing small consumers with the ability to receive and respond to pricing information may be prohibitive, in which case, those consumers may not actually have this choice.

Bulk power reliability not only entails the generation of electricity but the delivery of power through the transmission grid to distribution systems and high voltage customers. We must assure that necessary transmission plant can be added when needed and that the demand on the transmission network imposed by retail access does not degrade transmission reliability to unacceptable levels.

It now appears that bulk power reliability issues are best addressed by developing a fully functional independent system operator (ISO) with the authority to: mandate generation reserves; require the expansion of the transmission system; dispatch generation; redispatch generation during periods of constraint; and eliminate transactions that would jeopardize the stability of the bulk power system. A fully functional ISO may be difficult and expensive to implement but appears absolutely necessary before broad-based retail access can be seriously considered.

It should be noted, however, that establishing an ISO may transfer the authority relative to the reliability, pricing, and perhaps the determination of need for new transmission facilities from the states to the federal government. We believe that states can and should exercise authority in these areas, especially given the critical nature of maintaining a reliable regional bulk power system.

Stranded Costs

While a more complete discussion of stranded costs is presented as Chapter 4 to this report, a number of points need emphasis. First, although stranded costs are often viewed as an impediment to competition, if in fact our utilities have no stranded costs, this essentially means that the market price of electricity will exceed or compare with regulated rates.

Since stranded costs represent the difference between embedded costs and market prices, the stranded costs associated with a generation asset can only be calculated by projecting the market and regulated prices of electricity over the life of the generating asset, which might be decades. In short, stranded costs cannot be rigorously calculated up-front.

The stranded costs issue must be addressed, however, prior to the initiation of any significant level of customer choice. Customers must have information relative to any potential stranded cost obligations if they are to make cost effective economic decisions in a competitive market.

Finally, during a transition period that might accelerate the recovery of stranded costs, rates will be higher than would otherwise be the case. As a result, consumers may have a difficult time saving money while purchasing power from the competitive market and paying stranded costs. To the extent a competitive market offers economic benefits, those benefits may not be realized to any large degree until any allowed stranded costs recovery is complete.

Stranded Margins

Staff believes that the transition to a competitive market could cause some rates to increase if a levelized market price of electricity exceeds regulated rates. This problem may be especially acute for customers of lower cost utilities. When the market price exceeds regulated rates, stranded margins are produced, rather than stranded costs. To the extent ratepayers of high cost utilities are required to pay stranded costs, Staff believes that symmetry and equity demand that customers of low cost utilities be credited for any stranded margins that exist.

The stranded margins issue may be resolved by requiring that low cost utilities provide their customers with a credit during a transition period that is similar to the stranded cost payment made by customers of higher cost utilities. This issue could also be addressed by providing customers of low cost utilities with some form of extended rate protection such as a rate freeze or rate cap. Those utilities that assert that rates for all consumers will decline in a competitive market should have no difficulty with this concept of consumer protection.

Market Power

Staff would also note that the provision of customer choice may not be synonymous with the deregulation of generation. For example, as detailed in Chapter 3 of this report, the configuration of Virginia Power's bulk power system could allow that utility to exercise considerable market power in its service area if generation is deregulated. While there may be means of mitigating such market power, we must absolutely ensure that deregulated monopolies do not survive a restructuring process in Virginia. It is likely that extended rate protection for Virginia's consumers will be necessary until it can be demonstrated that a competitive market has overcome the market power of incumbent suppliers.

Tax Issues

Tax consequences must also be confronted as the deregulation of generation is considered. Currently all electric utilities providing retail service in Virginia, and regulated by the Commission, pay a state license tax and a special regulatory tax on gross receipts.

If customer choice becomes a reality and if electric generation is purchased from entities that are not public service companies, or from suppliers outside the Commonwealth, the revenues associated with these transactions will no longer be taxable under current law. Likewise, if Virginia utilities dramatically increase the provision of generation services to customers outside the Commonwealth, gross receipts tax revenue would be diminished.

In addition, if our higher cost utilities have stranded costs, the value of their generation assets may be reduced in a competitive market. Inasmuch as many of our localities are heavily dependent on local gross receipts taxes and on property taxes as well, a change in the structure of our electric utility industry may have a significant impact on many of Virginia's local governments.

This issue is currently being reviewed by a task force reporting to the SJR 259 subcommittee. This task force is studying alternative taxes in an effort to retain tax revenue while maintaining a "level playing field" for a potential array of electricity suppliers in a competitive market.

Other Issues

The deregulation of generation has a number of other implications that warrant some preliminary discussion as well. For example, if generation is deregulated before the decision is made that full retail access is practical and desirable for Virginia, it may be difficult to exercise control over generating assets that have been sold or transferred to an unregulated affiliate.

On the other hand, absent some change in current law, it is unlikely that new generation will be provided by competitive entities during a transition. Perhaps this issue can best be resolved by allowing for merchant plants that can be constructed absent the historical requirement of a showing of need. It is envisioned, however, that SCC siting oversight would be retained given the impact of new facilities on the environment, the operation of the regional power system and on the need for new transmission facilities.

Eminent domain issues must also be addressed. Historically, utilities have been allowed to exercise the right of eminent domain when constructing generation facilities and transmission lines necessary to interconnect those facilities. The right of eminent domain was provided because these facilities were constructed to serve the public good. Will merchant plants (unregulated generators) serving essentially private pecuniary interests be given this power, and will the construction of unregulated generation dictate the condemnation of private property for the construction of interconnecting transmission facilities?

This issue has currency with the Commission in the telecommunications area in that some new entrants into the local exchange market, chartered as public service companies, are proceeding with easement acquisitions threatening to exercise their claimed power of eminent domain. The magnitude of this issue can be appreciated when one considers that the SCC has granted certificates of public convenience and necessity to over 30 new local exchange entrants.

Finally, the compatibility of the economic deregulation of generation and nuclear power deserves a particular focus. Virginia Power has approximately 3400 MW of nuclear capacity; this represents 19 percent of the Company's installed capacity of approximately 17,900 MW. The Staff believes that the continued health of the nuclear industry in our state is critical from reliability, fuel diversity, and public health/safety perspectives. This issue adds an additional level of complexity that must be considered if deregulation and customer choice are pursued.

The preceding pages outline a number of critical points that should be kept in focus as the following process and competitive model options are reviewed.

If these issues can be resolved successfully, and if an effective and fully competitive market can be developed, some of Virginia's citizens and businesses may see lower electricity rates and be offered new, different, and innovative services from a variety of suppliers bidding to serve their energy needs. Others may see higher rates. As previously noted, there are no guarantees relative to how a competitive generation market will affect the price and/or reliability of Virginia's electric supply.

The introduction of more competition into the generation sector of Virginia's electric utility industry and the consideration of competitive retail access represent significant and complex changes for our electric utilities and for their customers. A fully functional competitive generation market cannot be declared or decreed into existence but must evolve, if it is to develop at all, with reasoned assistance from legislators and regulators. Consideration of any responsible plans to help establish a competitive market must include a transition period for incremental steps based on experimentation, evaluation and modification, as necessary.

The Commission Staff recommends that the transition in Virginia include distinct, but perhaps overlapping, phases. In the first phase, we propose the following: an assessment of retail rates in Virginia; adjustment of those rates as necessary; implementation of rate and service experimentation involving competitive retail access pilots; and the creation of specific market structures necessary to capture competitive benefits for all Virginians. Following this rate review/experimentation phase, a decision phase on whether and how best to pursue retail competition would then be undertaken.

This model, we believe, would assure that the General Assembly and the Commission will be as fully informed as possible of the potential benefits and costs of legislative/regulatory actions that will have to be considered during the transition period. At the same time, the tentative schedule envisioned in this model moves the Commonwealth surely and steadily to the point where an informed and reasonable decision may be made as to whether the implementation of retail competitive access is possible, advisable, and in the public interest.

Phase I - Rate Review/Rate Experimentation (1998 - 2001)

A. Rate Review and Evaluation – It is essential that each of the investor-owned utilities and cooperatives be subjected to a rigorous and thorough rate examination prior to any effort to implement retail access. This is especially necessary since these

rates may be in place for an extended period of time during a transition period. If initial rates are not reflective of costs, either the consumers or the utilities may be economically disadvantaged during the transition period.

The Commonwealth's two largest utilities, Virginia Power and AEP - Virginia, have rate/alternative regulatory plan cases now pending before the Commission and Allegheny Power is expected to file in early 1998. Thus, it may be said that the Commission is now engaged in this phase of the recommendation. These rate reviews should not only determine the extent to which existing rates reflect costs, but should undertake preparatory work for a competitive model and should include resolution of the following issues:

1. Parity - Current rates for some of our utilities may reflect some amount of inter-class subsidies. Such subsidies cannot be maintained in a fully competitive market. Therefore, any and all subsidies must be identified for each of our utilities. If subsidies are found, a determination must be made as to whether and at what speed they should be adjusted. The effect on rates caused by movement towards parity must be identified, and rate changes to address disparities must be ordered.

2. Unbundled Rates - The actual costs of generation, transmission and distribution must be identified and separated so informed decisions can be made as to whether and how generation should ultimately be deregulated.

3. Unbundled Bills - The logical extension of unbundling rates is to state separately the cost of generation, transmission, and distribution (and perhaps ancillary services) on consumer bills. This is necessary to prepare for an environment in which those services might be provided by three separate and distinct entities.

The actions contemplated in Paragraphs 1 - 3 are necessary and appropriate and should be taken irrespective of whether the final decision is to deregulate or to retain some form of regulation over the generation of electricity.

At the same time that the rate evaluation and adjustments are being made, several additional long-term issues must be studied.

4. Stranded Costs - Regulatory treatment of stranded costs has potentially enormous economic implications on utilities, their customers, and the development of effective competition. It is now premature to reach definitive conclusions as to the calculation and appropriate treatment of such costs because not enough is known about the future market price of electricity. We should, however, begin to focus on the many issues associated with stranded costs. These issues include the following questions:

   a. Do stranded costs, in fact, exist? How will stranded costs be calculated? Should calculations be determined and fixed as of a certain date or should there be an adjustment mechanism of some sort?

   b. Should utilities be permitted to recover stranded costs? What are the standards for recovery? Should there be a sharing of such costs between ratepayers and stockholders? Should recovery be contingent on a demonstration by the utility of its cost mitigation efforts and a demonstration of the efforts undertaken by the specific utility to "make competition work?"

   c. If recovery is found necessary and appropriate, over what time frame should stranded costs be recovered? Is there a rate design mechanism—a wires charge, an exit fee or a combination of both—that is appropriate for recovery of stranded costs? What rate impact for the compression and recovery of stranded costs can be tolerated? How will stranded costs be allocated to the various customer classes?

d. To what extent does stranded cost recovery inhibit competition by limiting competitive alternatives to the incumbent utilities?

e. Should new customers of electric utilities, especially those taking service under economic development rates, be liable for potential stranded costs in the advent of retail access?

f. What legislative changes might be necessary, if any, to implement the decisions made on the stranded cost issue?

g. How will changes in federal environmental laws, especially those associated with carbon emissions, change today's perception of anticipated stranded costs?

5. Stranded Margins - The customers of our low cost utilities may experience rate increases if regulated (i.e., cost-based) generation rates are replaced with competitive (i.e., market-driven) prices. Just as a decision must be made relative to the ability of high cost utilities to recover stranded costs, a decision must be made relative to the ability of customers of low cost utilities to retain the benefits associated with stranded margins.

6. Transition and Transaction Costs - In addition to the stranded cost/stranded margin issues, we must also recognize that the introduction of retail access could result in a significant level of transition/transaction costs. For example, it will cost money to establish an ISO and/or an RPX. The cost of information technology systems necessary to implement broad based retail access will be significant and real time metering systems could be expensive as well. Finally, transaction costs imposed by power marketers (middle men) must ultimately be borne by consumers. While these costs may be more than offset by the efficiencies of a competitive market, they must be acknowledged in the determination as to whether to proceed to retail access.

7. Ancillary services - Costs of ancillary services, such as load following, reserve provision and balancing, which are related to both generation and transmission, may have to be separated to ensure that cost shifting for these services does not occur in a competitive environment.

8. Customer Protections - We must recognize that it may be necessary to afford residential and small commercial consumers with some degree of regulatory protection for a number of years. This protection may be necessary until a fully developed competitive market can prevent the incumbent utilities from the exercise of monopoly power. Protection might come in the form of an extended rate freeze, a rate cap, or rates that are indexed to a specific inflation measure.

B. Formation of an ISO/RPX -- The formation of an Independent System Operator is absolutely essential if a significant level of retail access is to become a reality. Consequently, during Phase I, the Commission should, with input from the various stakeholders, pursue a process that will accommodate the formation of one or more regional ISOs. This process will likely involve a coordinated approach with other states as well as the federal government.

   The Staff also believes that a Regional Power Exchange (RPX) is necessary to accommodate broad based retail access. Consequently, during Phase I our utilities should pursue such a regional exchange in order to develop a transparent spot market for electricity. The success in establishing such a regional market can be gauged and reviewed periodically in determining whether and how to proceed with retail access. If, for example, we are unsuccessful in establishing an effective exchange for Virginia, the decision must then be made whether or not retail access can or should be pursued for all customer classes. In any event, the development of the ISO and RPX should not await the customer choice filings referenced later in this document.

C. Retail Choice Experimentation and Study -- Phase I should also include the implementation of retail access pilot programs and studies.

1. Virginia's major investor-owned utilities and at least two cooperatives should participate in pilot programs and studies, of one to two years duration, developed by the utilities with guidance from the Commission. The purpose of the pilots/studies is to provide hands-on experience and specific information on at least the following issues:

   - The information technology requirements for retail access and whether and when such technology will be available to accommodate communication among the power supplier, the transmission company, the distribution company and the consumer;

   - Whether and how generation supplies delivered to the distribution systems on a real-time basis match the loads to which those supplies are dedicated and, if they do not match, what reconciliation is required so that the price of electricity delivered by third-parties for specific consumers is not reallocated to, and paid by, other consumers;

   - Whether and how the costs of ancillary services, especially generation reserves, can be allocated in an equitable fashion among all consumers;

   - Whether time-of-use metering will be required and, if so, the cost of such metering; whether load profiling will instead suffice for small consumers and how those load profiles will be developed and applied; whether time-of-use metering and/or load profiling will accommodate aggregated service for small consumers;

   - How third-party suppliers should disclose their rates and terms and conditions of service to ensure that consumers can fairly compare options; how bills should be designed and presented to enhance customer understanding of retail access;

- Whether and how affiliates of existing utilities can compete fairly and what rules of conduct are necessary to govern affiliate relationships with the incumbent utilities;

- What rules of conduct or regulatory oversight should be applied to third-party suppliers;

- Whether the metering and billing functions should continue to be done by the distribution company or whether those functions can and should be handled by the competitive market;

- Whether, and if so what, consumer protection measures and standards of service quality must be adopted; and,

- Additional information on a number of miscellaneous issues related to customer participation levels, supplier interest, marketing practices, and the degree and type of consumer education measures that might be required.

2. The retail pilots/studies are expected to provide significant information applicable to a retail access model, but pilot programs cannot provide meaningful information about the price of electricity or the maintenance of reliability in a fully competitive market. Nor will pilots disclose the ability of the market to identify and overcome instances of market power. Even so, gaining insights into the issues detailed in Paragraph No. 1 will foster an informed decision as to whether and how competitive benefits can be best pursued.

D. The Staff would, on a continuing basis, monitor the progress of the Virginia pilot programs, development of the ISOs and RPXs and the measures undertaken in other states. Findings will be presented to the General Assembly and the Commission as necessary.

Phase II - Decision Phase (2000 - 2002)

A. At the beginning of this phase, the Commission and the General Assembly should review: the operation of pilot programs; the progress made in establishing an ISO/RPX; and progress made in other states relative to retail access. We must address reliability issues and, as previously mentioned, evaluate the potential transition and transaction costs associated with taking the step from wholesale to retail competition. We must then compare those costs to the potential benefits to be derived from making such a change. If a review of all these factors supports the development of a retail competitive model, all electric utilities operating in Virginia may be required to file retail access programs by a date certain.

B. All such customer choice filings should explain how the program will meet the standards set out in Senate Joint Resolution No. 259, and any subsequent standards that might be based on the lessons learned from the retail access pilot programs and the experience of other states. At a minimum, utilities must show in detail how their program will maintain reliable and competitive electric supply while protecting environmental quality. The filings should specifically detail:

- how generation/transmission reliability will be maintained;
- the extent to which an ISO/RPX has been developed, can be expected to be developed, or why they are unnecessary;
- the likely rate impact the proposal will have on the various customer classes;
- what information and metering technology will be necessary and the associated cost;
- how market power issues will be addressed;
- what customer protection measures are necessary and how they will be implemented;

- the proposed period for implementation of the program;

- how stranded costs/stranded margins should be addressed; and

- the likely effect of the proposal on the environment.

C. If a utility cannot develop a customer choice program that complies with these standards, its filing should detail why it was unable to develop an adequate program, whether and when such a program will be forthcoming and the steps that will be taken to develop it.

D. The Commission will conduct public hearings on the submissions. If it concludes that a program, proposed or modified in the hearing, meets the standards and that net benefits would accrue from its adoption, the implementation of customer choice should begin. If the transition process is proceeding in an orderly manner, its phase-in could be accelerated. If the implementation of choice proves more difficult, the phase-in period could be extended, if necessary.

Options for Competition

The transition model described thus far is more accurately characterized as a rational and deliberative process that will enable the electric utility industry in Virginia to evolve to competition and will accommodate any decisions the General Assembly and Commission might make whether to deregulate generation and implement retail access. The Commission Staff believes strongly that information and experience acquired in the first phase is needed to enable policymakers to make informed and reasonable decisions on these matters. This transition model is structured to develop the necessary information and deliver it in a timely and orderly manner to those in the decision-making process.

While an ultimate competitive model cannot be fully defined at this time, the Staff believes, as previously noted, that the formation of an independent system operator is critical regardless of the ultimate structure of the industry. This process of developing an ISO should be

initiated in the first phase of the model. Upon the development of a successfully operating ISO, there are several options for a deregulated electric market in Virginia, including:

A. Wholesale Competition Model -- As new generation is required to serve customers in Virginia, incremental capacity requirements could be supplied by requiring incumbent utilities to purchase power supplies from the competitive wholesale market. If utilities elect a " build"option, capital investments would not be rate based and the price consumers pay for new capacity would be driven by the wholesale market. As existing generation sources of Virginia utilities age and are retired and as load grows, an ever-increasing portion of total generation would be delivered by the market, with the local distributor retaining the function of procuring and delivering electricity to all its consumers. This process could be "forced" by gradually basing the cost of generation from existing units on the competitive market or on some index to that market. Rates charged by the local company would ultimately reflect wholesale prices for generation, once any appropriate level of stranded costs are recovered.

   While the development of the wholesale model would not mandate the formation of an RPX, Staff believes that such an exchange would, in fact, evolve over time and would increase the competitive efficiency of the wholesale market by providing for economic dispatch of generation over a broader market area. As a result, we believe that even if a decision is made to limit competition to the wholesale market, an effort should be undertaken early in the transition period to establish a regional power exchange.

B. Retail Competition -- If, during Phase II, it is determined that retail competition is best for Virginia, the Staff based on current knowledge, is aware of three basic models. We believe that two of these models should be explored but that the third (straight bilateral contracts) appears impractical and inoperable at this time.

   1. Expanded Wholesale Model - The wholesale model previously discussed does not envision any direct retail access. This model could be expanded, however, to accommodate direct

purchases of power by a limited number of large industrial customers. After all, it can be argued that such purchases by large industrials are not significantly different than direct purchases by wholesale customers such as cooperatives and/or municipals. It is certainly simpler and less expensive to accommodate direct access for large industrials than for all customers. In such a model, the Staff believes that an RPX is desirable and that an ISO is essential. In fact, the extent to which such access can be accommodated is a function of the technology available to the ISO and the distribution company. It is also a function of transmission import capability and the allocation of that capability to the various customer classes.

It should be noted, however, that the application of this model could harm some consumers if large volume customers are able to "lock-up" transmission capacity that has historically been used to import low cost energy for all customers. Care must also be taken to avoid the shifting of costs for ancillary services from large customers to smaller customers.

2. ISO/RPX - As previously discussed, it is the Staff's opinion that in order for a fully functional wholesale market to develop, an ISO is necessary and an RPX is desirable. If, however, broad based retail access is to be pursued, then an RPX operating in concert with an ISO is mandatory. Given this fact, it is appropriate to briefly review how an RPX might operate in concert with an ISO to deliver retail access. A full discussion of this concept is presented in Chapter 1 of this report.

   The purpose of an RPX is to provide a dispatch logic for generation and to establish a competitive spot market for electricity. This could be accomplished by having all generation owners supply the RPX with a bid for the price of generation for each hour or half hour of the following day. The RPX would use this information to develop a dispatch order to serve load curves provided by retail suppliers of electricity (local distribution companies, marketers, etc.). The ISO could then direct the dispatch of generation, taking into account

transmission constraints, until retail load is served. Thus, hourly price signals become available and, theoretically, the efficient use of electricity can be maximized.

If the appropriate information technology becomes available to the distribution company, customers could exercise " contracts-for-differences" and have the equivalent of retail access. As retail access is pursued, it becomes more expensive and more complex to provide choice to smaller and smaller customers. As an example, in England, the reported cost to make retail access available to 55,000 customers with loads greater than 100 KW has approached a half billion dollars. Providing access to all customers including residentials in England, even without real time metering, is expected to reach a total cost of $1.5 billion.

The RPX/ISO model could be modified to accommodate bilateral contracts outside the power exchange for a limited number of large consumers. With the formation of an effective RPX, however, the need or logic for such transactions is diminished, especially considering the complexities they introduce.

3. Straight Bilateral Contracts - Retail access could theoretically be pursued by allowing customers to deal directly with suppliers without having an RPX in place to provide for dispatch logic or for a transparent spot market. Coordinating transactions would, we believe, be unmanageable absent significant technological advances. Additionally, this model may not provide for effective access to competitive suppliers for many classes of customers. In fact, the Staff is unaware of a pure bilateral contract model that is in operation.

Need for Legislation

The Commission Staff believes that just as the electric industry will evolve in Virginia, so must legislative changes. It is currently premature to attempt an overhaul of the Virginia Code as it relates to the regulation of public utilities. We are not aware of legislative

changes necessary at this time, but will continue our review of how the Virginia Code should evolve to accommodate changes to our electric utility industry.

The Staff has identified at least two areas where legislative action may be warranted. The General Assembly may want to consider legislation that allows for the construction of merchant plants in the Commonwealth with the appropriate oversight of siting. The issues associated with the exercise of eminent domain should also be explored given the potential impact of merchant plants and the associated transmission facilities on the environment and on the regional bulk power system.

While there may be a number of additional areas where legislative changes may ultimately be needed, the Staff believes that legislative decisions made in Virginia should be made without attempting to anticipate when and whether federal legislation will be forthcoming. Virginia legislative decisions premised on an assumption that federal legislation will grandfather state restructuring initiatives may be inappropriate since none of the currently proposed congressional bills have provisions that truly grandfather state action (See Appendix No. 4). H.R. 655, introduced by Representative Schaefer, only grandfathers state legislation if it mirrors the requirements of the proposed bill. S. 237, introduced by Senator Bumpers, only grandfathers state legislation if enacted prior to January 30, 1997, provided the legislation has the effect of requiring retail competition on or before December 15, 2003.

Conclusions

The advancement of a competitive model for the generation of electricity in Virginia should be pursued with deliberation and with caution. It should be recognized that a competitive environment in Virginia will take time to evolve and that evolution will be driven by a number of factors including technology development, federal legislative initiatives, actions taken by surrounding states and, of course, legislative and regulatory actions taken in Virginia.

The decision to adopt retail competition should not be made until policy makers are reasonably certain that benefits will outweigh the costs and that the problems associated with retail access have been identified and have workable, cost effective solutions.

If a decision is made to advance to retail access, it must be recognized that the challenges associated with replacing the traditional regulatory model with a competitive market are enormous and the process will take time and cost money. Ratepayer protection, perhaps for an extended period of time, may be necessary. At the appropriate time, decisions regarding stranded costs and benefits must be made. Reliability cannot be compromised and market power is a reality that must be addressed.

As we confront these issues, the Staff believes that competitive pressures will continue to play an increasing role in the provision and pricing of electricity in the Commonwealth. As we advance, certain decisions must be made. At this juncture, the Staff believes that a fully competitive electric market will require the functional unbundling of generation, transmission, and distribution. Distribution will be regulated on a state level. Transmission should be part of an ISO with price regulation likely to be at a federal level and siting regulation remaining with the Commonwealth. As stated earlier, however, we believe that the states should play a role in assuring that the ISO supports the reliability of the regional bulk power system in a cost effective manner. An RPX is necessary if access for all customers is to be pursued. Ultimately, the local distribution company or some other power supplier will act as a supplier of last resort, providing competitively priced electricity from the open market to those who have no competitive alternatives or who elect not to shop for electricity.

The chapters which follow examine several complex issues and associated concerns with electric utility restructuring leading to the Staff's recommendation for a deliberative and evolutionary restructuring process. Specific recommendations for this transition process have been presented in the foregoing *Draft Working Model* section of this report. The supporting chapters focus on six specific areas including reliability, market structure, stranded costs, market

power, consumer impacts and environmental concerns. While each chapter focuses on a specific issue, there is significant redundancy in these discussions. For example, market structure cannot be addressed without consideration of reliability and market power. Likewise, consumer impacts cannot be discussed without focusing on reliability and on the stranded costs/stranded margins issue. Such overlap is unavoidable in that each chapter is essentially designed to be read on a "stand-alone" basis.

Following these Chapters are four Appendices. Appendix No. 1 is a copy of Senate Joint Resolution No. 259 which requests this study. Appendix No. 2 presents average rate comparisons on a state-by-state basis and on an international basis. The comparisons are discussed in some detail in Chapter 5 of this report. Appendix No. 3 presents a brief summary of the status of restructuring in those fourteen states that have been most proactive in this area. Finally, Appendix No. 4 presents a summary of draft federal legislation relative to restructuring the electric utility industry.

Statement of Jack Hundley
Virginia State Legislative Committee
American Association of Retired Persons

December 17, 1997

Good morning. My name is Jack Hundley and I am a member of the Virginia State Legislative Committee of the American Association of Retired Persons (AARP). I am here on behalf of AARP's over 784,000 members in Virginia who are age 50 and over. Electric utility restructuring is important to me and to the other members of AARP. Electricity is a vital service. Without it we are vulnerable to the whims of Mother Nature. It can mean the difference between life and death for many frail elderly Virginians.

For this reason we need to be sure that any changes in the structure of the electric system benefits residential consumers. No harm is not good enough. Since this service is essential to health and well-being, we need to pursue any changes cautiously and with a great deal of examination of the issues.

Today, AARP will file our comments on the "Draft Working Model for Restructuring the Electric Industry in Virginia" by the State Corporation Commission (SCC). While I don't have time to delve into all of our comments, I would like to highlight some of the issues we have identified in the report.

Let me start off by saying that we are generally pleased with the outlook of the report. Our critique of this plan really looks at the details. Overall the report is compatible with AARP policy.

Nonetheless, there are some provisions in the report that need improvement to ensure that consumers will be fully protected in a restructured environment. First, and foremost, the report does not fully recognize the importance of universal service in a restructured environment. AARP policy sees two important components that should be included in any universal service policy. First, all consumers should have electricity service that is priced at just, reasonable, and affordable rates. Second, there should be a low-income program to assist the needy in affording the electricity they need. This is crucial.

The report also notes that the SCC is currently doing rate reviews in preparation for the move to alternative regulation. AARP policy only supports the move to alternative regulation once there is effective competition for a service. Since such competition in no way exists at this time, we oppose the movement of Virginia Power and American Electric Power to an alternative form of regulation. This type of regulation, as we've seen in telecommunications, can lead to cost shifting and reduced service quality. The citizens of Virginia cannot afford lessened service quality from our electric companies and we look to the SCC to ensure that there is no such degradation.

The report also looks at market structure and market power issues. The report states that any deregulation of power supplies and stranded cost recovery should be conditioned

upon participation in an independent system operator (ISO) to mitigate vertical market power. While participation in an ISO is crucial for the restructuring of the marketplace, simple participation in this ISO should not warrant deregulation of the utility. Participation in the ISO is a first step, but the utilities also need to have unbundled their networks so that competition really can arise.

The report further focuses on the need for functional separation of distribution, transmission and generation. AARP policy actually supports divestiture of generation from transmission and distribution to protect consumers to the greatest extent possible against affiliate abuses.

We applaud much of the report's language on stranded costs. In particular, we are pleased with the statement that "...some sharing of stranded costs between investors and consumers should be inherent in the establishment of an appropriate recovery mechanism." (p. 86) In other states AARP has advocated that consumers pick up no more than 50 percent of the prudently incurred nonmitigatable stranded costs.

Finally, with regard to consumer protections, the report contemplates some sort of registration process to ensure that marketers are financially solvent and technically reliable. We have supported licensing of all suppliers to ensure that they have the ability to provide the services that they say they will provide. AARP also maintains that the Commission should require standardized billing formats. We agree with the staff that advertising and marketing standards should be developed and that the Commission should

implement rules on customer deposit requirements, late payment charges, and disconnection procedures. The report doesn't include this, but AARP also supports the development of rules guarding the privacy of consumers and the information currently held about individual consumers by the utilities.

Let me conclude by commending the SCC for their report. We appreciate the effort that went into developing such a comprehensive document. We look forward to continuing to work on this issue in the hopes of gaining benefits and protections for residential consumers.

VCCC
VIRGINIA
CITIZENS CONSUMER COUNCIL

SJR 259 Joint Subcommittee Studying Electric Restructuring

Jean Ann Fox, Vice President
Virginia Citizens Consumer Council

December 17, 1997

Senator Reasor, members of the Joint Subcommittee. Thank you for giving me this third occasion to talk to you about electric restructuring and consumer protection. I have described VCCC's concerns about the impact of deregulation on residential consumers, and stated a laundry list of protections and programs that must be put in place before retail competition and relaxed regulation is instituted to be sure residential customers get reliable, safe electric service at just and reasonable and affordable rates. So, I won't rehearse that list a third time.

VCCC endorses the careful and measured approach to restructuring the electric industry that is spelled out in the SCC Staff report to this Subcommittee. While we would have liked to see more discussion of specifics on universal service and consumer protection, on the whole the Staff model is the right way to go. We oppose any bills in the 1998 session of the General Assembly that would attempt to legislate retail competition on a date certain or that would decide recovery of stranded cost questions. The reasons for this position:

1. We do not yet know enough to say with any certainty that retail electric competition will result in lower rates for more reliable electric service for residential customers. By following the plan of work laid out in the Staff Model, the public and public servants will be in a better position to make wise decisions. Too many complex questions are unanswerable at this point. By adopting controversial "date-certain" legislation this year, the General Assembly would be buying a pig in a poke, as we say in Tennessee.

2. There is no pressing reason to enact legislation in 1998. The SCC is well on its way to carrying out the preliminary steps of examining rates for the major electric companies. The prerequisite pre-competition market structures are not in place, such as ar ndependent system operator or a regional power exchange. And, no one expects Congress to adopt electric restructuring legislation in 1998. Much has been made of the urgent need to pass a bill in Virginia before Congress acts. I wouldn't put a lot of trust in

the promise of federal grandfathering of state restructuring programs. The new bill introduced by Senator Bumpers moves the grandfather date to 2002, so you have time to get it right. If the Telecommunications Act of 1996 is any indicator, when the dust settles on Congressional electric restructuring, states will have precious little wiggle room. So, I would urge you to discount the urging of some that Virginia must adopt a bill this year so that we will be grandfathered by any future federal legislation.

3. Timing is everything. We regulate monopoly electric utilities to provide the discipline you would otherwise expect from an effectively competitive market on a business that many grew up believing was a natural monopoly. Even today, "deregulation" and "competition" only apply to the generation of electricity, not transmission or distribution. It may very well be that the Staff Model option of wholesale competition provides the best mix of benefits at the lowest transition costs for all ratepayers.

Since electric companies now exercise market power over the power market, "effective competition" will take a great deal of effort to bring about. You can't just legislate competition. And, as long as effective competition is not sufficient to discipline rates, quality of service, or market behavior, the public must be protected by regulation, the surrogate for competition. The Staff Model is the better route.

4. A few words about the current uproar in the Virginia Power alternative regulation case. The deadline for parties to file testimony in this traditional rate case/alternative regulation case is December 23. To beat the Christmas rush, VCCC filed its testimony by Dr. Mark Cooper on Monday. Yesterday the Company filed a motion to withdraw its alternative regulation plan which VCCC's testimony opposed. On the one hand, I'd like to think Virginia Power read our testimony and decided to throw in the towel. What I am afraid is happening is less entertaining.

The parties to the alternate regulation case have conducted extensive discovery into the facts of Virginia Power's request to freeze current rates for five years although the company is earning excess profits and to get approval for seven more years of transition cost recovery. The proposal would be subject to evidentiary examination, with a factual record developed. I suspect that Virginia Power decided that it had a better chance of getting the General Assembly to sign off on its request to recoup about $3 billion in claimed "stranded costs."

It is our position that Virginia Power's ratepayers have already paid the company a handsome return on investment to compensate for the risk of stranded investment and there is no justification for asking consumers to foot the bill again. Our view of the regulatory compact between ratepayers and Virginia Power is that customers have a right to efficient, economical electricity service. The SCC should do more than give ratepayers an immediate reduction to eliminate Virginia Power's excess profits. The SCC should also use the substantial record developed in this case to begin disallowing the uneconomical costs being imposed on Virginia consumers.

That won't happen if the General Assembly adopts legislation to guarantee that Virginia Power recoups its claimed "stranded costs."

VCCC respectfully requests this Subcommittee to recommend that the General Assembly continue your work for another year to provide oversight of the SCC's implementation of the Staff model and that you refuse to entertain date-certain retail restructuring legislation. We raise red flags over Virginia Power's stated intention of asking the General Assembly to pass a bill on stranded costs. Such a bill would likely be dangerous corporate welfare and anti-competitive.

Thank you.

Testimony of

Greg White
Vice President
Virginia, Maryland and Delaware Association of Electric Cooperatives

before the

Joint Legislative Study Committee on Competition and Restructuring within the Electric Utility Industry

December 17, 1997

General Assembly Building
Richmond, Virginia

Mr. Chairman, members of the joint committee, I am Greg White, Vice President of the Virginia, Maryland and Delaware Association of Electric Cooperatives, representing 12 cooperatives located throughout Virginia. Virginia's electric cooperatives appreciate the opportunity to share our views on the State Corporation Commission Staff Report, "Draft Working Model for Restructuring the Electric Utility Industry in Virginia."

When I spoke before you last August, we urged a cautious and deliberate approach to restructuring the electric industry in order to assure a win-win situation for all Virginians. We commend the Commission staff for taking such an approach. However, while we support a thorough, careful and deliberate analysis of restructuring, we are concerned with the timing uncertainty of the Staff's plan. The Model does not specifically recommend that open retail competition take place, nor does it set a target date for retail access. We believe that a more specific timeframe with goals and targets -- with the Commission having the discretion to accelerate or delay the schedule -- may be more appropriate. In our opinion, further uncertainty about how and when restructuring occurs may create confusion and doubt within the utility industry, within financial markets, and perhaps most importantly, among members of the general public.

More specifically, we have five general areas of the Working Model that we wish to comment on.

First, in Phase I of the Model, Staff recommends that "each of the investor-owned utilities and cooperatives be subject to a rigorous and thorough

rate examination prior to any effort to implement retail access." Staff further recommends that this examination should determine not only whether existing rates are cost-based, but should also resolve issues of rate disparity and unbundling of rates and billing. We believe that beginning the transition to retail competition with a review of rates is a somewhat backward approach. Unbundling of rates into their generation, transmission and distribution components should be first on the agenda. Once rates are unbundled, any disparities or cross-subsidies can be more readily identified and addressed, if need be.

We are concerned that engaging in multiple rate proceedings will require significant time and expense for both the Staff and utilities, which may shift the focus from the restructuring task at hand. We maintain that once the rates are unbundled and costs are made more transparent to the market and to consumers, the forces of competition will have a greater influence on prices than rate review proceedings.

In summary, while we do not disagree that unbundling rates and services will serve a very useful purpose, it is our opinion that our member-consumers will not benefit from the loss of time and money that "rigorous" cost-of-service proceedings will incur.

Second, we also have concerns that the Model provides little guidance on what direction Virginia should take on stranded costs. Rather than question whether stranded costs exist and whether stranded costs should be recovered, we believe the Transition Model should develop an approach for fully and fairly

dealing with the recovery of all prudently incurred stranded costs; and the Commission should be given the authority to determine the amount and method of recovery. Continued uncertainty about this extremely important issue is unfair to our member-consumers, to investors, to other utilities' ratepayers and shareholders, and to the utilities involved.

One further note on the stranded cost issue: as the Staff states in the Model, nuclear units represent a "significant complication" in the treatment and calculation of stranded costs. Significant expenses for decommissioning and for spent-fuel disposal may be incurred long after the transition to a restructured industry. We continue to advocate that the costs of nuclear decommissioning, fuel disposal, and other costs that may arise from NRC and other regulatory requirements should remain as a distribution wires charge.

Third, we are encouraged by the Staff's endorsement of the formation of an Independent System Operator (ISO) and Regional Power Exchange (RPX). Yet, we are extremely concerned about system reliability as power is transported across and out of Virginia. We believe that a number of technical issues, such as the governance of the ISO, need to be addressed immediately.

Further, as the Staff report notes, "ISOs will likely play a significant role in promoting effective competition by providing for efficient access to bulk power transmission facilities through the consolidation of individual transmission systems into larger ones." For example, Virginia Power owns or controls virtually all generating capacity within its control area; yet the company's transmission system has less than 4,000 MWs of capacity to import power into the area. In

other words, approximately 70 to 80 percent of Virginia Power's entire load must be served by its own generation during peak demand conditions. This combination of concentrated ownership of generating capacity and limited power import capability could provide Virginia Power with significant market power in a deregulated environment. For this reason, it is absolutely essential that we move forward expeditiously with the formation of an ISO and RPX.

Fourth, we also agree with the Staff's recommendations concerning pilot programs and prototypes. Yet, we believe that legislation may be necessary in order for the Commission to require utilities to conduct pilot projects. Current statutes authorize the Commission to approve special rates or contracts and experimental programs; but the law does not appear to provide the Commission with authority to mandate pilot programs. Once the Commission has this authority, we suggest that Staff work with the utilities and other stakeholders to establish a pilot that will provide the information needed for the Commission and the industry to continue with the restructuring process.

And finally, fifth, Staff outlines three possible models for retail competition: (1) expanded wholesale model, (2) ISO/RPX, and (3) straight bilateral contracts. We agree with Staff that straight bilateral contracts would be unworkable, and suggest instead that a hybrid -- a combination of the Expanded Wholesale Model and the ISO/RPX – is the more appropriate route to take.

In summary, the Staff has done a praiseworthy job of further clarifying the many complex issues facing us as we look to restructuring the electric industry.

And we fully endorse the cautious and deliberate approach to restructuring. Nevertheless, we believe it is now time to move forward with specific recommendations and clearly focused pilots for the industry and stakeholders to address. We look forward to reaching and participating in this next step. As we've stressed strongly from the outset, our first and main priority is to ensure that all Virginians benefit -- from the large industrial customer to the consumer at the end of the line. The crucial goal as we move forward is simply this -- retail competition must either enhance the cost and service quality for all classes of customers, or at a minimum, be cost and service neutral. Otherwise, Virginia's reputation for low electricity costs and high reliability will suffer, and the Commonwealth will not realize the intended benefits of retail competition.

Virginia's electric cooperatives appreciate the invitation to speak to you today, and look forward to continuing to work with you and the Commission as you fashion laws and regulations that will achieve this crucial goal, and benefit all Virginians. I would be happy to answer any questions at this time.

COMMENTS OF THE VIRGINIA OIL AND GAS ASSOCIATION
TO THE JOINT SUBCOMMITTEE STUDYING ELECTRIC RESTRUCTURING (SJR 259)
November 17, 1997
Laura Bateman, President

Mr. Chairman and members of the Subcommittee:

My name is Laura Bateman and I serve as President of the Virginia Oil and Gas Association. In my other lives, I am Vice President of Public Affairs for Commonwealth Gas Services, a Columbia Gas System Company — Columbia Gas having relocated its corporate headquarters to Virginia about 18 months ago, and as a member of the Virginia Coal and Energy Commission. I would like to emphasize that my comments today are representative of the Virginia Oil and Gas Association --- the collective voice of all segments of Virginia's natural gas industry, including exploration, production, marketing, transmission and distribution. We appreciate the invitation to appear today with our comments on the Commission Staff's model for transition to retail competition in the electric industry

I have seven points that I would like to make to you today, It is my intention to keep my remarks brief and, hopefully to the point. I want to begin by acknowledging the long hours and careful thought evident from the Staff's model. As a member of one of the Commission's working groups, I can attest, from professional and personal knowledge, to the long hours and careful thought that culminated in the SCC staff report. While our members and the Staff may have a different perspective on the pace and ultimate end point of restructuring, we compliment the Staff for its effort to address the issues. VOGA and its members can vouch for the deliberation intendant in that process. For, we have been there and done that in the regulatory devolution of the natural gas industry. While the natural gas industry may dwarf the electric utility industry in terms of numbers of customers, stranded costs, and the like, there are, I believe, many parallels and lessons to be learned...let me now share our concerns.

First, while the SCC's model proposes two phases for the transition to competition, we believe that affected parties and the public interest would be served by further defining the time periods for each of the segments of those phases. For instance, we believe the Commission should, within the context of the two Alternative Rate Plan (ARP) proceedings underway for Virginia Power and AEP Virginia, and for all future ARP proceedings, set out specific time frames for reviewing unbundled rates, implementing unbundled customer billing, and beginning pilot program enrollment. This additional certainty will help all parties focus effort their efforts on the specific tasks necessary to effect the transition. As an aside, we note that AEP Virginia's Alternative Rate Plan proposal places a great deal of emphasis on unbundling as a first step toward competition. While the General Assembly should make the larger policy decisions, including the overall time frame for transition to competition, the Commission is better able to manage its docket and should be provided the opportunity to establish specific, concrete dates for carrying out the steps necessary to effectuate each of the phases.

A second timing issue relates to reviewing market power issues. The Staff's model suggests that market power review should be delayed until the second phase of the transition. While we agree with the Staff that the formation of Independent System Operators and a Regional Power Exchange will address many vertical market power issues in Phase 1, we do not agree that horizontal market power issues should be left to the

federal government or delayed until Phase 2. Part of our difference in opinion stems from our views on natural gas transmission constraints, which the Staff cites as a primary justification for its view that competition in the generation sector is too far in the future to merit attention at this time. In our August presentation we provided a litany of examples of new gas transmission projects currently underway. The gas industry is responding to market demand, as it has since FERC unbundled the natural gas industry years ago. In fact, we believe that many of the constraints on new pipeline capacity are regulatory, and not market driven. While the FERC certainly has jurisdiction over some aspects of this, we also believe that competition in the generation sector would be aided greatly by reduced regulation of pipeline capacity additions. We agree with the Staff and with ALERT that the General Assembly should provide legislative authority for the development of merchant generation plants. However, we believe that there is a need for further upstream deregulation to ensure that merchant plants can have access to an adequate and reliable fuel supply.

Third, we believe the Staff model could be improved by an increased emphasis on the options for mitigation of stranded costs. Virginia Power and its non-utility generator (NUG) vendors are presently exploring a number of creative ways to restructure generation contracts, including market mechanisms akin to securitization. The Staff model states accurately that securitization is a new phenomenon. But that doesn't mean that the study of securitization and other market mechanisms for mitigating stranded costs should be shelved. We believe that a renewed emphasis on mitigating stranded costs can provide "win-win" solutions that benefit consumers and electric company shareholders alike.

Fourth, the Staff model seems to dismiss the notion that residential and small business consumers should be allowed retail access. We are aware of no state that limits competition to particular classes of customers. In fact, one of our members, Consolidated Natural Gas, has signed up over 100,000 residential and small business electric and natural gas customers in just eight months in the states of Ohio and Pennsylvania. It is the first non-regulated company to reach this milestone in the U.S. My company, Commonwealth Gas Services, has launched a very successful beginning to its customer choice program for residential and small commercial natural gas customers. Washington Gas has implemented a successful choice program in its Maryland service territory. The response indicates that all customer classes have a genuine desire to participate in innovative retail choice programs.

Fifth, we believe the Staff model should place more emphasis on unbundling ancillary services such as billing and metering. My company and our other members have seen in other states that customers can enjoy substantial cost savings from competition in these areas.

Sixth, we do not share the Staff's view that competition cannot be introduced effectively until Regional Power Exchanges and Independent System Operators are in place. Bilateral contracts have worked very well in the natural gas industry and can be utilized effectively in a competitive electric environment until an ISO/RPX is needed or established.

Finally, in our August comments to the Subcommittee we advocated a model for competition that is similar in many respects to those proposed by the Commission Staff and ALERT. We would like to emphasize just a few points of that model. VOGA

recommends a retail access program that provides all customers with the right to participate in a five-year transition to competition, beginning with 10% of each utility's peak load in the first year and larger increments in years 2-5. We advocate this model as one which best provides for measured movement toward competition, which allows for recovery of all prudently incurred stranded costs and benefits over a finite period of time, and which provides an opportunity for the General Assembly and the Commission to make mid-course adjustments. If you recall, we said in August that all we desire is the opportunity to compete on equal terms. That is still our goal.

But part of "equal terms" means that any transition to electric competition should ensure that all legal barriers to effective competition are removed and that no new barriers are established. While I do not desire to further complicate the tax issues you are facing, natural gas currently faces a competitive barrier in the form of the coal tax credit, which encourages generation facilities to purchase Virginia coal. While the Commonwealth's desire to encourage development of Virginia's energy resources is a laudable one, in many instances the coal tax credit forces customers to switch their source of fuel. I am here to urge you to add a holistic perspective to your deliberations on the matter at hand. At a minimum, we believe that existing tax credits should be fuel-neutral, and if we are to have tax credits that benefit Virginia industry, they should be extended to all Virginia-produced energy stocks, including specifically Virginia-produced natural gas and coalbed methane gas. On a prospective basis, we should all work together to ensure that any new tax mechanisms are truly fuel-neutral and do not artificially limit competition --- FOR THIS WILL TRULY BE IN THE BEST INTEREST OF ECONOMIC DEVELOPMENT IN SOUTHWEST VIRGINIA, AND THE ENTIRETY OF VIRGINIA IN THE LONG TERM.

That concludes my prepared remarks. I appreciate your time and attention and would be glad to answer any questions you may have.

Joint Subcommittee Studying
Restructuring in the Electric Utility Industry

December 17, 1997

Remarks of
Trip Pollard
Southern Environmental Law Center

Mr. Chairman, members of the Subcommittee, I thank you for the opportunity to present these remarks on the draft restructuring model the State Corporation Commission Staff provided you last month.

The Southern Environmental Law Center generally supports the SCC Staff's proposed framework for restructuring. If done properly, restructuring can produce significant environmental and economic benefits. However, we agree with the SCC Staff that it is critical to move cautiously in restructuring the electric utility industry, since restructuring is a complicated undertaking with many unanswered questions and very high stakes.

We support the proposed phased approach to retail competition, which provides for experimentation to address questions surrounding the creation of a competitive electric power market and stopping points to review the results of these experiments before proceeding further. We do believe, however, that a date certain for retail competition should be provided. Phase II should require all electric utilities operating in Virginia to file retail access programs no later than January 1, 2001 if it is determined from pilot results that the conditions essential to consumer and environmental protection exist.

The Southern Environmental Law Center also supports a number of specific elements of the SCC Staff's model, such as, in the first phase, a rigorous assessment of retail rates and adjustments where necessary so that we get rates right before any restructuring, the implementation of retail access pilots, the formation of an independent system operator (or ISO), and the need for careful stranded cost analysis since this multi-billion dollar issue has enormous implications for utilities, customers, the environment, and development of effective competition.

As you know, Virginia Power filed a proposal with the SCC that raises critical stranded cost issues. Although the Company just asked to withdraw the stranded cost part of its proposal, this proceeding would provide a valuable opportunity to use concrete numbers to assess stranded costs. SELC's expert testimony, which we will provide to the Subcommittee when it is filed, finds that Virginia Power's stranded costs are billions of dollars lower than the Company claims. If the SCC proceeding does not address stranded costs, it is essential to implement the components of the Staff's model to properly set the rates of utilities and study the stranded cost issue.

We also agree with the SCC Staff that restructuring raises serious environmental issues. As their report notes, "The 'invisible hand' of market forces historically has not performed well in conserving our natural resources and maintaining a long-run view toward preservation of the environment." (122).

A fundamental flaw with the draft model, however, is that although it identifies some of the potential environmental problems with restructuring, it fails to recommend adoption of concrete steps to address these problems. The Staff's model does not propose any measures to ensure an electric power system that protects environmental quality, nor does it propose components of retail choice pilot programs that would provide the necessary hands-on experience and specific information on how such measures will work in a competitive world. As a result, the model does not satisfy the General Assembly's direction in SJR 259 that the working model provide reliable, competitive electricity "while protecting environmental quality."

Restructuring must provide net environmental benefits. Among other things, it must promote greater energy efficiency and lead to a greater reliance on renewable energy resources. To begin to explore the environmental impacts of restructuring, the retail choice pilot programs called for in Phase I of the Staff's model should include specific elements such as environmental

disclosure requirements which enable customers to make informed choices about who they purchase their power from, and a mechanism to promote investments in energy efficiency and renewable energy.

Pollution Impacts and Environmental Disclosure

The SCC model recognizes that "Of all the environmental issues related to electric industry restructuring, the impact upon air quality is probably the most critical" and that "The magnitude of the electric industry's contribution to air-borne pollutants demands consideration" (Report, p. 118). Fossil fuel-burning power plants account for most air pollution in the United States, releasing approximately 66% of the sulfur dioxide (SO_2), 29% of the nitrogen oxides (NO_x), and 36% of the carbon dioxide (CO_2) emitted. Byproducts of these emissions include acid rain, reduced visibility from smog, ground-level ozone, and global climate change.

In addition to fossil fuel plant impacts, nuclear power plants produce a substantial amount of both high and low level radioactive wastes.

SCC Staff notes that "The most likely impact of competition upon the environment will be negative because an electric industry subject to competitive forces will face increased economic pressure to use low cost generation regardless of environmental consequences." (122).

Low cost generation is often heavily polluting. As Staff notes, under the Clean Air Act older plants built prior to 1978 are subject to less stringent pollution control requirements than similar new plants (119). Competition may create additional markets for these older plants, which enjoy an economic advantage because of depreciation and laxer environmental standards. If so, these plants may be kept in service longer and run more frequently, dramatically increasing air pollution.

To prevent this, other states have tried various approaches. The SCC Staff's model describes several of these approaches, but doesn't propose adopting any of them. At the very

least, since the current disparity in emissions standards may be most effectively addressed by federal legislation, any restructuring model should support federal legislation to remove current inequities in the Clean Air Act which create environmental harm.

A more significant step to address the pollution impacts of power plants is try to harness consumer desire for cleaner electric power by providing consumers adequate information about the fuel mix and emission rates of power suppliers so that they can make meaningful choices as to what kind of power plants will serve their needs. SCC Staff's report recognized that environmental disclosure mechanisms have been proposed to provide consumers with this information (121) and recognized that disclosure could be valuable (123); however, with virtually no analysis, Staff recommends against its adoption (123).

Pilot programs should be designed to gain experience with environmental disclosure, to examine both what product information must be provided by power suppliers so that consumers can make informed choices in selecting their electric power providers, and how best to provide this information to customers.

In addition, as SCC Staff recommended, it is essential that "the SCC or some other state agency monitor and verify the claims of suppliers of green power." (123). As Staff notes, there have already been problems in states with retail choice pilots with false or misleading claims by power marketers to win customers by claiming that the power they offered for sale was "green".

Pilot programs should be designed to gain experience with how best to protect consumers from misleading claims.

Funding Energy Efficiency and Renewable Energy

The second primary area the SCC Staff Report recognizes which could have a detrimental impact on the environment is declining investments in energy efficiency. (125). The same holds true for renewable energy investments.

Ultimately, our ability to solve the environmental problems created by power production will depend upon the success of policies to promote greater energy efficiency and the commercialization of renewable energy resources.

Experience has shown that electricity consumption can be significantly reduced, and electric bills cut substantially, if consumers take advantage of energy efficient technologies which offer the same or better level of performance than conventional technologies while using far less electricity.

As the SCC Staff model observes, the SCC has long recognized the value of energy efficiency and encouraged utility investment in conservation and load management (or CLM). We agree with the Staff's conclusion that the SCC's policy of encouraging cost effective efficiency programs should continue unchanged (132), and that utility resource plans should "continue to have conservation and energy efficiency measures as an option" (129). However, these policies need to be enforced. The Staff's report recognizes that utilities have already begun to abandon investment in energy efficiency as they prepare for competition, citing Virginia Power's planned cutback of energy savings in 2005 from 963 to 224 MW.

The long term costs of abandoning energy efficiency efforts -- in terms of increased pollution, risk of further environmental regulation, and increased costs to consumers -- are staggering. These actions are clearly contrary to the public interest and energy efficiency and renewable energy investments must not be lost during restructuring.

Little is known in Virginia about how to promote greater reliance on cost-effective energy efficient technology and stimulate the development of renewable energy resources. We need to experiment with other mechanisms than utility programs so that we can know how best to promote energy efficiency and renewable energy in a restructured industry. The most promising approach, we believe, is establishing an independent non-profit entity responsible for administering funds targeted for programs promoting greater energy efficiency and renewable

technology development. Similarly, funds should be earmarked to provide universal service.

The SCC Staff states that it does not recommend such a fund at this time and that it is "advisable to see how competition develops and how the market reacts to such things as energy efficiency" (127); yet the purpose of the pilot programs called for in the draft model is to gather the necessary information and experience needed to prepare for competition now.

Retail pilots should be conducted to gain experience and information with what rules should govern the independent administration of funds to promote greater energy efficiency and stimulate the development of renewable energy resources.

Conclusion

Although the SCC's model provides a workable framework for addressing the complex issues raised by electric utility restructuring, I urge the Subcommittee to endorse the proposals I have made so that maintaining or improving environmental quality can be ensured in any restructuring in Virginia.

I thank you for the opportunity to present these remarks.

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October 27, 1997

BY HAND

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Dear Cody and Tom:

This is in response to your October 10th letters to the undersigned forwarding the staff's draft "Transition Model for Electric Utility Industry Restructuring" and requesting comments by today.

Five thoughts. (1) SJR 259 (1997 session) requested the SCC staff to provide a model "... most appropriate for the Commonwealth of Virginia for the future structure of the electric utility industry to provide reliable, competitive electricity ...". Respectfully, the draft does not appear to be responsive to that request.

It is our understanding that the General Assembly wanted your recommendations on a specific model for reliable, competitive electricity. The bulk of this draft (Sections I and II) is basically (i) a restatement of issues that need attention as first highlighted in the July, 1996 SCC staff report and (ii) a process for future deliberations by the General Assembly over an additional five year period. It does not provide, as requested in SJR 259, "the appropriate timetable and transition for the model to be <u>implemented</u>". (Emphasis added)

(2) Having said that, there is a portion of the draft (Section III) in which various options for competition are generally discussed and certain opinions expressed. We agree with much of those discussions dealing with the benefits of an ISO, RPX, etc. Even then, it does not provide the specificity of a model that we believe the General Assembly desires according to their Resolution.

(3) In the first full paragraph on page 15, the report does in those few sentences outline the parameters of a model. With the addition of allowing bi-lateral contracts and some other embellishments, we concur with that one paragraph summary. We only wish an actual model for that approach had been forthcoming.

(4) We also concur with the two items highlighted for consideration as legislation at the 1998 session (e.g., merchant plants; eminent domain). In addition, we believe that the General Assembly at its 1998 session should make the policy decision to commence retail competition by January 1, 2001, establish the framework for such competition and initiate the action necessary for the transition to such competition.

(5) The draft report is premised on having certain actions take place in the marketplace and basically having in place all of the components of a competitive model before any decision is made as to whether to go to competition. We suggest that simply will not take place without and until a policy decision is made.

Finally, it is our concern that further delay in making this decision reduces the opportunity Virginia has to implement the model "most appropriate for the Commonwealth of Virginia for the future structure of the electric utility industry to provide reliable, competitive electricity". We have had the benefits of time to make an orderly transition; it is, however, now time to start that transition.

Sincerely yours,

Ralph L. "Bill" Axselle, Jr. Reginald N. Jones

cc: ALERT

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October 27, 1997

Mr. Cody D. Walker
Deputy Director
Division of Energy Regulation
State Corporation Commission
1300 East Main Street, Tyler Building
Richmond, VA 23219-3630

Re: ***Virginia Committee for Fair Utility Rates -***
Staff's Draft "Transition Model for Electric Utility Industry Restructuring"

Dear Cody:

We have received the executive summary of the Commission Staff's draft "Transition Model for Electric Utility Industry Restructuring." Thank you for sharing the draft with us, and affording us an opportunity to provide the Commission's Staff with written comments on your "work in progress."

The Virginia Committee agrees with the direction of a number of Staff's recommendations, which we view as proactive, necessary to prevent the Commonwealth from falling behind, and consistent with the public interest. These include the following:

- the Commission should encourage formation of one or more regional ISOs;
- the Commission should encourage the formation of one or more regional power exchanges ("RPX") in order to foster a more transparent spot market for electricity;
- the unbundled cost of generation, transmission, distribution [and, we would submit, ancillary services] should be identified and separated, and such unbundled costs should be stated separately on consumer bills.

Although we applaud the Staff's action in recommending these proactive steps, we nonetheless strongly disagree with the recommendation to defer, until the year 2000 or beyond, the basic public policy decision, namely, whether to permit retail customers to choose their generation supplier. In contrast, *the Virginia Committee recommends that the General Assembly enact legislation during the 1998 session establishing a date certain by which all retail*

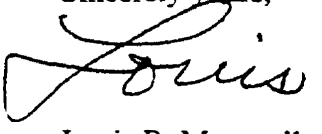
customers shall have the right to choose their electric generation supplier. Such legislation should require all electric utilities operating in Virginia to file applications making proposals to allow for retail access for their customers by the date certain.

We also disagree with Staff's discussion of alternative "options for a deregulated electric market in Virginia." The Virginia Committee recommends that the General Assembly enact legislation to entitle each retail customer to buy directly from a supplier or aggregator (through a bilateral contract), and that the supplier or aggregator may obtain the electricity directly from generators, from another supplier or aggregator, or through a regional power exchange (RPX). The Virginia Committee strongly opposes an exclusive Poolco (exclusive RPX) that does not permit customers to purchase directly from the supplier or aggregator of their choice and forces all customers to buy in the same "one-size-fits-all" manner through an exclusive (and anticompetitive) Poolco. Reasons for rejecting an exclusive Poolco and for permitting bilateral contracts are set forth in an attachment to this letter.

We also wish to make several comments on the Staff's recommendation for pilot programs to provide "hands-on" experience in Virginia with permitting retail customers to choose their supplier of electric generation. *First*, any program to develop hands-on experience should not have the purpose or effect of causing delay in granting customers the right to choose. (In fact, we prefer not to use the word "pilot" because it has acquired that connotation.) *Second*, such program should be of significant size, for example, at least five to ten percent of total electrical load of the utility, so that meaningful experience is obtained. (As you are aware, the pilot programs that will start shortly in Pennsylvania are to be five percent of electrical load. The Staff of the Maryland Commission has recommended that customers constituting ten percent of each utility's electrical load be given choice starting in April 1999.) *Third*, such program should be viewed and structured so that participants – both customers and sellers – do not view the program as necessarily ending at a certain date, but rather as part of a transition to full customer choice.

Again, we appreciate this opportunity to comment on the Staff's draft transition model. We look forward to further opportunities to discuss these matters with the Staff and other stakeholders.

Sincerely yours,



Louis R. Monacell

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Enclosure

BILATERAL CONTRACTS MUST BE PERMITTED IN ANY MODEL FOR ELECTRIC COMPETITION IN VIRGINIA

In its July 31, 1996, *Report on the Restructuring of the Electric Industry* , the Commission Staff aptly observed that "[w]here feasible, competition is always preferable to regulation."[1] However, in its draft *Transition Model for Electric Utility Industry Restructuring* (October 10, 1997), the Staff suggests (at pp. 12-13) that "broad based ***retail*** access" (emphasis added) could be achieved by an exclusive pool that (1) would receive price bids from suppliers of generation services, and (2) would use this information "to provide for dispatch logic or for a transparent spot market." The Staff questions the necessity for, and the efficacy of, giving suppliers and customers the right to deal directly with each other through bilateral contracts outside of the exclusive pool that the Staff visualizes. In the Staff's view, "[w]ith the formation of an effective RPX, however, the need or logic for such transactions [*i.e.*, bilateral contracts] is diminished, especially considering the complexities they introduce." *Transition Model*, p. 13.

The Virginia Committee for Fair Utility Rates respectfully disagrees with the Staff's skeptical assessment of the role of bilateral contracts in a competitive retail market. In any restructured market, participants must be exposed to, and be able to take advantage of, full fledged market forces. A pool system that restricts or eliminates the option of bilateral contracts outside of the pool does not truly reflect actual market forces, and insulates market participants from competition.

Significantly, ***none*** of the member companies of the PJM Power Pool, which is one of the largest pools in the United States, and which has undergone a major restructuring initiative to accommodate competition, agrees with Staff's premise that an exclusive pool, *i.e.*, one that precludes bilateral contracts, is the best vehicle for achieving retail access. To the contrary, the PJM Supporting Companies, consisting of all but one of the traditional public utility members of the PJM Power Pool,[2] have recognized, and publicly acknowledged, the importance and critical role of bilateral contracts in achieving full-scale competition:

> Because bilateral contracts offer potential benefits and opportunities that are not available through the pool-based spot market (for example, the ability to hedge price fluctuation risk through fixed-price contracts), ***the Supporting Companies expect bilateral trading to be robust in PJM.***[3]

Indeed, PECO Energy Company, the "lone dissenter among the pool's utility members . . . which has a very different view of PJM's future," has advocated, in conjunction with a group of

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[1] Staff Report on the Restructuring of the Electric Industry, dated July 31, 1996, Virginia State Corporation Commission, Case No. PUE950089, at 351.

[2] The PJM Supporting Companies are Public Service Electric & Gas Co.; Pennsylvania Power & Light Co.; Baltimore Gas & Electric Co.; GPU Energy; Potomac Electric Power Co.; Atlantic City Electric Co.; and Delmarva Power & Light Co. Andrew W. Williams, "Restructuring PJM to Facilitate Electric Competition," THE ELECTRICITY JOURNAL, Vol. 10, No. 8, October 1997, at 72& 78 n.1.

[3] *Id.* at 74.

power marketers, that centralized dispatch be altogether abandoned "in favor of a purely bilateral contract-based approach."[4] The PECO/CCEM group is convinced "that buyers and sellers acting on their own in such a contract-based system will have the incentive to produce diversified product offerings that will result in the greatest overall benefit for consumers."[5]

There are numerous additional reasons why exclusive pooling arrangements are antithetical to a fully competitive market and why the bilateral contract option must be retained as an integral part of any pooling arrangement. The principal reasons for retaining the bilateral contract option are broadly categorized as follows, and are set forth below.

1. POOLS ARE AN ARTIFICIAL RESTRAINT ON COMMERCE

Participation in a pool should be voluntary. If a buyer or seller wishes, for any reason, to contract outside a pool, he should be permitted to do so, through bilateral contracts or through some other market mechanism. This is the position of a broad spectrum of interest groups, including California state agencies, large electrical users, marketers that want to compete for the business of electrical consumers, and others.[6]

Pools rely on a single entity, instead of on the marketplace, to make critical decisions. This exclusive reliance increases the opportunity to "game" the poolco's price determination, and limits customer options.[7] A pool attempts to aggregate all supply and demand to converge at a single spot market price, and "at best offers a highly managed form of competition for a single bundled product: **the spot price of electricity for any given hour**."[8] On the other hand, the bilateral contract option recognizes that diversity of demand and supply options necessarily produces a wider range of distinct products at different prices, in other words, more choices that produce more consumer benefits.

2. "ONE SIZE FITS ALL" EXCLUSIVE POOLCOS STIFLE PRODUCT INNOVATION

The pool system seeks to reduce transactions between market participants to fungible, standard transactions, and, as outlined above, yields only a single, bundled product. On the other hand, diversity of demand and supply options necessarily yields a wider range of individual

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[4] *Id.* at 73.

[5] *Id.*

[6] *See*, e.g., "DIRECT ACCESS – QUESTIONS AND ANSWERS," Comments of California Department of General Services, California Large Energy Consumers Association, California Industrial Users, California Manufacturers Association, Chevron U.S.A. Products Company, Enron Capital and Trade Resources, Illinova Power Marketing, Inc., National Gas and Electric, New York Mercantile Exchange, Wickland Power Services, in California Public Utilities Commission, *Order Instituting Rulemaking and Order Instituting Investigation on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation*, R. 94-04-031 and I. 94-04-032, (hereinafter "Direct Access") at 12, citing the Reply Comments of the Department of Justice, "Inquiry Concerning Alternative Power Pooling Institutions Under the Federal Power Act," Docket No. RM94-20-000.

[7] *See* Direct Access at 5.

[8] *Id* at 10. (Emphasis in original)

products at different prices.[9] Bilateral contracts are formed on this premise. As a result, they are vehicles for multi-dimensional and sophisticated cost-saving arrangements utilizing comprehensive knowledge of energy production costs and differences in individual consumer needs and wants.[10]

Therefore, bilateral contracts are an essential component of any retail access regime, in order to encourage product innovation, and prevent stagnation of the market and virtual monopolization by an exclusive poolco that is unaffected by market pressures.[11] Typically, new entrants to the market compete by offering innovative energy products crafted to suit the individual customer. Removing the capacity to contract for such innovative, non-standard products could result in a substantially less competitive market.

3. MARKET MANIPULATION

In the United Kingdom, on the creation of an exclusive pool system, there was evidence of a 46% increase in price due to market manipulation. A pool that arbitrarily determines that all sales for a specified delivery period are for the same price, regardless of how many sellers or buyers participate or of the amount delivered,[12] creates artificial restrictions and increases the ability of market participants to game the price determination.[13] A "pure" poolco, *i.e.*, a poolco in which there would be no bilateral contracts between suppliers and consumers, poses a particularly acute risk that suppliers would exercise market power through the "leveraging" effect, in which "suppliers would manipulate market clearing prices in order to capture large profits on ***all*** of their dispatched plants."[14] In contrast, bilateral contracts are individually negotiated, and call for deliveries of electricity at different times, and at different prices. This curtails the effective market power concentration that sellers are able to exert within a pool and the potential for distortion of the market price.

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[9] *See* Direct Access at 10. *See* also "Centralized Pools: Description, Critique, and Recommendations; A Contribution to the Dialogue," Robert A. Levin, New York Mercantile Exchange, April 1996, (hereinafter "Centralized Pools") at 7.

[10] *See* "Problems in Pools (As Illustrated by the U. K. Model)," Steven Kean, Enron Gas Services, 11/30/1993 at 3.

[11] *See* "Electric Utility Restructuring; Issues for Small Business", J.W. Wilson and Associates, December 1995, at 34.

[12] *See* Centralized Pools at 20.

[13] *Id.* at 21.

[14] Richard A. Rosen and Heidi L. Kroll, "'Leveraging' - The Key to the Exercise of Market Power in a Poolco," at 1, 3-8 (Tellus Institute, June 25, 1996).

4. DIRECT COMPETITION FOR CUSTOMERS DOES NOT EXIST IN A MANDATORY POOL

In a pool, sellers do not compete among themselves for customers, and the pool itself has no obligation to serve. With the existence of bilateral contracts, the customer is not fully reliant on the pool system for satisfaction of its energy needs. In a system with bilateral contracts, the contractual obligation to serve, together with a liquidated damages clause, gives suppliers a greater incentive to ensure availability of physical supply.[15]

Bilateral contracts also maintain a healthy level of direct competition among the sellers for individual customers. Under a pool system, the sellers have no direct customers. In the absence of bilateral contracts, a pool risks rewarding lazy sellers because their only obligation would be to deliver electricity to the system at a particular spot price.[16] By maintaining a system with bilateral contracting, the sellers will have an incentive to maintain their competitive edge and their market share, to the advantage of all customers.

5. CUSTOMER CHOICE/OPENING ACCESS TO THE RESIDENTIAL CUSTOMER

The market for supplying electricity to residential customers is attractive. It presents significant opportunities for the development of power products to suit the flexibility in the loads of residential consumers,[17] and their substantial consumption of electricity. Absent the flexibility inherent in direct access and bilateral contracts, residential customers may not benefit from restructuring because, in an exclusive pool system, the development of innovative power products and, thus, customer choice, will be curtailed.

6. EFFICIENCY OF OPERATION

Experience in the U. K. market with the implementation of an exclusive pool has shown that it has failed to achieve the potential for greater efficiency. One-dimensional bidding in the pool, which did not maximize market efficiencies compared with a decentralized, bilateral approach, and the national price, which did not take account of locational cost differentials, both contributed to this failure.[18] These problems would not be as prevalent in a system that permits bilateral trading, because voluntary direct contracts between buyers and sellers harness competition among suppliers to make dispatch improvements, produce greater efficiencies, and permit flexible pricing.[19]

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[15] *See* "Making Bilateral Competition Work," Thomas W. Parkinson at 24.

[16] *See* Centralized Pools at 24.

[17] *See* Direct Access at 8, 9 citing broker and marketer comments in the California restructuring proceeding before the California Public Service Commission.

[18] *See* Steven Kean, Enron Gas Services, "Problems in Pools (As Illustrated by the U. K. Model)" (Nov. 30, 1993), at 2.

[19] *See* Thomas W. Parkinson, "Making Bilateral Competition Work," The Northbridge Group, Waltham, MA (Undated), at 24.

7. PERMITTING BILATERAL TRADING WILL ENCOURAGE AND ASSIST QUICKER IMPLEMENTATION

Parties involved in an exclusive pool system requiring that all energy transactions take place at the same pool price, and be dispatched according to pool rules, have a strong interest in the set up and operation of the rules and any changes thereto. Regulatory approvals, and active participation by interested parties in the regulatory process, will slow down and impede the development of the market. Agreement among parties to the regulatory process will be difficult to obtain and compromises among parties may result in further inefficiencies.[20] However, permitting bilateral contracting reduces, or eliminates, the need for regulatory approval of "one size fits all" price mechanisms and distribution rules in a pool system.

October 27, 1997

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[20] *Id.* at 23.

Comments on Electric Industry Restructuring in Virginia

Presented on Behalf of

The Apartment and Office Building Association of Metropolitan Washington

by

Bruce R. Oliver

My comments today are primarily intended to offer AOBA's perspective on the November 7, 1997, Staff Report entitled Draft Working Model for Restructuring the Electric Industry in Virginia. I will focus these comments on three key areas of particular concern. Those areas include:

1. The Staff's Model for Restructuring and Its Proposed Timetable for the Pursuit of Restructuring Issues

2. Stranded Cost Issues, and

3. The Staff's Pilot Program Recommendations

The Staff's November 7, 1997 report generally provides a thoughtful discussion of issues associated with industry restructuring and the introduction of retail competition. However, its conceptual discussions generally lack quantitative support, and its recommendation avoid the kind of detail and clarity necessary to bring focus and substance to policy issues for either legislators or regulators.

STAFF'S RESTRUCTURING MODEL AND TIMETABLE

The Staff Report suggests an unnecessarily elongated schedule for resolving issues associated with moving toward more competitive retail markets for electric generation. Under the Staff time table, widespread access to competitive retail generation markets would be postponed for at least 5-6 years and full implementation could be delayed for as much as 12 years. In the absence of more compelling findings regarding the costs and benefits of movement toward a more competitive retail market structure, the Staff time table is wholly unacceptable.

Despite Virginia's current status as a relatively low cost state for electric rates. The best means of protecting the interests of consumers may not be through protection of the status quo by means of a prolonged evaluation of retail competition issues. If wholesale markets are restructured, but retail markets are not, substantial discontinuities may arise between wholesale and retail prices for generation, and those discontinuities may create incentives that undermine the perceived benefits of maintaining regulated generation rates for retail service customers.

FERC efforts to bring about competition in wholesale generation markets through restructuring are progressing at a fairly rapid pace, and FERC's recent approval of a restructuring plan for PJM is seen as the likely model for restructuring wholesale markets in other areas of the country. If this is true, FERC's wholesale market restructuring efforts may gain further momentum, and the pace of implementation can be expected to accelerate.

AOBA agrees with the Staff Report that "the formation of an independent system operator is critical regardless of the ultimate structure of the industry." (SR p. 17) We also recognize the complexity of issues surround-

ing the establishment of a workable ISO, but Virginia is not working in a vacuum. Most of the conceptual issues relating to the formation of an ISO have already been the subject of considerable work in other jurisdictions, and we should not attempt to "reinvent the wheel." Rather, from the examples of ISO structures and the related body of information already available we should hone-in on what issues regarding ISO formation are truly unique to Virginia and what is required to resolve those issues. Statements such as that at page 3 of the Staff Report which asserts that, "A fully functional ISO may be difficult and expensive to implement," are not particularly instructive in the absence of greater delineation of the perceived difficulties and at least some preliminary quantification of the potential costs of ISO implementation.

The Staff Report also appears to place the primary responsibilities for formation of ISOs and the development of market structures for competition markets on the State's utilities, rather than on the consumers that those markets are intended to serve. We must not rely on existing utility *monopolists* to guide the development of competitive generation markets. Consumer representatives must play a key role in the resolution of industry structure and reliability issues. To be clear, I do not mean that utilities should be shutout of the restructuring process, but rather that utilities should be but a few of the many stakeholders who have sway on the outcome of restructuring de :rminations and the operation of ISOs, Power Exchanges, or other entities created to implement retail market competition.

The Staff time table for addressing industry restructuring issues includes a three-year period for rate review and rate experimentation. When the State's two largest electric utilities already have cases docketed before the SCC to address rate unbundling issues, a three-year time frame for rate review and experimentation appears excessive.

Finally, the recommendations and time table for industry restructuring set forth in the Staff Report, two key additional concerns for AOBA.

First, the report offers a number of possible market structures options without clearly advocating any one alternative. As a result, no well-defined competitive model emerges. Furthermore, the options that the Staff Report presents leave open the possibility that retail competition may be offered selectively to a few large industrials, while commercial, residential and institutional customers remain captive to traditional utility suppliers. AOBA members have already taken steps to prepare for the advent of retail competition in Virginia, and they do not want to be left standing at the alter, as other large customers skirt traditional regulation and gain access to competitive generation markets.

Second, although the Staff Report outlines generalized categories of issues that need to be addressed, it does not provide much insight regarding either means of resolving those issues or delineation of the specific issues that need to answered. Moreover, the Staff Report also does not adequately assess the extent to which experience to date in other jurisdictions might be relied upon to answer, or at least facilitate the development of answers, to key concerns.

STRANDED COSTS

AOBA looked to the Staff Report to focus stranded cost issues and facilitate their resolution. Unfortunately, most of the stranded cost issues that the Staff Report identifies are rather preliminary and academic in nature. The Staff Report also attempts to draw conclusions regarding the impacts of stranded cost recovery without providing even the most cursory

assessment of what appropriate levels of Stranded Costs recovery might be for the State's utilities. The bottom line from our perspective is that the discussion presented in the Staff Report on stranded cost issues lacks the "edge" necessary to crystalize issues and focus debate.

AOBA is also troubled by the discussion in the Stranded Cost section of the Staff Report which attempts to characterize "Stranded Costs" as "wealth transfers." This discussion has an academic tenor which portrays stranded cost issues in a heavily social ratemaking context. AOBA finds this inappropriate and objectionable.

AOBA believes that maintenance of the financial health of the State's T&D utilities is a matter of necessity, not an issue of wealth transfer. The premise of public policy should be to provide the State's utilities with full recovery of the costs that they have reasonably incurred to provide utility services, but would not be able to recover under a restructuring of the industry to provide for retail competition in retail generation markets. In that context, stranded cost would only lead to wealth transfers where those recoveries are either greater than or less than those which utilities would reasonably expect under current regulation. AOBA submits that it is the responsibility of the SCC to ensure that such wealth transfers do not occur.

Thus, contrary to the representations of the Staff Report the key public policy issues is not whether wealth transfers should occur, but rather how to properly value generation assets to ensure that wealth transfers do not occur. On this important issue of how to value generation assets, the Staff Report offers little real guidance.

AOBA believes that the best approach to the valuation of generation assets is an open auction of at least a substantial portion of a utility's

existing generation assets, where the auction is run by an independent third party and the utility owning the assets is free to participate in the auction. Through this market-based procedure, the difficult and often arbitrary process of estimating stranded costs and/or stranded margins based on projections of future market prices can be avoided.

Since the writing of the Staff report, Southern California Edison sold over 7,500 MW of generating capacity at auction obtaining an average price for the units sold of more than 2.6 times its depreciated book costs. Furthermore, both Niagara Mohawk and New York State Electric & Gas have recently entered into settlements of restructuring issues which call for their auctioning of substantial generation assets, including an interest in the Nine Mile Point nuclear plant.

Furthermore, our analysis of Virginia Power Form 1 data for 1996 finds that the average cost per kWh of generation from the Company's nuclear generating units was only about 2.2 cents per kWh. That includes all variable costs of production plus all fixed costs including return on investment, taxes, depreciation as well as decommissioning costs. By contrast, our estimate of the market price of firm generation provided at a load factor comparable to that achieved by those nuclear units is over 3.2 cents per kWh for the year 1999, and in the year 2000, we estimate that the market price would rise to over 4.0 cents per kWh.

Assuming that the market price is just 1.0 cents per kWh above Virginia Power's full variable and fixed costs nuclear generation and that the Company achieves an average annual capacity factor of 70% for those units the ability to price generation from Virginia Power's nuclear units would provide a net profit in excess of a regulated rate of return to the owners of those facilities of over $200 million dollars per year, or potentially more than

$1.0 billion dollars over the 5-year period of Virginia Power's proposed rate freeze. Furthermore, additional stranded value may be found in many of the Virginia Power's fossil-fueled generating plants. By properly recognizing these stranded values and returning most, if not all, of plant value in excess of net booked costs to consumers, the costs of transition to retail competition can be eased for consumers.

Although the Staff Report suggests that such sales of generation assets may not reflect the "true market value of the plants sold," (SR p. 90) AOBA finds that assertion to be unfounded. The Staff Report does not explain how it would assess "the true market value" of a plant, nor does it elaborate on why a competitive bidding process with multiple bidders participating would not yield realistic assessments of the present value of the plants sold considering market uncertainties and risks. Rather, the implication is that somehow the Staff believes it has greater insight to the "true market value" of generating plants than prospective buyers who must back their assessments with real dollar commitments.

AOBA also observes an interesting paradox in the findings of the Staff Report. Although it states (at page 4) that "stranded costs cannot be rigorously calculated up-front," the Staff Report also suggests that "stranded cost issues must be addressed ... prior to the initiation of any significant level of customer choice." Let's be realistic, if you cannot rigorously calculate stranded costs up-front, you cannot resolve stranded cost issues prior to the initiation of significant customer choice.

By definition, stranded costs are utility costs that would be recoverable under existing regulatory policies that are not be recoverable in competitive generation markets. Thus, the very existence of stranded costs is inextricably linked to the existence of competition, and there can be no

stranded costs until there is competition. The cruelest hoax that could be perpetrated on consumers would be to require them to pay for stranded costs without any clear commitment to open markets to competition by a date certain.

Thus, I reiterate that, *in the absence of a clear commitment to competition, there can be no stranded costs.* Furthermore, the legislature should discourage the adoption of policies which would provide for utility recovery of stranded costs prior to fixing a date certain for the implementation of full retail competition.

RETAIL COMPETITION PILOT PROGRAMS

The Staff Report recommends the development of experimental pilot programs for testing retail competition in Virginia. The Staff Report also provides a laundry list of issues for which those experimental pilot programs should provide hands-on experience and added information. Yet, beyond that laundry list of issues (SR pp. 14-15), the Staff Report offers little in terms of specific parameters for those programs and no specific experimental hypotheses to be tested. The Staff Report also makes no assessment of which of the issues that it hopes to address through experimental pilot programs might be answerable from the gained through pilot programs in other jurisdictions. Moreover, the Staff Report recognizes that its proposed experimental pilot programs cannot be relied upon to provide meaningful information regarding the two most critical issues associated with restructuring the impacts of competition on (1) the price of electricity and (2) the reliability of service. (SR p. 15).

AOBA understands the perspective that the transition to competition should represent a gradual evolution. Most jurisdictions that have moved forward in this area have opted for some form of phased implementation of retail competition. However, such meaningless pilot programs would represent a substantial waste of time and resources. Particularly, if they are pursued without well-conceived experimental hypotheses and without first performing an assessment of relevant lessons learned through initial retail competition implementation efforts (both pilot programs and live implementation) in other jurisdictions.

Although AOBA support timely movement toward the establishment of retail competition for generation services in Virginia, AOBA submits that large scale pilot programs can be structured to provide relevant information regarding the price and reliability of electric service under competition as well as the other issues that the Staff Report enumerates.

In this context, AOBA has distributed a draft resolution for consideration by the legislature which calls for timely implementation of large scale retail competition pilot programs by each of the State's largest investor-owned utilities and offers some specific parameters for those programs.

AOBA believes that such pilot programs should provide for participation by both individuals ar aggregated groups of customers without rate class or geographic restrictions. The programs must be large enough to represent a substantial portion of each utilities total service requirements (i.e., 10-20%), and should be implemented without either participation incentives and without cost subsidies among rate classes or utility functions. The programs should also be sufficiently long in duration (e.g., at least 3 years) to discourage marketers from offering substantial loss leaders simply to gain market share.

Thus, AOBA seeks your support for a legislative resolution which strongly encourages the SCC and the State's largest investor-owned utilities to implement realistic pilot programs of reasonable size on a timely basis. Meaningful large scale pilot programs should provide reasonable demonstration of both market price expectations and the extent of stranded costs or stranded margins.

If these programs are popular and provide customers with demonstrable advantages, the can be expanded and continued beyond the initial test period. If they are not successful in providing advantages to consumers, that will be signaled by low customer participation rates, and we can return to traditional regulation. Furthermore, meaningful pilot programs will facilitate development of an ISO and Power Exchanges by providing real tests of large scale competitive market operations.

AOBA members have a keen interest in the development of competitive markets for retail electric generation services, and its members have already committed funds to the development of aggregated load data. Thus, AOBA is readying itself and its members for competition and expects to be in position to offer substantial commercial and residential apartment load for participation in either live implementation of retail competition or a retail competition pilot program. Furthermore, AOBA suggests that if the legislature offers its support for large scale pilot programs, other strong candidates for participation in such a program might include the State's public and private universities, hospitals, and public school systems.

DRAFT RESOLUTION

Regarding Retail Electric Market Pilot Programs

Presented by the

Apartment and Office Building Association of Metropolitan Washington

for Consideration by

the Virginia Legislature

WHEREAS, the Federal Energy Regulatory Commission has adopted policies to move toward more competitive wholesale markets for electric generation and is in the process of implementing those policies.

WHEREAS, the Commonwealth of Virginia currently enjoys electric rates that are generally below the national average.

WHEREAS, the influence of competitive wholesale power markets on retail service in the Commonwealth of Virginia is unavoidable, and in that context, alternatives to traditional regulation for retail power markets warrant full investigation.

WHEREAS, competitive markets have produced substantial, and perhaps unanticipated, benefits in other industries previously subject to regulation.

WHEREAS, the staff of the State Corporation Commission has recommended that utilities in Commonwealth undertake experimental Pilot Programs to test retail competition in their service areas.

WHEREAS, consumers in the state of Virginia have expressed considerable interest in gaining access to competitive retail markets for electric generation.

WHEREAS, meaningful pilot programs for the assessment of retail competition must be structured to include significant participation by customers commercial, residential, and institutional customers, as well was large industrial customers.

WHEREAS, retail competition pilot programs of meaningful size are necessary to the position of State to operate successfully in the context of the wholesale power market restructuring being implemented by the Federal Energy Regulatory Commission.

RESOLVED by the Senate, the House of Delegate concurring, that the legislature of the Commonwealth of Virginia, strongly encourages the State Corporation Commission to require each of the State's investor-owned utilities that serves an aggregate peak load in excess of 1,000 megawatts to implement Retail Competition Pilot Programs for within its service territory.

These pilot programs should be designed to include not less than 10 to 20 percent of the total peak load of each applicable utility and should include opportunities for participation by individual customers and aggregated groups of customers without class restrictions.

Rates for the regulated portion of service electric services provided to customers participating in retail competition Pilot Programs should be developed based on the utility's costs of service by function without provisions for cost subsidies between classes of service or shifting of costs among utility functions and without provisions for stranded cost recovery. Stranded costs, if any, incurred by each participating utility should be assessed after the fact and recovered through future period rates as necessary and justifiable.

Participation in Pilot Programs should be voluntary, and there should be no use of arbitrary incentives or disincentives to influence customer participation decisions.

The Pilot Programs should be designed to provided realistic measures of the market prices that consumers would experience in competitive retail markets for generation, as well as greater information regarding the extent of potentially strandable utility costs.

Retail Competition Pilot Programs should be implemented later not later than January 1, 1999 and have durations of not less than 3 years.

Furthermore, the SCC staff should be required to analyze and report to the legislature the experience under each pilot program on an annual basis, not more than 90 days after the completion of each calendar year.

E. Paul Hilton
Vice President-Regulation

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VIRGINIA POWER

October 27, 1997

Mr. Cody D. Walker
Deputy Director
Division of Energy Regulation
Virginia State Corporation Commission
Tyler Building, 1300 East Main Street
Richmond, Virginia 23219

RE: Draft "Transition Model for Electric Utility Industry Restructuring"

Dear Cody:

We appreciate having the opportunity to review the Commission Staff's draft "Transition Model for Electric Utility Industry Restructuring" in advance of it being presented to the General Assembly's Joint Legislative Subcommittee on November 7, 1997. Virginia Power's comments on the draft are attached.

If you have any questions, please give me a call.

Sincerely,

E. Paul Hilton

E. Paul Hilton

Virginia Power Comments on the Virginia State Corporation Commission Staff's Draft "Transition Model for Electric Utility Industry Restructuring"

Virginia Power (the Company) applauds the Virginia State Corporation Commission Staff (the Staff) for its extensive efforts to comply with Senate Joint Resolution No. 259 and develop a working model for the future structure of Virginia's electric industry that will "provide reliable, competitive electricity and meet the demands of a changing industry..." Virginia Power does, however, have serious concerns about the Staff's draft "Transition Model for Electric Utility Industry Restructuring," which hereafter will be referred to as the "Model." In particular, the Company believes that the extended delay envisioned by the Model in addressing critical industry restructuring issues is not in the best interest of Virginia's electric customers.

Virginia Power believes that national pressure for competition and restructuring will soon make retail competition a reality. The question that the Commonwealth's policymakers should be dealing with today is not "Should retail competition be adopted?" as the Model suggests, but rather "How can the transition process best be managed to avoid chaos and preserve reliability while delivering effective competition in a reasonable period of time?" Retail customer choice can be made available to the citizens and businesses in Virginia, but to do it correctly, we must begin now.

Since enactment of the National Energy Policy Act of 1992, Virginia has begun moving towards competition while under the auspices of the traditional regulatory framework. Every entity that has a stake in the electric restructuring process in Virginia should be focused on the future, taking proactive steps to do whatever is necessary to ensure that the transition to competition is fair and equitable and that the integrity of the Commonwealth's electric system is not compromised.

For a short period of time, Virginia's legislators and regulators are in a unique position to control the state's destiny with respect to the future structure of its electric industry. While the Model suggests that the Commonwealth's policymakers should continue to collect and analyze information for approximately four more years, and then decide if retail competition should be implemented based on a cost/benefit analysis performed in the 2002 time frame, such a delay will undoubtedly cause Virginia to fall behind the more proactive states, and may force the Commonwealth to comply with mandates imposed by federal electric restructuring legislation. According to House Commerce Committee Chairman Bliley, federal legislation is now expected in 1998.

The Model recommends that each of the state's major electric utilities conduct retail choice pilot programs to gather information that can be used later to assess the net benefits of full scale retail competition. This recommendation to pursue retail pilot programs seems to be premised on the concept that enough variables can be incorporated into an experimental situation to learn a great deal about the merits of retail competition. However, the Model acknowledges that a pilot will provide no useful information about the three most significant issues that are presented by the implementation of a fully competitive retail market -- the price of electricity, reliability and market power concerns. As a result, the practicality of developing, implementing and studying the results of retail access pilot programs has to be questioned.

The Company concurs with the general framework for a competitive model that is recommended in the Model (i.e., the ISO/RPX with limited bilateral contracts), and strongly agrees with the Staff that actions should be initiated as soon as possible to establish one or more ISOs for the state. The Company also agrees that an RPX is essential if retail access is to be implemented, and for that reason, believes that it is imperative that the RPX be developed concurrent with the development of the ISO.

From the Company's perspective, the primary shortcomings of the Model are that it fails to endorse a legislative restructuring framework in 1998 and it does not come to terms with the critical issue of stranded cost recovery. In fact, the report does not indicate when such legislation would be needed, but it would clearly be after the year 2000. Passage of legislation by the General Assembly in 1998 is critical for establishing the fundamental restructuring framework recommended by the Staff in the Model, including defining rates to be applicable during the transition, unbundling of rates, addressing stranded cost issues, pursuing the development of an ISO and RPX, etc. Before undertaking these efforts, however, the Company believes that it is extremely important that the legislation be in place that would effectively define the "end game" for Virginia's electric industry and eliminate much of the doubt that currently exists about the future. It will be to the benefit of Virginia's electric customers, particularly residential and small commercial consumers, for the General Assembly to establish the conditions under which the transition to competition will occur rather than having it mandated by Congress.

The Model demonstrates that the Staff's viewpoint has changed very little since it issued its extensive "Report on the Restructuring of the Electric Industry" (Case No. PUE950089) in July 1996 – it still has many more questions than answers regarding a competitive industry structure, and it continues to have considerable doubt about the benefits of competition. Virginia Power finds it particularly troublesome that the Staff has apparently not made any progress in formulating a policy supporting stranded cost recovery, which is arguably the single most critical issue in the electric restructuring debate. The Company does not believe that several more years of exhaustive study and experimentation, as proposed by the Model, will produce the "right" answer to the many questions that continue to be asked by the Staff. The Model would essentially extend the Staff's study that has been underway since September 1995 by several more years, effectively deferring any resolution of the significant

issues that are currently facing Virginia's electric industry until well after the turn of the century. The Company believes such an approach would be unworkable and unwise.

In summary, it is Virginia Power's opinion that the Model's proposal to delay making a final decision about restructuring Virginia's electric industry for several more years puts the Commonwealth's electric utilities and their customers in an extended period of uncertainty that can and should be avoided. Wall Street and the rest of the financial community tend to look much more favorably on those states that have resolved the industry restructuring issue. If the Commonwealth defers making these critical decisions for several more years, Virginia's electric consumers may ultimately be harmed as the state's electric utilities and other industry participants that rely on the financial markets as a source of capital to support investments in the electric system will likely face higher financing costs as a direct consequence of the uncertainty about the future.

It is Virginia Power's position that the Commission and the General Assembly need to act now, in concert, to initiate the process that will ensure a workable framework is in place to deliver a competitive electricity market for Virginia as soon as practical. Admittedly, the issues that will be faced as retail competition is phased-in will be extremely complex, and the transition period must allow sufficient time for the process to be properly managed and for the competitive industry model to evolve over time, if necessary. Legislation is needed as soon as possible to begin the transition period required to develop the infrastructure for retail competition to begin.

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SJR 259 SUBCOMMITTEE MEETING
December 17, 1997

Mr. Chairman, members of the subcommittee, thank you for the opportunity to comment very briefly on the report of the SCC staff presented last month, and on the future direction for the utility restructuring issue in Virginia.

AEP generally agrees with the findings described in the Staff's report and acknowledges the significant effort behind them. The issues involved are not easily dealt with, and what has been accomplished will help you move forward with a much-narrowed focus, and begin to set some direction for Virginia.

We agree with the structural framework recommended in the report. As I explained in comments to you in late September, AEP had been working with numerous other utilities on a voluntary basis for two years to establish an independent regional transmission control system, referred to as an independent system operator (or ISO). Events of the past several days have, however, interrupted progress toward a filing this year for approval from the FERC. These events present some challenges from a policy standpoint and are of particular interest to Virginia, and I will update you on them briefly.

* * * * * *

As you know, AEP and others believe that the most significant of issues to be addressed in transition to competition is that of stranded costs, and AEP feels strongly that stranded cost recovery should be addressed before the onset of full competition. In this respect, AEP agrees with Staff that a phased approach to competition is appropriate, with the first phase tailored to both the preparation for competition and the resolution of transition issues, especially that of stranded costs.

Unless pre-empted by other events, the satisfactory resolution of transition issues is likely to be the pacing factor for establishing the much talked about "date certain."

It is our position -- and it is our recommendation to the subcommittee -- that attention be focused upon resolving the stranded cost and other transition issues and that this be done with the objective of beginning the transition period in mid to late 1999.

The length of the transition period will be a product of analysis and negotiation, dependent upon the rates to be in effect for utilities during the period and the opportunities such rates provide for cost recovery. All utilities would be subject to the same time line.

Consensus is essential, of course, and we recognize that it may be unattainable. The backstop may be the legislature, acting in 1999 in the presence or absence of settlement as it sees fit to define a transition period, possibly establish a date certain, and prescribe stranded cost treatment. This assumes that any future action by the Congress will allow Virginia and other states to decide to a significant degree their own destiny.

Pursuant to initiation of the transition period in mid to late 1999, key parameters should be decided cooperatively and with oversight from the State Corporation Commission within the context of the proceedings now underway before the Commission; a final report on this process should be due the subcommittee approximately 12 months from now, and ideally that report would contain an agreed upon term for the period of transition.

This term and the rates to be in effect during the transition period would have to represent a balancing of interests in (1) rate stability, (2) the near-term implementation of retail competition, (3) recognition of the inherent risks for utilities in committing to fixed rates on a multi-year basis, and (4) the appropriateness of stranded cost recovery.

* * * * * *

Concerning AEP's participation in efforts to establish an ISO, I reported to you in September that over a period of many months the 25 utility members had negotiated an operating agreement which was scheduled to be signed last week and then filed with the FERC. On the eve of the signing, however, two of the members announced their intention to align themselves with others in forming a yet-to-be defined "regional transmission entity" which would border AEP to the north in an arc extending from Michigan to North Carolina. One of the other participants in this alliance is Virginia Power.

This surprise announcement has presented some complications for AEP's participation in the ISO. One is the potential for direct impact upon AEP's operations to the extent that supply and demand transactions for the new entity could affect flows on our transmission system. AEP has at this point suspended its plans to sign on to the ISO agreement pending its learning more about the plans of the new entity.

To provide you with some better concept of the geographical presence of the two entities, the ISO with which AEP has proposed to be affiliated would have operations in 10 states from Michigan, Wisconsin and Illinois on the west and to Virginia on the east.

The potential new entity would extend from Michigan to Virginia and North Carolina, generally laying to the north and east of the proposed ISO. Pennsylvania and North Carolina are two states which would be served in part by the new entity but not by the ISO. I will provide maps to the subcommittee members delineating the service areas of the utility members participating in the development of these transmission organizations.

The SCC Staff's report stated a strong preference for the establishment of one or more independent system operators as a necessary part of an effective structure for retail competition. The developments of the past week, which I have briefly described, will undoubtedly elevate a number of issues concerning the operations and geographic scope of regional transmission entities, not to mention their differences in approach to key terms and conditions for providing transmission services. There could be significant implications for Virginia customers as to the quality of the retail markets that may ultimately be available to them, as these are influenced by transmission alliances.

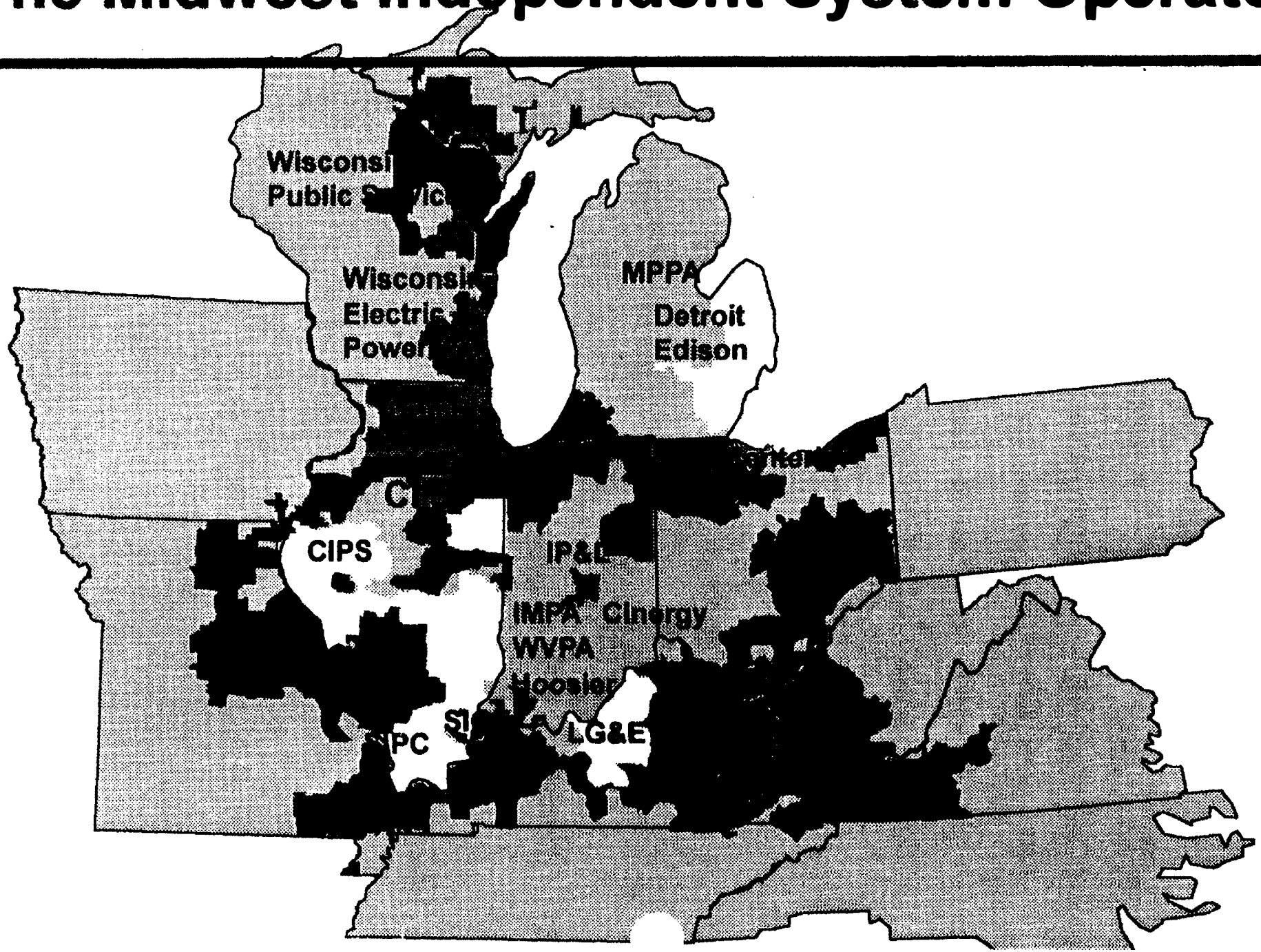
The Virginia Commission will be involved with the development of the one or more ISOs which will serve Virginia, and AEP agrees with the SCC Staff's comments to the effect that the Commission could have not only an interest but a significant role in encouraging ISO formation.

In summary, we suggest that in 1998 the subcommittee focus its interests upon these areas, with SCC Staff assistance:

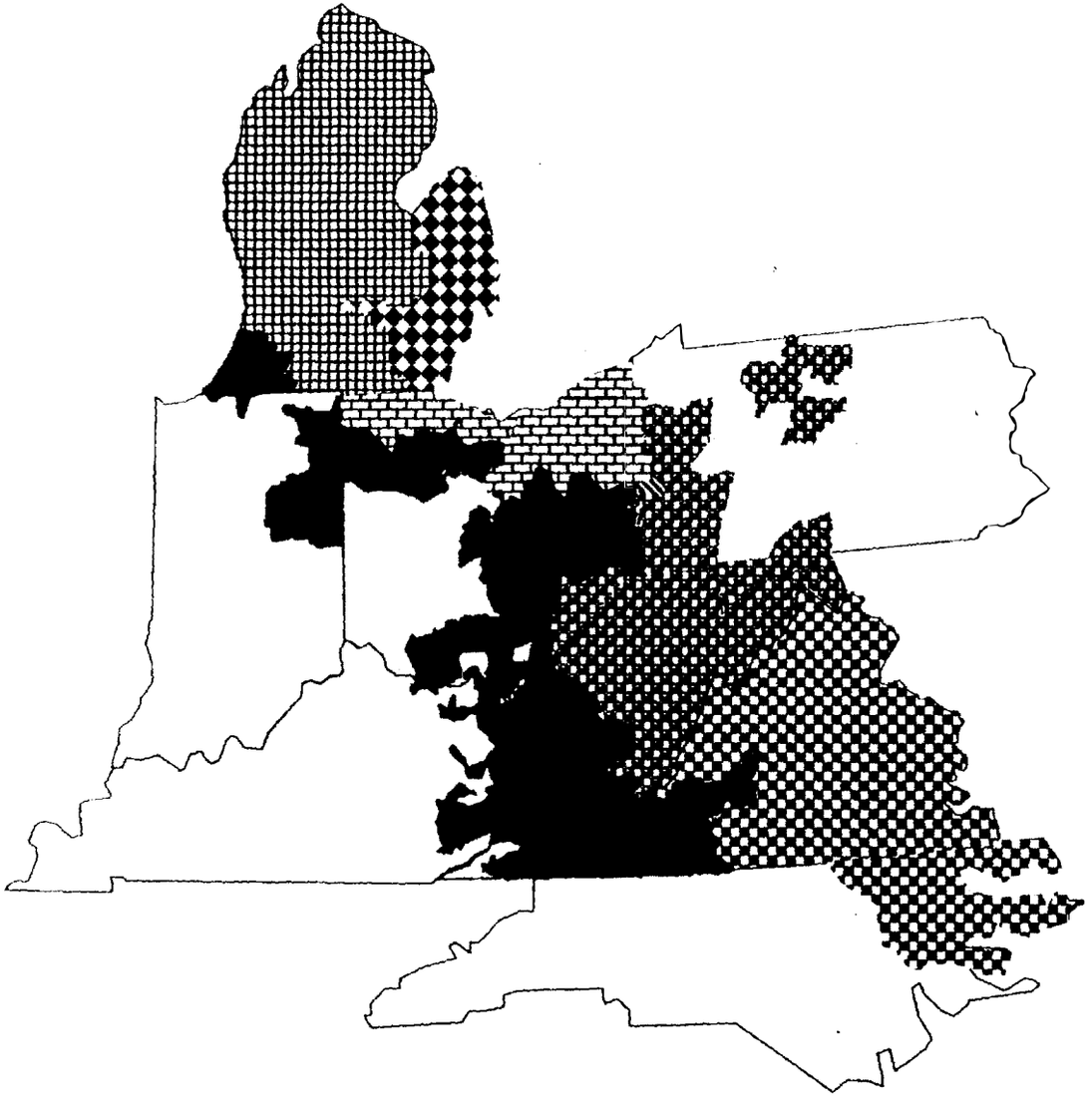
- establishment of the parameters for a transition period to begin in 1999;
- the formation of one or more ISOs to efficiently and economically facilitate energy delivery to Virginia customers; and
- an informed decision as to if, when, and how competition at the retail level should be initiated within the State.

Thank you.

The Midwest Independent System Operator



AEP and the Northern Utilities



- AEP
- Consumers Energy
- Detroit Edison
- First Energy
- Allegheny Power
- Virginia Power
- Duquesne Light

AEP: America's Energy Partner

VA. Tax Revenue from Electricity 1995

Gross Receipts Taxes	
State	88.0
Local	19.8
Special Assessment Fee	5.0
Total:	112.8
Consumer Utility Tax	170.8
Property Tax	110.6
Sales Tax	2.3
Total:	396.5

Summary of the January 8, 1998 Electric Utility Taxation Proposal Before the Task Force on State and Local Taxation of Electric Utilities

This request would modify slightly the declining block structure developed for Dr. Benton's September 19, 1997 presentation before the *Task Force on State and Local Taxation of Electric Utilities*. The modifications are in the revenue amount to be collected by the declining block consumption tax, who will pay the tax, and in the basis for the net corporate income tax.

This proposal replaces the State Gross Receipts Tax, less Coal Tax and Neighborhood Assistance Act Credits, the State Corporation Commission Special Tax *at the maximum allowable rate of .2%*, and the Locally Imposed Gross Receipts Tax. These revenues would be replaced by a net corporate income tax levied only on generation activity, and a declining block consumption tax designed to keep the relative burdens among classes at 1995 levels. It is assumed in this proposal that Public Authorities would not be subject to the consumption tax, and that revenue would not be made up by the other consumer classes. Thus, there is a net revenue loss of $14.4 million to the Commonwealth from this proposal.

Net Corporate Income Tax on Generation

Virginia Power estimated the share of federal income tax attributable to various activities it undertakes in an effort to estimate it's federal corporate tax liability on generation activities. To the extent that their analysis is accurate, it suggests that 60.4% of Virginia Power's taxable income comes from generation activities. This figure is assumed to be the same for all other IOUs and for ODEC.

Consumption Tax Rates

The consumption tax rates were set by first setting revenue targets for each of the customer classes. There targets were set as each class' estimated share of the 1995 Gross Receipts burden, multiplied by the revenue requirement left over after Net Corporate Income Tax collections. Rates were set to generate this level of revenue from each of the Residential, Commercial and Industrial Classes. Public Authorities will not be subject to the consumption tax under this proposal, and the revenues currently collected from the Public Authority's share of current Gross Receipts Taxes will not be recovered.

Keeping the Burdens the Same as in 1995. . .

Comparative Tax Burdens

Class	Gross Receipts - 1995	Total Revenue
Residential	47.6%	$54.3
Commercial	26.8%	$30.6
Industrial	13.0%	$14.8
Public Authority	12.6%	$14.4
Total	100.0%	114.1

Generates These Rates. . .

Consumption Tax Rates[2]

kWh per month	Tax Rate
0 - 2,500	.161 ¢/kWh
2,501- 50,000	.105 ¢/kWh
50,001 +	.079 ¢/kWh

[2]Using these rates collects the total revenue listed above for each of the first three groups. Under the current proposal, Public Authorities are exempt from the consumption tax, and the State will forego these revenues.

Analysis of the January 8, 1998 Electric Utility Taxation Proposal...

Target revenues to be recovered (millions):	
State Gross Receipts Tax	$93.9
SCC Special Tax @ 2%	$10.8
Local Gross Receipts Tax	$26.9
Total	**$131.6**

Expected Actual Revenue Recovery:		
Net Corporate Income Tax on Generation		$17.5
Consumption Tax		
Residential Class	$54.3	
Commercial Class	$30.6	
Industrial Class	$14.8	
Total Consumption Tax		$99.7
Total		**$117.2[1]**

[1]This proposal produces a revenue shortfall of $14.4 million, which is the amount of revenue that would be generated by the Public Authority and Other category, if they were subject to the consumption tax.

Technical Notes on January 8, 1998 Electric Utility Tax Proposal

Revenue Requirements	Total	Adjusted for Sample
State GRT	$93.9	$89.0
Corporate Income Tax	$17.5	n/a
Alternative Minimum Tax	n/a	n/a
SCC Fees	$10.8	$10.2
Local GRT	$26.9	$25.5
Total CUT Revenue Required	**$114.1**	**$108.1**
Tax From Net Corporate Income*	**$17.5**	
Total Tax	**$131.6**	
Revenue Shortfall from Baseline	**($0.0)**	

Sample Adjustment Factor
94.74% Total kWh less Municipal

Set consumption tax rates to collect revenue amounts corresponding to first three class 1995 shares of State Gross Receipts

		kWh subject to tax tier				
Tax rate		Residential	Commercial	Industrial	Public	Total
Tax 1	0.00161	32,044,930,814	7,760,580,000	131,280,000	0	39,936,790,814
Tax 2	0.00105	0	15,785,278,406	2,625,600,000	0	18,410,878,406
Tax 3	0.00079	0	0	14,090,050,472	0	14,090,050,472
Total		32,044,930,814	23,545,858,406	16,846,930,472	0	72,437,719,692
Sample Tax Paid		$51,476,390	$28,982,505	$14,058,678	$0	94,517,573
Total Tax Paid (Millions)		$54.3	$30.6	$14.8	$0	**$99,765,224**

***Estimate of Net Corporate Income Tax Collections from Generation Activity**
From the State Corporation Commission Data

1996 Federal Taxable Income

Production	Transmission	Distribution	Energy	Customer	Total
$291,739,469	$36,807,589	$105,187,026	($14,137,772)	$63,471,007	$483,067,319

Share of Total due to Production
60.40% (TY 1996 as reported unaudited by Virginia Power)

So, if this is the share of Generation activity, then IOUs would pay

$17.09 in Corporate Income Taxes ($28.3 X .604)

$87.8 Total IOU Gross Receipts Taxes
$34.8 GRT on all Non- Generation activity ($87.8 x (1-.604))

$3.8 GRT on T&D activities of coops other than ODEC.
$2.3 Gross Receipts Tax Collected from ODEC
32.2% Ratio of IOU Corporate Income Tax to Gross Receipts - all activities
$0.8 Estimate of ODEC Corporate Income Tax - All Activity

$0.45 Total Corporate Income Tax collected from ODEC if 60.4% is due to Generation

$17.5 Total Corporate Net Income Tax Collected from Generation activities of IOUs and Coops

LAWRENCE E. DE SIMONE
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Energy Services

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VIRGINIA POWER
NORTH CAROLINA POWER

November 4, 1997

Virginia Coalition for Fair Competition
c/o David L. Bailey, Jr.
1001 East Broad Street
Suite 225
Richmond, Virginia 23219

Dear Ladies and Gentlemen:

Virginia Power is most pleased with the results of our many hours of deliberation with the Virginia Coalition for Fair Competition (the Coalition) in arriving at an agreed upon solution to the Coalition's concerns about potential unfair competition from Virginia Power during the transition to competition. This letter sets forth our agreement on these issues that we have discussed over these last few months.

During our negotiation, you requested that we provide you a Statement of Intentions concerning Virginia Power's activity during the transition to competition within its service area in regard to the sale of fuel oil or propane, serving as a coordinator of energy services, providing engineering services and activity with regard to HVACR equipment or household appliances. Attached, marked Exhibit A and made a part of this Agreement, is the Statement of Intentions of Virginia Power with regard to these areas of concern.

Further, you requested that we agree to "Standards of Conduct" which would apply to any unregulated subsidiary created by Virginia Power for activity within its service territory during the transition to competition concerning sale of fuel oil or propane, general contracting, consulting engineering or activities regarding HVACR equipment or appliances. We have agreed to the proposed Standards of Conduct, which are attached as Exhibit B and made a part of this Agreement. Virginia Power agrees that these proposed Standards of Conduct are to be included as a part of any covered affiliates agreement which would be submitted to and ultimately approved by the Virginia State Corporation Commission pursuant to Chapter 4 of Title 56 of the Code of Virginia. It is understood that the Coalition would support the requested Virginia State Corporation Commission approval of the affiliates agreement, subject to the inclusion in the approval of the proposed Standards of Conduct.

A remaining issue, which we have discussed during our negotiation, concerns the determination of a time period which would be appropriate for a "transition to competition." In this regard, Virginia Power and the Coalition agree to the following:

- As to the Statement of Intentions set forth in Exhibit A hereof, the Statement of Intentions will continue in effect until Virginia Power determines that it wishes to pursue some activity inconsistent with the Statement of Intentions. In that event, Virginia Power will promptly give the Coalition written notice of its change in intention but expressly agrees not to engage in any business activity inconsistent with the Statement of Intentions set forth in Exhibit A until one year after the notice in writing of the change in intention has been mailed to the Coalition first- class mail, postage prepaid.

- With regard to the proposed Standards of Conduct, Virginia Power agrees that the Standards of Conduct included in an affiliates agreement approved by the Virginia State Corporation Commission shall remain in full force and effect until the Virginia State Corporation Commission determines that the Standards of Conduct should be amended or deleted from the affiliates agreement because competition has occurred at a level which makes some or all of the Standards of Conduct no longer appropriate.

Virginia Power understands that the Coalition will make a good faith effort to support the alternative rate plan filed by Virginia Power with the Virginia State Corporation Commission (State Corporation Commission Case No. PUE960296), which good faith effort will include a statement to the Virginia State Corporation Commission of such support. In addition, Virginia Power understands that the Coalition will, after a full and fair opportunity for review and comment, make a good faith effort to support legislation supported by Virginia Power in an upcoming General Assembly to implement a plan to provide for competition in the sale of electricity in the Commonwealth of Virginia.

Virginia Power further understands your intent to seek agreement on appropriate standards of conduct concerning unregulated activity during the transition to competition with other electric and gas utilities authorized to do business in Virginia. While this effort will be your initiative, Virginia Power wants you to know we will be supportive of this effort.

Virginia Power's agreement as provided in this letter is subject to the appropriate Coalition members, as set forth below, executing a copy of this letter and returning an executed copy to me. This letter represents the entire agreement and is enforceable by Virginia Power and the signatories to this letter, pursuant to the laws of Virginia.

Except as provided in this agreement, modifications shall occur only in writing signed by Virginia Power and such signatories to this letter as agree to such modification.

Thank you for your cooperation. Best wishes.

Yours truly,

Lawrence E. De Simone

Lawrence E. De Simone

Seen and Agreed:

AIR CONDITIONING CONTRACTORS OF AMERICA, VIRGINIA CHAPTERS

National Capital Chapter

Central Virginia Chapter

Hampton Roads Chapter

ASSOCIATED BUILDERS AND CONTRACTORS, VIRGINIA CHAPTER

CONSULTING ENGINEERS COUNCIL OF VIRGINIA

NATIONAL FEDERATION OF INDEPENDENT BUSINESS, VIRGINIA CHAPTER

VIRGINIA ASSOCIATION OF PLUMBING - HEATING - COOLING CONTRACTORS

VIRGINIA PROPANE GAS ASSOCIATION

VIRGINIA PETROLEUM JOBBERS ASSOCIATION

Exhibit A

Statement of Intentions
By Virginia Power

During the transition to competition, it is the Company's intention, within its service territory, only to sell fuel oil or propane, serve as a coordinator of energy services, or provide engineering services when such activity occurs either as an incidental part of a marketing effort to provide other energy services or as a part of providing services which are traditional Virginia Power activities.

During the transition to competition, it is not the Company's intention within the Company's service territory:

1. to buy or maintain an inventory of HVACR equipment or household appliances,

2. to install, service or warranty any such equipment or household appliances for customers,

3. to sell HVACR equipment or household appliances to customers metered and billed on residential rates,

4. to sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing traditional Virginia Power activities.

PROPOSED STANDARDS OF CONDUCT APPLICABLE TO A VIRGINIA UTILITY'S UNREGULATED SUBSIDIARY IN THE SERVICE TERRITORY DURING THE TRANSITION TO COMPETITION, WHICH ENGAGES IN SALE OF FUEL OIL OR PROPANE, GENERAL CONTRACTING, CONSULTING ENGINEERING, OR SALES, INSTALLATION, SERVICE OR WARRANTY OF HVACR EQUIPMENT OR APPLIANCES

It is not the intent of a regulated utility to compete unfairly in the marketplace by using ratepayer funds to subsidize non-regulated business activities.

The following Standards of Conduct, while not wholly inclusive or totally encompassing, attempt to set out guidelines and rules by which a regulated utility's unregulated subsidiary will abide:

1. STRUCTURAL SEPARATION Any utility that chooses to engage in either the sale of fuel oil or propane, general contracting, consulting engineering services or sales, installation, service or warranty of HVACR equipment or appliances as an unregulated business, activity or operation shall do so in a separate affiliated corporation or other legal entity. Each affiliate shall maintain books and records separate from the utility. All such records shall be made available upon request by the Commission staff.

2. OPERATIONAL SEPARATION The affiliate and the utility shall conduct business from physically separate locations; however, affiliates of the utility may share locations with each other. The utility and affiliate shall maintain separate telephones. The affiliate and the utility shall own and maintain separate inventory, vehicles, equipment and all other goods and equipment used to conduct their business.

3. PERSONNEL SEPARATION The utility and the affiliate shall maintain a separate work force. Recruitment, training, hiring and similar personnel activities shall be conducted separately by the utility and affiliate. At no time shall any personnel be employed simultaneously for both the utility and the affiliate.

4. COMPETITIVE PROCUREMENT The utility shall not contract for non-tariff services or purchases from an affiliate without following competitive solicitation procurement procedures.

5. INFORMATION AND BILLING SEPARATION There shall be no sharing of customer information or customer services between the utility and the affiliate including but not limited to billing and financing services or information or customer or potential customer information or records (i.e., usage information, billing, load, special circumstances, mailing lists,

etc.) unless such information or services are available to third parties under the same terms and conditions.

6. NON-DISCRIMINATION The utility must offer the same (if permitted) discounts, rebates, promotional practices, or guarantees to all non-utility non-affiliated suppliers or customers that it offers to its affiliates or customers of its affiliates (i.e., heat pump rebates, maintenance contracts).

7. NON-DISCRIMINATING UTILITY SERVICE. The utility shall process all similar requests for regulated utility services in the same timely manner, whether requested on behalf of an affiliate or a third party.

8. COMPETITIVE MARKETING AND SALES PRACTICES

   A. Joint promotions between the utility and the affiliate are prohibited, such as inclusion of flyers for the affiliate in the utility's bills or any similar access to billing information or systems unless such activities are available to third parties under the same terms and conditions.

   B. The affiliate shall not use the name, brand name logo, or trademark of the utility in any marketing, promotional, advertising or sales activities; except, however, nothing herein shall prohibit the affiliate from merely identifying itself accurately as a subsidiary of the utility by including the statement "a subsidiary of _____" which shall be in type no larger than the smallest type used in the material in which such statement appears.

   C. The utility shall not provide sales leads or procurement advice to its affiliates unless such information is available to third parties under the same terms and conditions. If a customer requests information about equipment suppliers, providers of conservation, or any other services sold by affiliates, to the extent the utility responds to the request, the utility shall provide a reasonably representative list of suppliers in the area and shall not in any manner promote the affiliate.

9. COST ALLOCATION PROCEDURES All permitted transactions between regulated utility activities and affiliates shall be recorded and accounted for in accordance with the utility's cost allocation manual. The Commission staff shall conduct an audit of allocation compliance when it believes it to be appropriate. Any transaction or transfer of services, assets, personnel or activities provided (directly or indirectly) by the utility to the affiliate must be allocated at market rates to prevent subsidization by ratepayers.

10. **ENFORCEMENT** The Commission reserves the right to audit, inspect, investigate, and conduct such other proceedings from time to time as the Commission deems necessary to enforce compliance with this Code of Conduct. In addition, the Commission or its staff may engage any independent consultant to conduct such audits from time to time as the Commission deems necessary.

11. **COMPLAINT PROCEDURE** If any competitor or customer of a utility believes that the utility has violated any of these Standards of Conduct, the competitor or customer may file a complaint in writing with the office of general counsel of the affected utility. If the complaint cannot be informally resolved, the complainant may immediately file their complaint with the Commission.

12. **GRANDFATHER PROVISION** These Standards of Conduct shall not apply to any utility's affiliate agreements approved by the Commission as of this date.

Testimony of Energy Consultants, Inc. to the Joint Subcommittee Studying Electric Utility Restructuring

September 29, 1997

Mr. Jack Greenhalgh
Vice President, Energy Consultants, Inc.
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Virginia Beach, VA 23454
(757) 481-2500 voice
(757) 481-1126 fax

Other locations
7841 Rolling Road, Springfield, VA 22153
8316 Colebrook Road, Richmond, VA 23227
7648 Thacher Drive, Toano, VA 23168
5544 Rolling Woods Road, Williamsburg, VA 23185
7 Uvilla Estates, Shenandoah Junction, WV 25442

Testimony of Mr. Jack Greenhalgh, Vice President, Energy Consultants, Inc. to the Joint Subcommittee Studying Electric Utility Restructuring
September 29, 1997

I am Jack Greenhalgh, Vice President of Energy Consultants, Inc. which is a Virginia small business, headquartered in Virginia Beach.

Thank you for giving me this opportunity to present information to you on a very effective residential and small business demand side management program. This program provides significant cost savings benefits to its users and to the environment of the Commonwealth.

Energy Consultants, Inc. provides demand control equipment to approximately 2,000 residential and 30 small business and church clients. We market our demand control equipment throughout Virginia and North Carolina. Other demand control equipment suppliers serve thousands of other clients.

I estimate there are about 7,000 users who have made a significant investment in this equipment in order to manage their demand for electricity. Their primary reason for making this investment is to take advantage of the various electricity rates that provide lower electricity bills. The resulting reduction in demand benefits the environment by deferring the need to build new power plants. I hope this very beneficial program will not become a casualty in any electric utility restructuring.

I am here to represent the users of this equipment as well as the selling dealers and the manufacturers. Virginia users are from throughout areas serviced by Virginia Power, from Northern Virginia to Richmond to Charlottesville to Hampton Roads, and many cities in between. However, this technology could benefit electricity users all over the state if their respective power company made the appropriate electricity billing rate available to them.

The residential customers of this technology are primarily business owners, senior executives and professionals. This makes sense because the best applications for the technology are for the larger homes with high electricity usage. These customers also tend to be well-informed and socially conscious, leading them to recognize when new technology has given them a new tool to save money while helping the environment.

We recently introduced new and less sophisticated equipment that has great promise in low income housing. We have discussed this with VMH, Inc., a non-profit corporation serving the elderly, disabled and low to moderate income population in Virginia. They are currently planning to incorporate this technology into some of their developments.

In order to understand the issues here, I must correct a common misconception about how households or small businesses go about saving money on their electricity bill. Most people believe that the only way to reduce their electricity bill is to use less electricity. They think that they must reduce their use of electrical equipment by turning their thermostat down in the winter or up in the summer or changing the hours they use their equipment to specified off-peak times. Saving electricity by these methods may cause the user to experience discomfort, inconvenience and life style change. Households generally reject these methods, and they are impractical for most businesses.

On average, people simply will not endure, or usually even consider enduring, very much discomfort or inconvenience to save money on electric power. In fact, skepticism about the ability to save money on electric power without discomfort or inconvenience has been the most difficult obstacle to introducing this technology.

Computer technology now provides many consumers a new way to deal with their demand for electric power. The dramatic reduction in computer cost allows production of a demand controller which is affordable to home owners and small businesses.

Today's demand controller is a dedicated computer driven device that lets a user significantly reduce his demand on the power company while experiencing no discomfort or inconvenience. Energy Consultants installs a small demand controller that manages the electrical loads for heating and cooling, the hot water heater and the electric clothes dryer. For the typical homeowner, these uses represent over 80% of their electrical usage.

The demand controller smooths out the demand pattern placed on the power company. In many cases, there will be some reduction in the kilowatthours consumed but the real savings for the user, and the energy efficiency for the power company, comes from the reduction in peak demand. The homeowner has direct control of this equipment and can set it so he very rarely is aware that it is operating.

A more detailed explanation of how the equipment works is contained in the attached exhibit. Briefly, the demand controller works with a little known electricity billing rate option called Schedule 1S. This option separates the charge for electricity use into two parts. One charge is for the kilowatthours consumed and another is for the peak demand placed on the power company during the month.

The Schedule 1S rate option has been available for residential customers since 1978. Large commercial facilities are all billed this way and demand control is a fairly routine part of their operations. Similar billing rate options are available in parts of North Carolina, South Carolina, Arizona, North Dakota, South Dakota, Ohio and Colorado.

Large companies, such as Honeywell and Johnson Controls, provide very sophisticated equipment for large users. Affordable equipment for the residential and small business user has come from smaller manufacturers and dealers, such as Energy Consultants, Inc.

We have collected and analyzed over 12,500 monthly electricity bills from our residential clients. They are reducing their demand peak on the power company by 50% or more. In addition, they are reducing their electricity bill by 30% in the summer and 20% in the winter. They are saving annually approximately $600 by paying a lower price for the electricity they use. And they are doing this without inconvenience, discomfort or life style change.

We also have similar installations in a number of small businesses and churches. The equipment being controlled and the operational aspects are somewhat different, but the concept is the same. The business is smoothing demand patterns and reducing overall kilowatthour consumption -- all without disruption to their operations or discomfort to their customers. These churches and businesses are saving up to $20,000 a year.

If the demand controller users are benefiting so well, why are so few customers using this technology? They simply do not know about it! Every potential user we talk to says they never knew the alternative rate options existed or that affordable demand control equipment was available. Other than publishing a small brochure on the subject, which gets very little distribution, I am not aware of any effort by Virginia Power to promote this program.

I can only surmise that Virginia Power has sufficient generation capacity to handle their electricity demand for the foreseeable future. From their perspective then, it simply would not be good business to reward people for managing their demand. Perhaps in a competitive marketplace, no electric utility would be motivated to help reduce the avoidable growth in electricity use. But from an environmental perspective, the Commonwealth does have an interest in the long term avoidance of increased consumption of electricity and more power plant construction.

With effective promotion, it is not unrealistic to foresee between 100,000 and 200,000 residential and business users of demand control in ten years. Unfortunately, the Alternative Regulatory Plan submitted to the SCC does not address the benefits of demand management to the smaller user.

In addition to the cost savings and environmental concerns, I would hope that any electric utility restructuring will treat residential and small business users equitably relative to the larger commercial / industrial users. For example, perhaps small users should have the right to gain economic power by allowing third parties to organize such users. Demand control users then could be represented by a third party to negotiate an appropriate demand based billing rate.

Energy Consultants, Inc. provides a modern, very useful technology that benefits the customer and the environment. I hope this Subcommittee will consider in its deliberations and any resulting legislation the proven value of demand management of electric consumption by smaller users.

On behalf of the users and the suppliers of this technology, thank you for your concern and your attention.

Explanation of Residential Demand Control with the Energy Sentry Demand Controller

Demand control with the Energy Sentry is based on an alternative electricity rate, either Schedule 1S or Schedule 1P. Schedule 1P was introduced in 1978. It is now a grandfathered rate that is limited to homeowners who were on that rate when Schedule 1S was introduced as its replacement in 1986. This explanation will use the Schedule 1S rate for illustration purposes. The recent dramatic growth in the acceptance of this rate is shown the Figure 1.

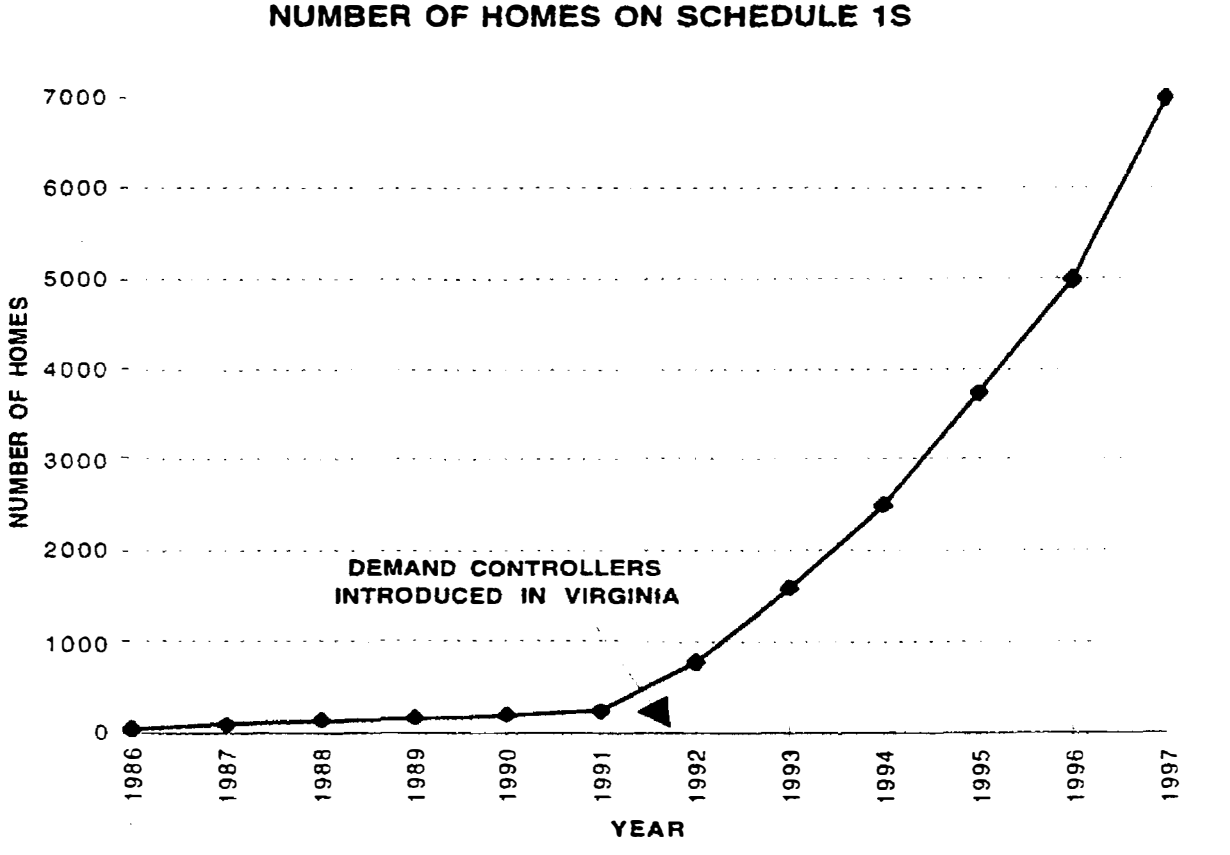


Figure 1. Estimated growth in numbers of Virginia Power customers using Schedule 1S

Schedule 1S was not accepted by many people until the introduction of demand control technology, after which there has been steady and significant growth. We believe that between 6,000 and 7,000 homeowners are now using this technology. As more people try it and tell their friends and neighbors, it's use is spreading rapidly.

The original concept of Schedule 1P, now Schedule 1S, was that homeowners would exercise discipline over the use of their electricity by rescheduling things to off-peak time and even setting heating and air conditioning thermostats to reduce usage during on-peak time. For a homeowner to save appreciable money by using the rate, it required a combination of life style change, discomfort and inconvenience. Consequently, the rate was poorly accepted as people have shown very little willingness to accept any of these disadvantages to save money on their electricity bill.

Advances in computer technology now provide affordable, dedicated microprocessor equipment that eliminates these disadvantages. Businesses, such as Energy Consultants, have been introducing the new technology to homeowners and small businesses in Virginia since 1991. With their very limited budgets for advertising, those suppliers have limited ability to reach the public. In spite of this limitation, the resulting growth in the number of users of this rate has been significant.

The following is a sample comparison of Schedule 1, the billing rate for most households, to Schedule 1S, which is used with demand control equipment:

	Schedule 1	Schedule 1S
Customer Charge	$7.00	$12.00
First 800 kWh	8.075¢	
Winter over 800 kWh	6.104¢	
Summer over 800 kWh	9.150¢	
On-peak time		5.311¢
Off-peak time		3.246¢
Winter Demand Charge		$4.974
Summer Demand Charge		$6.833

On-peak Time:

Winter - weekdays, 7:00 a.m. to 11:00 a.m. and 5:00 p.m. to 9:00 p.m
Summer -weekdays, 11:00 a.m to 10 p.m.
Some holidays are also off-peak

On Schedule 1, the user pays a fixed rate per kWh, 7 days a week, 24 hours a day. There is a higher rate for kWh over 800 kWh and different rates for the winter/summer season. Winter is from October through May. Summer is June through September.

On Schedule 1S, the user pays a different rate during the day, depending on whether it is during a specified peak time period or not. The user also pays a demand charge based upon the highest simultaneous use of electricity during the month -- something like a high water mark.

It was originally expected that savings would come from disciplined use of electricity, specifically the shifting of usage to off-peak time, resulting in a lower price per kWh. This would result in a usage reduction during on-peak time. Homeowners generally rejected this rate because achieving savings in that way required discomfort, inconvenience and life style change.

Demand control technology gave the homeowner and small business the capability to have sophisticated minute to minute management of the major electrical loads. Many of these loads operated simultaneously by sheer random chance, not because they needed to. Using computer technology to manage this process, it is possible to find the exact level at which everything can run as much as it needs to for the homeowner's comfort and convenience but avoids the peaks cause by unnecessary concurrent operation.

In order to understand how demand control works in the home, it is important to understand how energy is used in a home. As shown in Figure 2, our air conditioning, heat, hot water and clothes dryer account for 82% of our total residential electric demand. The All Other category includes our stove, refrigerator, lights, TV, VCR, fans and everything plugged into a wall. A characteristic of these "All Other" loads is that you generally KNOW when they are on. If your TV is on, you know it.

But the heating, air conditioning, hot water and dryer heating element are different. We generally are not aware when this equipment on. It operates in the background. As long as the room temperature is where you set it on the thermostat, you don't pay any attention to when the air conditioner is actually operating. Even the clothes dryer heating elements cycle on and cycle off, just like the heating elements that come on and off in the oven to maintain the temperature set for cooking. Even though you may know when the dryer is tumbling, you really don't know when the heating elements are on.

Recognizing how these equipments operate in the background, we can see how it is possible to manage their operation without affecting the comfort or convenience of the homeowner. The goal of demand control is to manage only these loads, minimizing the unnecessary coincidental operation and maximizing the demand reduction, all without the homeowner being aware that anything is happening. The ability of the demand controller to manage minutes at a time is the key to its operation.

Figure 3 looks at a one hour block of time in a typical home. In this home, there are two heat pumps, a hot water heater and an electric clothes dryer. The BASE LOAD at the bottom of each diagram represents the All Other loads.

The left diagram in Figure 3 shows activity without the Energy Sentry, which is the computerized demand controller. One air conditioner comes on because the room temperature calls for it, at about the same time, a second air conditioner happens to come on. Coincidentally, the hot water heater starts heating water in the tank. Virginia Power is measuring the highest half hour average of this demand for the month. The dotted line here is the highest half hour average, about 13 kilowatts. The demand charge in Schedule 1S is based on this peak. If this reading of 13 kilowatts was the highest during the month, then 13 KW x $6.833 would be a $89 demand charge on top of everything paid per kilowatthour.

The Energy Sentry acts like an electronic traffic manager, or a throttle, that the homeowner controls. In the right diagram in Figure 3, the homeowner has set the demand limit in the Energy Sentry to manage his demand to 6.5 kilowatts. The Energy Sentry caused the second air conditioner to come on slightly later, not enough to notice it in the home. It caused the hot water heater to wait five or ten minutes until the air conditioner cycled off. The 13 KW uncontrolled peak demand is now only 6.5 KW. That's a reduction of 6.5 KW.

The Energy Sentry operates under the homeowner's control. Demand limits for each month of the year are preprogrammed in the equipment. Demand Limits can be low in the spring and fall. They need to be higher in the summer for gas heated homes and higher in both winter and summer for electrically heated homes.

During the month, the demand limit can be adjusted whenever needed by the simple turn of a knob. If the homeowner recognizes that the controlled equipment is being cycled, the demand limit is set too low. This can happen if the weather is more extreme than anticipated by the demand limits preprogrammed into the Energy Sentry. This can be corrected by simply turning the demand limit up 1 to 2 kilowatts, which still is dramatically lower than the home would use without the Energy Sentry. It is routinely possible to reduce the demand peak by 50% without any awareness by the homeowner. The Energy Sentry operates entirely in the background.

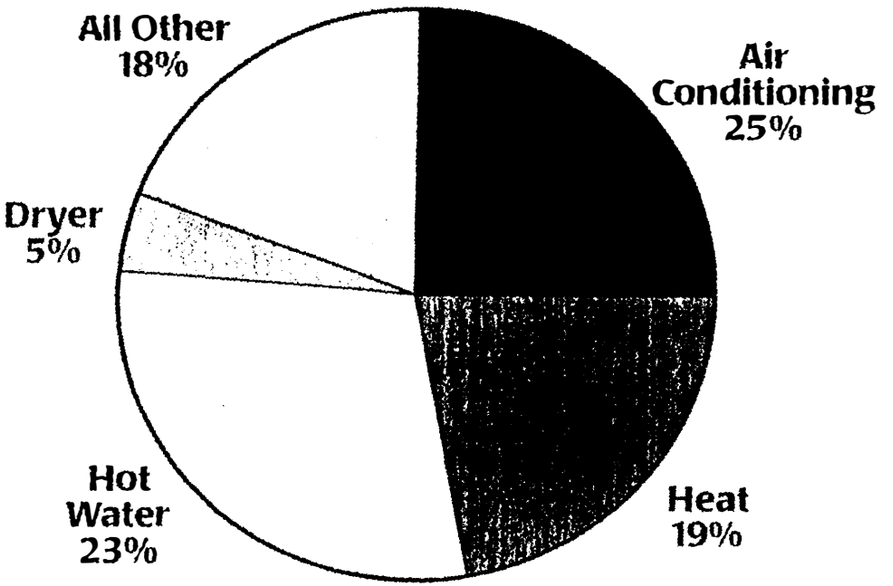
Figure 4 shows the impact on the homeowner's electricity bill of adopting this technology. The assumption is a home using 2900 kilowatthours in July. Under Schedule 1, this would cost $263. But under Schedule 1S, it would only cost $165. The management of the demand limit to 6.5 reduces the electric bill by almost $100.

The lower bill did not result in discomfort or inconvenience. The customer did not overtly defer loads to off-peak, except the clothes dryer, and made no changes to the thermostat settings. If the homeowner finds the off-peak times to be inconvenient for clothes dryer operation, the Energy Sentry's demand limits simply need to be set a little higher.

The Energy Sentry only manages during on-peak time; that's about 27% of the time. It is not operating during off-peak time, which is the other 73% of the time. Virginia Power does not measure your demand peak during off-peak time so the Energy Sentry doesn't need to manage demand then. The on-peak and off-peak times are displayed in Figure 5.

When a thousand households are reducing their demand peak by 6 kilowatts or more without even knowing it's happening, that's a reduction of 6 megawatts to Virginia Power. It only takes about 15,000 homes to completely eliminate the need for a 100 megawatt power plant. It is entirely feasible to expect 100,000 to 200,000 residential and small business users within ten years, if demand control of electricity could be effectively promoted as a public policy.

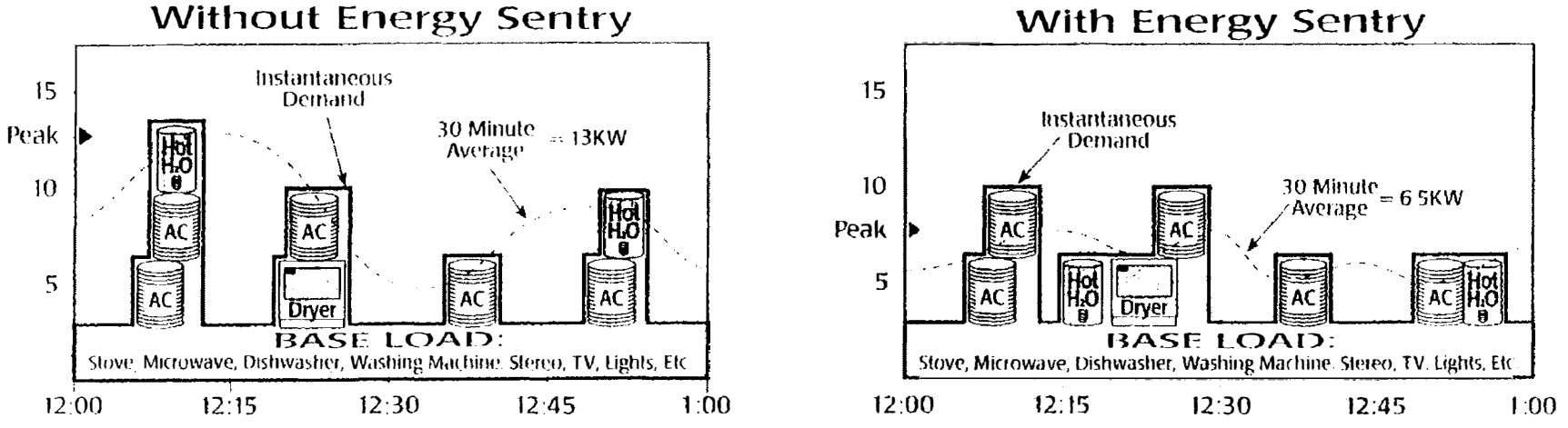
Virginia Power Data for Annual Electricity Cost for Average Two Story Home



82% of Total is Heating, Air Conditioning, Hot Water & Dryer

Figure 2

How the Energy Sentry Reduces Demand Without You Knowing It



The Energy Sentry – Your Energy Manager at Work

Figure 3

Saving 37% with Same Amount of Electricity

2900 kWh Example - July

Schedule 1		Schedule 1s	
First 800 kWh	$64.60	On-Peak kWh (725kWh)	$38.50
Excess over 800 kWh	192.15	Off-Peak kWh (2175 kWh)	70.62
		Demand Charge	44.41
Customer Charge	7.00	Customer Charge	12.00
Tax	2.40	Tax	2.40
Total	**$266.15**	**Total Schedule 1s**	**$167.94**

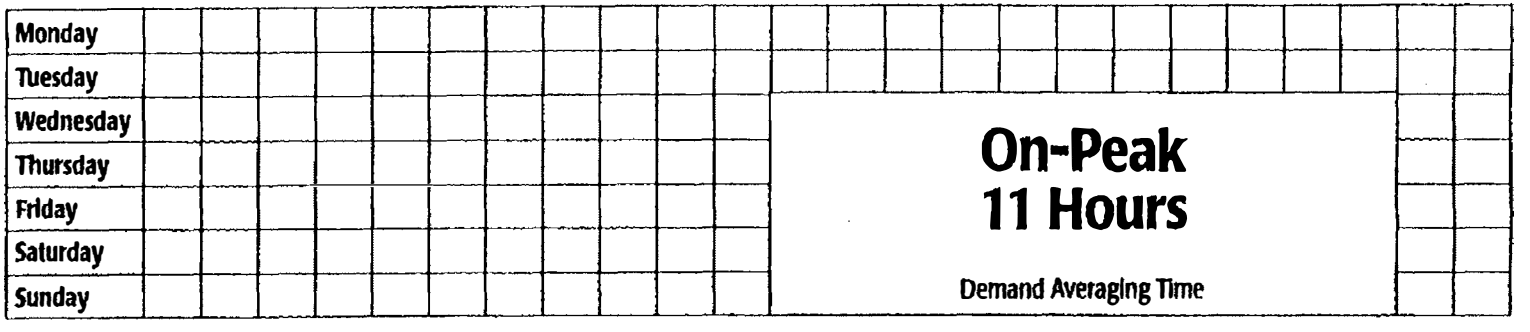
Savings for the Month $98.21 (37%)

Figure 4

Off-Peak Is 73% Of Year At Lowest Rate

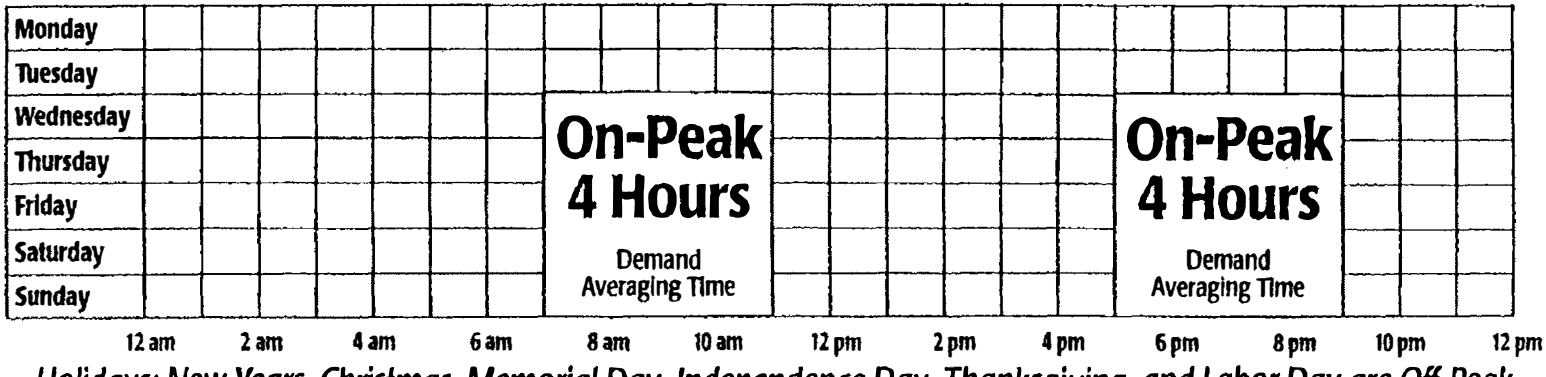
Summer Weekdays (June to September)

55 Hours On-Peak (33%) + 113 Hours Off-Peak (67%) = 168 Hours Per Week (100%)



Winter Weekdays (October to May)

40 Hours On-Peak (24%) + 128 Hours Off-Peak (76%) = 168 Hours Per Week (100%)



Holidays: New Years, Christmas, Memorial Day, Independence Day, Thanksgiving, and Labor Day are Off-Peak

Figure 5

APPENDIX F

SB 688 Electric Industry Restructuring Act; created.

Patron-Jackson E. Reasor, Jr.

Summary:

Electric Industry Restructuring Act. Establishes a five-year, phased transition to full retail competition in the electric utility industry. The bill's plan for transition from the current, fully regulated market to a market in which electric customers may purchase electrical generation service from their provider of choice, includes the following features: 1. January 1, 2000: All electric utilities must submit to the Virginia State Corporation Commission (i) a transition plan for the phase transition to retail competition and (ii) an application for a rate change or an alternative rate plan, either to be in effect until June 30, 2001. 2. July 1, 2000: One or more independent system operators (ISO) and regional power exchanges (RPX) are to be established. 3. July 1, 2001, through December 31, 2003: Enhanced wholesale competition with the following features: (i) electrical generation is no longer subject to rate regulation; (ii) the Virginia State Corporation Commission will continue to regulate transmission (to the extent of its jurisdiction) and distribution rates; (iii) Virginia's electric utilities are required to establish ISOs and RPXs to coordinate electric generation, and to establish wholesale electricity prices; (iv) regulated distribution companies will purchase electric power through an ISO/RPX, and then transmit and distribute electric power to all classes of retail customers; (v) large retail customers, however, are allowed (at their election) to purchase power from their local distribution company, or to contract, bilaterally, with another supplier of electricity; and (vi) the SCC is authorized to coordinate retail competition pilot programs to help prepare all retail customer classes for full competition in 2004. Large retail customers are defined in the bill as electric customers whose representative peak demand is five megawatts or greater during at least three billing months out of twelve. Large retail customers choosing to purchase power from another supplier during the enhanced wholesale competition period must pay the incumbent utility (whose market they are exiting) its net revenue loss, calculated on a per-kilowatt or per-kilowatt-hour basis, incurred as a result of losing that customer. Net revenue loss is calculated by subtracting from that customer's regulated rate (immediately prior to July 1, 2001) an estimated market rate established by the SCC, minus the regulated transmission and distribution rate charged the customer. 4. January 1, 2004: Full retail competition begins in which all retail electricity customers may purchase electrical generation services from the generation provider of their choice. Transmission and distribution will remain regulated, and subject to the regulatory oversight of the SCC. The bill also contains provisions addressing (i) consumer protections, including consumer education programs during the competition phase-in period (2001-2004), (ii) methods of ensuring that all retail customers will have a generation supplier after July 1, 2004, (iii) utility worker displacements resulting from retail competition, and (iv) electric efficiency and conservation. Virginia's incumbent electric utilities (those currently serving the Commonwealth) are furnished an opportunity to receive "stranded cost" payments from July 1, 2001, through December 31, 2003. Likewise, they may be liable for "stranded benefits" during the same period. The stranded cost/benefit formula offered in the bill compares an incumbent utility's estimated revenues from all generating facilities with the SCC's estimate of the annual revenues such facilities must receive to (i) recover costs (including the cost of fuel, operation, and maintenance, and the cost of energy production), and (ii) earn a fair and reasonable rate of return. Based on its estimate, the SCC will order a nonbypassable wires charge or credit (a customer billing surcharge or credit refund), apportioning to each customer its pro rata share of such revenue deficiency or surplus. The bill requires an annual reconciliation of revenue estimates with actual receipts. This "true up" results in a recalculation or adjustment of the wires charge or benefit for the following year. Additional charges are passed along to electricity customers through nonbypassable wires charges, including pro rata apportionment of transition costs, such as the cost of customer education programs, and the cost of establishing the ISOs and RPXs. Finally, the Electric Industry Restructuring Act establishes a 10-member legislative task force to oversee the transition to retail competition from its inception in July 1, 1999, through July 1, 2005. The task force, consisting of four members of the Virginia Senate and six members of the House of Delegates, is directed to work collaboratively with the Virginia State Corporation Commission. Annual reports to the Governor and each succeeding session of the General Assembly are required from the task force, as it reviews the progress of each phase of the Commonwealth's transition through restructuring to retail competition.

Full text:
01/26/98 Senate: Presented & ordered printed 980498727

Status:
01/26/98 Senate: Referred to Committee on Commerce and Labor
02/02/98 Senate: Continued to 1999 in Commerce and Labor (15-Y 0-N)

Go to (General Assembly Home) or (Bills and Resolutions)

summary

0498727

SENATE BILL NO. 688

Offered January 26, 1998

A BILL to amend the Code of Virginia by adding in Title 56 a chapter numbered 23, containing articles numbered 1 through 4, consisting of sections numbered 56-576 through 56-594, relating to the Electric Industry Restructuring Act; civil penalties.

Patron-- Reasor

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 56 a chapter numbered 23, containing articles numbered 1 through 4, consisting of sections numbered 56-576 through 56-594, as follows:

CHAPTER 23. ELECTRIC INDUSTRY RESTRUCTURING ACT. Article 1. General Provisions.

§56-576. Short title.

This chapter may be cited as the "Electric Industry Restructuring Act."

§56-577. Definitions.

As used in this chapter:

"Affiliate" means any person that controls, is controlled by, or is under common control with an electric utility.

"Aggregator" means a person licensed by the Commission that purchases or arranges for the purchase of electric energy as an agent or intermediary for sale to, or on behalf of, two or more retail customers.

"Broker" means a person licensed by the Commission that acts as an agent or intermediary in the sale and purchase of electric energy for use by one or more retail customers but that does not take title to electric energy.

"Commission" means the State Corporation Commission.

"Cooperative electric utility" means a utility formed under or subject to Chapter 9 (§56-209 et seq.) of this title.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.

"Distribute," "distributing" or "distribution of" electric energy means the transfer of electric energy through a retail distribution system to a retail customer.

"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

"Electric utility" means any person that generates, transmits, or distributes electric energy for use by retail customers in the Commonwealth, including any investor-owned electric utility, cooperative electric utility, or electric utility owned or operated by a municipality.

"Generate," "generating," or "generation of" electric energy means the production of electric energy.

"Generator" means a person owning, controlling, or operating a facility that produces electric energy for sale.

"Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the Commission.

"Large retail customer" means a retail customer (i) that has had an individual peak measured demand for electric energy of five megawatts or greater during at least three billing months out of the most recent previous twelve billing months for which such data are available, and (ii) that has installed, at its own or a supplier's expense, an interval data recorder or other similar technology approved by the independent system operator serving that retail customer to measure that customer's consumption of electric energy on an interval basis.

"Marketer" means a person licensed by the Commission that acts as an agent or intermediary in the sale and purchase of electric energy for use by one or more retail customers and that takes title to electric energy it purchases for resale to retail customers.

"Municipality" means a city, county, town, authority or other political subdivision of the Commonwealth.

"Nonbypassable wires charge" means a charge that is to be paid by a retail customer located in the geographic area that was the service territory of the incumbent electric utility and that represents that customer's share of the transition costs, public purpose program costs, or other costs recoverable by an electric utility as provided in this chapter.

"Nonregulated electric utility" means an electric utility located in the Commonwealth that is not regulated by the Commission as of July 1, 1999.

"Period of transition to customer choice" means the period beginning on July 1, 1999, and ending on December 31, 2003, unless otherwise extended by the Commission pursuant to this chapter, during which the Commission and all electric utilities authorized to do business in the Commonwealth shall implement customer choice for retail customers in the Commonwealth.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Regulated electric utility" means an electric utility that is regulated by the Commission as of July 1, 1999.

"Regulatory assets" means previously deferred, generation-related costs incurred by a regulated electric utility in providing electric energy. "Regulatory assets" represent the effect of actions of a regulator, regardless of their classification in financial statements, and therefore include items such as (i) the cumulative difference between recorded depreciation and generally accepted methods of depreciation, and (ii) the asset or obligation associated with the prior service cost component of pensions and other post-employment benefits costs.

"Related distribution service" means any billing, metering, collections, remittance, outage call, new connection, or other service or equipment that is necessary to provide retail electric energy directly to a retail customer.

"Retail customer" means any person that purchases retail electric energy at a single metering point or non-metered point of delivery located in the Commonwealth.

"Retail distribution system" means the electric energy facilities and related distribution services required for the distribution of electric energy to retail customers.

"Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

"Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it does not mean a generator that produces electric energy exclusively for its own consumption or the consumption of an affiliate.

"Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a retail customer.

"Transition benefits" means gains in the economic value of an incumbent electric utility's investments and commitments in generation assets that result from either (i) the implementation by the Commonwealth of customer choice in the sale of electric energy to retail customers in the Commonwealth or (ii) a federal statute or regulation requiring the implementation of customer choice or some other form of competition in the supply of electric energy to retail customers in the Commonwealth

"Transition costs" means losses in the economic value of an incumbent electric utility's investments and commitments in generation assets that would result from either (i) the implementation by the Commonwealth of customer choice in the sale of electric energy to retail customers in the Commonwealth or (ii) a federal statute or regulation requiring the implementation of customer choice or some other form of competition in the supply of electric energy to retail customers in the Commonwealth.

"Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy through the Commonwealth's interconnected transmission grid from a generator to either a distributor or a retail customer.

"Transmission system" means those facilities and equipment that are required to provide for the transmission of electric energy.

"Transmitter" means a person owning, controlling, or operating an electric energy transmission system, other than an independent system operator as provided in §59-581.

§56-578. Applicability; municipalities.

A. This chapter shall apply to all electric utilities authorized to conduct business in the Commonwealth.

B. Notwithstanding subsection A of this section, this chapter shall not apply to an electric utility owned or operated by a municipality unless (i) that municipality elects to have this chapter apply to that utility or (ii) that utility sells, offers to sell or seeks to sell electric energy through a regional power exchange or to a supplier or distributor of electric energy. Any electric utility owned or operated by a municipality, whether or not subject to this chapter, may purchase electric energy through a regional power exchange or through a contract with a generator or supplier, subject to the rules and procedures adopted by the independent system operator serving that electric utility and the relevant regional power exchange, as provided in §§56-581 and 56-582.

Article 2. Phased Transition to Retail Competition.

§56-579. Schedule for transition to retail competition; Commission authority.

A. The transition to retail competition for the purchase and sale of electric energy shall be implemented as follows:

1. On or before January 1, 2000, each electric utility subject to this chapter shall submit to the Commission (i) a transition plan relating to the phased transition to retail competition for the purchase and sale of electric energy, as provided in this chapter, and (ii) an application for a change of rates or

and sale of electric energy, as provided in this chapter, and (ii) an application for a change of rates or an alternative rate plan for rates to be in effect through June 30, 2001, as provided in §56-584.

2. On or before July 1, 2000, one or more independent system operators and one or more regional power exchanges shall be established, as provided in §§56-581 and 56-582, to facilitate a competitive market for the wholesale purchase and sale of electric energy in the Commonwealth.

3. a. Beginning on July 1, 2001, enhanced wholesale competition shall be implemented within the Commonwealth in which (i) each distributor subject to the jurisdiction of the Commission shall purchase electric energy for its retail customers either through a regional power exchange or through a contract with a generator or other supplier, (ii) large retail customers within the Commonwealth may, in lieu of purchasing from an incumbent utility, elect to purchase electric energy for their own use either through a regional power exchange or through a contract with a generator or other supplier, and (iii) the Commission may coordinate customer-diverse, geographically-dispersed retail competition pilot programs to be implemented by electric and gas utilities in preparation for full retail competition.

b. Large retail customers purchasing electric energy from a supplier other than their incumbent utility during the period July 1, 2001, through December 31, 2003, shall remit to such incumbent utility its net revenue loss, calculated on a per-kilowatt or per-kilowatt-hour basis, resulting therefrom, which shall be equal to the customer's regulated rate prior to July 1, 2001, less an average, market-based rate as may be determined by the Commission, and less transmission and distribution charges assessed the customer pursuant to rates established by the Commission under § 56-584.

4. Beginning on January 1, 2004, each retail electricity customer within the Commonwealth, regardless of customer class, shall have the opportunity to purchase electric energy from any supplier of electric energy seeking to sell electric energy to that customer.

B. The Commission may delay the implementation of enhanced wholesale competition for the purchase and sale of electric energy under this section if it finds that such delay is necessitated by any action or inaction of the Federal Energy Regulatory Commission or any proceeding pending before the Supreme Court of Virginia relating to or arising out of this chapter.

C. The Commission shall have the authority, and shall promulgate such rules and regulations as are necessary, to implement the provisions of this section.

§56-580. Nondiscriminatory access to transmission and distribution systems.

A. All distributors subject to this chapter shall provide for reasonable and nondiscriminatory access to their retail distribution systems consistent with the transition schedule prescribed by this chapter, and to the extent permitted or required by federal law, all transmitters subject to this chapter shall provide for reasonable and nondiscriminatory access to their transmission systems, including generators and suppliers that seek to serve retail customers in that class and retail customers in that class that seek to purchase electric energy through those systems.

B. The access to the transmission and distribution systems required by this section shall be provided to generators, suppliers and retail customers at rates and under terms and conditions that are just, reasonable and not unduly discriminatory. To the extent permitted or required by federal law, the costs to a transmitter of providing reasonable and nondiscriminatory access to its transmission system shall be determined by and included in the transmission rates established by the Federal Energy Regulatory Commission. All costs to a distributor of providing reasonable and nondiscriminatory access to its distribution system, including the cost of money and the opportunity to earn a reasonable return, shall be recovered in the rates established by the Commission for the distribution of electric energy as provided in §56-584.

C. The transmission and distribution services provided to each supplier and retail customer shall be at least equal in quality to those provided by the transmitter or distributor to itself or to any affiliate of that transmitter or distributor.

D. The Commission shall have the authority, and shall promulgate such rules and regulations as are necessary, to implement reasonable and nondiscriminatory access as provided in this section.

§56-581. Independent system operator.

A. By July 1, 2000, all incumbent electric utilities shall establish, subject to approval by the Federal Energy Regulatory Commission and, to the extent not prohibited by federal law, by the Commission, one or more independent system operators to coordinate and control the operation of the interconnected electric energy transmission grid system throughout, or in specified portions of, the Commonwealth, provided that all of the Commonwealth shall be served by an independent system operator.

B. It shall be the duty and responsibility of each independent system operator to:

1. Manage and control the transmission of electric energy throughout the Commonwealth, or in a specified portion of, the Commonwealth;

2. Provide reasonable and nondiscriminatory access to the transmission system under its management and control to all suppliers who seek to sell electric energy through, or transmitters who seek to transmit electric energy to, distributors served by such transmission system;

3. Coordinate the scheduling and balancing of the transmission of electric energy and such other services as may be required in connection with the transmission of electric energy in the Commonwealth, including coordinating with all other independent system operators serving portions of the Commonwealth;

4. Preserve the reliability and integrity of the transmission system under its management and control;

5. Adopt rules and procedures, subject to approval, to the extent required by federal law, by the Federal Energy Regulatory Commission and, to the extent not prohibited by federal law, by the Commission, for fulfilling the duties and responsibilities prescribed under this section, including establishing a managing board on which each incumbent electric utility has one representative and no generator, supplier, transmitter, or distributor of electric energy has more than one representative;

6. Procure all services that are required to fulfill such duties and responsibilities; and

7. Secure any approval from state and federal authorities that may be required to fulfill such duties and responsibilities.

C. The establishment and operation of an independent system operator shall be subject to approval, to the extent required by federal law, by the Federal Energy Regulatory Commission and, to the extent not prohibited by federal law, by the Commission.

D. No generator, supplier, transmitter or distributor of electric energy shall have an ownership interest in any independent system operator established under or authorized by this section.

E. To the extent that the cost to any incumbent electric utility of establishing and operating an independent system operator is not included in the rates for the transmission of electric energy established by the Federal Energy Regulatory Commission, that cost shall be recovered by that electric utility through a nonbypassable wires charge to retail customers, as provided in §56-592.

F. Subject to (i) approval, to the extent required by federal law, by the Federal Energy Regulatory Commission and, to the extent not prohibited by federal law, by the Commission, and (ii) unanimous approval by its managing board, an independent system operator may:

1. Merge with, join, or cede its authority to a similar entity if one should be established to manage and control the transmission of electric energy on a regional, statewide, or multi-state basis; and

2. Merge or combine with a regional power exchange established under §56-582.

2. Merge or combine with a regional power exchange established under §56-582.

G. Each generator producing electric energy, and each supplier selling electric energy pursuant to a bilateral contract for use by a retail customer, in any geographic area of the Commonwealth shall register with the independent system operator serving that area and comply with all rules, protocols and procedures that the independent system operator may adopt.

§56-582. Regional power exchange.

A. By July 1, 2000, all incumbent electric utilities and all suppliers of electric energy licensed by the Commission shall establish, subject to approval, to the extent not prohibited by federal law, by the Commission and, to the extent required by federal law, by the Federal Energy Regulatory Commission, one or more independent regional power exchanges to conduct statewide or regional competitive auctions, open on a reasonable and nondiscriminatory basis to all suppliers of electric energy.

B. Each generator and supplier that seeks to sell electric energy through a regional power exchange in the Commonwealth shall register with that regional power exchange and comply with all rules, protocols, and procedures that the regional power exchange may adopt.

C. Except as otherwise provided in this subsection, each generator that seeks to sell electric energy to a supplier for resale to a retail customer may sell to that supplier, and each supplier that seeks to sell electric energy to a retail customer may sell to that customer, only electric energy that has been accepted for sale by a regional power exchange, unless the retail customer or supplier enters into a bilateral contract with the generator. Except as may be further limited by any rule or procedure adopted by the independent system operator serving that regional power exchange, in accordance with subdivision B 5 of §56-581, bilateral contracts shall be permitted (i) on and after July 1, 2001, between a generator or supplier and a large retail customer to serve the full requirements of that retail customer, and (ii) on and after January 1, 2004, between a generator or supplier and any retail customer to serve the full requirements of that retail customer.

D. It shall be the duty and responsibility of each regional power exchange to:

1. Serve as a clearinghouse for supplying electric energy to retail customers throughout the Commonwealth or in a specified area thereof, provided all areas of the Commonwealth shall be served by a regional power exchange;

2. Match, through a regular auction process and in coordination with the relevant independent system operator or operators, electric energy offered for sale through the regional power exchange with the demand for electric energy by retail customers served by that regional power exchange and determine the market clearing price at which that electric energy is accepted for sale and sold through that regional power exchange;

3. Afford reasonable and nondiscriminatory access to such auction process to all generators and suppliers of electric energy authorized to conduct business in the Commonwealth, except that in conducting its auction process to meet projected required loads, the regional power exchange shall, before accepting for sale any other electric energy;

4. Adopt rules and procedures, subject to approval, to the extent not prohibited by federal law, by the Commission and, to the extent required by federal law, by the Federal Energy Regulatory Commission, to fulfill the duties and responsibilities required by this section, including establishing a managing board on which each incumbent electric utility has one representative and no generator or supplier of electric energy has more than one representative;

5. Procure all services that are required to fulfill such duties and responsibilities; and

6. Secure any approval from state and federal authorities that may be required to fulfill such duties and responsibilities.

E. The establishment and operation of a regional power exchange shall be subject to approval, to the extent not prohibited by federal law, by the Commission and, to the extent required by federal law, by the Federal Energy Regulatory Commission.

F. No generator, supplier, transmitter or distributor of electric energy shall have an ownership interest in any regional power exchange established under or authorized by this section.

G. To the extent that the cost to any incumbent electric utility of establishing and operating a regional power exchange is not included in the rates for the transmission of electric energy established by the Federal Energy Regulatory Commission, that cost shall be recovered by that electric utility through a nonbypassable wires charge to retail customers, as provided in §56-592.

H. Subject to approval, to the extent not prohibited by federal law, by the Commission and, to the extent required by federal law, by the Federal Energy Regulatory Commission, a regional power exchange may:

1. Coordinate its operation with, merge with, join, or cede its authority to a similar entity if one should be established to provide an electric energy auction to serve the loads of retail electric energy customers on a regional, statewide or multi-state basis; and

2. Coordinate its operation, merge, or combine with an independent system operator established under §56-581.

Article 3. Regulation of Electricity Generation, Transmission and Distribution.

§56-583. Transmission and distribution of electric energy.

1. The Commission shall continue to regulate pursuant to this title the distribution of electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth. The Commission also shall continue to regulate, to the extent not prohibited by federal law, the siting of facilities for the transmission of electric energy and the reliability, quality, and maintenance by transmitters and distributors of their transmission and retail distribution systems. Persons that own transmission and retail distribution systems may continue to own those systems.

B. Any electric utility authorized to sell electric energy to retail customers in an exclusive service territory in the Commonwealth as of July 1, 1998, and any successor distributor or distributors of such an electric utility, shall be authorized to continue to distribute electric energy to retail customers in that same exclusive service territory. The Commission shall consider a request by a distributor or distributors to modify the exclusive service territory of such distributor or distributors and shall approve any such request unless the Commission finds the requested modification to be contrary to the public interest.

§56-584. Regulation of rates subject to the Commission's jurisdiction.

A. Except as provided in the remaining subsections of this section, after July 1, 1999, the Commission shall continue to regulate an electric utility's rates still subject to the Commission's jurisdiction as provided in this title.

B. Rates for the generation, transmission and distribution of electric energy for all classes of retail customers shall continue to be regulated by the Commission on a bundled basis until the commencement of enhanced wholesale competition on June 30, 2001. After that date:

1. The Commission shall regulate the rates for the transmission of electric energy, to the extent not prohibited by federal law, and for the distribution of electric energy to such retail customers on an unbundled basis, but the Commission no longer shall regulate rates for the generation component of retail electric energy sold to that class of retail customers, or require any person to file a schedule of

retail electric energy sold to that class of retail customers, or require any person to file a schedule of charges, cost or revenue projections, or any other information for supplying retail electric energy to any class of retail customers.

2. For retail customers for which electric energy is purchased through a regional power exchange or from the wholesale market during the period July 1, 2001, through June 30, 2004, the Commission shall regulate the rates for the transmission of electric energy, to the extent not prohibited by federal law, and for the distribution of electric energy to such retail customers on an unbundled basis, and shall permit the distributor to recover in full its costs of supplying that electric energy to such customers, including the cost of purchasing that energy, any associated operating costs, and such additional compensation as determined by the Commission.

3. For retail customers for which customer choice has not yet been implemented and for which electric energy is not being purchased through a regional power exchange or from the wholesale market, the Commission shall continue to regulate rates for the generation, transmission and distribution of electric energy on a bundled basis pursuant to this title.

C. Notwithstanding the provisions of any other subsection of this section, if after December 31, 1997, the Commission approves an application for a change in base rates or an alternative rate plan for a regulated electric utility, the bundled base rates approved by the Commission for that electric utility shall remain in effect until June 30, 2001, for those retail customers for which customer choice has not yet been implemented and electric energy is not being purchased through a regional power exchange or from the wholesale market. Any such rates shall include an authorized range for a return on equity sufficient to permit that utility to recover in full by December 31, 2003, any regulatory assets that are associated with any non-nuclear generating facility owned or operated by that utility and that (i) were being recovered in rates that were being charged by that utility prior to January 1, 1998, whether or not the application for a change in rates or the alternative rate plan that proposed those rates has been finally approved by the Commission, or (ii) are costs, as determined by the Commission, that were incurred since January 1, 1998. The recovery of fuel costs shall continue pursuant to §56-249.6 until December 31, 2000. The Commission shall determine the appropriate methodology for the recovery of fuel costs for the period of July 1, 2001, through December 31, 2003, from retail customers for which customer choice has not yet been implemented.

§56-585. Licensure of suppliers of retail electric energy; license suspension or revocation; penalties.

A. As a condition of doing business in the Commonwealth, each person seeking to sell, offering to sell, or selling electric energy to (i) large retail customers after July 1, 2001, and (ii) any class of retail customer in the Commonwealth after January 1, shall obtain a license from the Commission to do so. The license shall authorize that person to act as a supplier until the license is otherwise terminated, suspended or revoked. Upon request, each incumbent electric utility authorized to conduct business in the Commonwealth as of the date of that request shall be issued an initial license under this section without the need for any further showing. Unless renewed by the Commission, a supplier's license shall expire after a period of five years from the date on which it was issued. A person that generates electric energy exclusively for its own consumption or the consumption of an affiliate shall not be required to obtain a license.

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall (i) satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including requirements that such person shall demonstrate, in a manner satisfactory to the Commission, financial responsibility, (ii) post a bond as deemed adequate by the Commission to ensure that financial responsibility, (iii) pay an annual license fee to be determined by the Commission, (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth, and (v) pay its share of the costs imposed pursuant to §56-586 to provide a supplier to a retail customer for which customer choice has been implemented if no supplier offers to sell electric energy to that customer.

C. The Commission may adopt reasonable rules and regulations governing the requirements for obtaining, retaining, and renewing a license to supply electric energy to retail customers, and may, as

obtaining, retaining, and renewing a license to supply electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements. In addition to being subject to any other applicable sanctions provided in Titles 12.1 and 13.1 or elsewhere in this title, any person that supplies electric energy to retail customers without a license to do so, or while its license to do so is suspended or revoked, shall be guilty of a Class 1 misdemeanor. Each day during which a person violates this section shall constitute a separate violation.

§56-586. Suppliers of last resort.

If, after July 1, 2004, a retail customer does not choose a supplier of electric energy, that retail customer shall be deemed to have selected as its supplier (i) the incumbent electric utility, which may supply electric energy to such retail customer through an affiliate that is a generator or supplier, or (ii) if neither that incumbent electric utility nor any of its affiliates is a generator or supplier of electric energy, the distributor serving the area in which that retail customer is located.

§56-587. Voluntary aggregation permitted.

Members of any customer class may, on and after July 1, 2001, voluntarily aggregate their electrical energy demand for the purpose of negotiating the purchase of electric energy from any supplier thereof.

§56-588. Metering, billing and other related distribution services.

A. Each distributor shall be responsible for all related distribution services for all retail customers in its service territory.

B. Subject to the right of a retail customer to elect to receive a separate bill from its supplier of electric energy, each distributor, on and after July 1, 2004, shall be responsible for billing retail customers for all services related to the supply, transmission and distribution of electric energy.

1. Bills to retail customers shall contain unbundled charges for the supply, transmission, and distribution of electric energy, and for all nonbypassable wires charges imposed under §56-592, in sufficient detail to enable the customer to identify those charges.

2. To enable distributors to bill retail customers on behalf of suppliers, each supplier shall furnish to each distributor serving each of the supplier's retail customers the charge for supplying electric energy to that retail customer for the distributor's billing period.

3. A distributor shall not be required to forward payment to a supplier for which the distributor is billing a retail customer until the distributor has received payment from that customer.

C. Each distributor shall provide to each supplier metering data related to that supplier's retail customers served by that distributor. Each distributor also shall provide to the independent system operator and the regional power exchange or exchanges serving that distributor's retail customers all load profiling, customer usage and related metering data required for the allocation and settlement of electric energy costs among the independent system operator, regional power exchange, generator and supplier for each retail customer served by that distributor.

D. All costs to a distributor to provide related distribution services required by this section shall be included in the rates established by the Commission for the distribution of electric energy and shall be paid by all retail customers served by that distributor. Provided, however, the recovery of the costs to a distributor to provide related distribution services required by this section that are specific to a particular retail customer, such as the costs associated with a retail customer selecting a new supplier or with the installation of special metering equipment, shall be approved by the Commission and charged to the affected retail customer.

§56-589. Consumer protections and customer services; penalties.

A. After the implementation of full retail customer choice on and after January 1, 2004, each distributor

A. After the implementation of full retail customer choice on and after January 1, 2004, each distributor shall continue to provide customer service functions consistent with the regulations of the Commission, including related distribution services as specified in § 56-588, and complaint resolution, at the same or higher level of quality as prior to the implementation of customer choice.

B. The Commission shall promulgate reasonable rules and regulations to:

1. Ensure that no distributor changes a retail customer's supplier of electric energy without written authorization from the customer to do so;

2. Prohibit any supplier from misrepresenting the quality, reliability and quantity of electric energy it agrees to supply to retail customers in the Commonwealth;

3. Require each supplier of electric energy to provide adequate and accurate information to enable retail customers to make informed choices and comparisons relating to the purchase of the electric energy services offered by that supplier;

4. Allow for cancellation by residential customers a contract for the supply and purchase of electric energy within three days of executing that contract;

5. Regulate distributor disconnection practices;

6. Establish minimum standards for information to be included in the bills and electric energy supply and purchase contracts provided to residential retail customers;

7. In conjunction with each distributor subject to this chapter, develop and implement prior to the implementation of customer choice, and continue after that date, a consumer education program informing retail customers of the changes in the retail sale and purchase of electric energy implemented by the provisions of this chapter and providing those retail customers with certain standardized information necessary to assist them in making an informed choice regarding their selection of a supplier of electric energy.

C. Each distributor shall recover its costs associated with the consumer education program specified in subdivision B 7 of this section through a nonbypassable wires charge as provided in § 56-592.

D. In addition to being subject to any other applicable sanctions provided in Titles 12.1 and 13.1 or elsewhere in this title, any person who knowingly or willfully violates subsection A of this section or any rule or regulation promulgated pursuant to subdivisions 1 through 6 of subsection B of this section shall be punished for each such violation by a civil penalty of not more than $5,000. Each day for which any such person is found to be in violation of subsection A of this section or any such rule or regulation shall constitute a separate violation. The Commission also may suspend, revoke, or refuse to renew the license of any supplier who violates this section or any such rule or regulation.

§56-590. Public purpose programs.

A. The Commission may, pursuant to the provisions of this title, approve and impose requirements on all generators, suppliers, transmitters and distributors doing business in the Commonwealth to implement any electric energy program that is intended to benefit the public health, safety and welfare, including any program the purpose of which is to:

1. Ensure that each distributor in the Commonwealth provides access to its retail distribution system to each retail customer in its service territory;

2. Promote electric energy efficiency and conservation, protection of the environment, and research and development; or

3. Educate and retrain employees of electric utilities whose employment will be directly affected by the implementation of customer choice pursuant to this chapter.

implementation of customer choice pursuant to this chapter.

B. The Commission shall determine the cost to each generator, supplier, transmitter and distributor affected by each such program of implementing that program, shall impose a nonbypassable wires charge on all retail customers to pay for those costs as provided in §56-592, to be collected by all distributors authorized to do business in the Commonwealth, and shall determine how the amounts collected by that nonbypassable wires charge shall be disbursed to each affected generator, supplier, transmitter and distributor.

Article 4. Additional Provisions.

§56-591. Transition costs and benefits.

A. Commencing July 1, 2001, and concluding on December 31, 2003, each incumbent electric utility in this Commonwealth that has incurred or will continue to incur net transition costs, or has derived or will continue to derive net transition benefits, associated with the implementation of customer choice, or the purchase of electric energy through a regional power exchange or from the wholesale market, for retail customers as provided in §56-579 shall, pursuant to the provisions of this section, be (i) entitled to recover its net transition costs or (ii) required to credit its net transition benefits, through a nonbypassable wires charge or credit to be determined by the Commission, calculated on a per-kilowatt or per-kilowatt-hour basis, and to be paid by or credited to the retail customers in the geographic area that was the service territory of the incumbent electric utility, as provided in § 56-592.

B. The Commission shall estimate annually the revenues all generating facilities are expected to receive that year from the sale of electric energy produced by such facilities and, in accordance with the regulated ratemaking methodology last approved by the Commission for the incumbent electric utility that is or was the owner of the facility, shall estimate the annual revenues all facilities must receive that year to ensure recovery of their cost to produce that electric energy, the cost of fuel, and all other operation and maintenance costs related to such facilities, and the opportunity to earn a fair and reasonable rate of return

C. If the Commission estimates that the amount such generating facilities will receive from the sale of electric energy produced will be less than the amount it estimates such facilities need to receive to recover costs to produce that electric energy, the Commission shall order that the difference be paid by retail customers located in the geographic area that was the service territory of the incumbent electric utility.

D. If the Commission estimates that the amount such generating facilities will receive from the sale of electric energy produced will be more than the amount it estimates the facilities need to receive to recover costs to produce that electric energy, the Commission shall order that a credit in the amount of the difference be given to the retail customers specified in subsection C of this subsection.

E. The Commission shall determine on an annual basis whether the amount it estimated that such facilities would receive from the sale of electric energy produced and the amounts it estimated such facilities would need to receive to recover costs were more or less than the amount such facilities in fact received from the sale of electric energy produced and the amount the facilities actually needed to receive to recover costs, and shall adjust the nonbypassable wires charge or credit ordered pursuant to subsections B and C accordingly.

§56-592. Nonbypassable wires charges.

A. The nonbypassable wires charges or credits authorized by this section shall be determined by the Commission for those retail customers subject to its jurisdiction and shall be paid by or credited to the retail customers specified in this section. The Commission shall determine the total amount to be paid by, or the total credit due to, retail customers subject to its jurisdiction based on the cost allocation methodology last approved by it prior to January 1, 2004, and shall determine a fair and reasonable methodology for allocating any such amount to be paid or credit due among such customers. Retail customers for which customer choice has been implemented pursuant to §56-579, and retail customers

customers for which customer choice has been implemented pursuant to §56-579, and retail customers for which electric energy is purchased through a regional power exchange or from the wholesale market pursuant to §56-579, shall pay their portion of the total amount that is to be paid as a nonbypassable wires charge, or shall receive their portion of the total amount due as a credit. The portion of the total amount to be paid or due as a credit that is allocable to retail customers for which customer choice has not yet been implemented, and for which electric energy is not purchased through a regional power exchange or from the wholesale market, shall be deemed to be included in the rates paid by those customers and no additional nonbypassable wires charge or credit for that amount shall be imposed on or given to those customers.

B. To the extent that the costs of establishing and operating an independent system operator as provided in §56-581, including the cost of money, are not included in the rates for the transmission of electric energy established by the Federal Energy Regulatory Commission, those costs shall be recovered through a nonbypassable wires charge to be paid by retail customers located in the service territory of each distributor served by that independent system operator. The establishment costs shall be recovered over the period of the useful life of the equipment and other assets required to establish the independent system operator.

C. To the extent that the costs of establishing and operating a regional power exchange as provided in §56-582, including the cost of money, are not included in the rates established by the Federal Energy Regulatory Commission for services provided by the regional power exchange, those costs shall be recovered through a nonbypassable wires charge to be paid by retail customers located in the service territory of each distributor served by that regional power exchange. The establishment costs shall be recovered over the period of the useful life of the equipment and other assets required to establish the regional power exchange.

D. The nonbypassable wires charge or credit related to net transition costs or benefits to an incumbent electric utility as provided in §56-591, resulting from the implementation of customer choice, or the purchase of electric energy through a regional power exchange or from the wholesale market, pursuant to §56-579, shall be calculated so that those costs are recovered from retail customers located in the geographic area that was the service territory of the incumbent electric utility, or those benefits are credited to those customers.

E. The nonbypassable wires charge related to the consumer education program specified in subdivision B 7 of §56-589 shall be calculated so that those costs are recovered from retail customers of each distributor in the Commonwealth over the duration of the program or until those costs are recovered in full.

F. The Commission shall determine the appropriate nonbypassable wires charge to be paid by retail customers located in the geographic area that was the service territory of the incumbent electric utility for:

1. The cost of any public purpose program specified in §56-590, to be recovered over the duration of that program; and

2. Any other cost associated with the implementation of customer choice, or the purchase of electric energy through a regional power exchange or from the wholesale market, for retail customers that the Commission determines is both necessary and reasonable for such retail customers to pay, to be recovered over a period to be determined by the Commission not to exceed twenty years.

G. The nonbypassable wires charges authorized by this section shall be collected by the distributor serving each affected retail customer and remitted by that distributor to the electric utility, generator, transmitter, distributor or supplier on behalf of which the charge is collected. The credits authorized by this section shall be processed by the distributor and, where appropriate, shall be charged to the electric utility, generator, transmitter, distributor or supplier on behalf of which the credit was processed. The distributor may charge the electric utility, generator, transmitter, distributor or supplier a reasonable administrative fee, as determined by the Commission, for the collection and remittance of such charges

or the processing of such credits.

§56-593. Divestiture not required; functional separation.

A. The Commission shall not order a regulated electric utility, nor shall it require a nonregulated electric utility to divest itself of any generation, transmission or distribution assets pursuant to any provision of this chapter.

B. 1. The Commission shall, however, direct the functional separation of generation, retail transmission and distribution of all regulated and nonregulated electric utilities in connection with the provisions of this chapter to be completed by December 31, 2003.

2. By July 1, 2001, each regulated electric utility shall submit to the Commission a plan for such functional separation which may be accomplished through the creation of affiliates or through such other means as may be acceptable to the Commission to ensure a competitive market for generation, retail transmission and distribution of electric energy within the Commonwealth.

§56-594. Legislative transition task force established.

A. A legislative transition task force is hereby established to work collaboratively with the Commission in conjunction with the phase-in of retail competition within the Commonwealth.

B. The transition task force shall consist of ten members, with six members from the House of Delegates and four members from the Senate. Appointments shall be made and vacancies filled by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections, as appropriate.

C. The task force members shall be appointed to begin service on and after July 1, 1999, and shall continue to serve until July 1, 2005. They shall (i) monitor the work of the Virginia State Corporation Commission in implementing this chapter and (ii) annually report to the Governor and each session of the General Assembly during their tenure concerning the progress of each stage of the phase-in of retail competition, offering such recommendations as may be appropriate for legislative and administrative consideration.

2. That the provisions of this act shall become effective on July 1, 1999.

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APPENDIX U

SB 619 Taxation of electric utilities.

Patron-John C. Watkins

Summary:
Taxation of electric utilities. Eliminates electric utilities from paying the state gross receipts tax, the SCC special assessment tax, and the local gross receipts tax. In place of these taxes, a declining block consumption tax paid by residential, commercial, and industrial users of electric power and a net corporate income tax (part of another bill) paid by certain electric utilities are proposed. These changes are in anticipation of federal deregulation of the electric utility industry. The bill also contains a technical amendment.

Full text:
01/26/98 Senate: Presented & ordered printed 985516484

Status:
01/26/98 Senate: Referred to Committee on Finance
02/04/98 Senate: Pursuant to S.Rule 20(j),rereferred bv Fin. (15-Y 0-N 1-A)
02/04/98 Senate: Rereferred to Commerce and Labor
02/09/98 Senate: Continued to 1999 in Commerce and Labor (15-Y 0-N)

Go to (General Assembly Home) or (Bills and Resolutions)

summary

985516184

SENATE BILL NO. 619

Offered January 26, 1998

A BILL to amend and reenact §§ 58.1-2626, 58.1-2627, 58.1-2628, 58.1-2633, 58.1-2660, 58.1-2690 and 58.1-3731 of the Code of Virginia and to amend the Code of Virginia by adding to Title 58.1 a chapter numbered 29 consisting of sections numbered 58.1-2900 and 58.1-2901, relating to electric utility taxation.

Patrons-- Watkins, Holland, Norment and Reasor

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§58.1-2626, 58.1-2627, 58.1-2628, 58.1-2633, 58.1-2660, 58.1-2690 and 58.1-3731 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding to Title 58.1 a chapter numbered 29 consisting of sections numbered 58.1-2900 and 58.1-2901, as follows:

§58.1-2626. Annual state license tax on companies furnishing water, heat, light or power.

A. Every corporation doing in the Commonwealth the business of furnishing water, heat, light or power, whether by means of ~~electricity, gas~~ or steam, except a pipeline transmission company taxed pursuant to §58.1-2627.1, shall, for the privilege of doing business within the Commonwealth, pay to the Commonwealth for each tax year an annual license tax equal to one and one-eighth percent its gross receipts, actually received, from all sources up to $100,000 of such gross receipts and two and three-tenths percent of all such gross receipts in excess of $100,000. For the tax year 1989 and thereafter the license tax shall be an amount equal to two percent.

B. The state license tax provided in subsection A shall be (i) in lieu of all other state license or franchise taxes on such corporation, and (ii) in lieu of any tax upon the shares of stock issued by it.

C. Nothing herein contained shall exempt such corporation from motor vehicle license taxes, motor vehicle fuel taxes, fees required by §13.1-775.1 or from assessments for street and other local improvements, which shall be authorized by law, nor from the county, city, town, district or road levies.

D. Nothing herein contained shall annul or interfere with any contract or agreement by ordinance between such corporations and cities and towns as to compensation for the use of the streets or alleys by such corporations.

§58.1-2627. ~~Exemptions~~Receipts from a member of an affiliated group.

~~A. There shall be excluded from the gross receipts of any corporation engaged in the business of furnishing heat, light and power by means of electricity, receipts from interstate business.~~

~~B. There shall be deducted from the gross receipts of any power supply cooperative, defined in §56-231.1, which purchases electricity for the sole purpose of resale to other cooperatives, the amount paid in such taxable period by such cooperative to purchase electricity from a vendor of electricity which is subject to the tax imposed by this chapter.~~

~~C. There shall be deducted from the gross receipts of any electric cooperative, as defined in §56-209, which is engaged in sales to ultimate consumers, and every corporation engaged in the business of furnishing heat, light and power by means of electricity, the amount so paid in such taxable period by such cooperative or corporation to purchase electricity from a vendor subject to the tax imposed by this chapter.~~

~~D.~~ Whenever the total gross receipts of any corporation engaged in the business of furnishing heat, light or power by means of ~~electricity or~~ gas includes receipts from another corporation which is a member of an affiliated group of corporations and which is also subject to the tax imposed by §58.1-2626, such receipts from such other corporation shall be deducted from such total gross receipts. The term "affiliated group" shall have the meaning given in §58.1-3703.

~~E. Effective for purchases on and after July 1, 1994, there shall be deducted from the gross receipts of any electric cooperative, as defined in §56-209, which is engaged in sales to ultimate consumers, the amount paid in such taxable period by such cooperative to purchase, for the purpose of resale within the Commonwealth, electricity from a federal entity which made payments during such taxable period to the Commonwealth in lieu of taxes in accordance with a federal law requiring such payments to be calculated on the basis of such federal entity's gross proceeds from the sale of electricity.~~

§58.1-2628. Annual report.

A. Each telegraph company and telephone company shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, owned, operated or used by it as of January 1 preceding, showing particularly the county, city, town or magisterial district wherein such property is located.

The report shall also show the total gross receipts for the twelve months ending December 31 next preceding and the interstate revenue, if any, attributable to the Commonwealth. Such revenue shall include all interstate revenue from business originating and terminating within the Commonwealth and a proportion of interstate revenue from all interstate business passing through, into or out of the Commonwealth.

B. Every corporation doing in the Commonwealth the business of furnishing water, heat, light and power, whether by means of electricity, gas or steam, shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to it as of January 1 preceding, showing particularly, as to property owned by it, the county, city, town or magisterial district wherein such property is located. The report shall also show the total gross receipts *of such corporations furnishing water, heat, light and power by means of gas or steam* for the twelve months ending December 31 next preceding.

C. Every pipeline transmission company shall report annually, on April 15, to the Department all of its real and tangible personal property of every description as of the beginning of January 1 preceding, showing particularly in what city, town or county and magisterial district therein the property is located.

D. The report required by subsections A and B shall be completed on forms prepared and furnished by the Commission. The Commission shall include on such forms such information as the Commission deems necessary for the proper administration of this chapter.

E. The report required by this section shall be certified by the oath of the president or other designated official of the corporation.

§58.1-2633. Assessment by Commission.

A. The Commission shall assess the value of the property subject to local taxation of each telegraph, telephone, water, heat, light and power company, except a pipeline transmission company taxed pursuant to §58.1-2627.1, and shall assess the license tax levied hereon if such company is subject to the license tax under this article.

B. Should any such taxpayer fail to make the reports required by this article on or before April 15 of each year, the Commission shall assess the value of the property of such taxpayer, and its gross receipts, *when applicable*, upon the best and most reliable information that can be obtained by the Commission.

C. In making such assessment, the Commission may require such taxpayer or its officers and employees

to appear with such documents and papers as the Commission deems necessary.

§58.1-2660. Special revenue tax; levy.

In addition to any other taxes upon the subjects of taxation listed herein, there is hereby levied, subject to the provisions of §58.1-2664, a special regulatory revenue tax equal to two-tenths of one percent of the gross receipts such person receives from business done within the Commonwealth upon:

1. Corporations furnishing water, heat, light or power, either by means of ~~electricity,~~ gas or steam;

2. Telegraph companies owning and operating a telegraph line apparatus necessary to communicate by telecommunications in the Commonwealth;

3. Telephone companies whose gross receipts from business done within the Commonwealth exceed $50,000 or a company, the majority of stock or other property of which is owned or controlled by another telephone company, whose gross receipts exceed the amount set forth herein;

4. The Virginia Pilots' Association;

5. Railroads, except those exempt by virtue of federal law from the payment of state taxes, subject to the provisions of § 58.1-2661; and

6. Common carriers of passengers by motor vehicle, except urban and suburban bus lines, a majority of whose passengers use the buses for traveling a daily distance of not more than forty miles measured one way between their place of work, school or recreation and their place of abode.

§58.1-2690. No state or local tax on intangible personal property or money; local levies and license taxes.

A. Except as provided in this chapter, there shall be no state or local taxes assessed on the intangible personal property, gross receipts or other such money or income owned by telephone or telegraph companies, railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of ~~electricity,~~ gas or steam.

B. On the real estate and tangible personal property of every incorporated telegraph and telephone company owning or operating telegraph or telephone lines in Virginia and of railroads, pipeline companies, or corporations furnishing water, heat, light and power by means of electricity, gas or steam, there shall be local levies at the rates prescribed by §58.1-2606.

C. Notwithstanding the provisions of subsection A, any county, city or town may impose a license tax under §58.1-3703 upon a corporation owning or operating telegraph or telephone lines in Virginia for the privilege of doing business therein, which shall not exceed one-half of one percent of the gross receipts of such business accruing to such corporation from such business in such county, city or town; however, charges for long distance telephone calls shall not be considered receipts of business in such county, city or town.

D. Notwithstanding the provisions of subsection A, any county, city or town may impose an excise tax under §58.1-3818.3 upon a corporation owning or operating telegraph or telephone lines in Virginia, at a rate that shall not exceed the rate lawfully imposed by §58.1-3818.3, on such corporation's gross receipts from sales of video programming or access to video programming directly to end-user subscribers who are located within such county, city or town.

CHAPTER 29.
ELECTRIC UTILITY CONSUMPTION TAX.

§58.1-2900. Imposition of tax.

A. There is hereby imposed, in addition to the local consumer utility tax of §58.1-3812 et seq., a tax on the consumers of electricity in the Commonwealth based on kilowatt hours used per month as follows:

kWh per month	Maximum tax rate
0-2,500	$0.161/kWh
2,501-50,000	0.105/kWh
50,001 +	0.079/kWh

The tax rates herein are in lieu of and replace the state gross receipts tax (§ 58.1-2626), the local license tax (§ 58.1-3731) and the State Corporation Commission special assessment tax (§ 58.1-2633) levied on companies furnishing water, heat, light or power by means of electricity.

B. The tax authorized by this chapter shall not apply to municipalities or divisions or agencies of federal or state governments.

§58.1-2901. Collection and remittance of tax.

A. The service provider shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such provider, the tax shall constitute a debt of the consumer to the Commission. If any consumer refuses to pay the tax, the service provider shall notify the Commission. After the consumer pays the tax to service provider, the taxes collected shall be deemed to be held in trust by such provider until remitted to the Commission.

B. A service provider shall remit monthly to the Commission the amount of tax billed during the preceding month to the service provider's consumers, except for the portion which replaces the local license tax revenues that would have been collected under §58.1-3731. Such portion shall be remitted to the locality in which the electricity was sold and shall be based on such locality's license fee rate which it imposes in accordance with §58.1-3731.

§58.1-3731. Certain public service corporations; rate limitation.

Every county, city or town is hereby authorized to impose a license tax, in addition to any tax levied under Chapter 26 of this title, on (i) telephone and telegraph companies, (ii) water companies and (iii) *gas or steam* heat, light and power companies at a rate not to exceed one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in such county, city or town. However, in the case of telephone companies, charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation.

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APPENDIX V

SB 620 Taxation of wholesale power suppliers.

Patron-John C. Watkins

Summary:
Taxation of wholesale power suppliers. Provides that wholesale electric power suppliers shall be subject to the corporate tax. This proposed change is in anticipation of federal deregulation of the electric utility industry.

Full text:
01/26/98 Senate: Presented & ordered printed 988840755

Status:
01/26/98 Senate: Referred to Committee on Finance
02/04/98 Senate: Pursuant to S.Rule 20(j).rereferred by Fin. (15-Y 0-N 1-A)
02/04/98 Senate: Rereferred to Commerce and Labor
02/09/98 Senate: Continued to 1999 in Commerce and Labor (15-Y 0-N)

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summary

988840755

SENATE BILL NO. 620

Offered January 26, 1998

A BILL to amend and reenact § 58.1-401 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 58.1-400.2, relating to taxation of wholesale electric suppliers.

Patrons-- Watkins, Holland, Norment and Reasor

Referred to the Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §58.1-401 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 58.1-400.2 as follows:

§58.1-400.2. Taxation of wholesale electric power suppliers.

A. An investor-owned wholesale electric power supplier shall be subject to the tax levied pursuant to §58.1-400.

B. Cooperatives, associations, partnerships and other business entities engaged in selling wholesale electric power shall be subject to corporate tax based on modified gross receipts.

C. The following words and terms, when used in this section, shall have the following meanings:

"Modified gross receipts" means all revenue from the sale of wholesale electric power within the Commonwealth, including the proportionate part of interstate revenue attributable to sales in the Commonwealth, with the following deductions:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on the sale of wholesale electric power.

2. Revenues billed on behalf of another such wholesale electric supplier to the extent such revenues are later paid over or settled with that supplier.

"Ordinary and necessary expenses paid" means ordinary and necessary expenses paid or incurred as defined in § 162 of the Internal Revenue Code.

"Sale of wholesale electric power" means all sales other than to the ultimate retail consumer.

"Wholesale electric supplier" means any corporation, cooperative, partnership or other business entity providing wholesale electric service.

The Department of Taxation may by regulation prescribe such exceptions to this section as it deems appropriate.

§58.1-401. Exemptions and exclusions.

No tax levied pursuant to §§ 58.1-400 ~~or §~~ 58.1-400.1 *or* *§58.1-400.2* is imposed on:

1. A public service corporation to the extent such corporation is subject to the license tax on gross receipts contained in Chapter 26 (§58.1-2600 et seq.) of this title;

2. Insurance companies to the extent such company is subject to the license tax on gross premiums under Chapter 25 (§58.1-2500 et seq.) of this title and reciprocal or interinsurance exchanges which pay a

premium tax to the Commonwealth as provided by law;

3. State and national banks, banking associations and trust companies to the extent such companies are subject to the bank franchise tax on net capital;

3a. Credit unions organized and conducted as such under the laws of the Commonwealth or under the laws of the United States;

4. Electing small business corporations (S corporations);

5. Religious, educational, benevolent and other corporations not organized or conducted for pecuniary profit which by reason of their purposes or activities are exempt from income tax under the laws of the United States, except those organizations which have unrelated business income or other taxable income under such laws;

6. Telephone companies chartered in the Commonwealth which are exclusively a local mutual association and are not designated to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof;

7. A corporation that has contracted with a commercial printer for printing and that is not otherwise taxable shall not become taxable by reason of: (i) the ownership or leasing by that corporation of tangible personal property located at the Virginia premises of the commercial printer and used solely in connection with the printing contract with such person; (ii) the sale by that corporation at another location of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer; (iii) the activities in connection with the printing contract with such person of any kind performed by or on behalf of that corporation at the Virginia premises of the commercial printer; and (iv) the activities in connection with the printing contract with such person performed by the commercial printer for or on behalf of that corporation; and

8. Foreign sales corporations (FSC) and any income attributable to an FSC under the rules relating to the taxation of an FSC in Part III, Subpart C of the Internal Revenue Code (§ 921 et seq.) and the regulations thereunder.

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SJ 46 Constitutional amendment; taxation and finance, assessments.

Patron-John C. Watkins

Summary:
Constitutional amendment (first resolution); taxation and finance; assessments; assessment by central state agency. Removes requirement that a central state agency assess the real and tangible personal property of public service companies, a function currently performed by the State Corporation Commission. This amendment would allow central assessment of any real and tangible property as directed by law.

Full text:
01/16/98 Senate: Presented & ordered printed 985530755

Status:
01/16/98 Senate: Referred to Committee on Privileges and Elections
01/27/98 Senate: Pursuant to S.Rule 20(j).rerefer. bv P.& E. (15-Y 0-N)
01/27/98 Senate: Rereferred to Commerce and Labor
02/09/98 Senate: Continued to 1999 in Commerce and Labor (15-Y 0-N)

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985530755

SENATE JOINT RESOLUTION NO. 46

Offered January 16, 1998

Proposing an amendment to Section 2 of Article X of the Constitution of Virginia, relating to taxation and finance, assessments.

Patron-- Watkins

Referred to the Committee on Privileges and Elections

RESOLVED by the Senate, House of Delegates concurring, a majority of the members elected to each house agreeing, That the following amendment to the Constitution of Virginia be, and the same hereby is, proposed and referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates for its concurrence in conformity with the provisions of Section 1 of Article XII of the Constitution of Virginia, namely:

Amend Section 2 of Article X of the Constitution of Virginia as follows:

ARTICLE X Taxation and Finance Section 2. Assessments.

All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses. In the event the General Assembly defines and classifies real estate for such purposes, it shall prescribe the limits, conditions, and extent of such deferral or relief. No such deferral or relief shall be granted within the territorial limits of any county, city, town, or regional government except by ordinance adopted by the governing body thereof.

~~So long as the Commonwealth shall levy upon any public service corporation a State franchise, license, or other similar tax based upon or measured by its gross receipts or gross earnings, or any part thereof, its real estate and tangible personal property shall be assessed by a~~ *A* central State agency, as prescribed by law, *may assess real estate and tangible personal property.*

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SJ 91 Study; Joint Subcomm. Examining Electric Utility Restructuring.

Patron-Jackson E. Reasor, Jr.

Summary:

Continuing the Joint Subcommittee Examining Electric Utility Restructuring in the Commonwealth. Continues the joint subcommittee examining the potential for electric utility restructuring within Virginia. The resolution directs this joint subcommittee to continue work begun in 1996 pursuant to Senate Joint Resolution No. 118, and continued in 1997 in response to Senate Joint Resolution No. 259. These studies examined one central issue: whether Virginia should restructure its electric utility industry to (i) eliminate the exclusive service territories through which franchised electric utilities and cooperatives furnish electric power, and (ii) permit electricity customers to purchase electric power from the seller of their choice. This resolution directs the joint subcommittee to review, in detail, the restructuring legislative proposals it has received to date, as well as such other proposals as it may receive, and to obtain such technical assistance as it may require in reviewing the potential impact of such proposals or any of their components. Significantly, the resolution directs the joint subcommittee to develop a comprehensive restructuring proposal for Virginia's electricity market. The resolution encourages the SCC to continue its investigation of electric utilities, and to (i) facilitate (to the extent of the SCC's authority) the development of independent system operators in conjunction with regional power exchanges and (ii) coordinate restructuring pilot programs and studies to be conducted by Virginia's electric and gas utilities and electric cooperatives. Finally, the resolution expresses the sense of the General Assembly that Virginia's electric utilities should recover "legitimate stranded costs" (as such costs may be defined by the General Assembly) in the event of restructuring.

Full text:

01/23/98 Senate: Presented & ordered printed 980475727
02/17/98 Senate: Printed as engrossed 980475727-E
03/19/98 Senate: Enrolled bill text (SJ91ER)

Amendments:

House Amendments
Senate Amendments

Status:

01/23/98 Senate: Referred to Committee on Rules
02/04/98 Senate: Assigned to Rules sub-committee: Studies
02/16/98 Senate: Reported from Rules with amendment
02/17/98 Senate: Reading waived (39-Y 0-N)
02/17/98 Senate: VOTE: (39-Y 0-N)
02/17/98 Senate: Read second time
02/17/98 Senate: Reading of amendment waived
02/17/98 Senate: Committee amendment agreed to
02/17/98 Senate: Engrossed by Senate as amended
02/17/98 Senate: Reading waived (39-Y 0-N)
02/17/98 Senate: VOTE: (39-Y 0-N)
02/17/98 Senate: Agreed to by Senate by voice vote
02/17/98 Senate: Communicated to House
02/19/98 House: Placed on Calendar
02/20/98 House: Referred to Committee on Rules
02/20/98 House: Assigned to Rules sub-committee: 3
03/10/98 House: Reported from Rules with amendments (15-Y 0-N)
03/11/98 House: Passed by for the day
03/12/98 House: Committee amendments rejected
03/12/98 House: Amendments by Mr. Diamonstein agreed to

03/12/98 House: Engrossed by House as amended
03/12/98 House: Agreed to by House with amendments (96-Y 0-N)
03/12/98 House: VOTE: ADOPTION (96-Y 0-N)
03/13/98 Senate: Reading of amendments waived
03/13/98 Senate: Passed by temporarily
03/13/98 Senate: House amendments agreed to by Senate by voice vote

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SENATE JOINT RESOLUTION NO. 91

Continuing the Joint Subcommittee Examining Electric Utility Restructuring in the Commonwealth

Agreed to by the Senate, March 13, 1998
Agreed to by the House of Delegates, March 12, 1998

WHEREAS, the joint subcommittee examining electric utility restructuring in the Commonwealth was first established pursuant to Senate Joint Resolution No. 118 (1996), and thereafter continued by Senate Joint Resolution No. 259 (1997); and

WHEREAS, the joint subcommittee has focused its activities on the anticipated introduction of retail competition in the sale of electricity which, if authorized, would allow independent power producers, power marketers, and other utilities, from within Virginia and across the country, to compete with Virginia's electric utilities in the sale of electricity to Virginia's residential, business, and industrial electricity customers; and

WHEREAS, over a dozen states (including California, Pennsylvania, New Hampshire, Montana, and Illinois) have, either through legislation or regulation, authorized various forms of retail competition, and the remainder-like Virginia-have undertaken legislative or regulatory studies of the issue; and

WHEREAS, California is slated to begin retail competition in 1998, and other states authorizing retail competition have undertaken pilot projects, with some poised to move beyond completed pilots to the first phases of multiple-phase competition plans; and

WHEREAS, during the past two years the joint subcommittee has examined the potential for competition in the retail sale of electrical power within the Commonwealth, and has received extensive testimony from investor-owned utilities, electric cooperatives, independent power producers; representatives of large industrial and commercial electricity customers; representatives of elderly, low-income, and other residential electricity customers, as well as from environmental groups and many other parties and organizations with a stake or strong interest in the outcome of this debate; and

WHEREAS, a task force appointed by the joint subcommittee in 1997 has conducted a broad study of the state and local taxation implications of electrical restructuring, including an examination of such critical issues as taxation of out-of-state electricity providers and retaining revenue neutrality in the event of restructuring; and

WHEREAS, the joint subcommittee has benefited from the extensive and continuing study of this issue by the staff of the Virginia State Corporation Commission (SCC), receiving in 1996 a detailed overview of this issue, and, in November 1997, a report on a potential model for retail competition within the Commonwealth; and

WHEREAS, representatives of commercial and industrial customers, independent power producers, and others advocate an expedited route to retail customer choice, urging the joint subcommittee to endorse a retail competition proposal which would phase in retail competition by 2001, with the beginning phase in 1998; and

WHEREAS, representatives of elderly, low-income, and other residential consumers, together with representatives of municipal power systems and others, have stressed that their support for electric utility restructuring in Virginia is, first and foremost, contingent upon a restructuring plan providing across-the-board benefits to all electricity customer classes; and

WHEREAS, the hours of testimony heard by the joint subcommittee, combined with the voluminous materials presented for its review, suggest that Virginia as a low-cost state for electrical power is not under the same pressure to adopt retail competition as its high-cost sister states to the North, such as New Hampshire and Pennsylvania; and

WHEREAS, nevertheless, the evolution of a nationwide electricity market prompted by current and proposed federal law and the action of other states, including a number of low-cost states such as Oklahoma, in adopting restructuring legislation or regulations suggest that Virginia should take affirmative steps to ensure that the Commonwealth's structure for the generation, transmission, distribution, and retail delivery of electricity creates no undue disadvantages for its electric utilities or their customers; and

WHEREAS, the Virginia State Corporation Commission has currently pending before it rate cases by two major Virginia utilities, the disposition of which may have a significant impact on Virginia's readiness for transition to retail competition due to (i) the likely necessity of baseline rate cases at the outset of transition to retail competition, (ii) the necessity of deciding current rate cases, without regard to electric utilities' potential entitlement to stranded costs recovery, and (iii) the possibility of significant electricity cost fluctuations occurring as a consequence in the interval between the present and Virginia's implementation of retail competition; and

WHEREAS, contemporaneous with the SCC staff's presentation of its proposal for retail competition within the Commonwealth, the joint subcommittee received several conceptual proposals for restructuring within the Commonwealth, many containing suggestions for target dates, phase-in periods, stranded cost calculations, and consumer education and protection provisions; and

WHEREAS, a thorough examination and appraisal of restructuring proposals before the joint subcommittee, including comprehensive analyses of their potential impact on (i) all classes of electricity customers within the Commonwealth, (ii) state and local tax revenues tied to electric utility property and sales, (iii) the environment, and (iv) the overall reliability of Virginia's electricity generation and distribution system should precede any enactment of legislation having such substantial and long-term consequences; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the Joint Subcommittee Examining Electrical Utility Restructuring in the Commonwealth be continued. The joint subcommittee shall (i) review, in detail, the restructuring proposals it has received to date, as well as such other proposals as it may receive; (ii) obtain such technical assistance as it may require in reviewing the potential impact of such proposals or any components thereof; and (iii) develop a comprehensive legislative proposal for restructuring Virginia's electricity market appropriate for the Commonwealth and beneficial to all of its citizens; and, be it

RESOLVED FURTHER, That the Virginia State Corporation Commission (SCC) and its staff be commended for its study of this complex issue, and its invaluable assistance to the joint subcommittee to date; and, be it

RESOLVED FURTHER, That the SCC is also encouraged to continue its examination of retail restructuring and to furnish reports to the joint subcommittee concerning the results thereof, and to direct, in furtherance thereof, such SCC coordinated electricity restructuring pilot programs and studies conducted by Virginia's electric and gas utilities and electric cooperatives as it may deem feasible that will (i) produce useful information, supplementing available and relevant reports of pilot programs and studies conducted in other states, and (ii) expedite Virginia's readiness for transition to retail competition in the electricity market by all energy providers; and, be it

RESOLVED FURTHER, That the SCC is requested to proceed with due dispatch to advance Virginia's readiness for transition to a restructured electricity market by facilitating, to the fullest extent of its authority, the development of independent system operators and regional power exchanges to aid in the future dispatch and sale of electric power generation within the Commonwealth; and, be it

RESOLVED FURTHER, That it is in the public interest and essential to the economic future of the Commonwealth that electric utilities within the Commonwealth be financially sound, and that it is the sense of the General Assembly that electric utilities in the Commonwealth should have the opportunity to recover legitimate stranded costs, as may be defined by the General Assembly, in the event of electric

utility restructuring within the Commonwealth; and, be it

RESOLVED FURTHER, That the Virginia State Corporation Commission, or its staff, is requested to report to the joint subcommittee in 1998, at such times as may be requested by the joint subcommittee chairman, as to the status or disposition of pending electric utility rate cases; and, be it

RESOLVED FINALLY, That the joint subcommittee shall continue its oversight of the impact that restructuring in the electric utility industry may have on small businesses, residential consumers, and utility industry employees.

The joint subcommittee shall be composed of a total of eleven (11) members. Members appointed pursuant to SJR No. 259 (1997) shall continue to serve, with the addition of four (4) members to be appointed as follows: two (2) members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and two (2) members of the House of Delegates to be appointed by the Speaker of the House in accordance with Rule 16 of the House Rules. Vacancies shall be filled pursuant to Senate Joint Resolution No. 118 (1996) and this resolution.

The direct costs of this study shall not exceed $8,250.

An estimated $5,000 is allocated for such independent economic or technical analyses as the joint subcommittee may require in its review of restructuring proposals. Such expenses shall be funded by a separate appropriation of the General Assembly.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

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APPENDIX Y

SJ 45 Electric utility industry restructuring.

Patron-John C. Watkins

Summary:
Memorializing Congress; electric utility industry restructuring; tax implications for the Commonwealth and localities. Memorializes Congress to carefully consider the effect on tax revenue for the Commonwealth and its localities prior to enacting any federal electric industry restructuring legislation and to provide within any electric utility restructuring legislation provisions clearly granting the authority to state and local governments to continue imposing and collecting taxes from generators of electricity, even if such generators are not physically located within that state.

Full text:
01/16/98 Senate: Presented & ordered printed 985512755
02/12/98 Senate: Printed as engrossed 985512755-E
03/13/98 Senate: Enrolled bill text (SJ45ER)

Amendments:
Senate Amendments

Status:
01/16/98 Senate: Referred to Committee on Rules
02/10/98 Senate: Reported from Rules with amendment
02/11/98 Senate: Reading waived (40-Y 0-N)
02/11/98 Senate: VOTE: (40-Y 0-N)
02/12/98 Senate: Read second time
/12/98 Senate: Reading of amendment waived
2/12/98 Senate: Committee amendment agreed to
02/12/98 Senate: Engrossed by Senate as amended
02/13/98 Senate: Read third time and agreed to by Senate by voice vote
02/13/98 Senate: Communicated to House
02/18/98 House: Placed on Calendar
02/19/98 House: Referred to Committee on Rules
03/10/98 House: Reported from Rules (15-Y 0-N)
03/11/98 House: Passed by for the day
03/12/98 House: Agreed to by House (Block Vote) (100-Y 0-N)
03/12/98 House: VOTE: BLOCK VOTE PASSAGE (100-Y 0-N)

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SENATE JOINT RESOLUTION NO. 45

Memorializing Congress to carefully consider the effect of allowing retail competition by out-of-state generators of electricity on tax revenue for the Commonwealth and its localities prior to enacting any legislation restructuring the electric utility industry.

Agreed to by the Senate, February 13, 1998
Agreed to by the House of Delegates, March 12, 1998

WHEREAS, Congress is currently considering legislation that would permit retail competition among generators of electricity; and

WHEREAS, allowing such retail competition among generators of electricity would permit out-of-state generators to market electricity and related services in the Commonwealth; and

WHEREAS, the Commonwealth and its localities currently collect taxes only from the sale or consumption of electricity produced by generation facilities physically located within the Commonwealth; and

WHEREAS, the Commonwealth and its localities depend on the over $400 million in tax revenue derived annually from the sale and use of electricity to provide essential services to Virginians; and

WHEREAS, there is uncertainty surrounding the Commonwealth's legal ability to tax a generator of electricity who generates electricity outside the Commonwealth and directly sells such electricity for consumption within the Commonwealth; and

WHEREAS, a provision of federal law, Public Law 86-272, prohibits a state from subjecting sellers of tangible personal property to net income taxation if the activity within the state is limited to the solicitation of orders and certain other related or minimal activities; and

WHEREAS, there is uncertainty surrounding the Commonwealth's legal ability to require a generator of electricity who generates electricity outside the Commonwealth and directly sells such electricity for consumption within Virginia to collect consumer taxes; and,

WHEREAS, the United States Supreme Court case of *Quill v. Heitkamp,* 504 U.S. 298, (1992) suggests that the Commonwealth lacks the necessary nexus to require out-of-state generators to collect certain kinds of taxes from customers within Virginia; and

WHEREAS, such differential tax treatment among generators of electricity will prevent the formation of a truly competitive marketplace and essentially deny consumers the economic advantages of competition since such differential treatment may mean that the generator with the lowest cost on a pre-tax basis is not necessarily the most successful in the marketplace; and

WHEREAS, if the intent of restructuring the electric industry is to allow all consumers to enjoy the economic benefits of competition, any legislation enacted by Congress should clearly provide that state and local governments can continue to impose and collect taxes from generators of electricity; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Congress be urged to carefully consider the impact on tax revenue for the Commonwealth and its localities prior to enacting any federal electric industry restructuring legislation; and, be it

RESOLVED FURTHER, That any electric utility restructuring legislation enacted by Congress should clearly provide that state and local governments can continue to impose and collect taxes from generators of electricity, even if such generators are not physically located within that state; and, be it

RESOLVED FURTHER, That the Clerk of the Senate transmit a copy of this resolution to the Congressional Delegation of Virginia and the Virginia Liaison office in order that they may be apprised of the sense of the General Assembly in this matter.

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APPENDIX Z

HB 1172 Electric utility industry; schedule.

Patron-Kenneth R. Plum

Summary:
Electric Utilities; wholesale and retail competition. Establishes a schedule for Virginia's transition to retail competition in the sale of electricity, as follows: 1. The State Corporation Commission, and entities with interests in electric generation and transmission facilities and the sale of electricity in Virginia, will work to establish independent system operators and regional power exchanges by January 1, 2001. 2. The transition to retail competition and the deregulation of generation facilities (as will be defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission), will commence in Virginia on January 1, 2002. 3. Retail competition, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission, will commence in Virginia on January 1, 2004. 4. Just and reasonable net stranded costs will be recoverable and appropriate consumer safeguards related to stranded costs and stranded benefits will be implemented, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission. 5. In implementing this bill, the General Assembly and the State Corporation Commission are required to ensure reliable electric service at reasonable and just rates to all classes of consumers with due regard to the protection of the environment. 6. The General Assembly, in implementing this bill, is also required to give due regard to the unique regulatory and taxation structures of all electric utilities and power supply cooperatives in Virginia. 7. The enactment is declared to have no effect on any pending litigation at the State Corporation Commission or in any court in the Commonwealth, or on any power or duty of the Commission granted by law or the Constitution of Virginia.

Full text:
01/26/98 House: Presented & ordered printed 988634408
02/15/98 House: Committee substitute printed 980512408-H1
03/02/98 Senate: Committee substitute printed 988781727-S1
03/30/98 House: Enrolled bill text (HB1172ER)

Amendments:
Senate Amendments

Status:
01/26/98 House: Referred to Committee on Corporations, Insurance & Banking
02/05/98 House: Assigned to C. I. B. sub-committee: 1
02/15/98 House: Reported from C. I. B. w/sub. (23-Y 3-N)
02/16/98 House: Read first time
02/17/98 House: Read second time
02/17/98 House: Committee substitute agreed to 980512408-H1
02/17/98 House: Motion to pending question agreed to
02/17/98 House: Pending question ordered
02/17/98 House: Engrossed by House - com. sub. 980512408-H1
02/17/98 House: Constitutional reading dispensed
02/17/98 House: Passed House (82-Y 16-N)
02/17/98 House: VOTE: PASSAGE (82-Y 16-N)
02/17/98 House: Communicated to Senate
02/19/98 Senate: Constitutional reading dispensed
02/19/98 Senate: Referred to Committee on Commerce and Labor
03/02/98 Senate: Reported from C. & L. with substitute (14-Y 0-N 1-A)
03/03/98 Senate: Const. reading disp., passed by for the day (39-Y 0-N)
03/03/98 Senate: VOTE: CONST. RDG. DISPENSED R (39-Y 0-N)
03/04/98 Senate: Read third time
03/04/98 Senate: Reading of substitute waived

03/04/98 Senate: Committee substitute agreed to 988781727-S1
03/04/98 Senate: Reading of amendment waived
03/04/98 Senate: Amendment #1 by Sen. Marye rejected
03/04/98 Senate: Reading of amendments waived
03/04/98 Senate: Amendments #2 & 3 by Sen. Reasor agreed to
03/04/98 Senate: Engrossed by Senate - comm. sub. w/amds. 988781727-ES1
03/04/98 Senate: Passed Senate with sub. w/amds. (35-Y 2-N 2-A)
03/04/98 House: Placed on Calendar
03/04/98 Senate: VOTE: PASSAGE R (35-Y 2-N)
03/05/98 House: Passed by for the day
03/06/98 House: Passed by for the day
03/09/98 House: Passed by for the day
03/10/98 House: Passed by for the day
03/11/98 House: Passed by for the day
03/12/98 House: Senate sub. w/amds. agreed to by House (89-Y 7-N)
03/12/98 House: VOTE: ADOPTION (89-Y 7-N)

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summary

VIRGINIA ACTS OF ASSEMBLY -- CHAPTER

An Act to establish a schedule for Virginia's transition to retail competition in the electric utility industry.

[H 1172]
Approved

Whereas, other states have begun making modifications to their electric utility industry for the ultimate purpose of permitting competition in the retail sale of electricity, and these regional changes are likely to impact Virginia's electric utilities and their customers irrespective of whether a transition to retail competition is begun in this Commonwealth; and

Whereas, it is in the best interest of the citizens of this Commonwealth that preparations begin for Virginia's transition to a competitive retail electricity market to ensure that (i) all Virginians have access to electricity at a reasonable price, and (ii) Virginia's electric utilities are sufficiently prepared to enter and thrive in this new market; and

Whereas, the State Corporation Commission may, pursuant to the provisions of Title 56 of the Code of Virginia, approve and impose requirements on electric utilities doing business in the Commonwealth to implement electric energy programs that are intended to benefit the public health, safety and welfare, including programs the purpose of which are to (i) educate consumers; (ii) ensure that each distributor in the Commonwealth provides access to its retail distribution system to each retail customer in its service territory; (iii) promote electric energy efficiency and conservation, protection of the environment, and research and development; (iv) provide minimum standards of training for employees who operate and maintain the facilities of an independent system operator or a regional power exchange; or (v) educate, retrain, or provide outplacement services for employees of electric utilities whose employment will be directly affected by the implementation of competition for the purchase and sale of electric energy pursuant to this act; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The State Corporation Commission and those parties involved in electric generating and transmission facilities and the sale of electricity in Virginia shall work together to strive to establish one or more independent system operators and one or more regional power exchanges that serve the public interest in the Commonwealth by January 1, 2001.*

§ 2. The transition to retail competition and the deregulation of generation facilities, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission, shall commence in Virginia on January 1, 2002.

§ 3. Retail competition, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission, shall commence in Virginia on January 1, 2004.

§ 4. Just and reasonable net stranded costs shall be recoverable and appropriate consumer safeguards related to stranded costs and considering stranded benefits shall be implemented, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission.

§ 5. In the implementation of any of the previous sections, the General Assembly and the State Corporation Commission shall ensure reliable electric service at reasonable and just rates to all classes of consumers with due regard to the protection of the environment.

§ 6. In implementing the provisions hereof, the General Assembly shall give due regard to the unique regulatory and taxation structures of all electric utilities and power supply cooperatives in Virginia.

§ 7. The enactment shall have no effect on any pending litigation at the State Corporation Commission

or in any court in the Commonwealth, or on any power or duty of the Commission granted by law or the Constitution of Virginia.

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