REPORT OF THE
LEGISLATIVE TRANSITION TASK FORCE
ESTABLISHED UNDER

The Virginia Electric Restructuring Act

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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EXECUTIVE SUMMARY

The Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, was enacted by the 1999 Session of the General Assembly. When the Act is fully implemented, consumers in the Commonwealth will be able to purchase electric generation services from the supplier of their choice. The Legislative Transition Task Force was established to work collaboratively with the State Corporation Commission (SCC) in conjunction with the phase-in of retail competition in electric services. The Task Force's creation was an acknowledgement that the General Assembly's responsibilities with respect to implementing retail choice did not end with the passing of the Restructuring Act. The transition from the traditional regulated utility model to a new era of competition for generation services requires constant monitoring, and occasional adjustments, by the General Assembly.

The Task Force continues to view the Restructuring Act as a dynamic document that can be fine-tuned to address evolving circumstances and issues raised during the course of the transition to competition. A measured implementation of electric utility restructuring is expected to allow the Commonwealth to avoid market difficulties experienced by some of the other states that implemented electric utility deregulation on a more rapid schedule.

In its third year of existence, the Legislative Transition Task Force met five times. Major issues examined by the Task Force included the siting of electric generating facilities, functional separation, the status of competition, and regional transmission entities. The Task Force also addressed a dozen proposals for amendments to the Restructuring Act and related legislation.

- Siting of Electricity Generation Facilities

The Task Force was charged, pursuant to Senate Joint Resolution 467 (2001), to study procedures applicable to the construction of new electricity generation facilities in the Commonwealth. The Task Force was directed to recommend amendments to applicable procedures as may be appropriate to facilitate the approval of construction of sufficient electricity generation capacity to provide a competitive market for electricity in the Commonwealth as soon as practical, without lessening necessary environmental considerations.

The Task Force's review of the generation facility siting process produced two legislative recommendations. First, the Task Force was persuaded that the SCC's review of environmental and other issues that had previously been addressed by other governmental agencies could create duplication and uncertainty in the permitting process. As a result, the Task Force recommended legislation, introduced as Senate Bill 554, that directs that requirements for the SCC's consideration of the effect of electric generation plants and associated facilities would be deemed satisfied by the other agency's issuance of permits or approvals regulating environmental and other public interest issues.

The second legislative recommendation of the Task Force with respect to electricity generation facility siting was to request that its study of the issue pursuant to Senate Joint Resolution 467 be extended for a second year. The SCC's decision to review and revise its permitting procedures, which followed from the Restructuring Act's revisions to the role of the

SCC in approving new generation facilities, began in June 2001. As the work of the Task Force for this period was nearing an end in December 2001, the SCC adopted revised requirements and published additional proposed rules for comment. The additional proposed rules address the cumulative environmental impacts of proposed new electric generating facilities, market power issues, and expedited permitting procedures for small power plants. The uncertainty regarding the status of facility permitting procedures necessitates an additional year of review by the Task Force.

- Functional Separation Issues

The Restructuring Act requires that incumbent electric utilities effect the separation of their generation, distribution and transmission functions effective with the advent of the phase-in of competition on January 1, 2002. The Commonwealth's two largest incumbent electric utilities - Dominion Virginia Power and American Electric Power-Virginia -- filed functional separation plans with the SCC, which involved transferring generation assets to new, affiliated companies. This "legal separation" approach was criticized in several quarters by advocates of "divisional separation" wherein the utility's functions would remain within the existing corporate entity but be segregated into distinct divisions. The SCC ruled on December 18, 2001, that Dominion Virginia Power's legal separation plan would impose unacceptable risks on the utility's consumers, and would result in a ceding of state oversight over power purchase agreements between the generation company and the distribution company to the Federal Energy Regulatory Commission. The SCC reasoned that the utility's obligation to provide generation services as a default service provider pursuant to the proposed power purchase agreement would be subject solely to federal regulation because the new generation company would be an "exempt wholesale generator" under federal law.

American Electric Power-Virginia's functional separation plan case was placed on hold in December 2001 pursuant to an agreement stipulating that the utility would continue its existing functional separation by corporate divisions. The stipulation further provides that there would be further inquiry into this matter during 2002.

- The Status of Competition in Virginia and Elsewhere

Amendments to the Restructuring Act adopted in the 2001 Session directed the SCC to report annually on the status of the development of regional competitive markets and the status of competition on Virginia, and to make any recommendations to facilitate effective competition in Virginia as soon as practicable.

The analysis presented to the Task Force regarding the development of regional competitive markets compared actual prices with the prices that would be expected in a fully competitive market. Wholesale market prices and volatility have hampered the development of retail markets nationally. Generation owners, it was suggested, have significant market power in some wholesale markets. The transition to competitive retail markets has been more difficult, and is taking longer, than many expected.

With respect to competition in Virginia, the retail choice pilot programs did not attract hoped-for levels of participation either by consumers or by suppliers. The statutory opening of the retail market to new entrants does not ensure that competition will exist overnight. Competition requires competitors who decide to offer services to Virginians. While several new competitive suppliers have been licensed by the SCC, they may elect not to sell power in Virginia if wholesale prices inhibit their inability to sell their services or products at a price that allows them to earn a profit. While Virginia is attempting to build the foundation for a competitive market, a healthy regional wholesale market is a precondition to enticing competitive service providers to operate here.

At the federal level, the Bush Administration's National Energy Policy has recognized electric utility restructuring as the most recent step in the transition from reliance on regulation to reliance on competitive forces. Congress continues its consideration of various legislative proposals aimed at facilitating the growth of competitive electricity markets, principally by addressing issues relating to regional transmission organizations and system reliability.

Several other states have slowed their moves towards restructuring aspects of their electric utilities, largely in response to California's experience. Trends indicate that the economics of the electricity business have not encouraged small customers to switch to new providers in other states that have restructured. While restructuring laws have generated savings for consumers, they have done so primarily via legislative fiat rather than through competition. While some consumers have received savings from access to competitive markets, larger consumers have garnered more savings than have smaller customers.

- Regional Transmission Entities

As 2001 ended, the Federal Energy Regulatory Commission's decision that the Alliance regional transmission organization did not satisfy certain key requirements of FERC Order 2000 has required all parties to reassess their options. In 2002, this issue will be revisited by the Task Force, as the Restructuring Act requires incumbent electric utilities that own, operate, control or have access to transmission capacity to join or establish a regional transmission entity by January 1, 2001. A regional transmission entity, which must be approved by the SCC, will manage and control the utility's transmission system in order to ensure that competitive service providers have unrestricted access to the transmission system for delivering power to customers.

- Legislative Recommendations

The Task Force endorsed seven proposals for legislation pertaining to electric utility restructuring that were enacted by the 2002 Session of the General Assembly:

- House Bill 747 expands the duties of the Department of Social Services to report the extent to which there is unmet need for energy assistance programs within Virginia, and related matters pertaining to the administration of the Home Energy Assistance Program. This was a recommendation of the Consumer Advisory Board.

- House Bill 748 creates an income tax return check-off for voluntary contributions to the Home Energy Assistance Program. This was a recommendation of the Consumer Advisory Board.

- Senate Bill 257 authorizes the Governor to require electricity generators to generate, dispatch or sell electricity for distribution within areas of the Commonwealth that are designated in a declaration of an electric energy emergency.

- Senate Bill 258 reenacts the definition of a "cogenerator" for purposes of public service corporation taxation.

- Senate Bill 259 exempts certain small electric facilities from the definition of an "electric supplier" for purposes of public service corporation taxation.

- Senate Bill 554 seeks to eliminate duplication by the SCC in its environmental and other reviews of proposed electric generating facilities.

- Senate Joint Resolution 116 continues the study by the Task Force, pursuant to Senate Joint Resolution 467 of 2001, regarding the procedures applicable to the permitting of the construction and operation of new electric generation facilities.

The Task Force endorsed two additional legislative proposals that were not enacted by the 2002 Session of the General Assembly:

- House Bill 732 would have authorized the SCC to require a provider of electric distribution services that becomes obligated to provide default service to acquire or build electric energy production facilities.

- House Bill 746 would have provided grants to persons for a portion of the cost of installing certain photovoltaic or solar water heating facilities.

Finally, the Task Force chose not to support several proposals that were offered for its consideration:

- Senate Bill 356, and companion House Bills, would have allowed the City of Martinsville's electric utility system to provide service in the Bassett area of Henry County, while maintaining its exemption from provisions of the Restructuring Act.

- Senate Bill 377 would have provided tax refunds and grants for the use of clean and efficient energy, including grants for power produced from renewable energy resources, sales tax refunds on energy-efficient appliances, and partial refunds of the titling tax for clean fuel vehicles, as well as grants similar to those included in House Bill 746.

- A proposal recommended by a majority of members of the Consumer Advisory Board would have imposed a three-cents-per-month assessment on all Virginia customer

accounts, in order to provide a dedicated revenue source for the Home Energy Assistance Fund.

- A proposal recommended by the Consumer Advisory Board would have provided $1 million in tax credits, under the Neighborhood Assistance Act program, to businesses that make contributions to the Home Energy Assistance Program.

- A proposal advanced by AES New Energy and Old Mill Power Company to, among other things, phase out the wires charges that may be assessed against customers who switch from incumbent electric utilities to competitive service providers, by 20 percent each year.

As the first phase of retail competition for electric generation services commences on January 1, 2002, the Task Force is prepared to continue implementing its duty to ensure that the transition to competition is advanced in a manner that harnesses the efficiencies inherent in a market-based system while allowing all Virginians to have the opportunity to realize its advantages without creating undue disruptions.

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LEGISLATIVE TRANSITION TASK FORCE
ESTABLISHED PURSUANT TO THE
VIRGINA ELECTRIC UTILITY RESTRUCTURING ACT

To: The Honorable Mark Warner, Governor of Virginia
and
The General Assembly of Virginia

Richmond, Virginia
April, 2002

I. INTRODUCTION

The Virginia Electric Utility Restructuring Act establishes the framework through which sales of retail electric generation services will be deregulated. The history of the development of the Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, is recounted in the 2001 report of the Legislative Transition Task Force.

The Restructuring Act creates the Legislative Transition Task Force for the purpose of working collaboratively with the State Corporation Commission (SCC) in conjunction with the phase-in of retail competition in electric services within the Commonwealth. The statutory responsibilities of the Task Force under § 56-595 of the Restructuring Act are set forth in Appendix A.

The Task Force consists of 10 members, who will serve until July 1, 2005: Senator Norment of James City County, chairman; Delegate Woodrum of Roanoke, vice chairman; Senator Stolle of Virginia Beach; Senator Watkins of Chesterfield County; Senator Saslaw of Fairfax County; Delegate J.C. Jones of Norfolk; Delegate Kilgore of Scott County; Delegate Parrish of Manassas; Delegate Plum of Fairfax County; and Delegate Tata of Virginia Beach.

The first report of the Task Force, detailing its activities and the recommendations developed during the 1999 interim, was submitted as Senate Document 54 of 2000. The Task Force's second year of work is reported in Senate Document 39 of 2001. Printed copies are available through the General Assembly's bill room (telephone 804-786-6984). These reports may be viewed at the Task Force's Internet web site (http://dls.state.va.us/elecutil.htm). The web site also provides access to many of the materials submitted at the Task Force's meetings, as well as links to the text of the Restructuring Act and the annual reports of the Joint Subcommittee Studying Restructuring of the Electric Utility Industry that created the Restructuring Act. The annual report of the joint subcommittee pursuant to Senate Joint Resolution 118 (1996) is Senate Document 28 (1997); the report pursuant to Senate Joint Resolution 259 (1997) is Senate Document 40 (1998); and the report pursuant to Senate Joint Resolution 91 (1998) is Senate Document 34 (1999).

II. ISSUES EXAMINED BY THE TASK FORCE

The Legislative Transition Task Force conducted five meetings -- on September 7, 2001, October 16, 2001, November 26, 2001, December 21, 2001, and January 7, 2002 -- between the 2001 and 2002 legislative sessions. Consistent with its statutory authorization, Task Force meetings focused on issues that the Restructuring Act directs the Task Force to examine, issues that arose in the course of the State Corporation Commission's implementation of the Act, and issues pertaining to the monitoring of utility restructuring within Virginia, in other states, and at the federal level.

A. SENATE JOINT RESOLUTION 467 -- THE SITING PROCESS FOR ELECTRICITY GENERATION FACILITIES

During the 2000 interim, the Task Force was advised that California's electricity woes were attributable in no small part to the lack of construction of new generation facilities. A group of stakeholders viewed an adequate supply of electricity as critical to the development of a competitive market for electric generation services, and urged that steps be taken to streamline the procedures applicable to the construction of electricity generation facilities.

With the concurrence of the Task Force, Senator Norment introduced Senate Joint Resolution 467 (Appendix B) in the 2001 Session. The resolution directs the Task Force to study procedures applicable to the construction of new electricity generation facilities in the Commonwealth, and to recommend any amendments to the Commonwealth's administrative and regulatory procedures as may be appropriate to facilitate the approval of construction of sufficient electricity generation capacity to provide a competitive market for electricity in the Commonwealth as soon as practical, without lessening necessary environmental considerations including siting and air quality impacts. The Task Force began its examination of Virginia's administrative and regulatory procedures for permitting electricity generation facilities, in furtherance of the goal of facilitating the approval of construction of electricity generation capacity in the Commonwealth, at its October 16, 2001, meeting.

1. Facility Siting Process

Virginia law currently does not have a single procedure for obtaining all approvals required to build and operate a power plant. Rather, prospective generators must obtain independent approvals from the State Corporation Commission, environmental regulators, and local governments (Appendix C). Because applicants apply for the necessary approvals simultaneously or in a sequence they select, ascertaining the number and status of facilities in the approval processes can be problematic. The number and type of environmental protection permits that a power plant developer is required to obtain varies depending on the type of facility, the amount of anticipated emissions, and other factors.

While the Department of Environmental Quality (DEQ) staffs the State Water Control Board, Air Pollution Control Board, and Waste Management boards, it also assists the SCC in its consideration of the environmental impacts of plant siting decisions as required by § 56-46.1 of the Code of Virginia. In coordinating the environmental review for the SCC, the DEQ provides

information on the avoidance and minimization of adverse environmental impacts. On average, DEQ's environmental impact review for the SCC takes 57 days.

Facilities with the potential to emit more than 250 tons per day must obtain a Prevention of Serious Degradation (PSD) permit from the Air Pollution Control Board. The potential emission from a power plant must be modeled prior to the issuance of a PSD permit. The average time for issuance of a PSD permit is 50 days from receipt of a completed application, though the period from initial consultation with DEQ to permit issuance typically is 11 or 12 months. The average time for issuance of a state major source permit, required of facilities emitting between 100 and 250 tons per day, is 86 days. Unlike PSD permits, state major source permits do not require review by the Environmental Protection Agency (EPA) or federal land managers.

Regardless of whether a PSD permit is required, all new power plants must comply with requirements that they use the best available pollution control technology (BACT) and major facilities must demonstrate compliance with local zoning prior to applying for a permit. DEQ has been conducting in-house modeling of emission of plants that do not meet PSD permit emission thresholds. The most recent model run October 1 with eight proposed power plants shows a negligible cumulative increase of about one percent in concentrations of ground level ozone concentrations.

A generator may need to obtain a Virginia Pollution Discharge Elimination System (VPDES) permit if the primary discharge from power plants is cooling water. The average processing time for a VPDES permit, which includes reviews by the EPA of major facilities, publication and public comment, and public hearing, is 168 days. The issuance of Virginia Water Protection permits requires an average of 180 days if the generating unit involves more than wetland impacts. The maximum period for wetlands impacts permits is 120 days, though general permit coverage is available in less than 45 days for projects affecting less than one-half acre of wetlands.

The SCC's process for permitting new generation facilities has recently been substantially revised. On June 12, 2001, the Commission established a proceeding (Case No. PUE010313) to develop new filing requirements for entities seeking to construct and operate generating facilities. A Commission order entered August 3, 2001, provided that applications filed after January 1, 2001, will no longer be required to obtain a certificate of public convenience and necessity or to obtain approval for expenditures. Instead, effective with the commencement of electric industry restructuring, SCC issuance of a certificate to construct and operate a new power generation facility will be conditioned on findings that the facility will not materially adversely effect reliability and is not otherwise contrary to the public interest, and reflects consideration of the facility's effect on the environment.

Howard Spinner, senior utilities analyst at the SCC, reported that in the past five years, Virginia has issued permit for five gas-fired plants, of which four are completed and operating (with a capacity of approximately 1,500 MW) and the fifth (a 540 MW gas-fired conversion project) is under construction. Applications for another eight gas-fired power plants, with 7,000 MW of capacity, are now pending before the SCC. In addition, the SCC expects to receive

applications from plants that if built will provide another 8,100 MW, of which 1,600 MW would be fueled by coal and the balance by natural gas. To put this additional generating capacity in perspective, Virginia is served by plants with 20,000 MW of capacity. Members were cautioned that all of the announced projects may not ultimately be constructed for various, reasons including zoning disputes and economic considerations.

The construction and operation of a power generation facility must also comply with local zoning and comprehensive plan requirements. All but a handful of Virginia localities have enacted zoning ordinances, which generally require power plants to be in industrial zones. Requirements that prospective generators obtain approval for property rezoning or use permits have precipitated disputes in some localities. In addition, § 15.2-2232 prohibits the construction of public utility facilities and public service company facilities that are not shown on a locality's master plan unless the project is approved as being in accord with the comprehensive plan.

Flippo Hicks of the Virginia Association of Counties observed that most counties are eager to add new, cleaner "peaking" plants to their tax base. He urged the Task Force not to curtail the land use control powers of local governments with respect to generation facilities. He distinguished the propriety of local zoning controls over power plants from control over transmission lines, over which localities have no control over siting. The fact that power lines cross multiple jurisdictions justifies giving authority over line siting to the SCC. With regard to power plants, consolidating land use approvals in a state agency would, he contended, require a new, large bureaucracy, and would involve the state in many decisions that traditionally have been a local function.

2. Effects of New Generation Facilities on Air Quality

At its November 26, 2001, meeting, the Task Force directed its focus on the potential environmental effects of proposed new electric generation facilities in Virginia. The deregulation of the electric utility industry has spurned a proliferation of proposed new power plants. It was reported that 28 new power plants have either received or requested air permits in the preceding two years. Five air permits have been issued; applications for 14 plants are being processed; and applications for nine plants are in initial stages. Melanie Davenport, chair of the State Advisory Board on Air Pollution (SAB), estimated that between 40 and 50 percent of the proposed plants would be constructed.

In response to concerns that the cumulative effect of numerous power plants that individually do not meet the threshold for requiring PSD permitting may nonetheless have a significant impact on air quality, the Air Pollution Control Board directed the SAB on Air Pollution to study the cumulative environmental impacts of the recent proliferation of applications for new power plants. A Cumulative Effects Work Group of the SAB focused on nitrogen oxide (NOx) emissions and regional ozone modeling. The Work Group split into two subgroups due to disagreements over the breadth and scope of evaluating complex cumulative effect issues.

Much of the concern focused on the need for cumulative modeling of generation facilities. Currently, individual air quality modeling is done for major individual plants, which

emit more than 250 tons annually. An air quality assessment of the cumulative effect of multiple minor sources is not required. Much of the concern with the effect of proposed plants on air quality is directed at NOx, which is a major precursor or ingredient in ozone, from the combustion of natural gas. All but two of the proposed power plants expect to use natural gas as their major fuel source.

Separate reports were prepared by the industry and economic development subgroup and the environment and health subgroup. The two subgroups presented their reports to the Air Pollution Control Board on November 7, 2001. The SAB's chair provided the Task Force with summaries of each group's report. Summaries of the two reports are attached as Appendix D and Appendix E.

The industry and economic development subgroup concluded that the DEQ has performed additional modeling beyond what is required for synthetic minor sources, which are sources where emissions are limited by stipulation to levels below the threshold for designation as major sources. Cumulative impact modeling based on the addition of eight of the new power plants shows that they will have no appreciable impact. DEQ does not have the staff to support multi-source modeling for synthetic minor sources. The cost to outsource multi-source modeling is at least $500,000. The DEQ's statewide air quality monitoring over the past 10 years shows no clear trends in ozone and NOx data. Forthcoming changes in allowed emission levels under the Phase II acid rain reductions, NOx SIP call, and regional haze rules will require reductions in ozone precursors. Emissions from automobiles and trucks are underrepresented in measuring cumulative impacts. Finally, power plant siting decisions are based on the proximity to natural gas lines, electricity transmission lines, and water sources rather than on whether sites are in air quality attainment areas.

The industry and economic development subgroup offered five recommendations. Periodic reassessments of regional ozone impacts should be conducted no more than twice per year. Public perception and awareness of cumulative impacts should be improved by highlighting DEQ's efforts in multi-source modeling and providing projections for emissions. The Commonwealth should participate in multistate initiatives addressing cumulative impacts. Contributions of mobile sources should be properly evaluated when cumulative impacts are examined. Finally, DEQ should continue to research and evaluate cumulative impacts with a clearly defined mission.

The environment and health subgroup asserts that much of the permitting activity is clustered in three "hotspots" in Central Piedmont, South Central Virginia and Northern Virginia. The subgroups concluded that Virginia must ensure a balance between environment and health concerns and needs for clean energy and industrial growth. Kentucky, Tennessee, Georgia and states in the Pacific Northwest have slowed their energy development programs to allow time for cumulative effect analyses. The scope, magnitude and rate of proliferation of power plant permit applications warrants a timely, broad cumulative effects modeling analysis in order for DEQ and the SCC to make fully informed decisions. The report states that there has not been a comprehensive review of the adequacy of Virginia's prevention of serious degradation (PSD) program, and that the National Park Service has conducted over twice as many new source permit reviews for the Shenandoah National Park than for any other park.

Recommendations of the environment and health subgroup to the Air Pollution Control Board include (i) continuing the Cumulative Effects Work Group using the mission statement proposed by this subgroup; (ii) expanding and accelerating DEQ modeling activities to include, among other things, regional ozone modeling and "worst case" cumulative effects analysis; (iii) considering additional DEQ and SCC staffing needs; (iv) adding information on trends to DEQ's annual monitoring reports; (v) forming a separate work group to address mobile sources; and (vi) installing and operating additional ozone and particulate monitors.

In response to questions regarding the number and status of applications for approval to construct and operate new or expanded electricity generation facilities, David Paylor of the DEQ provided members of the Task Force with information on facilities with DEQ approval pending or that have contacted DEQ in some fashion, as of November 1, 2001. A copy of the compilation is attached as Appendix F.

Pamela Faggert of Dominion Virginia Power, in her response to the SAB's summary (Appendix G), emphasized that an expansion of Virginia's power generation capacity is the best insurance against the problems that California faced last year, and that DEQ's cumulative assessment of multiple sources, which showed a contribution to NOx levels that fell "within noise level," did not include the effect of more stringent regulations that have already been promulgated. A statewide cap on NOx levels has been established, which cannot be exceeded regardless of the number of new plants that come on-line.

Dan Holmes of the Piedmont Environmental Council (PEC) underscored that Virginia is seeing applications for approximately 30 plants that would double the state's generation capacity. He contended that technologies are available to permit cumulative effect modeling, and that large gaps exist in the air quality monitoring system for the Central Piedmont and South Central regions of the State. While a statewide cap on NOx emissions will be implemented under the NOx SIP Call, the PEC is concerned that generators in Virginia may purchase emissions credits from sources in other states, thereby allowing the total amount of NOx emitted in Virginia to exceed the state's cap. Ms. Faggert acknowledged that while cross-border trading in emissions credits would be allowed, economic development in other states limits the practical possibility that generators in other states would trade their emissions credits to Virginia firms.

August Wallmeyer, representing Virginia's independent power producers, discounted concerns that a flood of new power plants would harm Virginia's air quality. He estimated that probably six to eight of the proposed plants for which applications are pending would be built. In addition, the new planned plants are required to use best available pollution control technologies, which makes them cleaner than older plants.

3. Other Environmental Considerations

SJR 467 directs the Task Force to recommend any appropriate improvements to the generation facility permitting process without lessening necessary environmental considerations. Chris Miller, president of the PEC, pointed out that the facilities under consideration could have large impacts on the environment through factors other than NOx emissions, including their consumptive usage of water.

In addition, a few of the plants are planning to burn coal, which can have a much greater environmental impact than natural gas-fired plants. He urged the Task Force not to leave the State and the SCC without the ability to examine the plants on a cumulative basis, and asserted that the SCC has a role in weighing the environmental issues against economic considerations. Allowing power plants to be built in rural areas, or greenfields, may result in improper spot zoning. He praised those firms that are building power plants in existing industrial areas, or brownfields, and those that are using dry cooling technologies to reduce water usage. The effect of the planned facilities on conservation areas and historic sites was also raised.

4. House Bill 2759

During the 2001 Session, the Corporations, Insurance and Banking Committee asked the Task Force to study the issues raised by House Bill 2759, which was introduced by former Delegate Harris. The bill would require the SCC to consider the impact of nitrogen oxide emissions, if any, from any proposed electric facility when approving construction of electric facilities, to evaluate the cumulative impact of nitrogen oxide emissions of the proposed facility and existing facilities in the geographic area of the proposed facility, and to require that any report of the environmental impact of the proposed facility be available to the public prior to any public hearing held in the approval process. The bill would also prohibit the Commission from approving the construction of any facility where emissions from the operation of such facility result in a violation of national ambient air quality standards.

The Task Force addressed this proposal in the context of its siting process study under SJR 467. John Daniel, Director of Air Program Coordination at DEQ, reported that HB 2759 would not require the SCC to do anything that is not currently being done by DEQ.

5. Revised Generation Facility Permitting Procedures

As noted previously, the SCC opened a proceeding (Case No. PUE010313) on June 12, 2001, to establish new filing requirements for applicants seeking to construct and operate new electric generating facilities in Virginia. By order of August 3, 2001, the SCC ruled that §§ 56-234.3 and 56-265.2 would not be applicable in the Commission's approval process for the construction and operation of electric generating facilities.

On December 14, 2001, the SCC issued an order adopting new rules regarding applications for authority to construct and operate an electric generating facility, effective for applications filed on or after January 1, 2002. The new rules omit requirements that applicants show a need for their facilities. The rules also address the applicant's technical and financial fitness; the facility's impacts on the environment, economic development, and electric system reliability; and other public interest considerations.

The Commission's order also published additional proposed rules for comment in a new docket (Case No. PUE010665). These additional rules address the cumulative environmental impacts (including impacts on water and gas supplies) that may be caused by the many proposed

new electric generating facilities, filing requirements relating to market power, and expedited permitting processes for small generation facilities of 50 megawatts or less.

6. Duplication of Approval Requirements

One of the more controversial applications to build an electric generation facility was filed in January 2001 by Tenaska Virginia Partners, L.P., for a plant in Fluvanna County (Case No. PUE010039). On October 23, 2001, Hearing Examiner Michael Thomas issued his report with recommendations to the SCC. Four points in his report sparked a negative reaction by Virginia Energy Providers (VEP), a group of entities interested in the development of electric generation facilities in the Commonwealth. VEPs concerns included (i) a finding that Tenaska's proposed use of fuel oil as a backup to natural gas would be contrary to the public interest; (ii) an assertion that DEQ's air quality analysis fails to take into account cumulative increases in air pollution; (iii) criticisms of DEQ's air quality modeling procedures; and (iv) a recommendation that the developer not be allowed to use fuel oil as a backup fuel source, due in part because of concerns about traffic, notwithstanding a VDOT-approved transportation plan.

The VEP contended that the hearing examiner's construction of the provision of § 56-265.2 B that requires a Commission finding that a facility is "not otherwise contrary to the public interest" is sufficiently broad to give the SCC virtual veto power over the decisions of the DEQ, VDOT, and other state agencies. VEP also complained that the statute's directive that the SCC "establish such conditions as may be desirable or necessary to minimize adverse impact as provided in § 56-46.1" creates conflicts with DEQ, uncertainty about environmental permitting authority, and questions about technical competence to make environmental determinations.

VEP was also concerned with the SCC hearing examiner's conclusions in an application on a proposed Tractebel facility. In this case, it was asserted that the Federal Aviation Administration's issuance of a "no hazard" letter regarding the plant's potential interference with aviation did not preclude the SCC from reaching a different conclusion and denying the requested certificate of public convenience and necessity based on its own determinations as to whether the facility presents potential hazards to aviation. Finally, VEP expressed disagreement with the SCC's proposed rulemaking process (see Part A 6) to consider the cumulative impacts of air and water issues, market power, and utility infrastructure issues. If the proposed rules were adopted, it was asserted, the SCC would be giving itself the power to effectively override the decisions of any other governmental agency.

The SCC's actions were criticized as (i) causing competing governmental reviews of the same subject matter, (ii) giving the SCC the power to overrule decisions by agencies with greater expertise in their particular areas, and (iii) increasing permitting uncertainty and thereby undermining the goals of providing adequate generating resources to serve Virginians and to insure reliability for consumers. Proposed legislation that the VEP advanced in an attempt to address these concerns is discussed at Part III I, below.

B. FUNCTIONAL SEPARATION PLANS

Section 56-590 of the Restructuring Act required incumbent electric utilities to file with the SCC, by January 1, 2001, their plan to effect the separation of their generation, transmission, and distribution functions. This separation of functions may be accomplished through the creation of affiliates, which is referred to as legal separation, or through such other means as the SCC finds acceptable, such as separation by divisions of the same corporate entity. The Commission is authorized to impose conditions on the utility's functional separation plan as the public interest requires.

Though the requirement for SCC approval of functional separation plans applies to all incumbent electric utilities, the Task Force became involved this year with monitoring the approval of the plans filed by the two largest investor-owned electric utilities, Virginia Electric and Power Company (Virginia Power) and American Electric Power-Virginia (AEP). The Commission previously approved functional separation plans for two other Virginia utilities, Allegheny Power and Conectiv.

1. Virginia Power's Plan for Legal Separation

Virginia Power's application under § 56-590 B of the Restructuring Act for approval of its functional separation plan was filed with the SCC in November 2000. Virginia Power proposed to separate its generation assets and operations from its transmission and distribution assets and operations by transferring $6.7 billion in generation assets, together with its rights and obligations under its nonutility generation contracts and other rights and obligations related to its generation operations, to a new company to be named Dominion Generation Corporation. Virginia Power will distribute the stock of Dominion Generation to its parent, Dominion Resources, Inc., with the result that Dominion Generation will be a subsidiary of Dominion Resources, Inc.

Virginia Power will retain its transmission and distribution assets and operations and will be known as Dominion Virginia Power. The accounts and employees of Dominion Generation and Dominion Virginia Power will be separated. Dominion Virginia Power will conduct electric transmission operations, customer service and metering, and gas and electric distribution operations in Virginia and other states. Dominion Virginia Power will be the incumbent electric utility under the Virginia Electric Utility Restructuring Act.

The payment obligations under the outstanding $3.8 billion in debt financings of Virginia Power will be allocated between Dominion Virginia Power and Dominion Generation.

Under the functional separation plan, Dominion Virginia Power will:

- Collect wires charges from retail customers on behalf of Dominion Generation;
- Be responsible for providing retail customers with capped rate service;
- Provide default service under the Act, if it is designated a default service provider; and
- Be subject to SCC review with respect to retail rates for electric service during the capped rate period and any period that it is a default service provider.

Under the functional separation plan, Dominion Generation will:

- Not be a public utility; and
- Will be regulated by FERC, not by the SCC

Dominion Generation sought to be an exempt wholesale generator under the federal Public Utility Holding Company Act. To obtain this classification, the SCC must find that the change in status will benefit customers, be in the public interest, and not violate state law. Dominion Generation would supply Dominion Virginia Power with electric power during and after the capped rate period pursuant to a power purchase agreement (PPA) between Dominion Virginia Power and Dominion Generation. The PPA is intended to ensure the availability of generation assets or their equivalent for services to retail customers. Dominion asked the SCC to approve the form of the PPA. As introduced, the plan stated that upon expiration of the capped rate period, any power purchases by Dominion Virginia Power from Dominion Generation under the PPA would be at prevailing market prices. This provision amended to conform to the requirements of Senate Bill 1420 (2001 Session).

In all, Virginia Power filed 13 amendments to the plan. One amendment sought to address the contingency that the FERC would revise the power purchase agreement, in which event Dominion Generation would become the distribution company and sell power directly to customers at retail.

2. SCC's Ruling on Virginia Power's Plan

Virginia Power's functional separation case was heard over nine days in October 2001. On December 18, 2001, the SCC ruled that the plan proposed by Virginia Power would impose unacceptable risks on the utility's customers by reducing or eliminating the effects of many consumer protection measures incorporated into the Restructuring Act (Order on Functional Separation, Case PUE 000584, p. 3). Instead, the SCC ordered that the utility separate its generation, distribution and transmission functions through the creation of divisions within the Company to manage and operate each function.

Perhaps the Commission's crucial finding was that legal separation would cause an unacceptable transfer of power from the State to FERC. Virginia Power could not ensure that FERC would not alter the PPA. As a wholesale power contract, it would be subject to FERC jurisdiction. FERC would thus have the legal authority, however unlikely it might be exercised, to alter the terms of the PPA.

The SCC also found that legal separation has the potential to impose a substantial burden of unsecured debt on Dominion Virginia Power after the generation assets are transferred to the Dominion Generation affiliate. Virginia Power's plan to reassign some of the payment obligations to Dominion Generation is unclear, and to require that such reassignment issues be dealt with in future proceedings was found unacceptable. In addition the collapse of ENRON was viewed by the SCC as illustrative of the possibility that legal separation may pose risks for Dominion Resources and its shareholders.

The SCC's order did not, however, foreclose future consideration of legal separation. At such time as needed market structures, including an adequately developed wholesale market and a regional transmission organization that can ensure the transmission of power at fair and nondiscriminatory prices, are in place and conditions in the competitive market for retail electric generation service merit, the Commission may again consider such a plan.

Judge Morrison wrote a separate concurring opinion in which he noted his agreement with the majority opinion's conclusion that the Restructuring Act does not indicate a preference that functional separation be accomplished by the creation of a legally separate affiliate corporation to own the generation assets. However, his concerns as to the General Assembly's intentions regarding the matter of the form of functional separation prompted him to write a separate opinion. "If the General Assembly finds that the Commonwealth should cede the oversight of generation assets to the federal government," he noted, "it would be immensely helpful to articulate that policy by statute, and we will proceed as directed." He added that if a legal separation with some mechanism attached as a condition in order to retract, or "reel back" the resultant ceding of jurisdiction to FERC, is desirable, "then a carefully considered and crafted contingency statute is needed." Any future application by Virginia Power for approval of a legal separation plan "would be greatly assisted by further consideration by the General Assembly of the ramifications of legal separation, particularly the loss of State authority. He concluded:

> "The Company's contention regarding the intent of the Legislature would be less difficult to accept if these consequences were squarely debated and clear direction, together with a carefully considered and designed plan for reestablishment of Virginia's authority in the event of necessity, is given us by that body."

3. Task Force Reaction

The Task Force was briefed on the SCC's ruling in the Dominion Power case on December 21, 2001. Though no concerns were expressed regarding the merits of the Commission's results in the case, Chairman Norment expressed frustration with Judge Morrison's concurrence. The Task Force has worked with diligence on a difficult subject, and has tried to encourage consensus on a number of issues. The Commission was aware that the January 1, 2002, deadline for the commencement of retail competition in some regions was at hand. Senator Norment was chagrined that questions regarding the General Assembly's intent in the Restructuring Act were raised in December 2001, because questions could have been posed to the Task Force at any of its earlier meetings. As has happened previously, such as with the issue of negative wires charges and default service rates, Commission actions have been contrary to what many felt was the clear intent of the Legislature. The Restructuring Act has attempted to establish the principles and purposes, while giving the SCC broad discretion to implement them. It is unfortunate when the latitude given to the SCC results in arguments concerning the lack of clarity of intent.

When the Task Force met on January 7, 2002, stakeholders were provided an opportunity to comment on the functional separation issue. Stewart Farrar, representing Virginia Power, noted that there are certain aspects of the Restructuring Act that caused the Commission to disapprove Virginia Power's plan. A copy of Mr. Farrar's comments is are attached as Appendix

H. The legal impediments to approval include (i) ceding to the FERC jurisdiction over wholesale power rates to be paid to Dominion Generation under the PPA, (ii) Virginia Power's right to continue using a fuel factor after legal separation, and (iii) Virginia Power's right to pay to Dominion Generation collect wires charges after legal separation.

Virginia Power spokesperson Eva Tieg Hardy expressed her company's interest in the formation of a working group to work on developing consensus legislation to address these issues. The Task Force encouraged stakeholders to begin a dialogue aimed at addressing the issue informally and determining if there is a consensus. Judy Jagdmann of the Office of the Attorney General, as representative of consumer interests, agreed to a request to convene a meeting of interested persons. The Task Force made it clear that in the absence of consensus, there would be no support for legislation addressing these issues in the 2002 Session.

4. AEP's Functional Separation Plan

AEP's functional separation plan, initially filed on January 3, 2001, was similar to Virginia Power's plan. AEP would create a nonregulated generation company (Genco) and transfer to it all generation-related assets. At a hearing in October on the revised plan, parties agreed to a stipulation that AEP would continue its current functional separation of functions by division, AEP would not impose any wires charge during 2002, and there would be a further inquiry during 2002 into the terms and conditions of the proposed transfer of generation assets to an affiliate. On December 18, 2001, the SCC entered an order in Case No. PUE010011 that, among other things, adopted the stipulations.

C. STATUS OF THE DEVELOPMENT OF A COMPETITIVE RETAIL MARKET

The Restructuring Act was amended in the 2001 Session by the adoption of § 56-596 to require the SCC to report to the Task Force and the Governor, by September 1 of each year, the status of the development of regional competitive markets, on the status of competition in the Commonwealth, and the SCC's recommendations to facilitate effective competition in the Commonwealth as soon as practical. The SCC briefed the Task Force on its report at the September 7, 2001, meeting.

1. Status of Development of Competitive Regional Markets

Dr. Kenneth Rose of the National Regulatory Research Institute, who contributed the portion of the report addressing the status of development of competitive regional markets, provided an evaluation of the current performance of retail and wholesale markets. A copy of Dr. Rose's materials is attached as Appendix I.

Retail market performance is highly dependent on prices in the wholesale market because most retail markets have overall price constraints and do not fluctuate with changing conditions in the wholesale market. The "standard offer" or "price to compare," which refers to the price for generation service paid by a retail customer who does not select a competitive supplier, is the benchmark price used by consumers in determining whether to switch to a competitive service

provider. This benchmark price is also used by competitive suppliers in determining whether the difference between the price to compare and the cost to procure power to serve customers is sufficient to allow them to offer customers an opportunity to save on their power costs compared to the standard offer price, while covering the costs of securing and delivering the power. This lack of "headroom" is the primary reason that retail markets, after a period of initial success in some states, have shown stress or why other markets have seen very little activity.

Fifteen states and the District of Columbia currently allow retail choice, and three states (Virginia, Michigan and Texas) will allow retail choice effective January 1, 2002. Recent failures of California electricity markets have slowed the nation's move toward restructuring their electric utilities. No state has passed restructuring legislation since California's problems began last summer, and no state appears close to doing so. Six states (Arkansas, Nevada, New Mexico, Oklahoma, Oregon, and West Virginia) that passed restructuring legislation have postponed the move toward retail access. At least 14 states have decided to discontinue considering the issue at this time. Twelve other states continue to study the issue.

Dr. Rose's evaluation of retail markets examined such factors as the numbers of competitive offers, offers priced below the price to compare, number of competitive suppliers, and percentage of customers selecting alternative suppliers. Competitive activity in other states open to retail choice is in significant decline. During the 12-month period ending July 2001, the number of competitive offers at or below those prices available to nonshopping customers from incumbent utilities dropped from 48 to nine nationwide. Pennsylvania, which has been lauded for its deregulation successes, has seen both the number of competitive residential offers and customer load (for all classes) served by alternative suppliers plummet. The number of statewide residential offers at prices below the price-to-compare has dropped from 28 in July 2000 to two by July 2001. Over the same period, the number of total offers (including offers for more expensive "green power") in Pennsylvania has fallen from 75 to 23. Additionally, many suppliers are now only willing to offer electricity on a month-to-month basis. Similar results are evident from the retail markets in California, Massachusetts, and New Jersey.

The evaluation by Dr. Rose of wholesale market performance was based on how closely actual prices are tracking what would be expected in a fully competitive market, where suppliers are not able to control the price. The discrepancy between the two is a measure of market power, which is the ability of a firm or group of firms to raise and maintain the product price significantly above a competitive level. Market power violates the assumption that suppliers are "price takers" in a market and cannot control the market price.

The degree of market power that a supplier of electricity can exercise is a function of characteristics of electricity, including (i) the inelasticity of demand for electricity, (ii) the high degree of concentration of markets for most geographic regions, and (iii) the fact that market entry by other firms is limited by transmission constraints or the need to build new generation facilities, both of which take time. Market power can be exercised either by physically withholding power from the market or by economically withholding capacity by setting a very high price for the plant or unit. This results in the plant or unit to be dispatched at a price that exceeds its marginal cost or it not being dispatched at all, which results in a benefit similar to physical withholding.

California's recent rise in wholesale power prices was attributed to a combination of scarcity conditions, higher natural gas prices, and market power impacts. Market power may be averaging more than 40 percent of the wholesale price in California since June 2000. In the PJM spot market, total costs were estimated to be 41 percent higher ($224 million) than they would be under perfect competition. Evidence of withholding of capacity in the summer of 2000 and earlier in 2001 to manipulate prices was alleged to exist in the PJM installed capacity market.

Dr. Rose concluded that wholesale market prices and volatility have hampered the development of retail markets. The evidence suggests that generation owners have significant market power in wholesale markets. Given the characteristics of electric supply and demand, this market power may consist for some time. In sum, the transition to competitive retail markets has been more difficult and is taking longer than many had expected.

Nationally, the amount of generation supply compared to demand varies among regions, with not all regions having the traditional 15 percent reserve margins. A substantial amount of generation facility construction is planned or underway. However, as 92 percent of new generation is fueled by natural gas, supplies of gas and pipeline capacity may cause difficulties. Electric power transmission capacity poses a more immediate problem.

Dr. Rose observed that the primary determining factor in whether a state has proceeded with deregulation is whether the state's power costs exceeded the national average. Of the states that have passed restructuring law, 10 had prices below the national average; of these, at least half have delayed implementation of their statutes.

In response to a request for suggestions for what Virginia could do to improve restructuring efforts, four items were identified. First, states should increase their generation and transmission capacities. Second, states should address concentration in the wholesale market, by seeking a diversity of ownership among new market entrants. Third, information exchanges for customers, such as Ohio's "apples to apples" data for comparisons of offers, should be implemented. Finally, increased demand responsiveness is needed, in order to determine if adjustments in usage are reflected in power prices.

2. Status of Competition in Virginia

Beginning January 1, 2002, and extending in a phase-in period running until January 1, 2004, customers in Virginia will be eligible to choose their supplier of electricity. Eligibility to choose a supplier does not guarantee that competitive suppliers will be making offers in Virginia. Whether customer choice for electricity occurs here will depend in large part on whether competitive suppliers decide to enter Virginia's retail market. While the SCC has licensed 16 new competitive suppliers of electricity, these newly licensed firms may decide not to offer electricity at retail here if wholesale prices inhibit their ability to sell power profitably.

Experimental retail choice programs in Virginia also have not attracted the hoped-for level of participation either by consumers or suppliers. However, the pilots have aided the transition to a restructured electric utility industry by developing and testing electronic data interchange systems. Concern was expressed that four suppliers in natural gas pilot programs defaulted, that reliance on contracts with rates set on a month-to-month basis is increasing, and

that many of the competitive suppliers selected by pilot participants are affiliates of incumbent utilities.

Richard Williams, Director of the SCC's Division of Economics and Finance, told the Task Force that the Commission is committed to making Virginia ready for competitive suppliers of electricity by the start of competition on January 1, 2002. Numerous proceedings are underway at the Commission in connection with the transition to competition, including cases to unbundled incumbent utilities' rates, to determine the level of wires charges, to consider functional separation plans, and to approve plans to transfer control of transmission assets to regional transmission entities.

The SCC expressed confidence that Virginia is laying the proper foundation to have a fair, efficient and effective market. Success in attracting these suppliers to Virginia's retail electricity market, however, will depend greatly on a healthy regional wholesale market - a market that is currently showing signs of stress.

3. Recommendations to Facilitate the Development of a Competitive Market

In preparing its report on the status of competition, the SCC asked stakeholders to identify actions that would facilitate the development of a competitive retail power market in Virginia. The stakeholder recommendations are compiled in the SCC's report. While the SCC commented on several of the proposals, it did not specifically present the Task Force with any proposals for legislative changes to the Restructuring Act. When questioned about the absence of SCC recommendations, Mr. Williams observed that the SCC's most valuable function at the present time is to lay the foundation for the development of competition. The SCC may offer recommendations at a later date. For now, he described the process as headed on the right track. Even if a proper framework is established, however, there will not be competition unless competitors come in and make attractive offers to customers, and high wholesale prices have inhibited competition in other states.

D. GENERATION CAPACITY SET-ASIDE REQUIREMENTS

Members raised concerns at the September 7, 2001, meeting that the operators of the generation facilities being constructed in Virginia may sell all of their power in other states. While planned merchant plants can sell their power in any market, the SCC's Richard Williams noted that protections are in place to protect Virginia customers for the next several years. The Restructuring Act does not address the issue of the SCC's authority to require incumbents to build generation capacity to serve Virginia's load in the future. The theory underlying the Act is that reliability will be provided through the competitive market. However, the Act does not expressly condition industry deregulation upon the development of a competitive market.

At its September meeting, members asked how they could be assured that the construction of additional power plants in the Commonwealth would provide Virginians with the adequate supply of electricity needed for the development of a robust competitive market. Concerns focused on the prospect that while generation facilities would be located in this state, the power could be shipped to Northeastern markets where the price of electric power is higher

than it is in Virginia. Virginia consumers would then pay higher rates as they are forced to match the price paid by residents of other regions.

At its October 16, 2001, meeting, the Task Force addressed related issues regarding whether the building of new generation capacity in the Commonwealth will benefit Virginians. An attempt was made to address whether the General Assembly could require new generation facilities, as a condition to siting approval, to reserve a portion of their capacity exclusively to serve the Virginia wholesale or retail market.

The extent to which Virginia may regulate the operation of merchant plants depends on the extent of federal preemption of state activity. The Federal Power Act of 1935 applies to the sale of electric energy at wholesale in interstate commerce. FERC does not, however, have jurisdiction over facilities used in local distribution or over the transmission of electricity consumed by the transmitter. Subsequent changes in the Act have encouraged the development of the wholesale transmission market and of new competitive generating companies. In its Order 2000, the FERC contemplates that regional transmission organizations will have exclusive authority to maintain short-term reliability, including the right to order redispatch of any generator connected to transmission facilities. The authority for generator redispatch is intended by FERC to be used by the regional transmission organization (RTO) to prevent or manage emergency situations. FERC has announced that it envisions four regional RTOs to serve the continental United States. However, as the Supreme Court has held oral arguments in two cases challenging FERC's rulemaking authority, the respective boundaries of federal and state jurisdiction are uncertain.

The Commerce Clause of the federal Constitution has been construed to limit the ability of states to enact legislation that provides economic protectionism for its own citizens. Article I, Section 8, Clause 3 of the United States Constitution reserves to the Congress the power "to regulate commerce . . . among the several states." Although on its face the Commerce Clause merely gives Congress the power to regulate commerce among the states, "it has been settled for more than a century that the Clause prohibits States from taking certain actions respecting interstate commerce even absent congressional action." CTS Corp. v. Dynamics Corp. of America, 107 S. Ct. 1637 (1987).

Under negative or dormant commerce clause jurisdiction, state regulation that affords disparate, and less favorable, treatment to interstate commerce will ordinarily be struck down. Discrimination against interstate commerce in favor of local business or investment is per se invalid, save in the narrow class of cases in which a municipality can demonstrate under rigorous scrutiny that it has no other means to advance a legitimate local interest. (Nicholas Fels and Frank Lindh, "Lessons from the California "Apocalypse:" Jurisdiction over Electric Utilities," 22 Energy L.J. 1, 29 (2001).)

Examples of cases where courts have struck down statutes based on the Commerce Clause include:

- New England Power Co. v. New Hampshire, 455 U.S. 331 (1982): New Hampshire law that prohibited the exportation of inexpensive hydroelectric power to other states violates the Commerce Clause.

- Pennsylvania v. West Virginia, 262 U.S. 553 (1923): West Virginia law that prohibited the export of natural gas by pipeline unless in-state needs had been met violates the Commerce Clause.

- In re Nebraska Public Power District, 354 N.W. 2d 713 (S.D. 1984): State law that imposed an additional condition on the issuance of a permit for a transmission line, if less than 25 percent of the power transmitted over the line will serve that state, violates the Commerce Clause.

- Middle South Energy , Inc. v. Arkansas Public Service Commission, 772 F.2d 404, 416 (8th Cir. 1985): The Arkansas Public Service Commission could not prevent the utility from purchasing expensive power from an out-of-state nuclear plant in which it participates; the APSC cannot give a preference to its citizens by closing its borders to high-cost electricity, by shifting the burden to citizens of other states.

The Task Force was advised that the ability of legislation to withstand Commerce Clause scrutiny may turn on whether it gives less favorable treatment to interstate commerce than to local interests. If it does, it is per se invalid in the absence of a showing that there is no alternative way to advance a legitimate local interest.

Judy Jagdmann of the Office of the Attorney General observed that the question whether a law that reserves to Virginia a portion of the electricity produced by new merchant plants runs afoul of the dormant Commerce Clause boils down to whether the state's purpose is to favor in-state economic interests. Action may withstand challenge if the state can show a legitimate interest that cannot be served as well by other means. Such an interest may be assuring that power is available to meet needs for capped rate service and default service.

Ralph L. "Bill" Axselle, speaking for a coalition of developers of generation facilities for the wholesale market, told the Task Force that the construction of new capacity in Virginia will aid the development of Virginia's electric generation market even if their electricity can be sold in other states. Unlike many other commodities, electricity cannot be stored or easily and inexpensively shipped out of state. Transmission losses and tariffs reduce the net return on exported power. The ability to send electricity through a transmission grid is subject to physical constraints, and the system's capacity is currently limited. The new producers intend to serve a regional market of which Virginia's viable, robust market is an important part.

Mr. Axselle also asked the Task Force to consider that the wholesale electricity transmission grid is designed to serve regional, as well as local needs, and it is not clear how restrictions on the interstate flow of electrons would operate. In addition, by requiring in the existing law that default service providers have access to adequate capacity to meet their obligations, the question involves supplemental capacity. Having the additional capacity in Virginia will assist Virginians, because marketers will sell their power here when they can. Finally, the siting of the new merchant plants in Virginia should be encouraged. Because the facilities are required to install the current best available control technology, they are cleaner

than older plants. With regard to the facility siting process, he praised the competence of the personnel at the SCC and DEQ. Most of their problems have involved local land use approvals.

William G. Thomas, representing Dominion Virginia Power, echoed the observation by Augie Wallmeyer of the Virginia Independent Power Producers that transmission system constraints will ensure that all the power generated in the Commonwealth will not be exported. The Restructuring Act's default service provision, which continues until the General Assembly determines that it is no longer necessary, should provide assurance that adequate capacity will exist to serve Virginians.

R. Daniel Carson of AEP-Virginia offered that Virginia is not the only state adding generating capacity. In the seven-state AEP system, it has been announced that 27,000 MW of new generation capacity will be added between 2001 and 2005. Of this amount, air discharge permits have been issued for 5,000 MW. AEP has 1,740 MW of capacity in Virginia and a peak load of twice that amount. The company imports power from other states to meet the utility's Virginia obligations.

Ray Bourland of Allegheny Energy, which has announced plans to build an 88 MW facility in Buchanan County with CONSOL Energy, observed that the existing restructuring framework provides sufficient safeguards and incentives to ensure adequate electric generation capacity for Virginians. Allegheny Power will by contract provide power to any of Allegheny Power's default service customers under the terms of the utility's approved functional separation plan. On the issue of a generation set-aside requirement, Mr. Bourland concurred with the perspective of other suppliers. If merchant plants are selling power in wholesale transactions, they are subject to FERC jurisdiction. If a state sought to avoid FERC jurisdiction over wholesale sales by requiring a portion of a plant's output to be limited to the retail sales, the plant operators may balk at doing business in a state where they are obligated to engage in the highly-regulated retail business. A copy of Mr. Bourland's testimony is attached as Appendix J.

E. REQUIRING THE PROVISION OF ELECTRICITY IN EMERGENCY SITUATIONS

In response to Senator Watkins' inquiry at the September meeting regarding requirements that electricity generators provide power during emergency situations, staff reviewed existing Virginia statutes that authorize the Commission or the Governor to address extraordinary situations. Section 56-249.1 authorizes the SCC to require a public utility to make emergency spot sales of electricity to another such utility. However, the requirement only applies to public service companies. As many of the planned generation facilities are general-purpose business entities that plan to sell electricity into the wholesale market to meet peak demand requirements, they appear to be beyond the scope of the statute's application.

Chapter 17 of Title 56 authorizes the Governor to take possession of and to operate the plants of providers of electric power if he concludes that there is an imminent threat of substantial curtailment, or suspension of service. Moreover, § 44-146.17 empowers the Governor, after declaring a state of emergency, to issue orders necessary to allocate or regulate the use, sale and production of commodities, services and resources.

The Restructuring Act contemplates that if a licensed supplier fails to fulfill an obligation that results in the failure of electricity to be delivered into the control area serving its retail customers, the control area operator will charge the defaulting supplier for the full cost of procuring replacement energy, and may result in revocation of the supplier's license. Section 56-577 acknowledges that this provision applies to the extent not precluded by federal law or the Federal Energy Regulatory Commission. The respective jurisdiction of state and federal authorities to address such situations is central to any attempt to address the issue.

Texas and Ohio have enacted legislation seeking to address emergency situations. The Texas restructuring act requires power generators serving its area to observe scheduling, operating and reliability rules established by the operator of the Electric Reliability Council of Texas (ERCOT). ERCOT, which serves as the reliability council for about 85 percent of Texas, is unique in its exemption from FERC oversight as a result of its lack of interconnection with transmission systems outside of Texas. ERCOT's protocols, which take effect with the advent of customer choice in January 2002, authorize it to issue operating notices if there is an unplanned transmission outage, hurricane, ice storm or other emergency, and to require certain units to operate certain resources that are available in the time frame of the emergency.

During the oil embargo crisis of the 1970s, Ohio passed a law that directs any public utility commission to adopt rules empowering the governor, among other things, to order electric companies to sell electricity in order to alleviate hardship or acquire or produce emergency supplies to meet emergency needs. It was amended when Ohio enacted customer choice for the electric industry by adding licensed service providers to the list of entities that the governor could call on to provide power. The law, which has apparently not been used to deal with electricity emergencies, also authorizes the governor to declare an energy emergency if the health, safety or welfare is imminently and substantially threatened by an energy emergency. The public utility commission's rules provide that the governor may request the Secretary of the federal Department of Energy to invoke § 202(c) of the Federal Power Act.

The Federal Power Act provision cited in Ohio's rules authorize FERC to require temporary connections of facilities and such generation, delivery, interchange or transmission of electricity as in its judgment will meet an emergency attributable to a sudden increase in the demand for electricity or a shortage of electric energy or of facilities for its generation or transmission. Under the authority of this section, the Secretary of Energy ordered, in December 2000, that generators and marketers make electricity available to keep the lights on in California. The order, aimed at addressing rolling blackouts at a time when power suppliers were reluctant to provide electricity to insolvent distribution companies, called on suppliers to make excess power available to the state's independent system operator.

F. STATUS OF RESTRUCTURING NATIONALLY

1. Federal Energy Policy

In May 2001, President Bush's National Energy Policy Development Group released its National Energy Policy. The Group observed:

One of the most important energy issues facing the Administration and Congress is electricity restructuring. The electricity industry is going through a period of dramatic change. To provide ample energy at reasonable prices, states are opening their retail markets to competition. This is the most recent step in a long transition from reliance on regulation to reliance on competitive forces. . .

Increased competition in wholesale power markets encourages states to open retail electricity markets. Under current law, FERC has jurisdiction over the wholesale power market, while states have jurisdiction over retail markets. Beginning in 1996, states began opening retail markets to competition in order to lower electricity prices. Twenty-five states have opted to open their retail electricity markets to competition. . .

Since 1995, Congress has grappled with electricity competition legislation. Initial efforts sought to require states to open their retail markets by a certain date. Subsequent efforts focused on promoting competition on electricity markets and complementing state retail competition plans. Under this approach, federal legislation focused on core federal issues, including:

- Regulation of interstate commerce;
- Assuring open access to the interstate and international transmission system;
- Enhancing reliability of the grid;
- Lowering barriers to entry;
- Reforming outdated federal electricity laws, such as PUHCA and Public Utility Regulatory Policies Act of 1978 (PURPA);
- Reforming the role of federal electric utilities in competitive markets;
- Protecting consumers; and
- Clarifying federal and state regulatory jurisdictions.

(NEPD Group report, Washington, D.C., 2001; pp. 5-11 and 5-12)

The NEPD Group recommended that the President (i) direct the Secretary of Energy to propose comprehensive electricity legislation that, among other things, repeals PUHCA and reforms PURPA and (ii) encourage FERC to use its existing statutory authority to promote competition and encourage investment in transmission facilities. (Id., p. 5-12)

2. Status of Federal Legislation

The Task Force continued to monitor pending federal legislation that would affect electric utility restructuring. A copy of a summary of federal bills before Congress as of August 30, 2001, is attached as Appendix K.

The Electric Power Daily reported on December 7, 2001, that Representative Joe Barton (R-TX), Chairman of the House Energy and Air Quality Subcommittee, has introduced a 125-page bill (HR 3406) titled "The Electric Supply and Transmission Act of 2001." The bill is designed to promote competitive electricity markets by allowing federal regulators to mandate membership in regional transmission organizations and providing federal eminent domain

authority to site transmission facilities. The bill would require transmission-owning utilities to join an RTO within one year of the bill's enactment. For utilities that have not joined an RTO within the required timeframe, the bill establishes an appeal process or judicial review.

The bill also requires the operators of RTOs to be independent of market participants. The bill would also authorize the FERC to approve construction or expansion of transmission facilities if the project involves interstate commerce or proves to be in the public interest. This authority would only be granted to FERC if the Commission finds that the state itself is without authority to approve the siting. The North American Electric Reliability Council would oversee reliability. The bill would repeal PUHCA and certain requirement of PURPA.

As the Task Force wrapped up its work prior to the 2002 Session, Congress had not yet acted on federal energy restructuring legislation. Reuters reported on January 30, 2002, that a House energy subcommittee headed by Rep. Barton of Texas was expected to hold a bill-writing session in February to prepare a federal electricity deregulation plan.

3. Developments in Other States

Matthew Brown of the National Conference of State Legislatures has observed the several preliminary trends in states that are in the transition to competition. First, the economics of the electricity business did not encourage small customers to switch to new providers. Aspects of relevant industry economics include (i) the high cost ($50 to $200 or more) of securing each new customer; (ii) individual residential customers may be less attractive prospects for power marketers than industrial customers, due to typical profit margins of about one cent per kilowatt-hour; and (iii) the potential for savings of residential customers who switch is relatively low, ranging from $.84 to $4.20 (or two percent to 10 percent) on a typical residential customer's monthly bill of $70. (Matthew H. Brown, Restructuring in Retrospect (National Conference of State Legislatures, October 2001), pp. 14-17)

Second, restructuring laws have delivered immediate savings through legislative fiat, rather than through competition. Examples include rate reductions, rate caps, and rate freezes. While rate caps and freezes protect smaller customers from rising energy prices, changes in the wholesale price of electricity are not passed on to customers. (Id., pp. 17-21)

Third, some customers, for some period, received some savings as a result of access to competitive markets, with larger customers garnering more savings than smaller customers. "With a few exceptions, retail markets nationwide have been quiet for most residential customers, with few marketers selling products and few small consumers buying." (Id., p. 21)

Recent developments in Pennsylvania underscore Mr. Brown's third point. According to testimony provided by John M. Quain, Chairman of the Pennsylvania Public Utility Commission before the Professional Licensure and Consumer Protection Committee on August 29, 2000, the PJM Independent System Organization has instituted a $1,000 per megawatt-hour cap in the wholesale market.

Of Pennsylvania's 5.2 million customer accounts, 2 million customers volunteered for the electricity choice program. Of that number, 1 million made a choice of an electricity generator. While half stayed with their incumbent provider, about 500,000 customers had switched to new providers as of July 2000.

The restructuring mandated by Pennsylvania's Electric Choice Program, coupled with subsequent settlements facilitated by the Commission, required rate reductions that led to savings for all Pennsylvanians. Customer savings attributable to rate caps, guaranteed rate reductions through utility restructuring, and stranded cost securitization were projected to be $873 million in 1999 and $2 billion by the end of 2000.

In setting up the Electric Choice Program in 1999, regulators created contracts that label existing regional electricity companies as "providers of last resort." Under those contracts, the companies agreed to provide electricity at a capped rate to any customers who have not signed on with a competing company. With rising wholesale prices, many industrial and commercial customers are returning to their traditional electric utility.

The Pennsylvania Office of Consumer Advocate's quarterly Electric Shopping Statistics for July 1, 2001 show that 591,596 customers are participating in electricity open markets; in April 2001, 787,846 customers were participating. This 25 percent quarterly decline in the total number of customers compares to a 62 percent drop in the total customer load in the quarter (from 5,370.4 MW to 2,039.5 MW).

Pennsylvania customer load (MW) served by alternative suppliers

	Residential	Commercial	Industrial	Total
April 2001	1,454.90*	2,170.9	1,774.8	5,370.40*
July 2001	1,184.0**	398.4	456.8	2,039.5**
Change	(270.9)	(1,772.5)	(1,318.0)	(3,330.9)

* Includes 443.5 MW from customers assigned under the Competitive Discount Service program.
** Includes 425.1 MW from customers assigned under the Competitive Discount Service program.

Pennsylvania customer load (MW) served by alternative suppliers

	Residential	Commercial	Industrial	Total
July 2000	1,004.53	2,169.34	2,335.35	5,509.22
July 2001	1,184.0*	398.40	456.80	2,039.50*
Change	179.47	(1,770.94)	(1,878.55)	(3,469.72)

* Includes 425.1 MW from customers assigned under the Competitive Discount Service program.

As of January 2000, all PECO Energy customers were permitted to choose an alternate electric generation supplier. Whether a customer participated in the choice program or not, PECO Energy provided all of its residential customers with a seven percent monthly rate reduction in 2000 and an eight percent rate reduction in 1999. These rate reductions were eliminated in 2001; any savings thereafter will depend on the rate charged by the customer's electric generation supplier.

As part of PECO's electric restructuring agreement, PECO was required to randomly assign 20 percent of residential customers to receive electric supply from an alternate electric generation supplier (EGS) under the Competitive Discount Service (CDS) program. As a result, 300,000 residential customers that had not chosen a competitive supplier were randomly chosen and switched during the first quarter of 2001 to The New Power Company, which was chosen by PECO to provide Competitive Discount Service from March 2001 through January 2004.

These assigned customers are buying their electricity at below-market cost as part of the state's discount power program designed to encourage switching to alternative generation suppliers. Assigned residential customers receive a discount off PECO's "price to compare" of 1.02 percent if they use electric heat and 2.02 percent if they do not. The "price to compare" is the portion of the bill associated with the generation and transmission of electricity.

Of the 393,348 residential PECO-area customers who were served by an alternative supplier on July 1, 2001, 223,747 were assigned to the CDS Program. The 223,747 PECO customers assigned to CDS represent 39 percent of all residential customers in Pennsylvania served by an alternative supplier.

In GPU Inc.'s service territory, which includes Erie and 30 other counties, alternative suppliers served 4,836 customers as of July 1, or about 0.5 percent of the total number of customers in GPU's territory. This represents an almost 90 percent drop from the 47,117 customers who were buying electricity from GPU's competitors on April 1. Looking only at the residential category, the number served by alternative suppliers fell from 35,973 on April 1 to 4,262 on July 1.

At the Electric Choice program's height, as many as 30 competing suppliers were registered to serve customers in GPU's service territories, according to GPU officials. But wholesale prices have exceeded GPU's capped retail rate for much of 2001. GPU's rate is capped at 4.528 cents per kilowatt-hour. The rates charged by the three remaining competitors range from 6.4 cents to 7.3 cents per kilowatt-hour. Faced with the prospect of paying GPU's capped rate or the competitors' higher rates, customers began switching back to GPU. As a result, most of the competing companies no longer do business in GPU's territory. According to an Erie (Pennsylvania) Times-News article dated July 10, 2001, GPU has estimated that it will lose between $145 million to $250 million this year as a result of customers switching away from the competing companies.

Wattage Monitor, Inc.'s Residential Savings Index of August 9, 2001 (Appendix L), provides a snapshot of available monthly savings in states that have deregulated their electric utilities. The authors observed that "the recent run-up in natural gas prices and the resulting increase in wholesale market electricity prices has caused many competitive suppliers there to stop offering savings to consumers because they are unable to secure electricity supplies at competitive rates. Some suppliers have simply left the market altogether." In Ohio, savings available to consumers was limited by the lack of an active wholesale market and the inability of competitive suppliers to secure electricity. At that time, despite laws that allowed customers to choose, there were no suppliers offering competitive service in six states and the District of

Columbia. Residential consumers in Texas had the greatest savings potential, due to aggressive discounting of service by competitive suppliers at the beginning of pilot programs.

G. MEMBER REGULATION BY ELECTRIC COOPERATIVES

Prior to the 2001 Session, the trade group representing Virginia's electric cooperatives presented proposed legislation that would remove SCC oversight of the rates, terms and conditions of electric distribution service. Similar legislation was introduced in the 2001 Session as House Bill 1940. The Corporations, Insurance and Banking Committee referred the bill to the Task Force for study.

The Task Force commenced reexamining this topic at its November 26 meeting. Under the co-ops' proposal, a referendum on self-regulation will be scheduled by a board of directors of a cooperative when the board adopts a resolution recommending it or upon receipt of a petition signed by one percent of cooperative members. A referendum will be held at an annual or special meeting, and passage of the proposal will require approval by two-thirds of the votes cast at the meeting. A similar procedure would be available for cooperatives to reinstitute SCC regulation of rates, terms and conditions of service.

Upon passage of a referendum for self-regulation, the SCC will not regulate the cooperatives' rates, terms and conditions of electric distribution service. However, cooperatives would continue to be subject to the capped rate, wires charges, and default service provisions of the Restructuring Act.

Under the self-regulation proposal, charges for service would be set by the cooperative's board, subject to requirements that they be nondiscriminatory, reasonable and just. The SCC will be empowered to determine, upon receipt of complaints by 25 percent of a customer class, whether the rates, terms and conditions of service are nondiscriminatory, just and reasonable. If the Commission finds that they are not nondiscriminatory, just and reasonable, the cooperative is required to develop new rates, charges, fees and rules and regulations as necessary to correct any defect. The SCC may also attempt to mediate meritorious complaints.

Howard Scarboro of Central Virginia Electric Cooperative asserted that member regulation is needed to avoid the substantial expenses of staff, consultants, and lawyers that are now borne by member-customers. He also argued that member regulation would allow cooperatives to avoid costs of making up revenues lost in redesigned rates, interest on refunds, processing refunds, and providing members notice of final approved rates. The length of time involved in resolving rate cases, which has extended longer than 400 days, was also identified as a justification for member regulation.

Douglas Wine of the Shenandoah Valley Electric Cooperative observed that more than half of states allow cooperatives to be self-regulated. He praised 1998 State legislation that allowed telephone cooperatives to be self-regulated.

Several groups advised the Task Force of their reservations with the member regulation proposal. Members of the Virginia Coalition for Fair Competition cautioned that approval of the measure may prevent the SCC from gathering sufficient information to determine whether

cooperatives are cross-subsidizing affiliates that compete in new lines of business. They also expressed concern that the limited exemption from SCC regulation sought by the proposed legislation would, if successful, be followed by attempts to end all oversight. A spokesman for Bear Island Paper Company, which consumes 29 percent of Rappahannock Electric Cooperative's electricity, objected to the proposal's lack of proportional representation for large consumers in self-regulation votes. Other concerns included the continuation of cooperatives' monopolies in service territories and lack of clarity regarding procedures involving the SCC.

Arlen Bolstad, Senior Counsel at the SCC's Office of General Counsel, expressed concerns about the workability of the several provisions of the proposal. He observed that while under Virginia law a quorum of members requires attendance of 2.5 percent of a co-op's members, Delaware's member-regulation law requires that 50 percent of a co-op's members vote in a referendum. Other questions involve the issue of whether member-regulated cooperatives would continue to be "public service companies" with exclusive service territories, the power of eminent domain, inspections of records by the SCC, and the obligation to serve customers in their territories.

H. STRANDED COST RECOVERY INFORMATION

On October 19, 2000, the SCC entered its final order in the matter of the functional separation of the generation, distribution, and transmission services of incumbent electric utilities. Though most of the interest generated by the order dealt with rates for default service, it also discussed requirements for the reporting of information relating to ascertaining to incumbent electric utilities' recovery of stranded costs. The Task Force is required by § 56-595 to monitor whether the recovery of stranded costs under § 56-584 has resulted in or is likely to result in the overrecovery or underrecovery of just and reasonable net stranded costs.

As originally proposed, 20 VAC 5-202-40 B 6 would have required that incumbent electric utilities provide the fair market value of generation assets, even if they intend to transfer these assets at book value. Incumbent utilities opposed the requirement on grounds that, to the extent that transfers to functionally separate units will be made at book value, a market valuation is unnecessary. Some incumbents and independent power producers opposed a related requirement in proposed 20 VAC 5-202-40 B 6 that would have required incumbent electric utilities to provide a year-by-year fair market valuation of long-term power contracts.

The Commission concluded that information about (i) the fair market value of generation assets at the time of their sale or transfer and (ii) the fair market value of long-term power contracts on a year-to-year basis is critical to the Legislative Transition Task Force's assessment of stranded cost recovery. However, the SCC added that while it is required to assist the Task Force in monitoring stranded cost recovery, it "will defer to the Task Force to determine as soon as possible, by resolution or some other specific directive to the Commission, whether it will want this information for its use in monitoring utilities' recovery of stranded costs." The SCC's final version of rule 20 VAC 5-202-40 B 6 c provides that the fair market valuation of generation assets and purchase power contracts will be required by the Commission "if and when the Task Force directs the Commission to obtain that information for its use pursuant to the Task Force's obligations under § 56-595 of the Act."

The Task Force agreed during its meeting in December 2000 that it would want information regarding the fair market valuation of generation assets and power contracts for use in monitoring utilities' recovery of stranded costs. Utility industry representatives asked that the Task Force revisit this issue, as they were negotiating a solution to another issue when the item was discussed. The issue was on the agenda for the January 12, 2001, meeting, but was not taken up. The Task Force revisited the issue at its December 21, 2001, meeting, and unanimously agreed to inform the Commission that it would want the information for use in monitoring utilities' recovery of stranded costs.

I. REVENUE FROM ELECTRICITY CONSUMPTION TAX AND INCOME TAX ON ELECTRIC UTILITIES

In response to a request for information by Senator Watkins, the Task Force was briefed at its December 21, 2001, meeting on the state tax revenue receipts. In 1999, the General Assembly enacted Senate Bill 1286, which revamped the system of taxing electric utilities. The tax on utilities' gross receipts was eliminated, and in its place (i) utilities became subject to the corporate income tax, subject to certain adjustments, and (ii) electricity consumers became subject to a tax based on the amount of power consumed. These new taxes were intended to be revenue-neutral to the State.

Prior to the enactment of the 1999 legislation, it was estimated that the corporate income tax feature would generate $21 million. David Klabo of the Department of Taxation reported that utilities would not file their first income tax returns until the fall of 2002. He cautioned that the corporate income tax is a volatile revenue source. The collections from the consumption tax are close to the estimated figures. For calendar year 2001, the consumption tax generated $51.7 million. Fiscal year 2002 consumption tax revenues totaled $25.2 million to date, which is slightly behind but closely tracking the official revenue forecast.

J. STATUS OF CONSUMER EDUCATION PROGRAM

The Restructuring Act was amended in the 2000 Session to require the SCC to establish and implement a consumer education program pursuant to § 56-592.1. The program will be implemented over five years at a total estimated cost of $30 million. The SCC is required to provide periodic updates to the Task Force concerning the program's implementation and operation.

At the September 7, 2001, meeting, Kenneth J. Schrad, Director of the SCC's Division of Information Resources, updated members on Virginia Energy Choice, the SCC's consumer education program. A survey conducted in May indicates that only 28 percent of Virginians are aware of the transition to a competitive market. However, 80 percent of respondents are interested in the competitive market and desire more information.

The SCC commenced media advertising in November. Other Commission activities so far include hiring consultants, conducting community-based consumer outreach, preparing booklets, retaining a call center, and updating the Energy Choice web site.

A 15-member Consumer Education Advisory Committee has been established to provide input to the SCC regarding the consumer education campaign. The Committee includes representatives of consumer groups as well as investor-owned utilities and electric cooperatives.

K. DISPOSITION OF DISPLACED GENERATION OF INCUMBENT UTILITIES

At the Task Force's October 16, 2001, meeting, Michel A. (Mitch) King, President and General Manager of Old Mill Power Company, raised the issue of certain federal limitations on the disposition of generation that is surplus to utilities, including the disposition of "displaced generation," or generation that becomes surplus to incumbent utilities such as Virginia Power when they lose customers to competitive service providers. Mr. King's concerns were stated in his letter of October 20, 2001 (Appendix M).

Prior to June 1, 2000, Virginia Power was prohibited by the terms of its FERC-approved Amended and Restated Market-Based Sales Tariff from selling generation for delivery to loads located within its service territory in order to prevent the utility from dominating the generation market within its service territory. The restriction encouraged the development and continued use of generating assets owned by parties other than Dominion that could be used to serve the retail loads of customers. Virginia Power obtained a waiver to this restriction for the purposes and duration of its pilot program, which allowed Virginia Power to offer electricity for serving loads in its service territory to unaffiliated competitive service providers at the same rate and terms as it offers such electricity to its affiliates. The practical effect of this waiver is to reduce the cost of wholesale power to competitive service providers within Dominion's service territory. This special market-based rate automatically expires on December 31, 2001. Mr. King was advised that Virginia Power did not plan at this time to seek an extension of that special market-based rate authority.

Mr. King asserted that the practical effect of not asking for an extension of this special market-based rate authority is to significantly diminish the amount of generation within Virginia Power's service territory that is available to competitive service providers at a cost of only one transmission "wheel." The end of the special market-based rate authority will also negate any increase to the total amount of generation available for end-use within Virginia Power's service territory. After January 1, 2002, CSP imports of generation into Virginia Power's service territory will have no effect on the total amount of generation available to serve load in that territory. This reportedly will increase the cost of wholesale energy to competitive service providers.

L. REGIONAL TRANSMISSION ENTITY DEVELOPMENTS

1. Status of Alliance Regional Transmission Organization

Sections 56-577 and 56-579 of the Restructuring Act require incumbent electric utilities that own, operate, control or have an entitlement to transmission capacity to join or establish a regional transmission entity (RTE) by January 1, 2001. The utility shall transfer the management and control of its transmission system to the RTE, which must be approved by the SCC. In

reviewing an application, the SCC is required to consider such issues as reliability, safety, pricing of transmission services; the RTO's governing structure, and the ability of competitive suppliers of electricity to have unrestricted access to the transmission system for delivery to customers.

Both Virginia Power and AEP-Virginia filed with the SCC and FERC applications to join the Alliance regional transmission organization (RTO). The Alliance would be an independent operator of a regional transmission grid involving 16 electric utilities in 11 states. Though the SCC had scheduled hearings for September 2001 on the Alliance applications, they were placed on hold pending the outcome of FERC proceedings.

Though FERC had previously conditionally approved to the Alliance RTO, subject to additional compliance filings, FERC ruled on December 20, 2001, that The Alliance did not satisfy certain key requirements of FERC Order 2000. Specifically, FERC found that the Alliance lacked sufficient scope to exist as a stand-alone RTO and directed the Alliance companies to explore how their business plans can be accommodated with in the Midwest ISO. FERC also observed that the Midwest ISO may not be the ideal RTO for all Alliance companies and noted that Virginia Power may prefer to join another RTO. The Alliance companies were directed to file, within 60 days, statements concerning their plans to join an RTO.

Cody Walker of the SCC updated the Task Force on the status of the Alliance RTO at its December 21, 2001, meeting. He identified several concerns that the SCC had raised with FERC regarding the proposed Alliance RTO, including its scope and configuration and market design. FERC's rejection of the Alliance RTO has required all parties to take a step back and reassess their options.

2. FERC Order on Market-Based Rate Tariffs

On November 20, 2001, the Federal Energy Regulatory Commission voted 3-1 to issue an order revising existing market-based rate tariffs and prohibiting anticompetitive behavior or the exercise of market power. Since the 1980s, FERC has allowed utilities that do not have market power to charge market-based rates for spot market wholesale sales. The order changes the criteria for determining whether a utility has market power, and imposes new rules for such sales by companies with market power. Prior to the FERC order, the benchmark for market power was whether a seller had a market share of 20 percent of the power needed in a particular market.

The new test for market power is called the supply margin assessment (SMA) screen. FERC will examine a company's importance in serving peak electricity loads. A company has market power if its electricity is "pivotal," which means that some of the company's capacity must be used to meet the market's peak demand. The SMA screen is intended to measure whether a company can raise prices in the market by withholding supply. Regional transmission constraints will also be considered as a measurement of market power.

Companies that are identified as having market power can no longer charge unregulated, market-based rates for spot market wholesale transactions. Instead, two new obligations are imposed:

- They must publicly post the incremental cost of producing the uncommitted power during each hour in a 24-hour period on their open-access same-time information systems.

- They must charge cost-based prices for spot market wholesale sales. The price that the utilities can charge is the difference between (i) their cost of producing the power and (ii) the bid of more expensive power in the region that their power displaces. This is known as the "split the savings" technique. The new cost-based rates will be administered by an independent third party.

FERC has determined that American Electric Power and two other firms have the ability to exercise market power within their control area markets because their generation is needed to meet the market's peak demand.

FERC has presented this ruling as an attempt to circumvent problems in the wholesale power market that were experienced in California. However, FERC Commissioner Breathitt characterized the new rule in her dissent as the use of leverage to force utilities to join an approved RTO. Sales into an RTO with FERC-approved market monitoring and mitigation will be exempt from the SMA screening.

The current status of this issue is unclear. On December 20, 2001, the FERC issued an order deferring the date by which the companies in the proceeding must implement the mitigation for spot-market energy sales. Several utilities have appealed FERC's November 20, 2001, order on market-based rates, and FERC has announced that it will issue a future order specifying a future date by which the affected companies must complete their implementation of any required mitigation.

M. CONSUMER ADVISORY BOARD ACTIVITIES

The Act directs the establishment of a Consumer Advisory Board. The Board is directed to assist the Legislative Transition Task Force in its work under § 56-595, and in other issues as may be directed by the Task Force.

The 17-member Board is required to be appointed from all classes of consumers and with geographical representation. William Lukhard serves chairman and Otis Brown as vice-chairman. Delegate Plum serves as liaison between the Task Force and the Consumer Advisory Board.

At the Task Force's January 7, 2002, meeting, the Consumer Advisory Board presented its report to the Task Force. The Board's report, without its appendices, is attached as Appendix N.

In its 16 meetings over the past three years, the Consumer Advisory Board has developed recommendations in areas of assisting low-income consumers in meeting their energy needs, energy efficiency, and renewable energy. The Board understands that the major thrust of deregulation is to establish a competitive market in which residential and small business consumers will benefit. The Board also recognizes that the General Assembly would be reluctant to enact legislation generating revenue through mechanisms that would increase the cost of electricity, and that current information indicates a potential lack of general fund revenues to fund new programs.

N. OTHER ACTIVITIES

Section 56-595 of the Restructuring Act directs the Task Force to monitor the work of the SCC in implementing the Act, receiving such reports as the SCC may be required to make pursuant to the Act, including reviews, analysis, and impact on consumers of electric utility restructuring programs of other states. The Task Force received reports on the status of implementation of the Act from the SCC at several of its meetings. Commission activities during the 2001-2002 interim include:

1. Permanent Rules for Virginia Energy Choice

On June 20, 2001, the SCC adopted permanent rules for Virginia Energy Choice. The rules, designed to advance a competitive energy supply market and protect Virginians interested in shopping for electricity and natural gas, took effect August 1, 2001.

The rules provide that consumers will receive or can ask energy suppliers making offers in Virginia for: (i) accurate and understandable advertisements, solicitations, marketing materials and customer service contracts that are not misleading; (ii) a toll-free phone number to contact for additional information; (iii) an estimated average annual price to help residential customers comparison shop; (iv) a statement of how to terminate service; (v) a statement disclosing contract terms, usage requirements, customer start-up fees, cancellation fees, or fixed charges; (vi) an explanation of the "Customer's Right To Cancel" a contract, without penalty, for up to 10 days after receiving notice of a change in providers; and (vii) consumer control over the release of customer information to marketers. Consumers will have the right to "opt out" of utility information-sharing provisions. The local distribution companies will be required to provide competitive service providers with lists of all eligible customers. Prior to releasing the customer lists, the utilities will give each customer the opportunity to have his or her name and information withheld.

The rules also address the amount of information that will be available to a customer on the monthly utility bill. In the rules for Energy Choice, standard terminology will be used for the following key bill components: distribution service, competitive transition charge, electricity supply service or natural gas supply service, state and local consumption tax, and local utility tax. Bills will also include a customer's monthly energy consumption for the previous 12 months, "price-to-compare" information, a description of all applicable charges, and notices of any rate changes.

Consumers selecting a competitive supplier are entitled, upon making a purchasing decision, to: (i) delivery of a written contract containing all applicable prices, terms, and conditions; (ii) the ability to verify the customer's decision to select a competitive service provider; (iii) the ability to substantiate, upon a customer's request, any claims that an offer possesses unusual or special attributes; (iv) a deposit or pre-payment, if required, that does not exceed an estimated three months' worth of service; (v) explicit dispute resolution procedures; (vi) toll-free numbers to call in case of a service emergency or for customer inquiries; (vii) 60 days' written notice if a competitive service provider decides to terminate service to a customer class or to abandon service within the Commonwealth; and (viii) confirmation, upon request, that the provider is licensed by the SCC.

2. Schedule for Implementation of Competition

On April 2, 2001, the SCC established the phase-in schedule for electric choice for most consumers. The Restructuring Act requires the SCC to establish a phase-in schedule for electric choice that begins January 1, 2002. The SCC's schedule gives at least three quarters of the electric customers in the Commonwealth the opportunity to choose an energy supplier January 1, 2003, which is one year earlier than the January 1, 2004, deadline established by the Restructuring Act. The Commission decided that a one-year transition to retail electric choice would attract competitive suppliers and benefit the most consumers. Energy marketers would have enough potential customers to offset the marketing and set-up costs to come into the Commonwealth.

AEP-Virginia, Allegheny Power, and Delmarva Power and Light will implement full retail choice in their service territories on January 1, 2002.

Virginia Power, with nearly two million retail customers, will introduce retail choice in three steps over one year. Residential customers in northern Virginia and one-third of the statewide industrial load will receive retail choice on January 1, 2002. Residential customers in central and western Virginia as well as a second third of the statewide industrial load will receive retail choice on September 1, 2002. Hampton Roads and the remaining industrial load will receive retail choice on January 1, 2003.

Virginia's 13 electric cooperatives and Kentucky Utilities (Old Dominion Power Company) will be required to complete the move to full retail choice completed by January 1, 2004. Each electric utility is required to furnish quarterly updates to the Commission on the status and progress of the phase-in implementation within its service territory.

3. Minimum Stay Requirements

On October 9, 2001, the SCC issued an order establishing minimum stay requirements. Under the rule, local distribution companies may require a 12-month minimum stay period for customers with an annual peak demand of 500 kW or greater. The minimum stay period applies to customers who request service from a local distribution company after a period of receiving service from a competitive service provider. However, the minimum stay requirement does not

apply to customers who return to capped rate service provided by the local distribution company as a result of their competitive service provider's abandonment of service in Virginia.

4. Other SCC Activities

Other Commission activities during 2001 included:

- Addressing the unbundling of rates, establishing wires charges, and capped rates in connection with the functional separation cases.
- Licensing competitive service providers and aggregators.
- Promulgating aggregation rules.
- Developing rules for consolidated billing services.
- Monitoring and intervening in several FERC proceedings, including AEP's plans for reorganization in Ohio and the Alliance RTO.

5. Other Testimony Provided to the Task Force

Urchie Ellis, a retired attorney, testified at the Task Force's final meeting in favor of a two-year moratorium on the deregulation process. In his analysis, Virginia's electricity rates are very good and change is not necessary. No one has promised to come in and offer service at lower rates, and the public does not understand the move to restructuring, he contended.

III. DELIBERATIONS AND RECOMMENDATIONS

At its January 7, 2002, meeting the Task Force considered numerous proposals for amendments to the Restructuring Act and related legislation.

A. ASSESSMENT FOR HOME ENERGY ASSISTANCE PROGRAM

William Lukhardt, chair of the Consumer Advisory Board, presented the Board's five recommendations for legislation. The first called on distributors of electric service, or other providers of billing services, to assess three cents per month from each of its Virginia customers. A copy of the proposal is attached as Appendix O. The collected funds would be deposited in the Home Energy Assistance Fund. The Fund, established at § 63.1-338, currently consists of donations and contributions and any moneys that may be appropriated by the General Assembly.

Delegate Plum observed that the Consumer Advisory Board voted by a margin to 6 to 5 to recommend this HEAP funding proposal. At present, the extent of the unmet need for energy assistance services is not clear. The issue of measuring unmet need is addressed in the Consumer Advisory Board's recommendation that the Department of Social Services (DSS) collect data regarding this issue (see Part III E). Following a suggestion that it hold this recommendation for possible future action, the Task Force voted not to endorse this proposal.

B. GRANT PROGRAM FOR SOLAR ENERGY EQUIPMENT

Last year, the Consumer Advisory Board recommended legislation that would establish individual and corporate income tax credits for the purpose and installation of equipment that either (i) generates electricity from solar energy or (ii) uses solar energy to heat or cool a structure or provide hot water. The tax credit would equal 15 percent of the cost of purchasing and installing eligible equipment, up to $1000, which credit must be taken in the year it is installed and purchased. The equipment must provide at least 10 percent of the building's energy needs, and be approved as eligible by the Department of Mines, Minerals and Energy. The Task Force declined to take formal action on it. Delegate Plum introduced the proposal as House Bill 2474. The bill, as amended to sunset the credit in 2006, was approved by the House of Delegates but failed in the Senate Finance Committee.

The Consumer Advisory Board's recommendation incorporated the Senate's suggestion that the incentive be crafted as a grant program rather than as a tax credit. A copy of the Board's recommendation is attached as Appendix P. The proposal provides grants to individuals and corporations equal to 15 percent of the cost incurred in installing photovoltaic property, up to a maximum of $2,000, or solar water heating property, up to a maximum of $1,000. The eligible equipment must be placed in service between January 1, 2002, and December 31, 2006. The proposal was amended to include an enactment clause providing that it would become effective only if the Department of Mines, Minerals, and Energy is appropriated funding in the 2002-2004 appropriations act for the administrative costs incurred in implementing the program.

The Task Force unanimously endorsed this proposal. The measure, introduced as House Bill 746 by Delegate Plum, was carried over to the 2003 Session in the House Commerce and Labor Committee.

C. INCOME TAX RETURN CHECK-OFF FOR CONTRIBUTIONS TO HOME ENERGY ASSISTANCE PROGRAM

For the second consecutive year, the Consumer Advisory Board proposed that the Home Energy Assistance Program be funded in part through voluntary contributions from individuals under an income tax refund check-off. The proposal, which tracks similar existing check-off provisions, allows persons entitled to a state tax refund, at the time the return is filed, to designate all or part of their refund amount to be paid into the Home Energy Assistance Fund to be used to assist low-income Virginias in meeting seasonal residential energy needs. A copy of the proposal is attached as Appendix Q. In 2001, the proposal was incorporated into House Bill 2473 as introduced, but was not enacted.

In 2002, the Task Force again recommended a favorable disposition for this proposal. The bill was introduced by Delegate Plum as House Bill 748. The measure was amended in the Senate Finance Committee to provide that for all taxable years beginning on or after January 1, 2003, the Department of Taxation may retain up to five percent of all voluntary contributions made on individual income tax returns in a taxable year, not to exceed $50,000, to defray the Department's costs of administering voluntary contributions. Each organization receiving voluntary contributions will have a pro rata share deducted from its voluntary contribution payment from the Department. The bill, as amended, passed the General Assembly.

D. FUNDING OF HOME ENERGY ASSISTANCE PROGRAM THROUGH NEIGHBORHOOD ASSISTANCE ACT

In its 2002 recommendations, the Consumer Advisory Board again recommended that the Home Energy Assistance Program be funded in part through contributions from businesses by offering tax incentives under the Neighborhood Assistance Act (Appendix R). The proposal provides that the Home Energy Assistance Fund would be the beneficiary of $1 million of Neighborhood Assistance Act tax credits. Contributions by businesses would be eligible for a tax credit equal to 45 percent of the amount of their donations, with a maximum credit of $175,000, and a minimum credit of $400, per year.

After noting concerns with the current budgetary situation, the Task Force declined to recommended enactment of this proposal this year.

E. DUTIES OF DEPARTMENT OF SOCIAL SERVICES REGARDING HOME ENERGY ASSISTANCE PROGRAM

In the 2001 Session, the General Assembly enacted House Bill 2473 to create the Home Energy Assistance Program. As the bill passed the General Assembly, the responsibilities of DSS in administering the program were limited to administering distributions from the fund and

reporting annually as to effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians. The Consumer Advisory Board recommended that certain provisions in its original recommendation be restored to the Program. A copy of the proposal is attached as Appendix S. These measure requires DSS to:

- Provide a clearinghouse for information exchange regarding such residential energy needs for low-income Virginians, which clearinghouse will provide information regarding the extent to which the Commonwealth's efforts in assisting low-income households are adequate, are cost-effective, and are not duplicative of similar services provided by utility service providers, charitable organizations, and local governments;

- Collect and analyze data regarding the amounts of energy assistance provided, categorized by fuel type, and the extent to which there is unmet need for energy assistance in the Commonwealth;

- Track recipients of low-income energy assistance in Virginia based on data provided by program administrators; and

- Develop and maintain a statewide list of available private and governmental resources for low-income Virginians in need of energy assistance.

The Task Force agreed to a favorable disposition of this recommendation. Delegate Plum introduced House Bill 747 in the 2002 Session to implement the recommendation. As it was passed by the General Assembly, the legislation requires DSS to (i) facilitate meetings with the Department of Housing and Community Development, the Department of Mines, Minerals and Energy, and other agencies of the Commonwealth, as well as any nonstate programs that elect to participate in the Home Energy Assistance Program, for the purpose of sharing information directed at alleviating the seasonal energy needs of low-income Virginians, including needs for weatherization assistance services; (ii) collect and analyze data regarding the amounts of energy assistance provided through the Department, categorized by fuel type in order to identify the unmet need for energy assistance in the Commonwealth; and (iii) develop and maintain a statewide list of available private and governmental resources for low-income Virginians in need of energy assistance. In preparing its annual report required by § 63.1-339 regarding the effectiveness of low-income energy assistance programs, DSS shall (a) conduct a survey biennially beginning in 2002, regarding the extent to which the Commonwealth's efforts in assisting low-income Virginians are adequate and are not duplicative of similar services provided by utility services providers, charitable organizations and local governments; (b) obtain information on energy programs in other states; and (c) obtain necessary information from the Department of Housing and Community Development, the Department of Mines, Minerals and Energy, and other agencies of the Commonwealth, as well as any nonstate programs that elect to participate in the Home Energy Assistance Program, to complete the biennial survey and to compile the required annual report. The Department of Housing and Community Development, the Department of Mines, Minerals and Energy, and other agencies of the Commonwealth, as well as any nonstate programs that elect to participate in the Home Energy Assistance Program, are required to provide the necessary information to DSS. DSS' annual reports will not be required after October 1, 2007.

F. INCENTIVES FOR RENEWABLE AND EFFICIENT ENERGY TECHNOLOGIES

Senator Mary Margaret Whipple presented a proposed package of tax incentives for clean and efficient energy at the Task Force's December 21, 2001, meeting (Appendix T). The proposal is similar in purpose to the legislation that Senator Whipple asked the Task Force to endorse prior to the 2001 Session, and which was introduced as Senate Bill 792. However, last year's proposal featured a corporate income tax credit in an amount equal to 0.85 cents for each kilowatt of electricity produced from certain renewable energy resources (wind and biomass) and an individual and corporate income tax credit for the costs of photovoltaic and solar water heating property. The proposal submitted to the Task Force this year substituted grants for the tax credits.

The Task Force agreed that, given the current budgetary difficulties, Senator Whipple's proposal is not likely to be embraced by the General Assembly. The Task Force agreed to carry the measure over. Nevertheless, Senator Whipple introduced the proposal in the 2002 Session as Senate Bill 377. The legislation as introduced provided (i) grant awards in the amount of 0.85 cents for each kilowatt of electricity produced by a corporation from certain renewable energy resources; (ii) grants to individuals and corporations equal to 15 percent of the cost incurred in installing photovoltaic property, solar water heating property, or wind-powered electrical generators (grants are limited to $2,000 for each system of photovoltaic property, $1,000 for each system of solar water heating property, and $1,000 for each system of wind-powered electrical generators); (iii) a refund of sales and use tax paid on certain appliances meeting energy star efficiency requirements developed by the federal government and for heat pumps, air conditioners, and natural gas water heaters meeting specified performance measures; and (iv) a refund of one-half of the sales and use tax paid on motor vehicles using clean fuel sources as a source of propulsion. Refunds of sales and use taxes on appliances, heat pumps, air conditioners, natural gas water heaters, and motor vehicles using clean fuel sources as a source of propulsion are limited to a maximum of $500 in tax paid per item. In addition, no person shall receive more than $5,000 in refunds in any calendar year for each of the appliances, heat pumps, air conditioners, natural gas water heaters, and motor vehicles covered under the bill. The tax refunds and grants programs would not be available after 2007. The bill was left in the Senate Finance Committee during the 2002 Session.

G. SERVICE TERRITORY OF MUNICIPAL ELECTRIC UTILITIES

For the second consecutive year, the Task Force considered proposals to amend the provisions of the Restructuring Act that address the extent to which the municipal electric utility operated by the City of Martinsville should be able to provide service to areas outside its service territory in existence on July 1, 1999, without becoming subject to the provisions of the Restructuring Act. Last year, the Task Force endorsed, and the General Assembly enacted, identical proposals (Senate Bill 896 and House Bill 1935) that allowed Martinsville's electric utility to expand its service territory to areas within the City's boundaries that were previously served by an investor-owned utility.

At its December 21, 2001, meeting, Carter Glass, representing the City of Martinsville, outlined a proposal to allow its electric utility to provide service to the unincorporated community of Bassett, located several miles northwest of the City in Henry County. The area had not been certificated to a regulated electric utility; service has been provided by Bassett Furniture Industries, Inc., which has owned and operated its own electric system serving its factories as well as residential and commercial customers in the surrounding community. The company has decided to withdraw from the electric distribution business, and has stated that there would be advantages to it and to other current users of its system if Martinsville were to operate the company's facilities.

A proposal was offered, a copy of which is attached as Appendix U, to amend § 56-580 to allow an electric utility owned or operated by a municipality to remain exempt from the provisions of the Restructuring Act if it commences providing service to areas outside its service area as of July 1, 1999, that (i) were not part of an exclusive service territory established by the State Corporation Commission as of such date and (ii) were served by a company that allows the municipal electric utility to acquire its distribution facilities and to distribute electric energy within the area.

The Task Force expressed concerns with allowing municipal electric utilities to extend their service territories outside of their municipal boundaries to serve new areas in the midst of the service territories of utilities that are subject to the Restructuring Act. The Task Force unanimously decided against supporting this proposal.

Notwithstanding the Task Force's negative action on the proposal, identical bills (Senate Bill 356, House Bill 429, and House Bill 709) were introduced to implement the proposal during the 2002 Session. None were favorably reported by the committee to which it was referred.

H. MEMBER REGULATION BY ELECTRIC DISTRIBUTION COOPERATIVES

Prior to the 2001 Session, the Task Force was advised that legislation to allow member regulation by distribution cooperatives would be introduced with the request it be referred to the Task Force for study. House Bill 1940 was referred by the Corporations, Insurance and Banking Committee to the Task Force for further consideration. The Task Force's consideration of this issue is discussed in Part II G, above. At the Task Force's December 21, 2001, meeting, a re-written draft of the cooperative member regulation bill was circulated (Appendix V). No action was taken on the proposal at that meeting, and prior to the following meeting the electric cooperatives asked that no action be taken on the proposal at this time.

I. STATE CORPORATION COMMISSION REVIEW OF GENERATION FACILITIES

As discussed in Part II A 6 above, the Virginia Energy Providers (VEP) asked the Task Force to support legislation aimed at curbing a perceived duplication by the SCC of power plant siting decisions previously rendered by other governmental agencies. Bill Axselle, spokesperson for the VEP, presented his organization's recommended legislation at the January 7, 2002, meeting. He characterized the measure as having as its goal the avoidance of duplication of environmental reviews. With regard to certain issues, the SCC should, he argued, defer to the decisions of agencies with greater expertise in particular subject matter areas.

The VEP's proposal, a copy of which is attached as Appendix W, requires the SCC, when considering the effect of an electrical generating facility, to defer to the jurisdiction and actions of federal, state and local agencies charged by law with responsibility for issuing permits or approvals respecting environmental impact and mitigation of adverse environmental impact or for other specific public interest issues.

Alexander Macaulay, representing the Piedmont Environmental Council, spoke against the proposal on grounds that there is insufficient evidence that the power industry's freedom of action has been restricted. He also expressed doubt that there is duplication of approvals in the site permitting process, and observed that the SCC may not adopt the recommendations of its hearing examiner in the controversial Tenaska proceeding.

The Task Force moved favorably on the VEP's proposal in concept, while acknowledging that revisions may be appropriate to address concerns raised by the measure's opponents. Delegate Woodrum objected to the Task Force's favorable recommendation.

In the 2002 Session, Senator Norment introduced legislation based on this proposal (Senate Bill 554). As it was enacted by the General Assembly, the bill provides that any valid permit or approval required for an electric generating plant and associated facilities issued or granted by federal, state, and local governmental entities charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans and public safety, shall be deemed to satisfy requirements for SCC consideration of the effect of the facility on the environment with respect to matters that are governed by the permit or approval or are within the authority of and were considered in the issuance of the permit or approval. The measure also grants to DEQ and the Air Pollution Control Board the authority to consider the cumulative impact of new and proposed electric generating facilities on attainment of national ambient air quality standards. The SCC and DEQ are also required to enter into a memorandum of agreement to govern their coordination of reviews of the environmental impacts of such facilities.

J. PROVIDING ELECTRICITY IN EMERGENCY SITUATIONS

As discussed in Part II E above, the Task Force addressed the issue of whether the electricity generated from power plants, including those not regulated as public utilities, could be called upon to serve areas of the Commonwealth adversely affected by emergency situations. A draft proposal was presented to the Task Force (Appendix X) that authorizes the Governor to require any generator or any municipal electric utility to generate, dispatch or sell from a facility that it operates to the Commonwealth for distribution within areas of the state designated in a declaration of electric energy emergency.

Despite some concerns expressed by Michael Cline of the Department of Emergency Services that the powers granted to the Governor in this proposal are duplicative of existing authority, the Task Force endorsed the proposal in concept. Senator Watkins introduced the measure as Senate Bill 257. As enacted by the General Assembly, the legislation authorizes the Governor to declare an electric energy emergency upon finding that an unplanned interruption in the generation or transmission of electricity, resulting from a hurricane, ice storm, windstorm, earthquake or similar natural phenomena, or from a criminal act affecting generation or transmission, act of war or act of terrorism, so imminently and substantially threatens the health, safety or welfare of residents of this Commonwealth that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property. Upon declaring an emergency, the Governor may require a generator or municipal electric utility to generate, dispatch or sell to the Commonwealth electricity from a facility that it operates within the Commonwealth, for distribution within the areas of the Commonwealth designated in the declaration. The Commonwealth shall compensate generators, dispatchers or sellers of electricity in the same manner as provided in § 56-522. The Governor is also authorized to request the Secretary of the United States Department of Energy to invoke section 202(C) of the Federal Power Act. The measure was amended in committee to provide that the Department of Emergency Services, rather than the SCC, shall promulgate guidelines for the implementation of the Governor's powers.

K. PUBLIC SERVICE TAXATION: DEFINITION OF ELECTRIC SUPPLIERS

In addition to examining proposals affecting the Restructuring Act, the Task Force has traditionally reviewed legislation that affects the taxation of electricity suppliers. In response to an issue identified by the SCC, Senator Watkins asked the Task Force to consider a change to the definition of an "electric supplier" in § 58.1-2600. A copy of the proposal is attached as Appendix Y. The amendment exempts all persons who own or operate facilities for the generation, transmission or distribution of electricity for sale that have a capacity of 25 megawatts or less from the definition of an "electric supplier." Currently, a person who owns or operates a solar, wind or hydroelectric facility with a capacity of 25 megawatts or less is not included in the definition of an electric supplier. The measure also clarifies that electric suppliers whose facilities have a capacity of 25 megawatts or less are not required to report their property to the SCC.

The Task Force endorsed the proposed change. Senator Watkins introduced legislation implementing the change (Senate Bill 259) in the 2002 Session. The measure was enacted by the General Assembly.

L. PUBLIC SERVICE TAXATION: COGENERATOR DEFINITION

The Task Force considered a proposal to reenact the definition of a "cogenerator" in § 58.1-2600. Cogenerators had been defined as qualifying cogenerators or qualifying small power producers within the meaning of regulations of the FERC implementing Public Utility Regulatory Policies Act of 1978. However, Virginia's definition of "cogenerator" was removed from the Code effective December 31, 2001, as part of legislation adopted in 2000 that eliminated the tax credit for cogenerators under § 58.1-433. However, repealing the definition created the possibility of confusion because the term is used in § 58.1-433.1, which created a new tax credit for the purchase and consumption of coal.

The Task Force endorsed the proposal to reenact the definition of a cogenerator for public service taxation purposes (Appendix Z). Senator Watkins introduced the measure in the 2002 Session as Senate Bill 258. The measure was enacted by the General Assembly with a provision making it effective retroactive to December 31, 2001.

M. REQUIRING DEFAULT SERVICE PROVIDERS TO BUILD GENERATION FACILITIES

In the course of discussions regarding the powers of the SCC with respect to the effect of functional separation on the obligations of default service providers, statements were made on behalf of Dominion Virginia Power to the effect that the Commission has authority to require a distributor that is designated as a default service provider under § 56-585 to build generation capacity or to create an affiliate to do so. As such authority is not expressly stated in the Restructuring Act, Delegate Woodrum proposed an amendment that would grant the authority to the SCC (Appendix AA).

Virginia Power spokesman William G. Thomas questioned the need for the amendment and suggested that it may be broader than appropriate in that it also addresses the distributor's operation of the facilities. Daniel Carson of AEP-Virginia expressed his company's opposition to a provision that gives the SCC the power to require distributors to retain retail electric energy production facilities. Bill Axselle, representing VEP, offered that the proposal should be amended to allow the SCC to require distributors designated as default service providers to purchase generation services on a competitive, nondiscriminatory basis, in order to avoid perpetuation of the strong position of incumbent distribution utilities.

The Task Force recommended this proposal in concept, subject to revisions not inconsistent with its purpose. Delegate Woodrum introduced the proposal in the 2002 Session as House Bill 732. The measure as introduced authorizes the SCC to require a distributor that becomes obligated to provide default service, or an affiliate formed by the distributor, to (i)

purchase, through nondiscriminatory competitive procurement, generation services or (ii) acquire or build electric energy production facilities as the Commission deems will satisfy all or a portion of the distributor's obligation to provide generation services. The bill was referred to the House Commerce and Labor Committee, which carried it over to the 2003 Session.

N. CONTINUING SJR 467 - STUDY OF GENERATION FACILITY SITING PROCESS/DOMESTIC CAP

The Task Force's study of the siting process for electric generating facilities pursuant to Senate Joint Resolution 467, discussed at Part II A above, was not completed prior to the start of the 2002 Session. One factor complicating the Task Force's review of the siting process was the SCC's decision, announced in June 2001, to establish new requirements for entities seeking to construct and operate new electric generating facilities. The SCC's order adopting new requirements was issued on December 14, 2001, at which time the Commission also adopted a new proceeding to consider additional rules addressing the cumulative impacts of new electric generating facilities, filing requirements related to market power, and expedited permitting processes for small (less than 50 megawatts) generating facilities. The Task Force also learned of issues regarding the ability of operators of generating facilities to acquire air pollution emission credits from facility operators in other states, and thereby to risk exceeding the statewide cap on NOx emissions.

The Task Force considered a resolution (Appendix BB) to continue its study of siting procedures at its January 7, 2002, meeting. The Task Force acknowledged that changes to the SCC's environmental review procedures contemplated by Senate Bill 554 will further complicate its review of the siting process. The Task Force unanimously endorsed the recommended resolution. Senator Norment introduced the legislation as Senate Joint Resolution 116. The measure was adopted by the General Assembly. It provides that the Task Force will report its findings and recommendations to the 2003 Session of the General Assembly.

O. WIRES CHARGE PHASE-OUT; BILLING BY MUNICIPALS AND COOPERATIVES

AES New Energy and Old Mill Power Company jointly proposed two amendments to the Restructuring Act intended to enhance the development of competition in Virginia's electricity markets. A copy of the proposal is attached as Appendix CC. First, they proposed a reduction in the wires charges by 20 percent each year. They asserted that a phased elimination of the wires charges will allow a gradual transition to full competition. The Act's provisions allowing the imposition of wires charges upon customers who switch from their incumbent utility impede the development of a sustainable retail market by limiting the ability of competitive service providers to offer services at prices that are sufficiently low to induce new entrants to do business in Virginia.

Second, they proposed allowing suppliers to offer dual billing options in service areas currently served by electric cooperatives. Their proposal amends subsection J of § 56-581.1 to eliminate the provision that exempts utility consumer services cooperatives and municipal electric utilities from undertaking coordination of the provisions of direct billing services by

suppliers and aggregators. Eric Matheson of AES New Energy noted that under his proposal municipal utilities and cooperatives would still not be required to undertake coordination of the provisions of consolidated billing services. The statement of Old Mill Power Company in support of the proposals is attached as Appendix DD.

William G. Thomas, representing Dominion Virginia Power, countered that the Restructuring Act's imposition of wires charges establishes the method by which customers who leave an incumbent electric utility pay their share of the utility's stranded costs. The Act allows competitive service providers to compete in the face of wires charges by buying them down or financing them. As wires charges are an integral part of the Act's approach to restructuring the Commonwealth's electric utilities, all aspects of the Act may need to be revisited if this proposal proceeds.

Senator Watkins observed that, while the proposal appears flawed in some respects, it raises an issue that may be appropriate for review next year. The Task Force agreed to carry the issue of wires charges over to its next year, when it is charged under § 56-595 with examining whether the recovery of stranded costs as provided in § 56-584 has resulted, or is likely to result, in the overrecovery or underrecovery of just and reasonable net stranded costs.

IV. CONCLUSION

The Legislative Transition Task Force recognizes that the successful implementation of the Restructuring Act is vitally important to all Virginians. The members of the Task Force remain confident that Virginia can successfully implement retail competition for electric generation services.

In its third year of existence, the Task Force has continued to attempt to address issues that were perhaps not anticipated when the Restructuring Act was crafted. The ability to refine the provisions of the Restructuring Act as competition is phased in throughout Virginia has been lauded as an important safeguard for Virginia's consumers. With the inception of retail competition in portions of the Commonwealth on January 1, 2002, the Task Force is overseeing the commencement of a new era in the provision of electric generation services. The success of this new system will depend in no small part on the Task Force's success in fostering the development of a competitive market.

In the upcoming year, the Task Force anticipates addressing several complex and controversial issues, including but not limited to the generation facility permitting process, the recovery of stranded costs, functional separation issues, and the development of regional transmission entities. The advent of retail competition, it is acknowledged, it likely to increase, rather than reduce, the number and difficulty of policy issues that necessitate the Task Force's attention.

At the end of its third year of existence, it is appropriate for the Task Force to share the conclusions of NCSL Analyst Matthew Brown:

> The early years of restructuring have produced a mixture of results and these results reflect a market in transition. It appears safe to say that competition *could* produce a broader array of innovations and products than regulation, and that it could do so while also keeping electricity costs stable and affordable for consumers. To date, most of the benefits of retail competition for electricity remain theoretical . . . Many retail competition advocates promoted the idea of retail electric competition with the promise that it would lower rates for everyone. That has, however, proved difficult to deliver, not so much because retail competition could not ultimately make the electric system more efficient, but because prices under competition remain subject to many of the same forces that affect prices under regulation. When natural gas prices increased in 2000, wholesale electricity prices increased as well. Retail markets, without the benefit of well-functioning wholesale markets, proved less efficient than many had hoped and made it difficult to achieve real savings from retail market competition. The question that perhaps remains unanswered is not whether retail competition will lower rates for all consumers, but whether competition will make electricity rates lower than they otherwise would have been under competition. The answer to that question remains elusive.

Matthew H. Brown, Restructuring in Retrospect (National Conference of State Legislatures, October 2001), pp. 37-38.

The members of the Task Force appreciate the diligent efforts of the members of the Consumer Advisory Board in developing recommendations addressing the critical issues of low-income energy assistance, renewable energy, and energy efficiency, and wish to express their appreciation to all persons who have assisted in its deliberations.

Respectfully submitted,

Senator Thomas K. Norment, Jr., Chairman
Delegate Clifton A. Woodrum, Vice-Chairman
Delegate Jerrauld C. Jones
Delegate Terry G. Kilgore
Delegate Harry J. Parrish
Delegate Kenneth R. Plum
Senator Richard L. Saslaw
Senator Kenneth W. Stolle
Delegate Robert Tata
Senator John Watkins

Provisions of the Virginia Electric Utility Restructuring Act Pertaining to the Legislative Transition Task Force

§ 56-595. Legislative Transition Task Force established.

C. The Task Force members shall . . . (i) monitor the work of the Virginia State Corporation Commission in implementing this chapter, receiving such reports as the Commission may be required to make pursuant thereto, including reviews, analysis, and impact on consumers of electric utility restructuring programs of other states; (ii) determine whether, and on what basis, incumbent electric utilities should be permitted to discount capped generation rates established pursuant to § 56-582; (iii) after the commencement of customer choice, monitor, with the assistance of the Commission, the Office of the Attorney General, incumbent electric utilities, suppliers, and retail customers, whether the recovery of stranded costs, as provided in § 56-584, has resulted or is likely to result in the overrecovery or underrecovery of just and reasonable net stranded costs; (iv) examine utility worker protection during the transition to retail competition; generation, transmission and distribution systems reliability concerns; energy assistance programs for low-income households; renewable energy programs; and energy efficiency programs; and (v) 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 in order to maintain the Commonwealth's position as a low-cost electricity market and ensuring that residential customers and small business customers benefit from competition.

§ 56-577 (Schedule for transition to retail competition)

B. . . . The Commission shall, within a reasonable time, report to the General Assembly, or any legislative entity monitoring the restructuring of Virginia's electric industry, any such delays [in the implementation of the transition to retail competition] and the reasons therefor.

§ 56-579 (Regional transmission entities)

F. On or after January 1, 2002, the Commission shall report to the Legislative Transition Task Force its assessment of the success in the practices and policies of the RTE facilitating the orderly development of competition in the Commonwealth.

§ 56-581.1 (Competitive retail electric billing and metering)

C. . . . The Commission shall report any such delays [in any element of the provision of billing services] and the underlying reasons therefor to the Legislative Transition Task Force within a reasonable time.

§ 56-585 (Default service)

E. On or before July 1, 2004, and annually thereafter, the Commission shall determine, after notice and opportunity for hearing, whether there is a sufficient degree of competition such that the elimination of default service for particular customers, particular classes of customers or particular geographic areas of the Commonwealth will not be contrary to the public interest. The Commission shall report its findings and recommendations concerning modification or termination of default service to the General Assembly and to the Legislative Transition Task Force, not later than December 1, 2004, and annually thereafter.

§ 56-592. (Consumer education report)

The Commission shall complete the development of the consumer education program described in subsection A, and report its findings and recommendations to the Legislative Transition Task Force on or before December 1, 1999, and as frequently thereafter as may be required by the Task Force concerning:

1. The scope of such recommended program consistent with the requirements of subsection A;
2. Materials and media required to effectuate any such program;
3. State agency and nongovernmental entity participation;
4. Program duration;
5. Funding requirements and mechanisms for any such program; and
6. Such other findings and recommendations the Commission deems appropriate in the public interest.

§ 56-592.1 (Consumer education program scope and funding)

D. Pursuant to the provisions of § 56-595, the Commission shall provide periodic updates to the Legislative Transition Task Force concerning the program's implementation and operation.

§ 56-596. Advancing competition.

B. By September 1 of each year, the Commission shall report to the Legislative Transition Task Force and the Governor information on the status of competition in the Commonwealth, the status of the development of regional competitive markets, and its recommendations to facilitate effective competition in the Commonwealth as soon as practical. This report shall include any recommendations of actions to be taken by the General Assembly, the Commission, electric utilities, suppliers, generators, distributors and regional transmission entities it considers to be in the public interest. Such recommendations shall include actions regarding the supply and demand balance for generation services, new and existing generation capacity, transmission constraints, market power, suppliers licensed and operating in the Commonwealth, and the shared or joint use of generation sites.

SENATE JOINT RESOLUTION NO. 467

Requesting the Legislative Transition Task Force to study procedures applicable to the construction of new electricity generation facilities in the Commonwealth.

Agreed to by the Senate, February 22, 2001
Agreed to by the House of Delegates, February 21, 2001

WHEREAS, the Legislative Transition Task Force was established pursuant to § 56-595 of the Code of Virginia to work collaboratively with the Commission in conjunction with the phase-in of retail competition within the Commonwealth; and

WHEREAS, an adequate supply of electricity is critical to the development of a competitive market for electric generation services in Virginia; and

WHEREAS, the procedures applicable to the construction of electricity generation facilities affect the length of time required to build new generation capacity; and

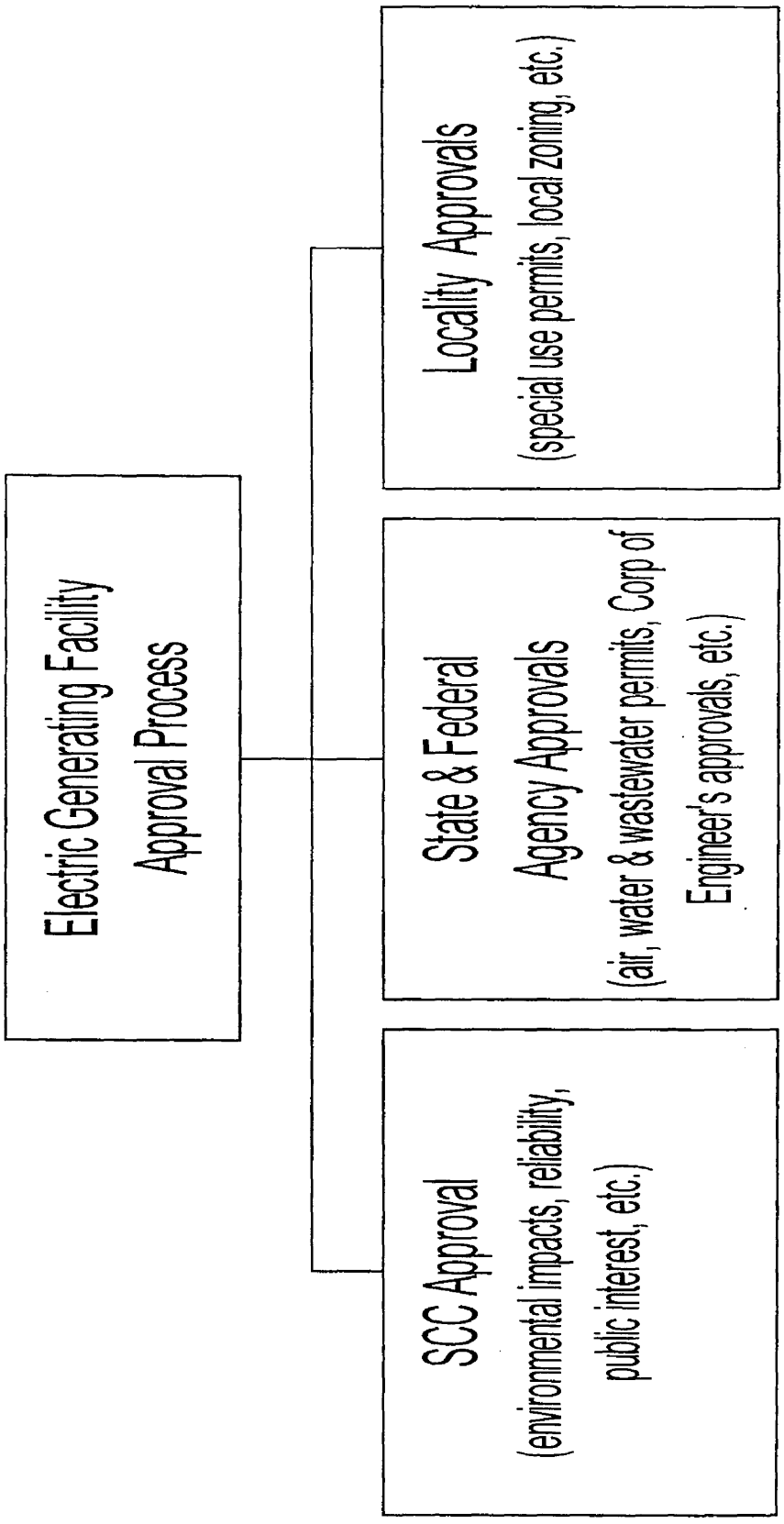
WHEREAS, the siting of electricity generation facilities is often the source of controversy involving competing public objectives; and

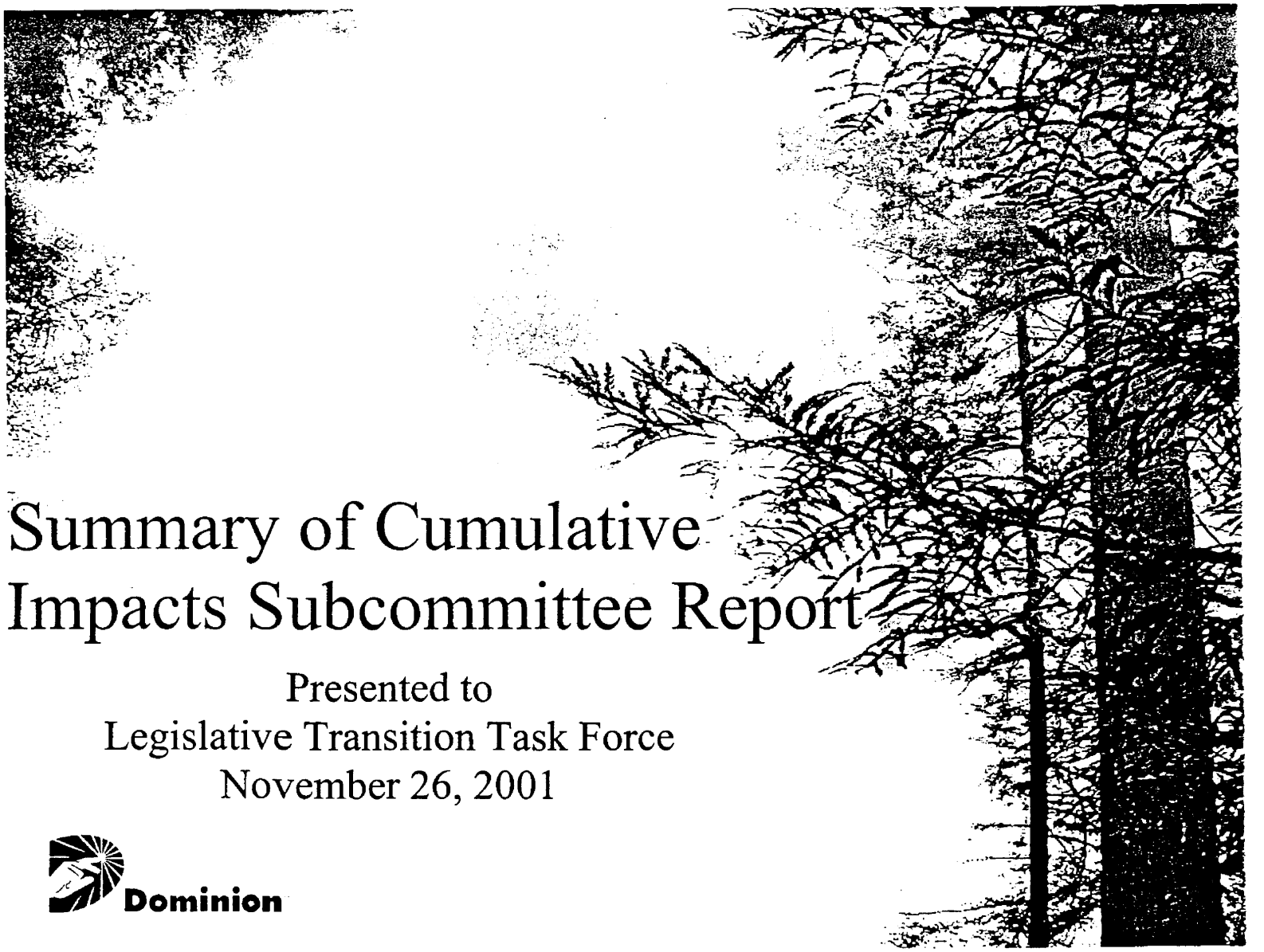
WHEREAS, the effects of emissions from electricity generation facilities on air quality are often cited as a major concern in their siting; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Legislative Transition Task Force be requested to study procedures applicable to the construction of new electricity generation facilities in the Commonwealth. The Legislative Transition Task Force shall recommend amendments to the Commonwealth's administrative and regulatory procedures as are appropriate to facilitate the approval of construction of sufficient electricity generation capacity to provide a competitive market for electricity in the Commonwealth as soon as practical, without lessening necessary environmental considerations including siting and air quality impacts.

Technical assistance shall be provided to the Legislative Transition Task Force by the State Corporation Commission, the Secretary of Commerce and Trade, and the Secretary of Natural Resources. All agencies of the Commonwealth shall provide assistance to the Legislative Transition Task Force for this study, upon request.

The Legislative Transition Task Force shall complete its work in time to submit its findings and recommendations by November 30, 2001, to the Governor and the 2002 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.


Electric Generating Facility Approval Process
Locality Approvals
(special use permits, local zoning, etc.)
State & Federal Agency Approvals
(air, water & wastewater permits, Corp of Engineer's approvals, etc.)
SCC Approval
(environmental impacts, reliability, public interest, etc.)

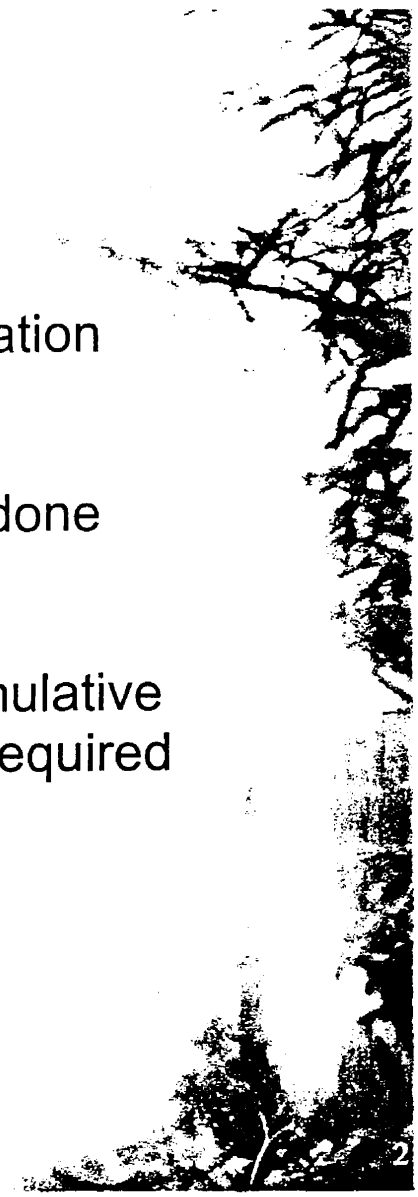


Summary of Cumulative Impacts Subcommittee Report

Presented to
Legislative Transition Task Force
November 26, 2001

Dominion

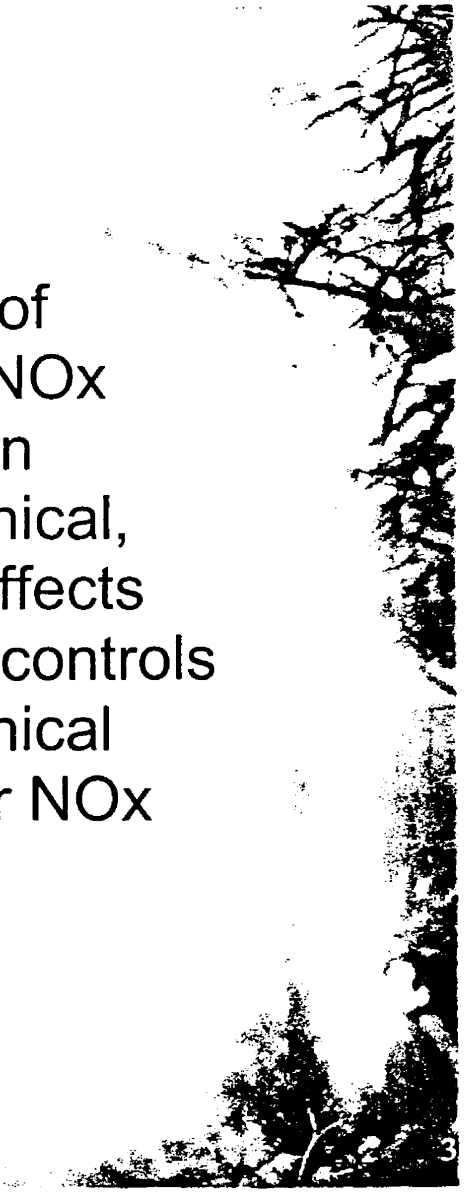
Background



- Virginia is experiencing a proliferation of proposed power plants
- Individual air quality modeling is done for major individual plants
- For certain minor sources no cumulative air quality impact assessment is required under current regulations

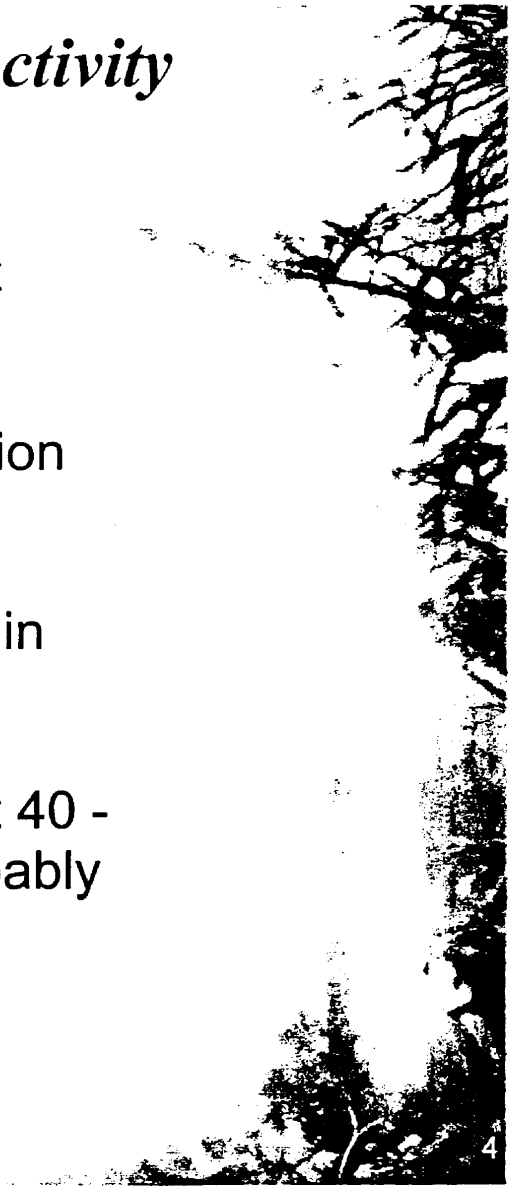
Mission Statement

To make recommendations for evaluating cumulative impacts of ozone precursors, particularly NOx emissions, from new sources, in a way that helps evaluate technical, economic and environmental effects NOx emissions and emissions controls so that the DEQ can form technical and regulatory review policy for NOx emissions sources.

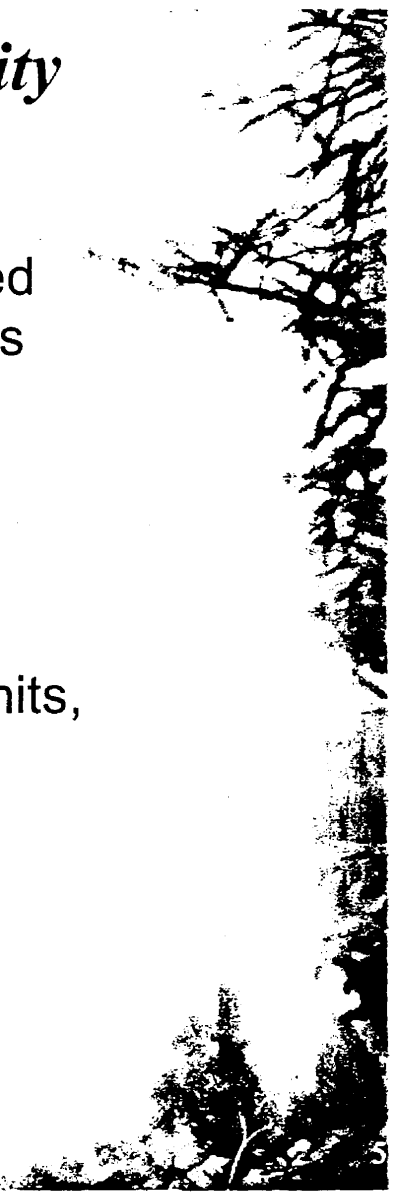


Current Air Permitting Activity

- Five air permits issued in last 2 years
- Fourteen plants with application in process
- Nine plants with applications in the initial stages
- Total of 28 new plants (about 40 - 50% of these plants will probably be constructed)



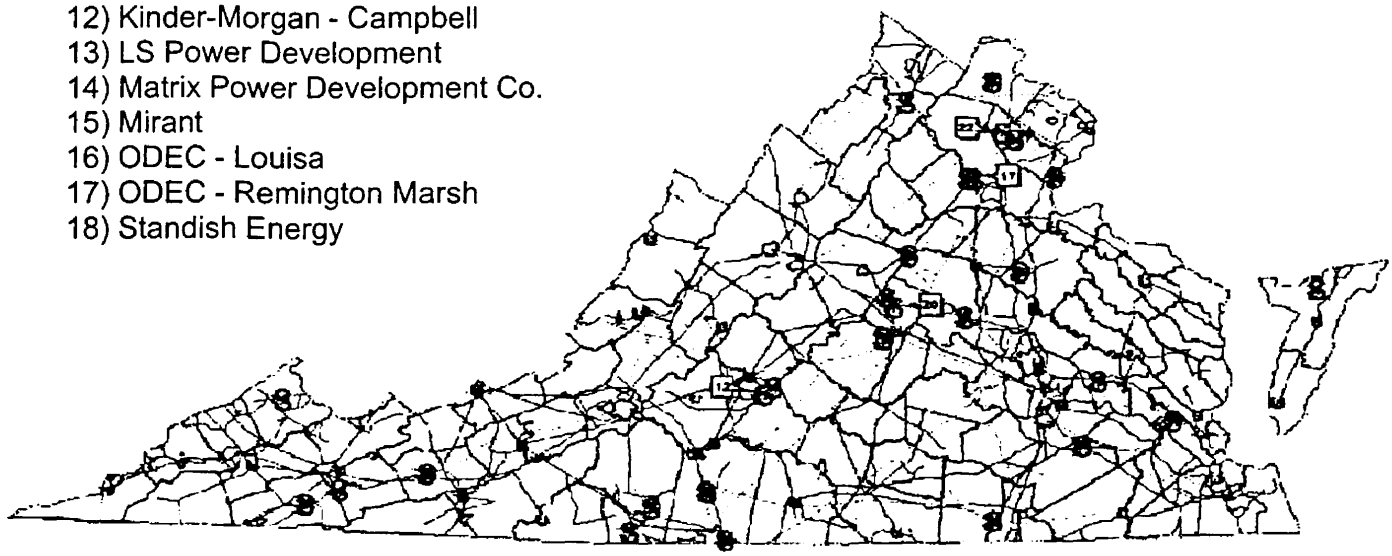
Current Air Permitting Activity



- 26 of the 28 plants are clean fueled with natural gas. Some have oil as backup fuel
- Only 2 are fired with coal and oil as main fuel sources
- Most of the plants were PSD permits, and subject to air modeling as required by NSR

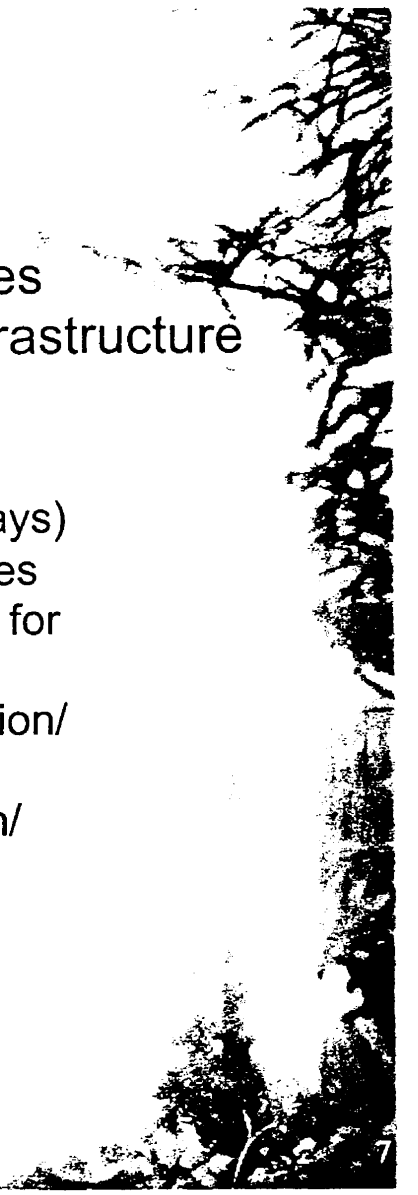
Proposed Power Generation Facilities in Virginia

1) Allegheny Energy Supply
2) Chickahominy Power
3) Cincap
4) Commonwealth Chesapeake Corp.
5) Competitive Power Venture - Fluvanna
6) Competitive Power Venture - Smyth
7) Competitive Power Venture - Warren
8) Declear Energy
9) Entergy
10) Henry County Power, LLC
11) Kinder-Morgan - Brunswick
12) Kinder-Morgan - Campbell
13) LS Power Development
14) Matrix Power Development Co.
15) Mirant
16) ODEC - Louisa
17) ODEC - Remington Marsh
18) Standish Energy
19) Tenaska - Buckingham
20) Tenaska - Fluvanna
21) Tractebel, Inc.
22) US DataPort/Calpine
23) Virginia Power - Ladysmith
24) Virginia Power - Remington
25) Virginia Power - Possum Point
26) White Oak Power Co.
27) Wolf Hills Energy
28) Wythe Energy



Prepared by Virginia Economic Development Partnership
Data Sources: VEDP, NPMS, USGS, SCC

Power Plant Siting

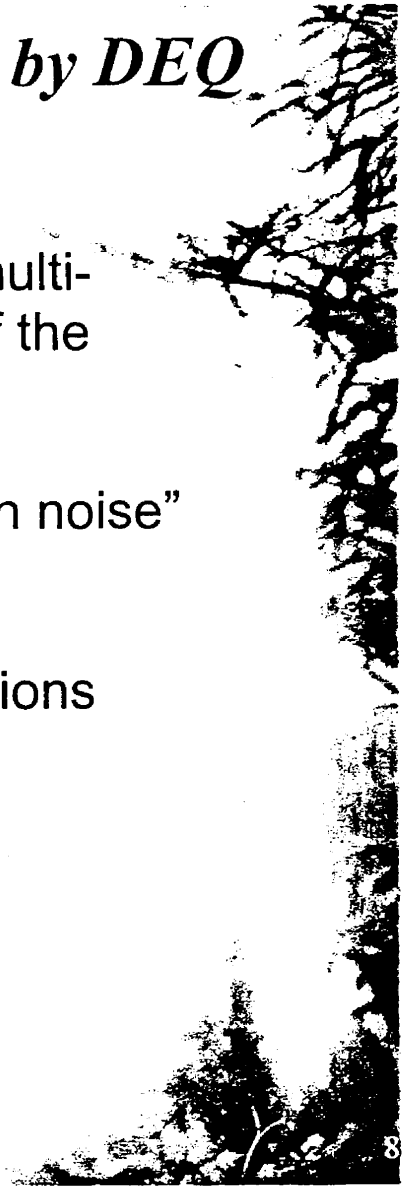


- Power plant developers select sites based on proximity to existing infrastructure

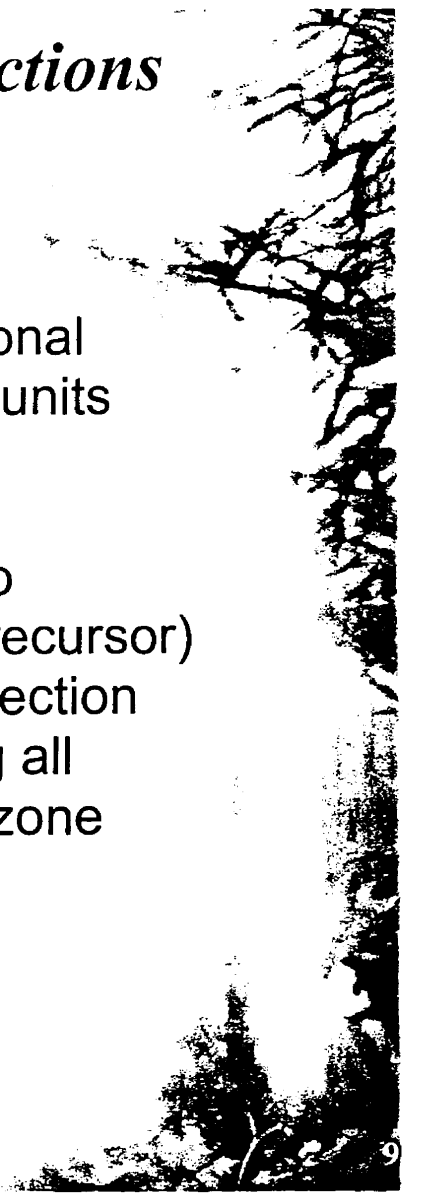
- Power plants need:
  - ✓ Fuel availability (gas pipelines, railways)
  - ✓ Proximity to electric transmission lines
  - ✓ Water availability (river/groundwater for cooling)
  - ✓ Transportation access (for construction/ maintenance)
  - ✓ Land availability for future expansion/ zoning
  - ✓ Site topography/soil characteristics
  - ✓ Good existing air and water quality

Cumulative Impacts Air Modeling by DEQ

- DEQ has voluntarily conducted multi-source ozone modeling from 8 of the new power generators
- DEQ says all impacts were "within noise" of the modeling results
- This did not include ozone reductions expected under future SIP call



"On-the-Way" Emissions Reductions

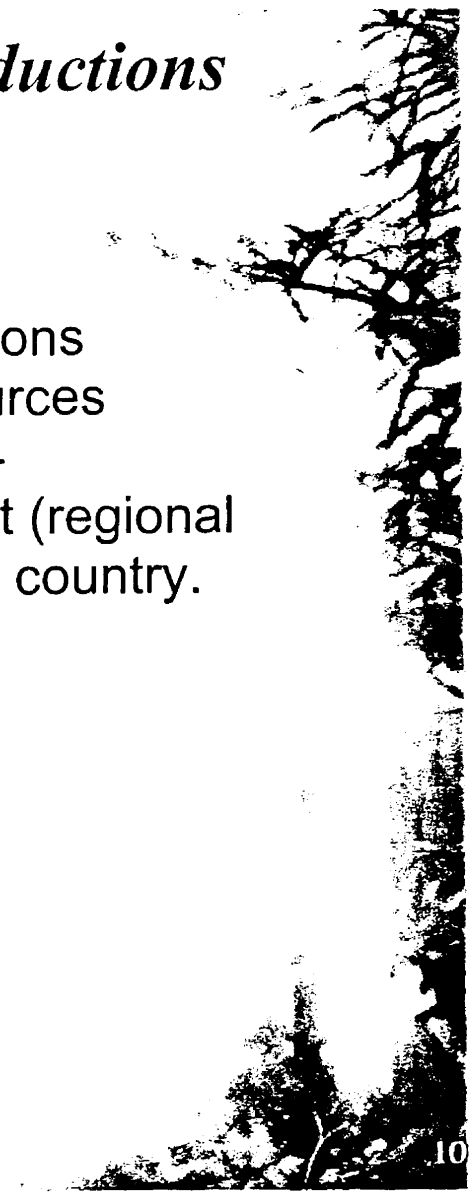


- Phase II of Acid Rain Program (Title IV) - SO2 scrubbers, additional NOx reductions for early elected units by 2008

- NOx SIP Call - Virginia sources to reduce NOx emissions (ozone precursor) by approximately 65% in 2003 (section 126) - EPA projects this will bring all areas into attainment with new ozone standard

"On-the-Way" Emissions Reductions

- BART (best available retrofit technology) - to reduce emissions of PM, NOx and SOx from sources built between 1962 and 1977 - to address visibility impairment (regional haze) in Class 1 areas around country.



Recommendations

- DEQ should continue to research and evaluate the issue of cumulative impacts while addressing the following factors:
  - ✓ Improve public awareness of multi-source modeling efforts and solutions
  - ✓ Take into account effect of NOX SIP Call, regional haze rule, and phase II acid rain rule
  - ✓ Properly evaluate contributions of mobile sources
  - ✓ Participate in multi-state initiatives addressing cumulative impacts

State Advisory Board on Air Pollution Cumulative Effects Work Group

Environmental and Health Subgroup Findings and Recommendations

Introduction to the problem

Since the January 1998 announcement of deregulation of the power industry, Virginia has been subjected to an inordinate number of new power plant proposals. As of today, there are 30 proposals announced, filed with local and/or state government agencies, or approved. The 30 potential new power plants will produce more than 20,000 megawatts representing more than a 100 percent increase to existing electric generation in the Commonwealth, and almost a 100 percent increase in the number of electric generating facilities (31 existing plants producing 18, 200 megawatts).

This subgroup believes that the cumulative "environmental health" effects of multiple new and modified power plants is a critical issue because Virginia's air quality is already substantially impaired. Last year, the Virginia Department of Environmental Quality determined that 20 of 21 ozone monitors located in urban and rural settings reflected unhealthy levels of ozone (based on 1997 through 1999 data) under the new 8-Hour ozone standard currently recommended by the Environmental Protection Agency. While it is true that Virginia "receives" a lot of air pollution from out of state, recent modeling studies by the Southern Appalachian Mountain Initiative and the National Oceanic and Atmospheric Administration indicate that Virginia contributes surprisingly high amounts of pollution to their own air quality problems and related environmental impacts. The addition of 30 power plants can and likely will "add up" to cumulative impacts that may further degrade Virginia's air quality.

Health and Environmental Effects of Power Plant Emissions

This unprecedented new emissions growth has triggered public issues and concerns related to the cumulative, or additive, "environmental health" effects of multiple new and modified sources of air pollution.

Nitrogen oxides (NOX) and particulate matter (PM) emissions from fuel combustion in power plants and other sources contribute to a range of health problems. Nitrogen oxides are respiratory irritants, and also form ozone and small particles through atmospheric chemical reactions. Ozone is a powerful respiratory irritant that can cause lung inflammation, transient decreases in lung function, shortness of breath, chest pain, wheezing, coughing, and exacerbation of respiratory illnesses such as asthma. Long-term and repeated ozone exposures may lead to chronically reduced lung function. On days of peak summertime ozone concentrations when energy demands are typically high, additional pollution emissions may exacerbate health problems for people with asthma, other respiratory ailments, or sensitivities to ozone. Particulate matter contributes to a range of health problems, including impaired lung function, aggravation of serious respiratory and heart diseases, and premature death.

Power plant pollution will also take a major toll on sensitive ecological and agricultural resources in the Commonwealth. The primary pollutants of concern from these new power plants are sulfur dioxide, nitrogen oxides, volatile organic compounds (nitrogen oxides and volatile organic compounds are ozone precursors) and particulate matter. These proposals come at a time when Shenandoah National Forest is considered to be the second most polluted park in the nation. New plants will likely play a significant role in the contribution to regional and local haze, acid deposition, and/or ozone. Known resources at risk include scenery (visibility), streams, soils,

fish, and vegetation. Ozone sensitive crops show a reduction in growth and yield by as much as 10% at half the federal level of ozone determined to negatively effect human health. Particulate matter will further decrease views from the Park/Blue Ridge region and many scenic and historic resources in the Piedmont region. Sulfur dioxides are associated with the acidification of lakes and streams, accelerated corrosion of buildings and monuments and reduced visibility.

Other States and Energy Deregulation

If energy development in Virginia continues at its current rate, the number of power plants in the Commonwealth could surpass 50 in the foreseeable future. The Bonneville Power Administration's recent "worst case" cumulative effects analysis indicates that 45 *natural gas-fired (most with oil back-up)* power plants in the Pacific Northwest would cause significant impacts on visibility at several Class I national parks and wilderness areas. Neighboring and other states affecting Virginia's air quality are also experiencing larger permitting program activities due to energy development and other industrial growth. Kentucky (after 24 applications), Tennessee, Georgia, and the Pacific Northwest states have slowed down their energy development programs (through moratoriums or other methods) to allow time for a cumulative effects analysis.

Recommendations

The Environment and Health Subgroup believes there needs to be more consideration in achieving a balance between protection of environmental and human health and Virginia's desire for efficient, clean energy choices and potential future industrial growth (economic development). To ensure the protection of human health and the environment in the face of 30 new sources of pollution, the following recommendations were made:

Short-term Recommendations

1. Continue the Cumulative Effects Work Group Effort – The work should continue and consider the effects of all criteria pollutants from the new power plants.

1. Expand and Accelerate Virginia Department of Environmental Quality Modeling Activities – Modeling is essential to better understand the cumulative effects of emissions on human health and the environment. A statewide cumulative effect analysis, that includes all proposed plants and taking into account existing pollution levels, must be performed. This modeling must assume all proposed sources would be permitted, built, and operated. That these facilities will use the maximum electric generation capacity, emission levels, and number of days for burning dirtier fuel found within their permits. Assumptions on reductions in air pollution from future pollution control initiatives cannot be made.

2. Install and Operate Additional Ozone and Particulate Matter Monitors – A high priority is the establishment of new monitors that address monitoring network gaps in the heart of the Piedmont and south central Virginia, which are also "hotspots" for concentrated energy development.

3. Consider Additional Key Virginia Department of Environmental Quality Positions – Given the significant increase in permitting workload, it appears that additional staffing

will be needed to carry out the recommended analyses and to keep up with the current permit workload.

4. Form a Separate Work Group to Address Mobile Sources - It is acknowledged that mobile source emissions contribute to and are important in the understanding of the pollution problem facing Virginia.

1. Add Air Quality Trends Information to Virginia Department of Environmental Quality Annual Monitoring Data Report We believe that air quality trends, analyses and summaries (5 to 10-year trends recommended) are essential to monitor key environmental health concerns over time.

Long-term Recommendations

1. CALPUFF Initialization Project – The health and environmental subgroup members acknowledge and support the Virginia Department of Environmental Quality's August 2001 agreement for a comprehensive CALPUFF Initialization Project affecting Virginia and West Virginia Class I areas. This is the same modeling approach used to determine the cumulative effects of 45 new natural gas power plants proposed for the Pacific Northwest (3 states).

2. Consider Additional Virginia Department of Environmental Quality Regional/Field Compliance Staff - If most of these plants are built then the workload for DEQ field positions would increase significantly.

3. Perform a Comprehensive Review of PSD Program (40 CFR 51.166) - This would entail the review of the Prevention of Significant Deterioration (federal air quality initiative) program to ensure Virginia's compliance.

Contacts:

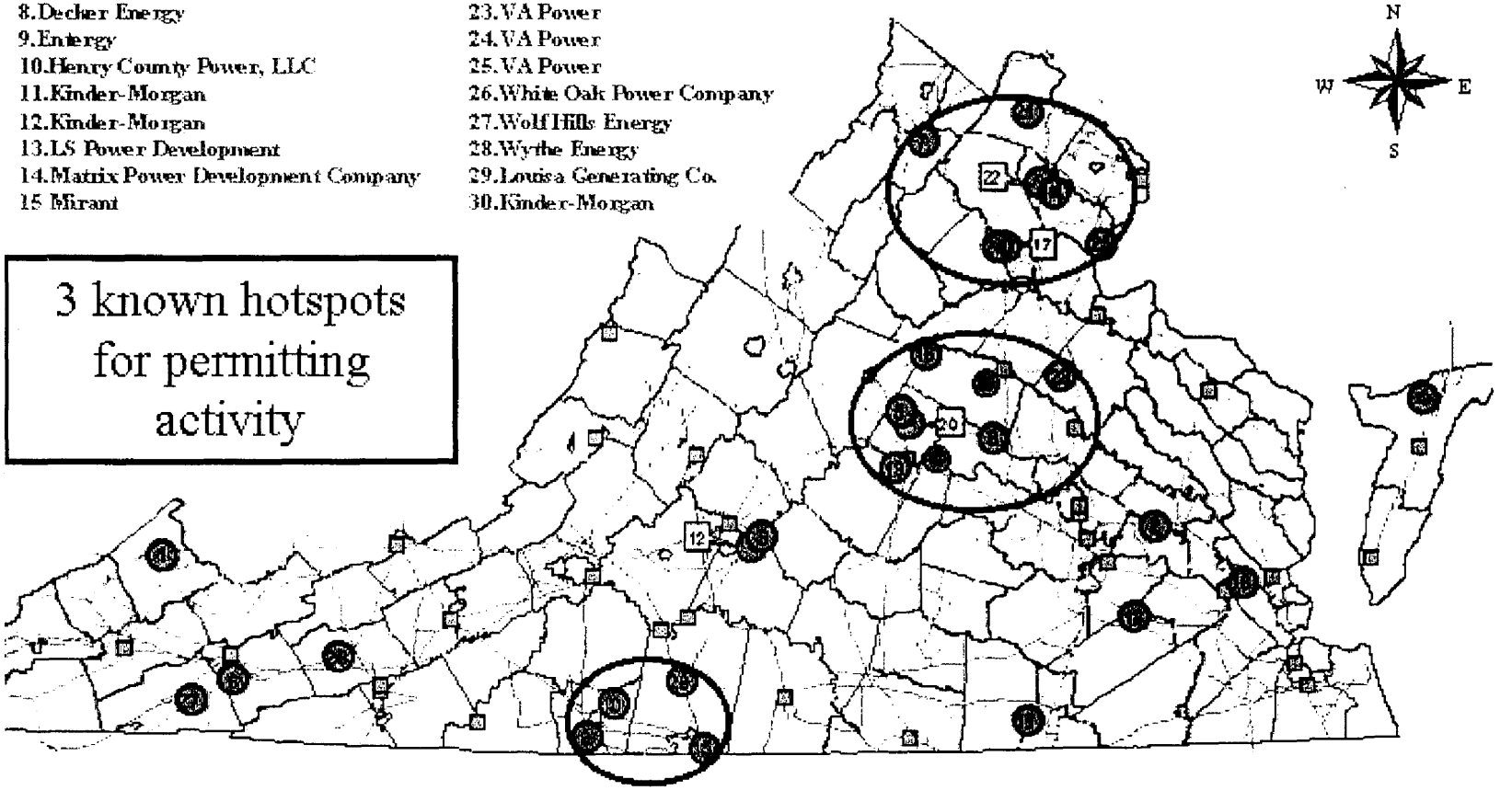
Dan Holmes
Piedmont Environmental Council
(540) 672-0141
dholmes@pecva.org

Donna Reynolds
American Lung Association of VA
(804) 267-1900

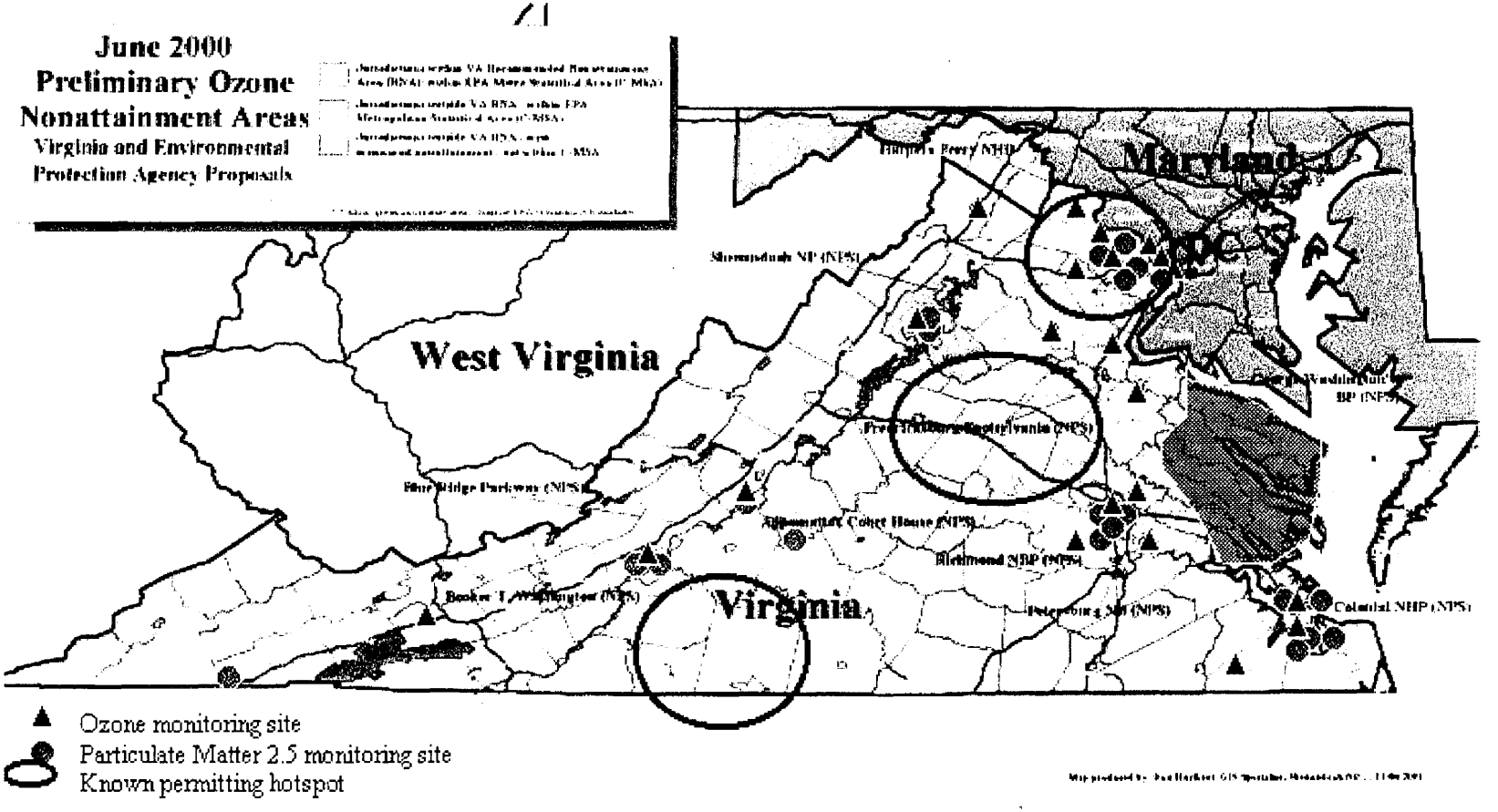
Proposed Power Generation Facilities in Virginia

1. Allegheny Energy Supply
2. Chickahominy Power
3. Cincap
4. Commonwealth Chesapeake Corp.
5. Competitive Power Ventures
6. Competitive Power Ventures
7. Competitive Power Ventures
8. Decher Energy
9. Entergy
10. Henry County Power, LLC
11. Kinder-Morgan
12. Kinder-Morgan
13. LS Power Development
14. Matrix Power Development Company
15 Mirant
16. ODEC
17. ODEC
18. Standish Energy
19. Tenaska
20. Tenaska
21. Tractebel
22. US Dataport
23. VA Power
24. VA Power
25. VA Power
26. White Oak Power Company
27. Wolf Hills Energy
28. Wythe Energy
29. Louisa Generating Co.
30. Kinder-Morgan

3 known hotspots for permitting activity



Proposed plants as of October 2001



- Current number of Ozone and PM2.5 monitors is insufficient to determine Virginia's air quality- especially in the Piedmont and South central VA permitting hotspots

- Large gaps in the monitoring network

COMMONWEALTH of VIRGINIA

James S. Gilmore, III
Governor

John Paul Woodley, Jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
Street address: 629 East Main Street, Richmond, Virginia 23219
Mailing address: P.O. Box 10009, Richmond, Virginia 23240
Fax (804) 698-4500 TDD (804) 698-4021
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Dennis H. Treacy
Director

(804) 698-4000
1-800-592-5482

November 26, 2001

MEMORANDUM:

TO: The Honorable Thomas K. Norment
Senate of Virginia

FROM: David K. Paylor

SUBJECT: Status of Power Generating Facilities With DEQ Approvals Pending

At the last meeting of the Electric Utility Restructuring Transition Task Force, you asked for information on all of the power generating facilities with DEQ approval or review pending. I have attached a chart that lists all of the power generating facilities that have such approvals pending or have contacted DEQ in some fashion. This includes information on pending air permits, pending water permits, and pending environmental impact reviews. The information is based upon our permit tracking and EIR tracking data-bases as well as a survey or our regional offices and reflects information available from those sources as of November 1.

Unfortunately, I am unable to attend your meeting this morning. If you have any questions, however, Kathy Frahm (DEQ Policy Counsel) or John Daniel (Director of DEQ Air Programs) will be at the meeting and should be able to assist you.

Plant Name	County Location	Facility Capacity	Comments	Env Impact Review	Application Status	Permit Program	Days to Issue Permit	Application Status	Permit Program	Days to Issue Permit
Wellington Generation LLC	Prince William	400 Megawatts, 5 simple cycle turbines		Not submitted	Active application	NSR/ State Maj		No contact	VPDES	
Louisa Generating Co. Inc	Louisa	1000 Megawatts, 4 combined cycle turbines, 2 steam turbines		Not submitted	Active application	PSD		pre-application	VPDES	
Wythe Energy Facility	Wythe	620 Megawatts		Not submitted	Active application	PSD		Pre-application meeting		
Virginia Power - Caroline Combustion Turbines	Caroline	600 megawatts, 5 simple cycle turbines		Issued (15)	Issued	NSR/ State Maj	83	Pre-application	VPDES	
Doswell, LLP	Hanover	171 MW, CT		Issued (51)				No contact		
ODEC - Lousia Generation Station	Louisa	594 Megawatts on Natl Gas + 603 Megawatts on Fuel Oil, 5 simple cycle turbines	Applicant provided additional EIR information on 9/18/01	Issued (64)	Active application	NSR/ State Maj		No contact		
ODEC - Remington Marsh Run	Fauquier	765 Megawatts on Natl Gas + 788 on Fuel Oil, 4 simple cycle turbines		Not submitted	Active application	NSR/ State Maj		No contact	VPDES	
Tenaska (ECTI)	Fluvanna	900 Megawatts, 3 combined cycle turbines		Issued (61)	Active application	PSD		Active Application (10/9/01)	VWP	
								Active application (Incomplete)	VPDES	
Tenaska (ECTI)	Buckingham	900 Megawatts, 3 combined cycle turbines		Issued (52)	Active application	PSD		Active application (Incomplete)	VWP	

Power Plants (Active) **Status of DEQ Review** **11/01/01**

Plant Name	County Location	Facility Capacity	Comments	Env Impact Review	Application Status	Permit Program	Days to Issue Permit	Application Status	Permit Program	Days to Issue Permit
Henry County Power LLC	Henry	1,100 Megawatts, 4 combined cycle turbines (natural gas only)	Federal Land Manager AQ issues	Issued (27)	Active application	PSD		No permit required		
Cincap	Henry	320 Megawatts, 4 simple cycle turbines	BACT Issue on NOx	Issued (64)	Active application	NSR/ State Maj		No contact		
Tractebel, Inc	Loudon	1400 Megawatts, 4 combined cycle turbines		Issued (60)	Pre-application meeting	PSD/NA		No contact	VPDES	
Tractebel, Inc (Alternative)	Loudon	500 Megawatts, 3 simple cycle turbines		Not submitted	Modeling Protocol Only	Unknown		No contact		
Commonwealth Chesapeake Corp	Accomack	350 Megawatts, 7 GE LM 6000 at 50 mW each, simple cycle, oil fired only turbines		Not submitted	Issued	PSD		No permit required	VWP	
White Oak Power Company	Pittsylvania	670 (WSS) Megawatts, 4 simple cycle turbines		Not submitted	Active application	PSD		No contact		
Mirant (Danville Airside Industrial Park)	Pittsylvania	870 Megawatts, 2 combined cycle & 4 simple cycle turbines		Issued (52)	Incomplete application	PSD, Title IV, Title V (thb)		No permit required	VWP	
Allegheny EnergySupply	Buchanan	2 GE LM 6000 PC's 50mW each, simple cycle		Not submitted	Active application	NSR/ State Maj		Pre-application		
Chickahominy Power	Charles City	675 Megawatts, 4 Westinghouse 501F simple cycle turbines		Not submitted	Active application	PSD		No contact		

Power Plants (Active) **Status of DEQ Review** **11/01/01**

Plant Name	County Location	Facility Capacity	Comments	Env Impact Review	Application Status	Permit Program	Days to Issue Permit	Application Status	Permit Program	Days to Issue Permit
Kinder-Morgan	Brunswick	Hybrid combined cycle power plant		Issued (55)	Active application	PSD		Active application (Incomplete)	VWP	
Competitive Power Venture	Warren	530 Megawatts, 2 combined cycle turbines		Not submitted	Pre-application meeting	PSD		No contact		
Competitive Power Venture	Fluvanna	530 Megawatts, 2 combined cycle turbines		Not submitted	Active application	PSD		No contact		
Entergy	Louisa			Not submitted	Pre-application			Pre-application	VPDES	
Cal-Pine	Surry	800 MW		Not submitted	Pre-application			Pre-application		
LS Power	Sussex	1600 MW Coal		Not submitted	No contact			No contact		

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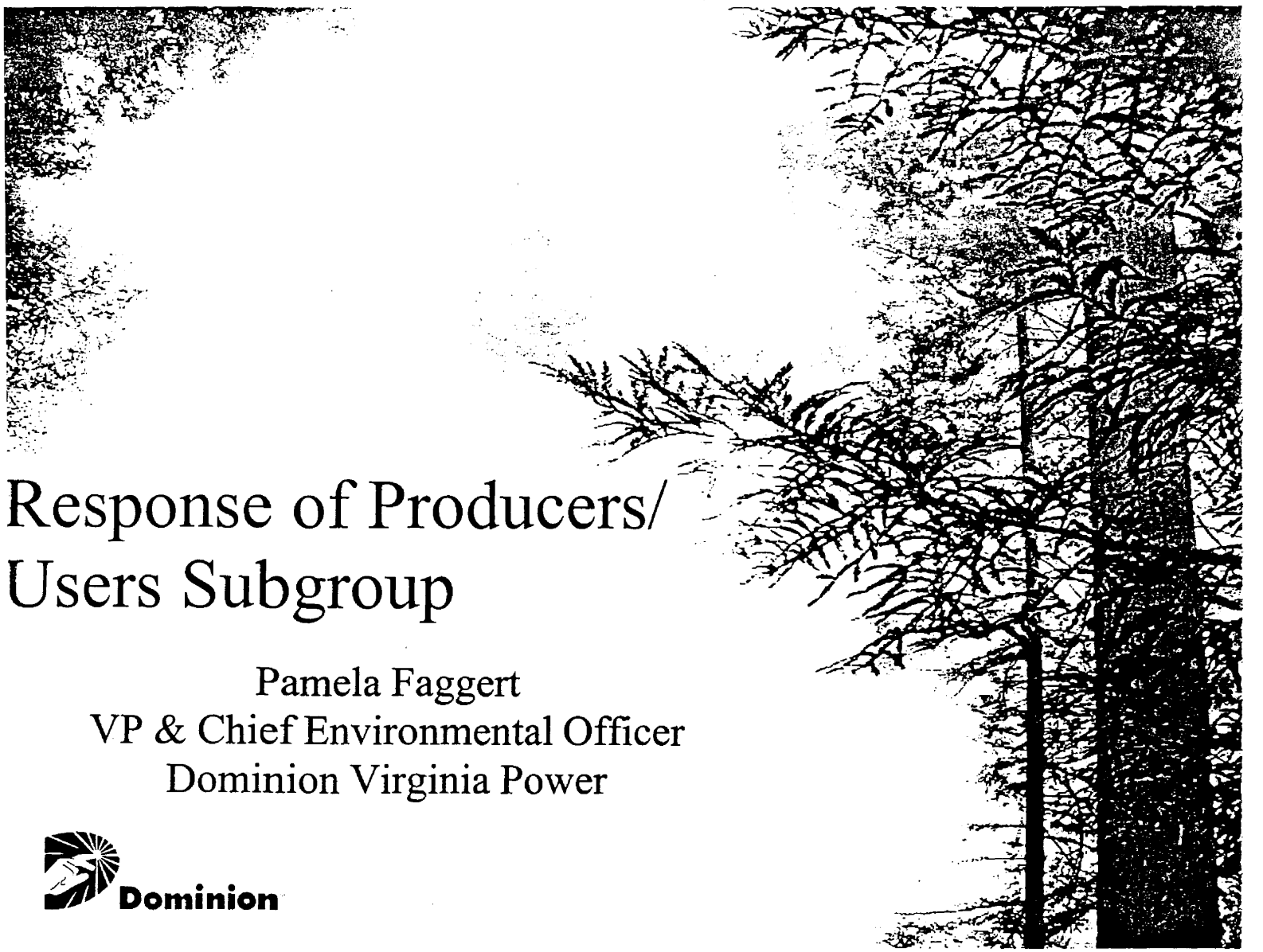


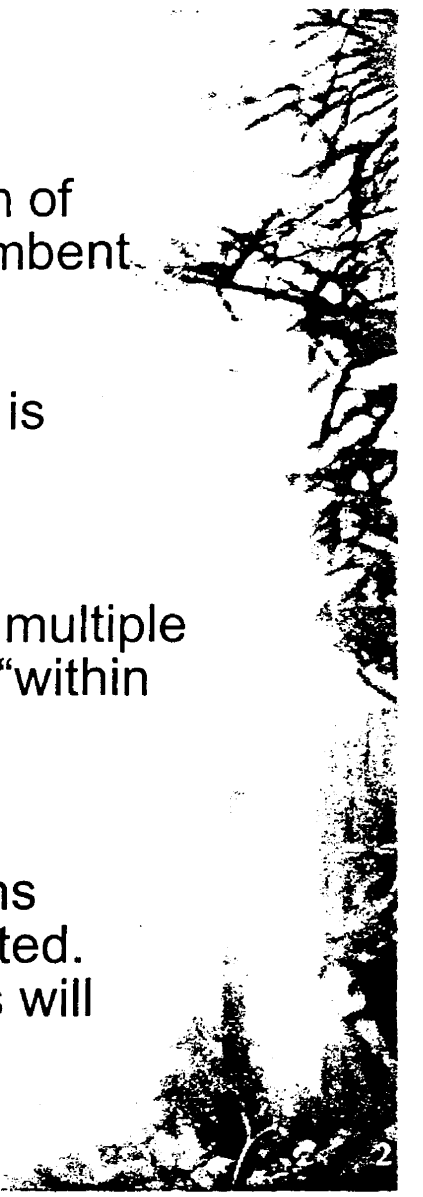
Response of Producers/ Users Subgroup

Pamela Faggert
VP & Chief Environmental Officer
Dominion Virginia Power

Dominion

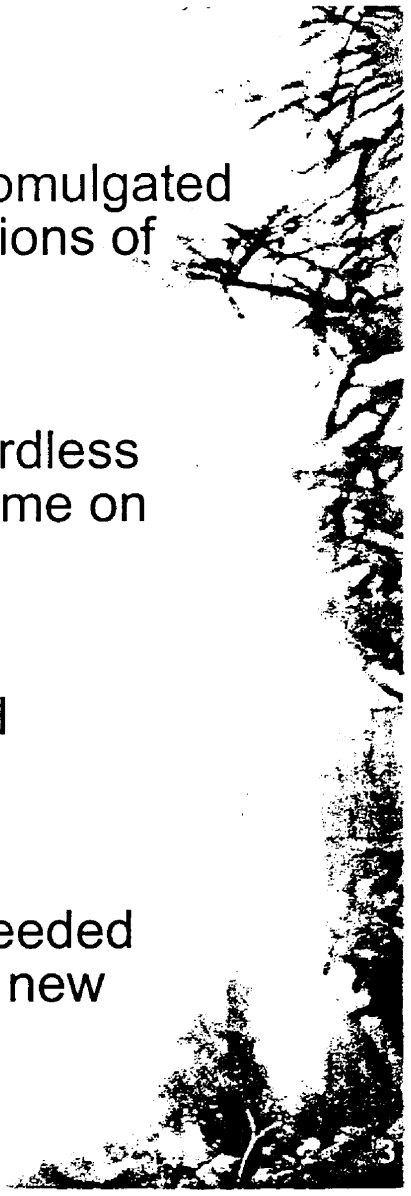
Observations

- Virginia is experiencing expansion of generating capacity by both incumbent utilities and private developers
- Expansion of generating capacity is best insurance against problems experienced in California
- DEQ's cumulative assessment of multiple sources shows NOx contribution "within noise level"
- This modeling did not include the effect of more stringent regulations that have already been promulgated. This means that actual emissions will be even lower than predicted



Observations

- Regulations have already been promulgated that will significantly reduce emissions of both SOx and NOx
- A cap on NOx has already been established. This means that regardless of the number of new units that come on line, this cap will not be exceeded
- DEQ will not approve any project unless satisfied that it will be in full compliance with all applicable environmental regulations
- DEQ has the tools and authority needed to protect the environment and no new legislation is needed



Proposed Power Generation Facilities in Virginia

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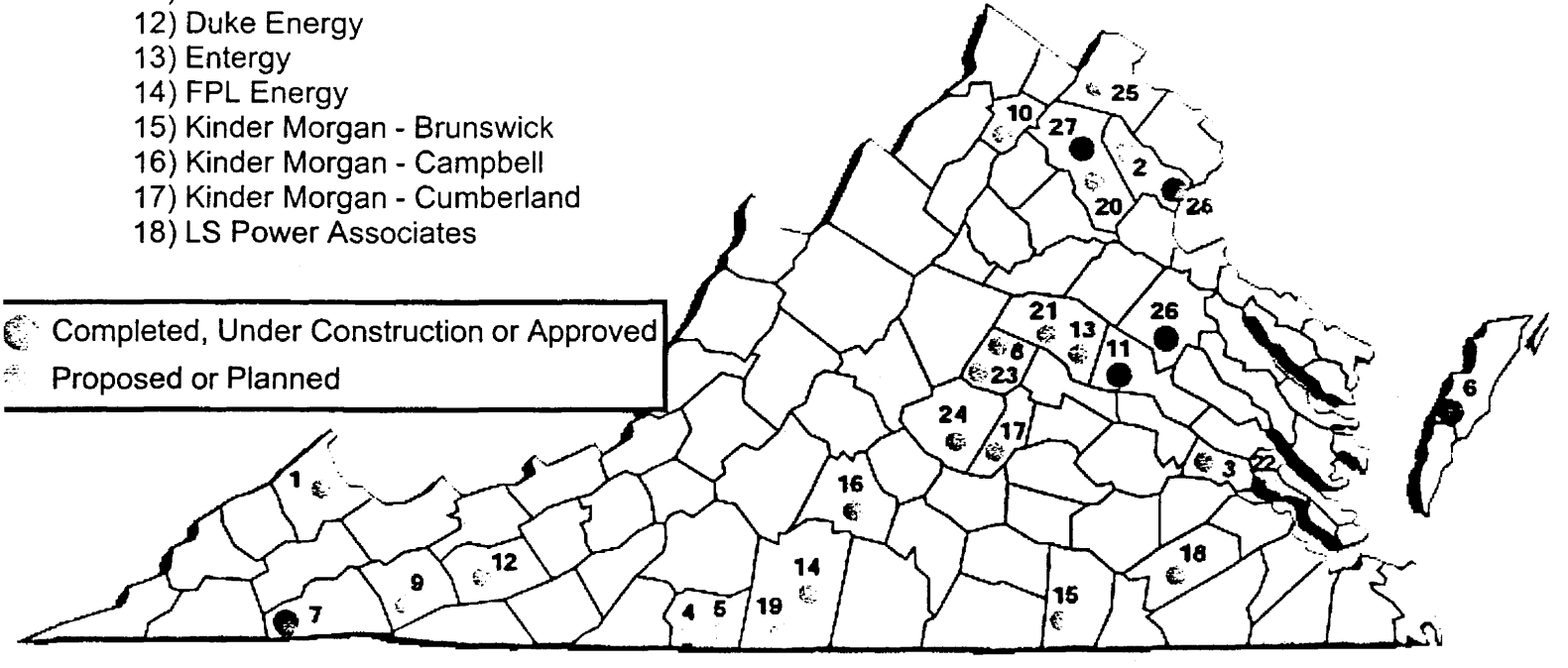
4) Cinergy
5) Cogentrix
6) Commonwealth Power
7) Constellation
8) Competitive Power Ventures - Fluvanna
9) Competitive Power Ventures - Smyth
10) Competitive Power Ventures - Warren
11) Doswell LP
12) Duke Energy
13) Entergy
14) FPL Energy
15) Kinder Morgan - Brunswick
16) Kinder Morgan - Campbell
17) Kinder Morgan - Cumberland
18) LS Power Associates
19) Mirant
20) ODEC - Fauquier
21) ODEC - Louisa
22) Standish-Landcraft
23) Tenaska - Fluvanna
24) Tenaska - Buckingham
25) Tractebel
26) Dominion Virginia Power - Caroline
27) Dominion Virginia Power - Fauquier
28) Dominion Virginia Power - Possum Point



STATEMENT OF VIRGINIA POWER
TO THE
LEGISLATIVE TRANSITION TASK FORCE

January 7, 2002

Thank you Mr. Chairman, members of the Task Force. My name is Stewart Farrar, and I appreciate this opportunity to appear before you today on behalf of Virginia Power.

As was discussed at your meeting on December 21, the State Corporation Commission entered an Order on December 18 disapproving Virginia Power's Plan under the Restructuring Act to accomplish legal separation of its operations by transferring its generation assets to a new affiliate, Dominion Generation. Naturally, we were disappointed in the Commission's ruling, and we disagree with a number of aspects of its Order, particularly in view of the Commission's two prior decisions approving legal separation for the Allegheny and Delmarva companies, in which the Commission raised none of the legal issues found in our Order.

In some general respects, the Order in our case is encouraging about the possibility of further consideration of our Plan. It says: "This Order denies approval of the Company's proposed Plan at this time...." (p. 3), and: "This Order does not foreclose, in any manner, further consideration of the corporate reorganization and asset transfers proposed by the Plan . . ." (p. 4). Finally: "Given the evidence and the law, we conclude that we cannot approve legal separation at this time.... In reaching this conclusion, we do not in any way foreclose approval of the proposed asset transfers in the future . . .." (p. 34)

In those passages, at least, the Commission seems to be suggesting the possibility of later approval of the Plan. However, even there, the Commission cautions that, "given the evidence and the law, we conclude we cannot approve legal separation at this time...." So, there are obviously certain aspects of the law that caused both the Commission majority and the

concurring Commissioner to disapprove our Plan on this occasion, and our fear is that, unless these legal questions that the Commission perceives are clarified by the General Assembly, they will continue to be used by the Commission to foreclose approval of our Plan in any future proceeding as well.

The remainder of the Order makes plain what the Commission's major legal issues are. Paramount is the question of Federal Energy Regulatory Commission (FERC) jurisdiction over the wholesale power rates that would be paid by Virginia Power to Dominion Generation for service under the power purchase agreement (PPA) we proposed as part of our Plan. Even though we believe we dealt responsibly with the FERC jurisdiction issue in our case, the Commission obviously has serious misgivings about any wholesale power arrangement. It says that our "contemplated transfer of the generation assets unacceptably and irrevocably deprives the Commonwealth of Virginia of authority over physical assets critical to the delivery of vital public services" (pp. 35-36), and that "legal separation entails federal preemption." (p. 44) With statements such as that, we cannot find much comfort in other statements in the Order that suggest that improvements in the competitive market over time may be enough to change the result in our favor in some future proceeding. To the contrary, the FERC issue is clearly a major roadblock to approval of any Plan such as ours, and we believe it will remain so unless and until we find a satisfactory solution to this issue.

There seem to be additional legal impediments to any favorable consideration of our Plan in the future, given the Commission's discussion in the Order of issues such as Virginia Power's right to continue to use a fuel factor, and to collect wires charges, after legal separation. Although the Commission did not rule definitively on these subjects, it said that "the Plan also calls into question other key provisions of Virginia law," (p. 45) and that Virginia Power would

consideration by the General Assembly of the ramifications of legal separation...." (pp. 67-68) We therefore assume the Commission will support an effort to amend the Restructuring Act in regard to proposals such as ours, and we are, of course, very willing to work toward this end with all the stakeholders.

Finally, we believe it is crucial to move forward to address these topics during this session of the legislature. Delay in resolving these questions benefits no one, and will do nothing but leave these issues in limbo for another year. The Company will be unable to move forward to attain the efficiencies necessary for it to be a nationally competitive energy company, and customers will experience a delay in achieving the benefits of competition. Even the Commission Staff agreed in the Allegheny case that the transfer of generation assets to an affiliate would allow Allegheny Energy generation company "to compete more effectively in the emerging unregulated energy supply business." Less than a week ago, one-third of our service territory became fair game for competitive suppliers of electric energy. On September 1, another third of our territory will enter that arena, and as of January 1 of next year, all of our customers will be eligible to shop for competitive supplies of electricity. With such major developments occurring on the customer and competitive side of the equation, it would seem only appropriate that the legal issues raised by the Commission's Order related to our own Company's Plan to respond effectively to this developing market be resolved as soon as possible.

Accordingly, we hope to work with the stakeholders to resolve the legal issues raised by the Commission's Order. Naturally, we will do our best to develop a consensus on this proposal before bringing it to your attention.

I thank you again for the opportunity to address this important topic this afternoon

#97801

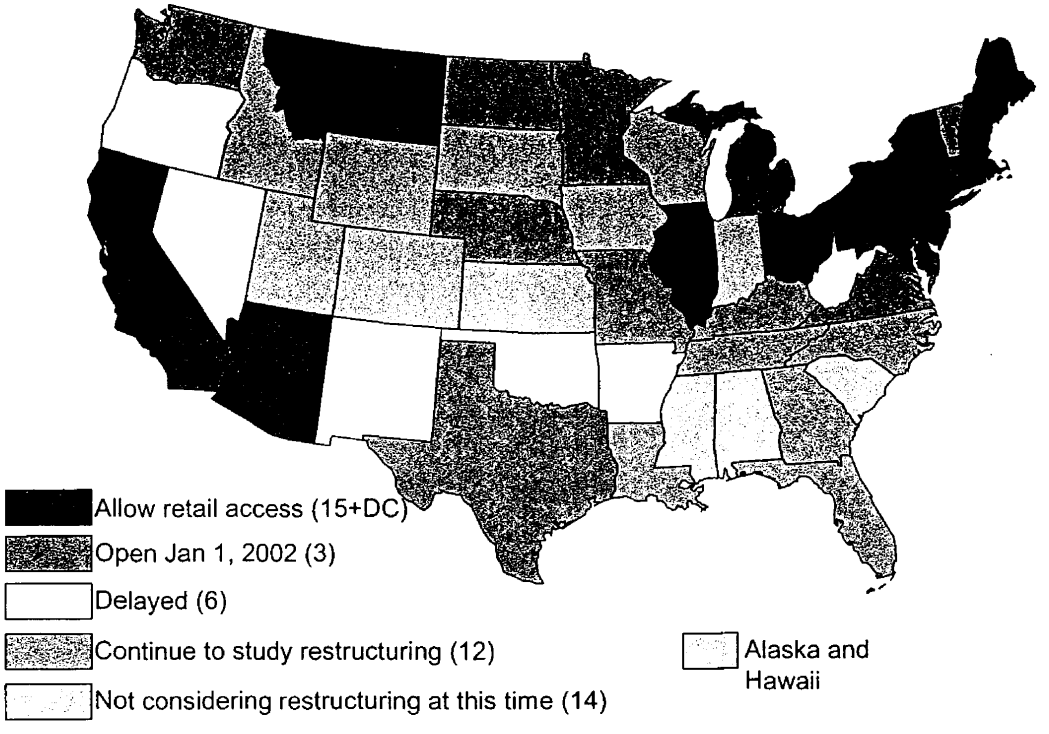
Performance Review of Electric Power Markets

Presentation to the
Legislative Transition Task Force

September 7, 2001

Kenneth Rose, Ph.D.
The National Regulatory Research Institute
Ohio State University
http://www.nrri.ohio-state.edu/about/staffpages/kenrose.html

State Electric Industry Restructuring Status



Evaluation Criteria

- Retail market performance is based on:
  - number of offers, offers with savings opportunities, number of suppliers, type of offers, and percent of customers that selected an alternative supplier
- Wholesale market performance is based on:
  - how closely actual prices are tracking what would be expected in a fully competitive market--where suppliers have no or only limited ability to control the price

Fig. ES 3. Residential offers nationwide

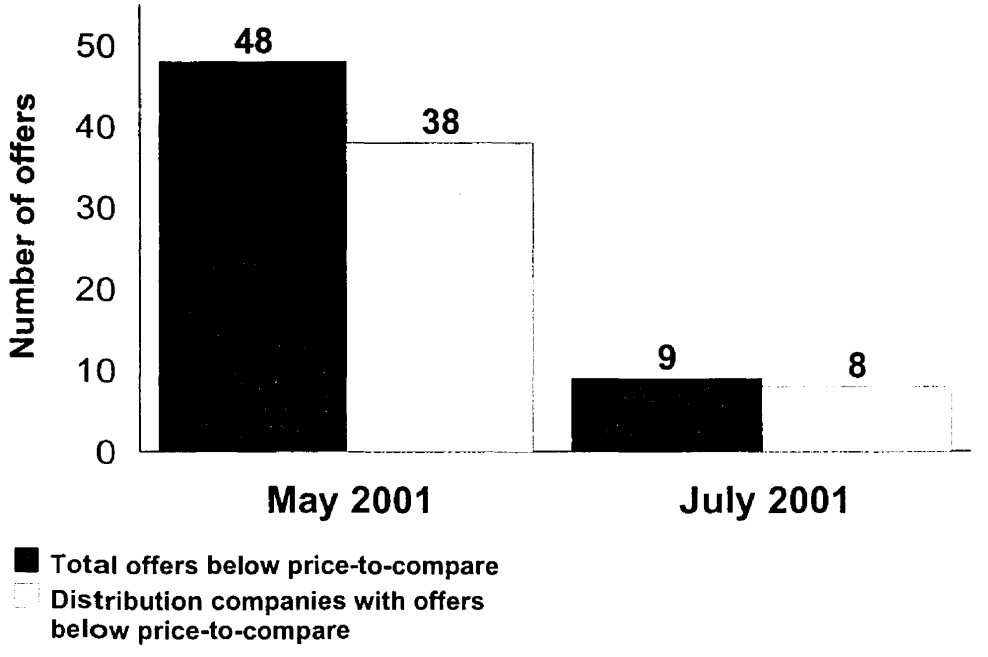
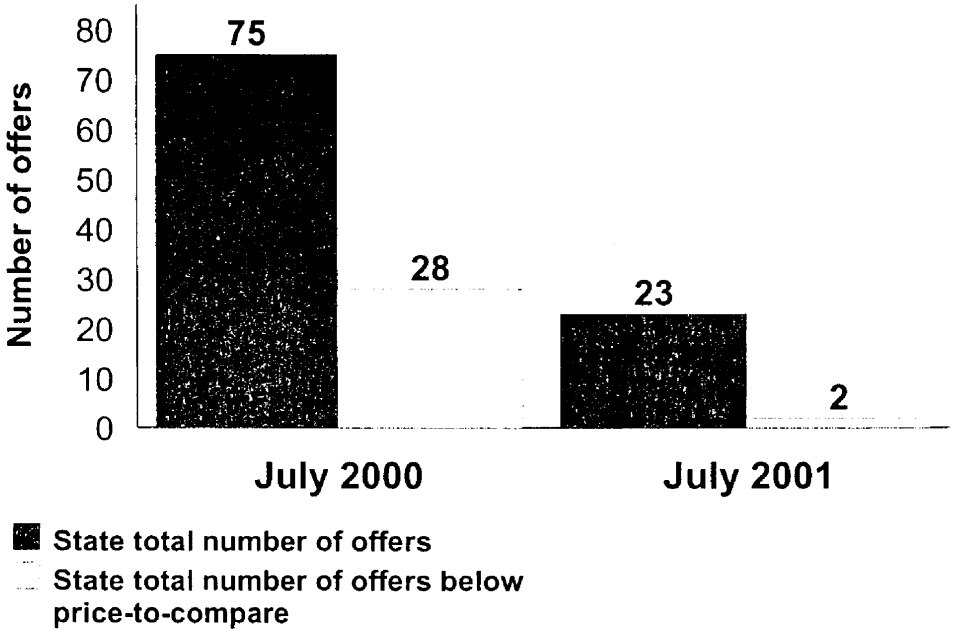
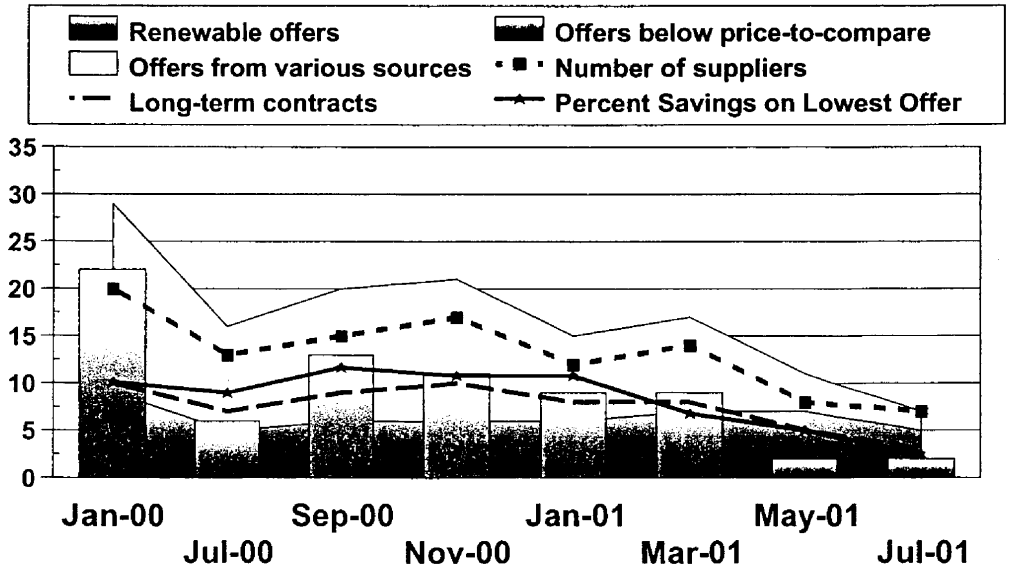


Fig. 6. Pennsylvania statewide residential offers

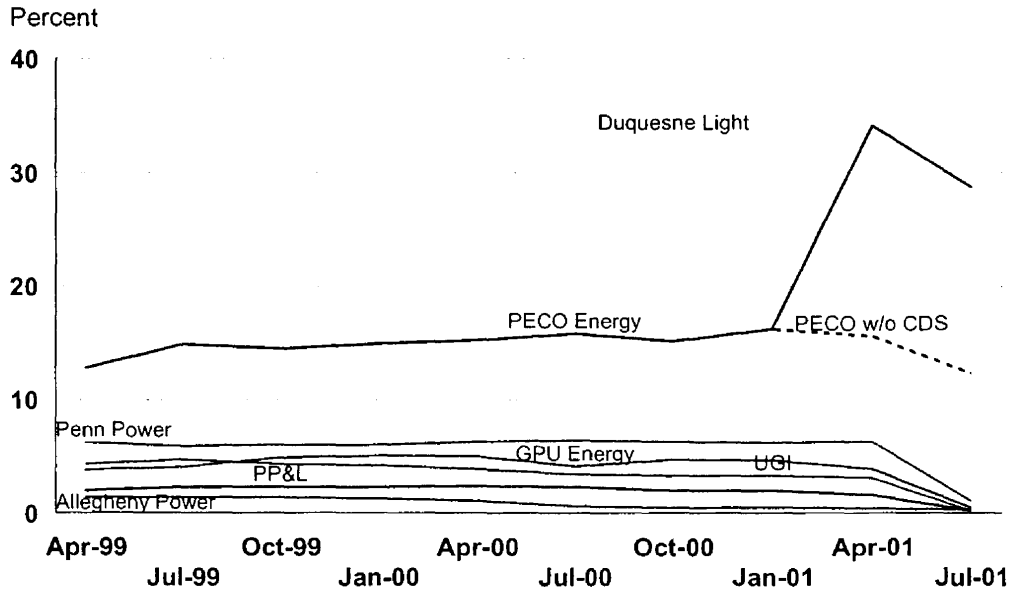


PECO Energy Trend



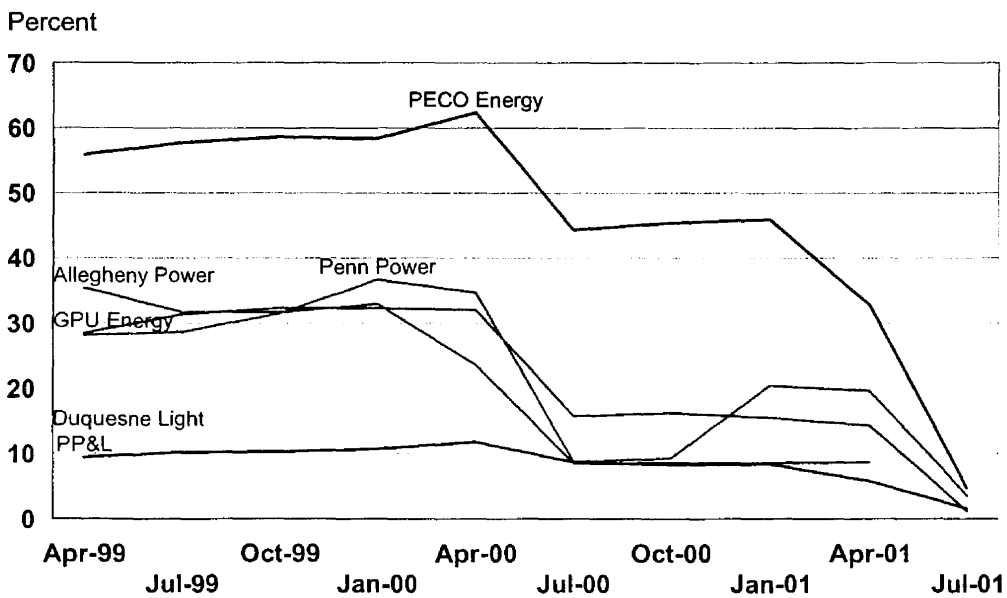
Data Source: Compiled from data obtained from Wattage Monitor (http://www.wattagemonitor.com)

Percent of Pennsylvania Residential Customers Served by Alternative Supplier



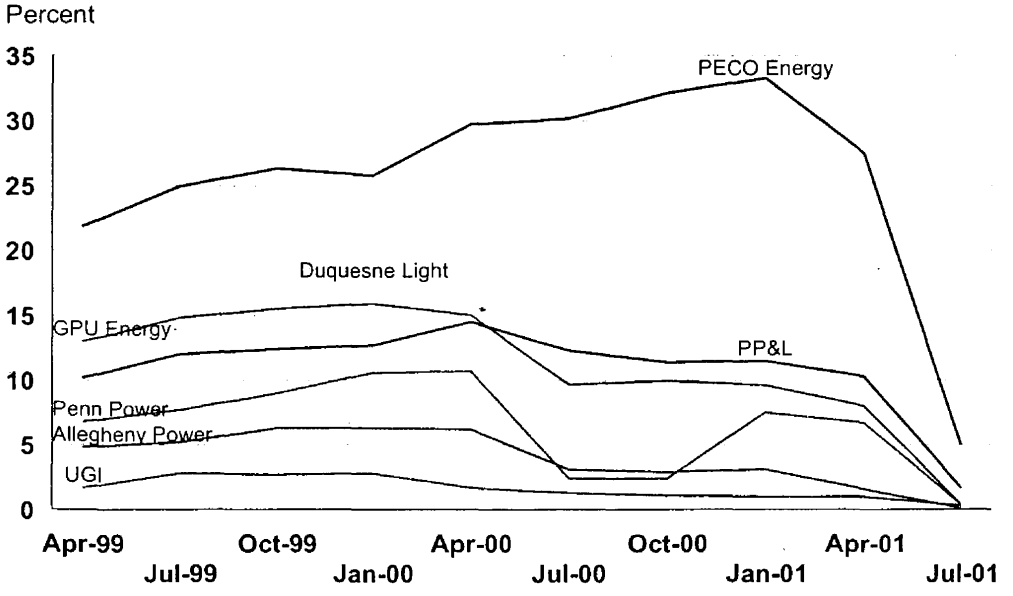
Data Source: Pennsylvania Office of Consumer Advocate

Percent of Pennsylvania Commercial Customers Served by Alternative Supplier



Data Source: Pennsylvania Office of Consumer Advocate

Percent of Pennsylvania Industrial Customers Served by Alternative Supplier



Data Source: Pennsylvania Office of Consumer Advocate

Fig. 8. Pennsylvania total load served by alternative suppliers

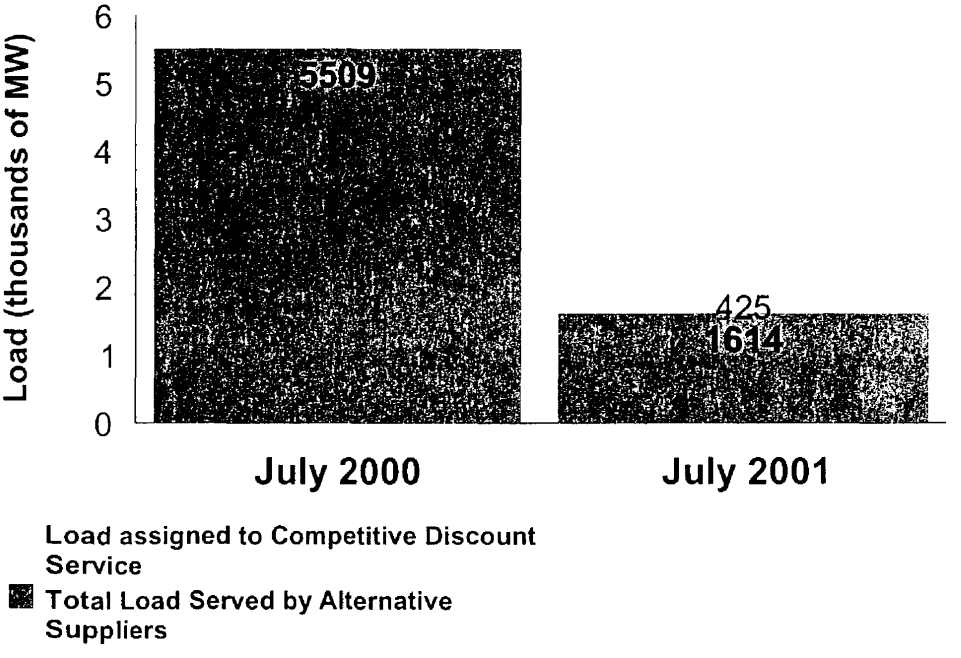
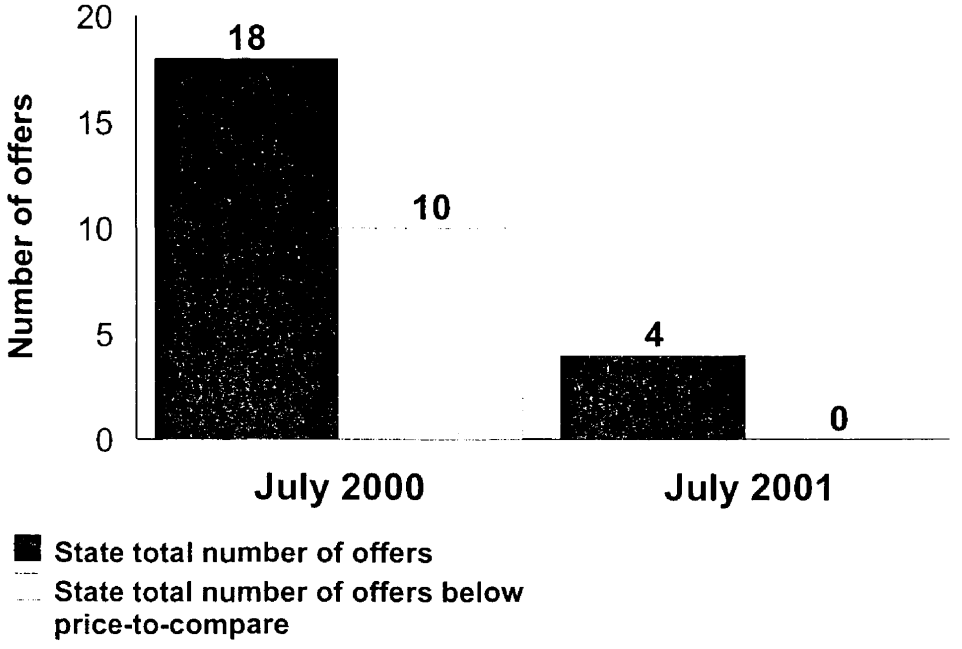


Fig. 5. New Jersey statewide residential offers



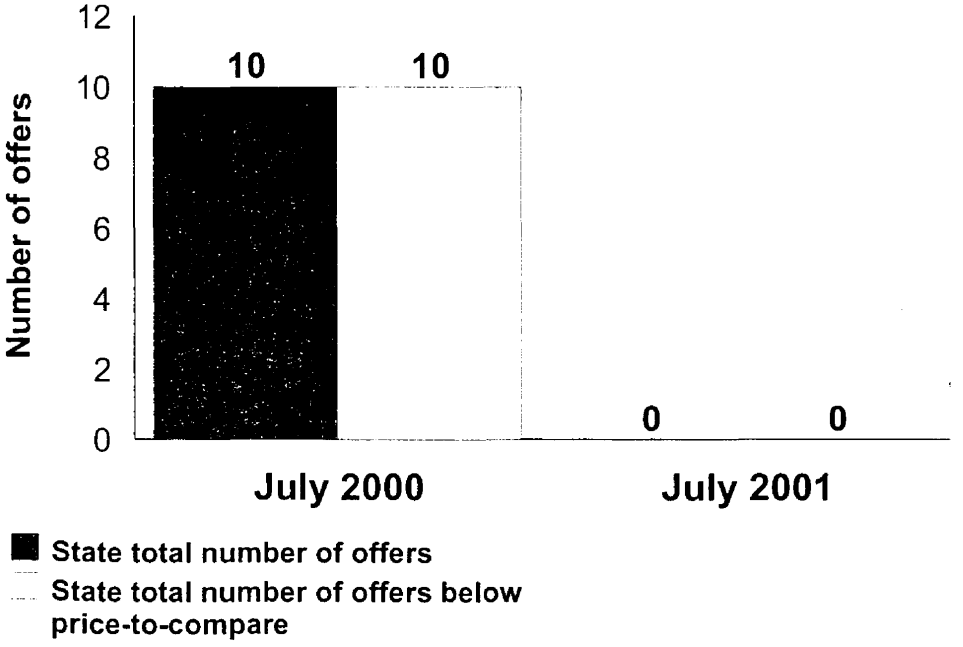
Percent of New Jersey Customers Served by an Alternative Supplier

Residential		
	Nov 2000	May 2001
Conectiv	5.9	1.5
GPU	1.0	0.2
PSE&G	1.8	1.5
State Total	2.2	1.1

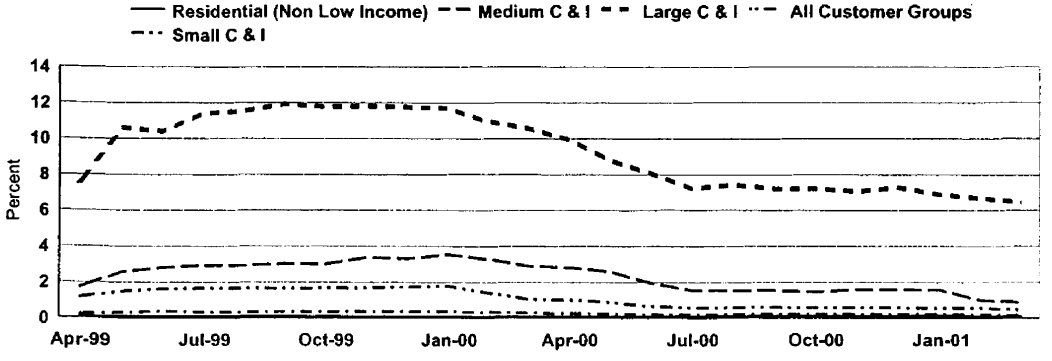
Non-Residential		
	Nov 2000	May 2001
Conectiv	11.8	1.1
GPU	5.8	1.1
PSE&G	6.3	5.2
State Total	6.9	3.4

Data Source: New Jersey Board of Public Utilities

Fig. 3. Massachusetts statewide residential offers



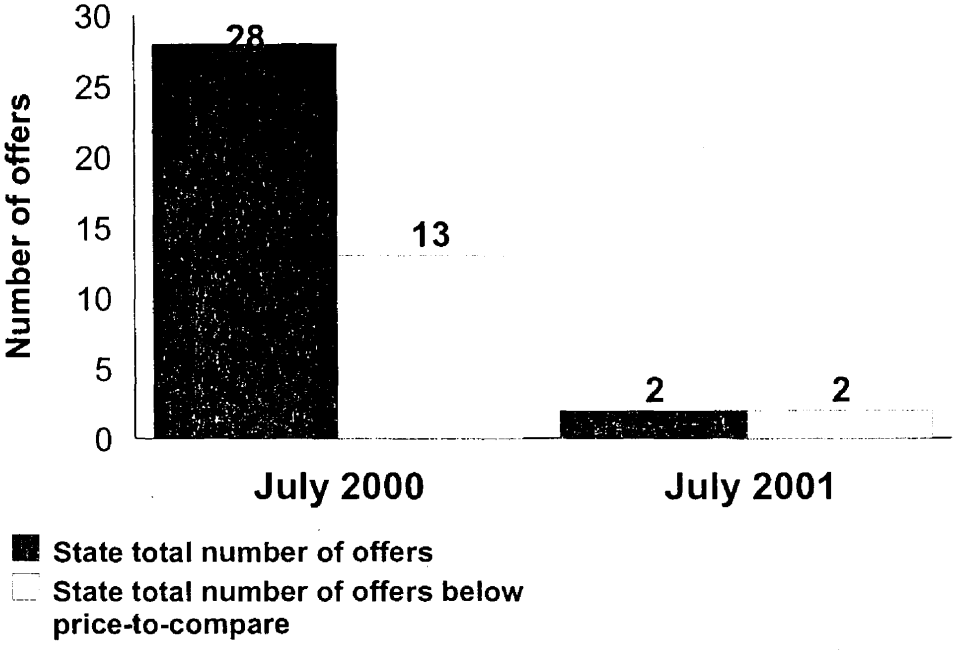
Massachusetts Customers Choosing a Competitive Supplier



	Apr-99	Jul-99	Oct-99	Jan-00	Apr-00	Jul-00	Oct-00	Jan-01	Mar-01
Residential (Non Low Income)	0.06	0.09	0.09	0.09	0.10	0.12	0.13	0.14	0.08
Small C & I	1.16	1.66	1.68	1.78	1.01	0.59	0.58	0.57	0.46
Medium C & I	1.71	2.93	2.99	3.53	2.82	1.55	1.46	1.57	0.86
Large C & I	7.48	11.40	11.78	11.68	9.94	7.22	7.21	6.88	6.44
All Customer Groups	0.23	0.34	0.35	0.37	0.28	0.21	0.22	0.23	0.15

Source: Massachusetts Division of Energy Resources

Fig. 2. California statewide residential offers



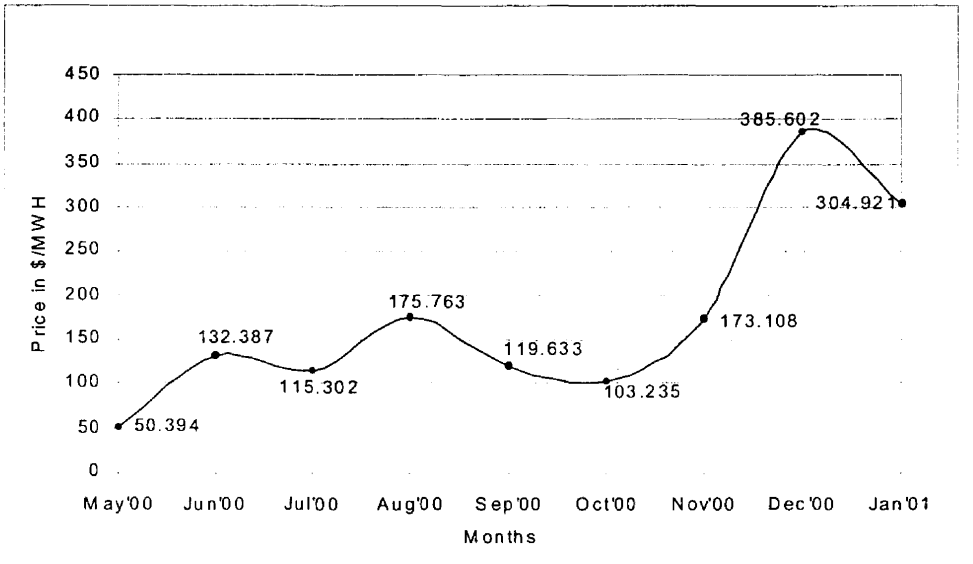
Percent "Direct Access" Customers - California

	June 15, 2000	May 15, 2001
Residential	1.8%	0.86%
Commercial <20 kW	4.1%	0.77%
Commercial 20 - 500 kW	7.3%	1.04%
Industrial > 500 kW	19.7%	2.55%
Agricultural	4.2%	0.32%
Total	2.2%	0.85%

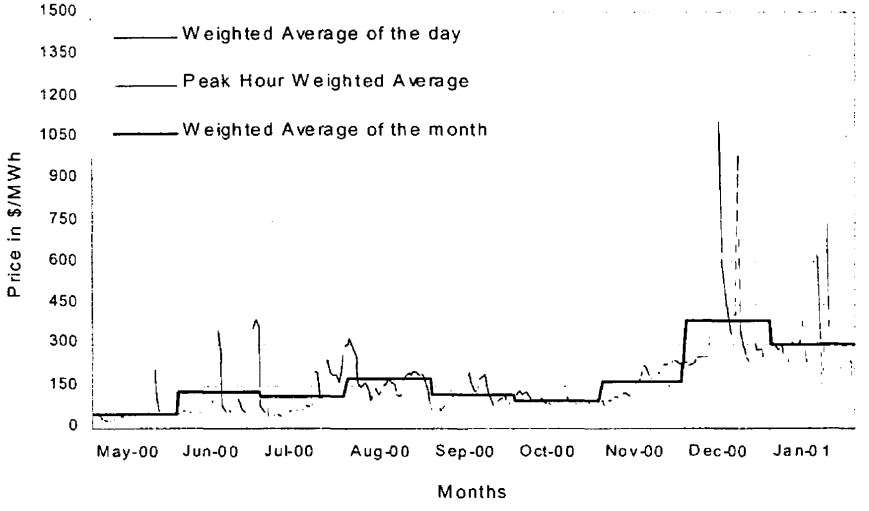
Why Pennsylvania's Retail Market Has Been Declining

- The highest "shopping credit" or price to compare for generation service in the state is for PECO Energy customers at 5.67 cents/kWh (annual average for regular residential service).
- If the energy price = $50/MWh (as it averaged last December), adding $10/MWh for capacity would put the total cost over $60/MWh or 6 cents/kWh -- at least 0.33 cents/kWh *over* the price to compare.
- If the energy price is in the $30 to $40/MWh, as they averaged from January through May, and the retail cost of ICAP is has high as 1.8 cents/kWh for serving a residential customer (as some put the high end at), then the margin would be very thin and risky given the price volatility in both the energy and capacity markets
- This would leave little room for marketing costs, administrative costs, cost of risk management, or an adequate profit.

California Power Exchange: Load Weighted Day Ahead Average Prices



California Power Exchange: Day Ahead Prices



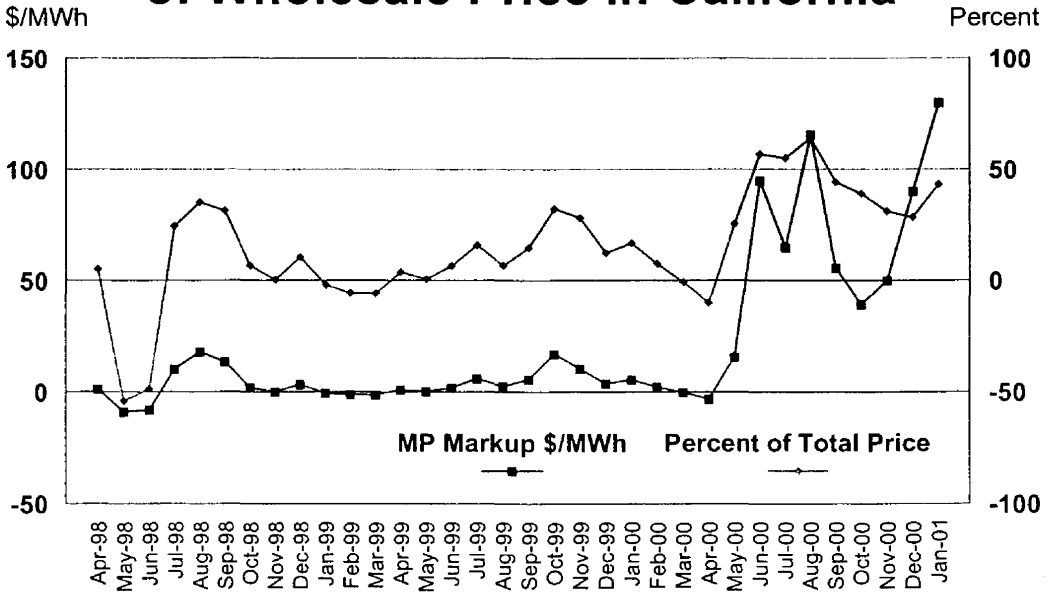
What is Market Power?

- Market power is the ability of a firm or group of firms to raise *and maintain* the product price *significantly* above a competitive level
- This is the price leverage a firm has to raise the price above a competitive price
- Must be large enough and persist for an appreciable amount of time to be of concern
- This violates the assumption that all suppliers are "price takers" in a market and cannot control the market price

Market Power in California

- Higher wholesale prices are a result of a combination of scarcity conditions (e.g., low hydroelectric generation), higher natural gas prices, *and* market power impacts
- Market power may be averaging over 40% of the wholesale price in California since June of 2000
- The California wholesale market power problem is a western states' wholesale problem

Average Market Power Markup and Percent of Wholesale Price in California



Source: Frank A. Wolak, "What Went Wrong with California's Re-structured Electricity Market? (And How to Fix It)"

Average Market Power Markup and Percent of Wholesale Price in California

Time Period	MP markup ($/MWh)	Percent of Total Price
1998	3.5	1.2
1999	3.8	9
2000	44	30
Jun 00 - Jan 01	80	45
Aug 2000	116	64
Jan 2001	130	43

Source: Frank A. Wolak, "What Went Wrong with California's Re-structured Electricity Market? (And How to Fix It)"

Market Power in PJM*

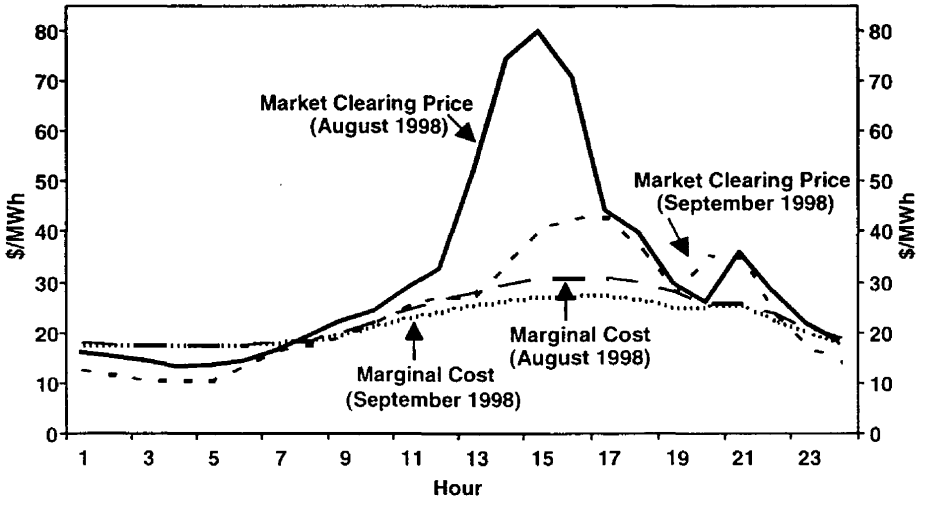
- Market imperfections in the spot market (10% to 15% of the market) for the period April through August of 1999 totaled $224 million
- Total costs in PJM were 41% higher than under perfect competition
- When bilateral contracts are added (an additional 30% of the market) the sum of the spot market and bilateral contract costs is $827 million, or a 48% increase over competitive costs
- Load-weighted Lerner Index was estimated at 0.293 for spot energy market and 0.323 when bilateral contracts are included

*Erin T. Mansur, "Pricing Behavior in the Initial Summer of the Restructured PJM Wholesale Electricity Market," University of California Energy Institute, April 2001.

Market Power in PJM *(continued)*

- The PJM's Market Monitoring Unit also estimated load-weighted Lerner Indices
  - for April through December of 1999, the average was about 0.02, with the maximum for the year in July at 0.08
  - for 2000 the average increased to 0.04, with the maximum in December at 0.14
- Differences in these estimations and Mansur's may be due to methodology and data access

PJM DATA: ENERGY-WEIGHTED AVERAGE MARKET CLEARING PRICE AND MARGINAL COST

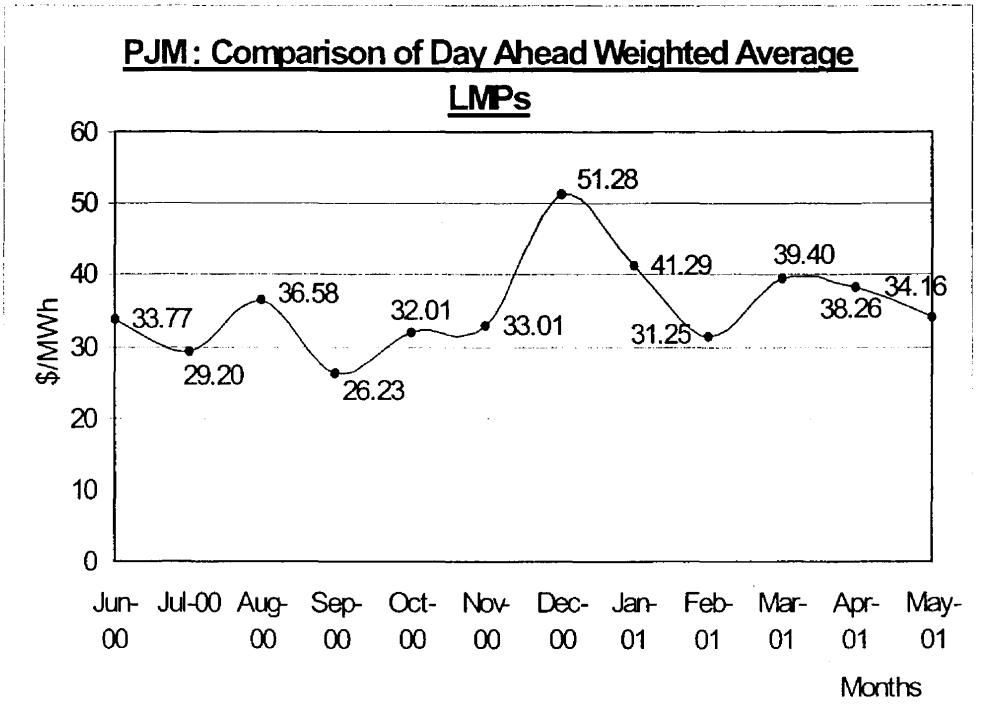


Source: F.T. Sparrow, State Utility Forecasting Group, Purdue University
"Deregulation In Indiana: Is Competition Good or Bad for Indiana Ratepayers?"
Electric Power Industry Special Institute, Columbus, Ohio, June 21-22, 2000.

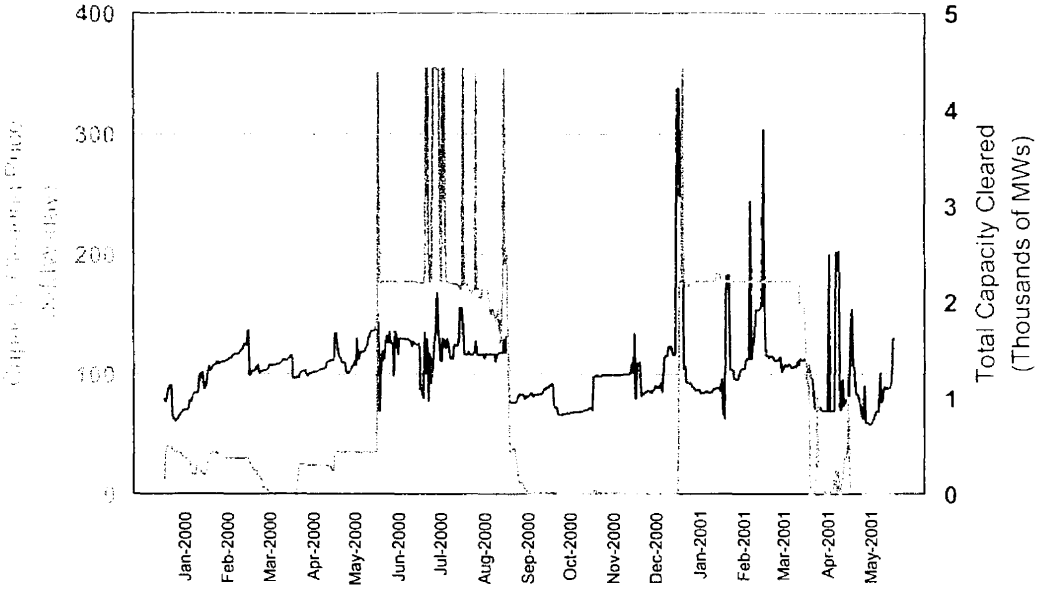
PJM's Installed Capacity Market*

- PJM's installed capacity (ICAP) market has shown signs of problems
- Prices for the first three months of the year were at or near the PJM capacity deficiency rate of $177/mW-day (see graph)
- Retail cost of ICAP has increased from 0.6 cents/kWh to 1.8 cents/kWh for a residential customer
- Evidence of withholding of capacity last summer and this year to manipulate prices

*Source: PJM, Market Monitoring Unit, June 2001 and PennFuture, E-cubed, Feb. 20 and April 5, 2001 issues.



PJM Daily Capacity Credit Market



New York

- The New York ISO Market Advisor concluded that "electric markets in New York have been competitive under most conditions experienced to date"
- He did warn that to ensure the competitiveness of New York markets, entry of new generation and investment in transmission must be facilitated
  - "The lack of new construction will also increase the vulnerability of the market to abuses of market power as transmission constraints and tight supply cause withholding to have a larger effect on prices"

New York *(continued)*

- A New York Department of Public Service staff report found that there were:
  - "significant problems with the NYISO's day-ahead, hour-ahead, and real-time operations caused by software design problems; rules that do not work as intended; and gaming that occurs when market participants try to take advantage of the simultaneous existence of problems with software, rules, and procedures
  - "NYISO's market monitoring approach is insufficient to adequately protect consumers
  - "there is strong reason to suspect that there is the potential for millions of dollars in consumer harm"

New England*

- NEPOOL moved to a competitive bid based dispatch system on May 1, 1999
- During the first 12 months of an open wholesale generation market (May 1, 1999 - April 30, 2000), 47% more capacity was out of service (on an average weekday) than during the prior 12 month period and nearly double that of May 1997 through April 1998
- Fossil plant forced outage rates increased from 11.4%, during Jan. '97 - Apr. '99, to 23.6% for the period May '99 - Dec 99

*Source: Allen, Biewald, and Schlissel, "Generator Outage Increases," Jan. 7, 2001.

New England *(continued)*

- On May 8, 2000, the peak market clearing price reached $6,000/MWh ($6/kWh) when 8,440 MW was out of service -- a 66% increase relative to the average daily capacity out of service during the same month in the three years prior to competition
- On June 8, 1999, the peak market clearing price reached $1,003/MWh ($1.003/kWh) when 5,965 MW was out of service -- a 83% relative increase
- ISO New England concluded "that the $6,000 per MWh price was reasonably related to the costs and risks faced in securing and arranging delivery of energy to New England"

Conclusions

- Wholesale power prices and volatility have hampered the development of retail markets
- The evidence suggests that generation owners have considerable market power in wholesale markets
- Given the characteristics of electric supply and demand, this market power may persist for some time
- The lack of price information in many regions of the country will also contribute to wholesale market power problems
- The transition to competitive retail markets has been more difficult and is taking longer than many had expected

COMMENTS OF O. RAY BOURLAND
ALLEGHENY ENERGY
LEGISLATIVE TRANSITION TASK FORCE
OCTOBER 15, 2001

Thank you for allowing Allegheny Energy to address the Legislative Transition Task Force on the siting process for electricity generation facilities (SJR 467), and on ensuring adequate generation for Virginia.

Allegheny Energy supports the Legislative Transition Task Force's (LTTF or Task Force) examination of possible amendments to the Commonwealth's administrative and regulatory procedures pertaining to the construction of new electricity generation facilities. Unnecessary regulations increase the time needed to bring a project to fruition, and can hamper the development of necessary generation resources. Further, Allegheny Energy believes that the existing restructuring framework provides sufficient safeguards and incentives to ensure adequate electric generation for Virginia's consumers.

As noted in the State Corporation Commission's (SCC or Commission) recent decision in Case No. PUE010313, *In the Matter of Amending Filing Requirements for Applications to Construct and Operate Electric Generating Facilities,* the General Assembly has made a change to the framework for considering generating station applications. There, the SCC observes that the Restructuring Act overrides the previous requirement for an examination of potential rate impacts, if any, which may result from a new generating station. There is one overriding reason for this result. If a generation facility produces power at above-market prices, it will not be utilized as much as cheaper resources in providing power to consumers. In other words, the market will weed out high-cost, inefficient producers.

The SCC determined that other aspects of the application process remain unchanged. For example, it said that applicants must continue to show that proposed facilities have no adverse reliability impact on electric service provided by public utility companies. The SCC further found that applicants must show that their facilities are in the public interest, including an evaluation of the impact of the facilities on the environment. Additionally, the Department of Environmental Quality continues to examine air quality analyses in connection with proposed projects. Allegheny Energy is willing to work with the Commission in the development of the specific filing requirements to be used in future applications.

Two matters involving Allegheny Energy and its affiliates illustrate the soundness of the Commonwealth's electric industry restructuring decisions. First, Allegheny Energy and CONSOL Energy have announced plans for a joint venture to construct an 88-megawatt generating station in Buchanan County. The generating station will use coal-bed methane as its fuel, produced by CONSUL Energy's CNX Gas Operations. Allegheny Energy also is aware that others have proposed generating facilities for Virginia at this time. Accordingly, the market is registering its approval of the Virginia restructuring effort as presently constituted with one of the most meaningful measures available: significant investments in the Commonwealth.

Second, the SCC has approved significant portions of Allegheny Power's (Allegheny Energy's utility subsidiary) transition/restructuring plan. One important component of the plan approved by the SCC is that Allegheny Power can separate its generation facilities from its transmission and distribution facilities, and transfer them to an affiliate. That has been accomplished. The plan also contains Allegheny Power's

agreement to contract for generation sufficient to meet its default service obligations at rates set in accordance with the Restructuring Act. In other words, Allegheny Power will by contract secure the electricity needed by its default service customers. No "reservation" of generation output from plants located in Virginia was necessary to achieve this end.

Parenthetically, the rates at which Allegheny Power provides default service include a $1,000,000 rate decrease effective July 1, 2000, additional bill credits of $750,000 in the first year following adoption of the new rates, and bill credits of $250,000 in the second year following adoption of the new rates, plus the rate cap period provided by statute. Additionally, Allegheny Power agrees to operate and maintain its distribution system in the Commonwealth at or above historic levels of service quality and reliability.

Accordingly, Allegheny Power and its affiliates currently are providing reliable service to their customers and each other in a restructured electricity environment. Customers also enjoy the opportunity to shop for electric generation services from others if they so choose. Virginia is attracting new generation resources under the terms of the existing Restructuring Act, and can, as has been achieved for Allegheny Power, secure the necessary generation resources for default service customers without the complications introduced by a "generation reservation" provision.

Thank you once again for the opportunity to address the Task Force on these important issues.

Status of Federal Electric Industry Restructuring Legislation
Pending in the 107th Congress as of August 30, 2001

Senate Bills

S. 26 (January 22, 2001): Senator Dianne Feinstein (D-CA)
Amends the Department of Energy Authorization Act to authorize the Secretary of Energy to impose interim limitations on the cost of electric energy to protect consumers from unjust and unreasonable prices in the electric energy market.

S. 80 - California Electricity Consumers Relief Act of 2001 (Jan. 22, 2001): Senator B. Boxer (D-CA)
Requires FERC to order refunds of unjust, unreasonable, unduly discriminatory or preferential rates or charges for electricity, and to establish cost-based rates for electricity sold at wholesale in the Western Systems Coordinating Council.

S. 172 - Electric Reliability Act (January 24, 2001): Senator Gordon Smith (R-OR)
Grants the FERC jurisdiction, over: (1) the electric reliability organization (ERO, established by this Act); (2) Affiliated Regional Reliability Entities; (3) system operators; and (4) users of the bulk-power system. Mandates that: (1) ERO take appropriate steps to gain recognition in Canada and Mexico; and (2) the United States use its best efforts to enter into agreements with Canada and Mexico to effectuate compliance with ERO standards. Grants the ERO disciplinary and enforcement powers. Permits recovery of implementation and enforcement costs incurred by the ERO and each Affiliated Regional Reliability Entity, respectively. Instructs FERC to establish a regional advisory body upon the petition of certain State Governors. Limits ERO authority exclusively to bulk-power system reliability standards. Denies the ERO and FERC any authority to set and enforce compliance with adequacy or safety standards governing either electric facilities or services. Declares that nothing in this Act preempts State action that is not inconsistent with ERO standards.

S. 173 - Consumer Utilities Turnback Trust Fund Act of 2001 (Jan. 24, 2001): Sen. B. Boxer (D-CA)
Amends the Internal Revenue Code of 1986 to impose a windfall profits adjustment on the production of domestic electricity and to use the resulting revenues to fund rebates for individual and business electricity consumers. Establishes the CUT Trust Fund into which shall be appropriated revenues from such tax. Provides that amounts in the Fund shall be available, without further appropriation, for specified rebates for individual and business electricity consumers.

S. 206 - Public Utility Holding Company Act of 2001 (January 30, 2001): Sen. Richard Shelby (R-AL)
Repeals the Public Utility Holding Company Act of 1935 and enacts the Public Utility Holding Company Act of 2001. Prescribes procedural guidelines for FERC and State access to records of a holding company (including subsidiaries, associates, and affiliates) of a public utility or natural gas company. Instructs FERC to promulgate a final rule to exempt specified holding companies from such access requirements. Requires FERC to exempt any person or transaction from such access requirements if it finds that regulation of such person or transaction is irrelevant to the jurisdictional rates of a public utility or natural gas company. Retains the jurisdiction of FERC and State commissions to determine whether a public utility company or natural gas company may recover in rates any costs of affiliate transactions. Declares this Act inapplicable to: (1) the United States; (2) a State or its political subdivision; and (3) a foreign governmental authority not operating in the United States.

S. 221 - State Electricity Reserve Fund Act of 2001 (January 30, 2001): Senator Barbara Boxer (D-CA)
Authorizes the Secretary of Energy to make loans through a revolving loan fund for States to construct electricity generation facilities for use in electricity supply emergencies.

S. 286 - Small Business Assistance Act of 2001 (February 8, 2001): Senator Dianne Feinstein (D-CA)
Direct the Secretary of Commerce to establish a program to make no-interest loans to eligible small business concerns to address economic harm resulting from shortages of, and increases in the prices of, electricity and natural gas.

S. 287 (February 8, 2001): Senator Dianne Feinstein (D-CA)
Directs FERC to impose cost-of-service based rates on sales by public utilities of electric energy at wholesale in the western energy market.

S. 388 - National Energy Security Act of 2001 (February 26, 2001): Sen. Frank Murkowski (R-AK)
Seeks to protect the energy and security of the United States and decrease America's dependency on foreign oil sources to 50 percent by the year 2011 by enhancing the use of renewable energy resources, conserving energy resources, improving energy efficiencies, and increasing domestic energy supplies. Amends the Outer Continental Shelf Lands Act to authorize the Secretary of the Interior to reduce or eliminate the royalty or net profit share set forth in leases in the Western, Eastern and Central Planning Areas of the Gulf of Mexico. Mandates that: (1) Federal oil or gas royalties accruing to the United States under any lease or permit be paid in kind in oil or gas; and (2) such royalty-in-kind oil be transferred to the Secretary of Energy to fill the Strategic Petroleum Reserve. Mandates transfer to a State, upon its request, of Federal authority over oil and gas lease operations on Federal land within the State. Directs the Secretary, when the price of West Texas Intermediate crude oil or natural gas reach certain levels, to grant a specified credit against the payment of royalties on oil and gas exploration and development on Federal land and the Outer Continental Shelf in order to encourage those activities. Establishes Federal grant programs for incentive payments for nuclear energy technology and research. Prescribes leasing guidelines for the Arctic Coastal Plain (Arctic National Wildlife Refuge) for private sector oil and gas exploration, development, and production, including rights-of-way and easements for oil and gas transportation. Establishes Federal grant programs for: (1) local governmental use of alternative fuel vehicles; and (2) residential renewable energy. Delineates mandatory factors for consideration by Federal agencies in connection with hydroelectric power licensing procedures. Amends the Federal Power Act to direct the FERC to approve an Electric Reliability Organization, which shall adopt standards for the reliable operation of a bulk power system. Amends the Public Utility Regulatory Practices Act of 1978 to repeal the requirement that an electric utility enter into a new contract to purchase or sell electric energy or capacity pursuant to requirements governing cogeneration and small power production. Repeals the Public Utility Holding Company Act of 1935. Deems State actions to support emission-free electricity sources to be control measures meeting Clean Air Act requirements and included in a State Implementation Plan.

S. 389 - National Energy Security Act of 2001 (February 26, 2001): Sen. F. Murkowski (R-AK)
Same as the preceding bill, S. 388, except that it includes a provision to amend the Internal Revenue Code of 1986 to establish tax incentives.

S. 408 - Small Business Electricity Emergency Relief Act of 2001 (Feb. 27, 2001): Sen. B. Boxer (D-CA)
Authorizes the SBA to make disaster loans to small businesses that have suffered or are likely to suffer substantial economic injury as the result of a sharp and significant increase in the price of electricity.

S. 552 - Transition to Competition in the Electric Industry Act (Mar. 15, 2001): Sen. Bob Graham (D-FL)
Provides that no electric utility shall be required to enter into a new contract or obligation to purchase or to sell electricity or capacity under Section 210 of PURPA from or to qualifying cogeneration and small power production facilities.

S. 597 - Comprehensive and Balanced Energy Policy Act (Mar. 22, 2001): Sen. J. Bingaman (D-NM)
Authorizes States to develop energy infrastructure regional coordination. Mandates periodic reviews of regulations to identify barriers to market entry for emerging energy technologies. Amends the Federal Power Act to establish the Electric Reliability Organization. Establishes a Public Benefits Fund. Amends the Rural Electrification Act of 1936 to authorize electrification grants for rural and remote communities. Directs the Federal Trade Commission to prescribe disclosure requirements regarding: (1) energy sources used to generate electricity; and (2) specified consumer protections and privacy. Amends the Federal Power Act to require FERC to establish: (1) a wholesale electricity market data information system; and (2) wholesale electric energy rates in the western energy market. Prescribes guidelines governing: (1) renewable energy resources; (2) distributed generation facilities; and (3) hydroelectric relicensing. Directs the Secretary of Energy to: (1) assess cost and performance goals for a national coal-based technology development and applications program; and (2) implement a power plant improvement initiative program. Sets a deadline for a specified Outer Continental Shelf Oil and Gas lease sale. Mandates an accelerated research and development program regarding pipeline integrity of natural gas and hazardous liquids. Prescribes guidelines for statutory mechanisms that increase vehicle fuel efficiency or provide vehicle alternatives in order to limit demand for petroleum products by light-duty vehicles. Amends the Energy Policy and Conservation Act to revise alternative fuel requirements for Federal fleets. Establishes: (1) the Federal Energy Bank; and (2) the High Performance Schools Program. Energy Science and Technology Enhancement Act - Delineates goals for enhanced research and development programs that target: (1) energy efficiency; (2) renewable energy; (3) fossil energy; (4) nuclear energy; and (5) fundamental energy science. Directs the Secretary of Energy to: (1) establish national energy research and development advisory boards; (2) monitor workforce trends pertaining to skilled technical personnel supporting enrage technology industries; (3) establish traineeship grant programs for technically skilled personnel; and (4) develop employee training guidelines to support electric supply system reliability and safety.

S. 764 - Energy Reliability and Stability Act (4/24/2001): Sen. Feinstein (D-CA) and Sen. Smith (R-OR)
Directs FERC to impose just and reasonable load-differentiated demand rates or cost-of-service based rates on sales by public utilities of electric energy at wholesale in the western energy market (the area covered by the Western Systems Coordinating Council). Authorizes a State public utility commission in such market to prohibit any utility under its jurisdiction from making any sale of electric energy to a purchaser outside the utility's service area if the commission believes that its delivery would impair the utility's ability to meet the demand for electric energy in its own service area. Instructs FERC to require a seller of natural gas to disclose the commodity portion and transportation portion of the sale price if it is sold in a bundled transaction under which it is to be transported into California from outside the state.

S. 794 - Rural Electric Tax Equity Act (April 26, 2001): Senator Fred Thompson (R-TN)
Amends the Internal Revenue Code to permit an exempt cooperative to exclude from income certain prepayments of any loan, debt, or obligation made, insured, or guaranteed under the Rural Electrification Act. Adds rules concerning the treatment of certain amounts received by taxable electric cooperatives.

S. 900 - Consumer Energy Commission Act of 2001 (May 16, 2001): Senator Richard Durbin (D-IL)
Establishes a Consumer Energy Commission to assess and provide recommendations regarding recent energy price spikes (including gasoline, natural gas and propane) from the perspective of consumers.

S. 972 - The Electric Power Industry Tax Modernization Act (May 25, 2001): Sen. Murkowski (R-AK)
Amends the Internal Revenue Code to permit a governmental unit to make an irrevocable election to terminate certain tax-exempt bond financing for electric output facilities. Provides for the exclusion from gross income as contributions to capital of certain amounts received by electric utilities. Revises the special rules concerning the tax treatment of nuclear decommissioning costs.

S. 1068 - Electricity Gouging Relief Act of 2001 (June 20, 2001): Senator Barbara Boxer (D-CA)
Directs FERC to order a refund (including interest) for the portion of charges on the transmission or sale of electric energy between June 1, 2000, and June 19, 2001, which the Commission deems to be unjust and unreasonable.

S. 1231 - Electricity Information Disclosure, Efficiency, and Accountability Act (July 24, 2001): Sen. R. Wyden (D-OR)
Amends the Federal Power Act to establish a system for market participants, regulators, and the public to have access to information about the operation of electricity power markets and transmission systems.

House Bills

H.R. 4 - Securing America's Future Energy Act (July 27, 2001): Rep. W. J. (Billy) Tauzin (R-LA)
This bill, which passed the House on August 2, 2001, includes the bulk of the Bush Administration's proposals for a national energy policy but does not address electricity restructuring issues. Those are being dealt with separately in the House and Senate.

H.R. 238 (January 20, 2001): Rep. Duncan Hunter (R-CA)
Authorizes the Secretary of Energy to impose interim limitations on the cost of electric energy to protect consumers from unjust and unreasonable prices in the electric energy market. (Same as S. 26)

H.R. 264 (January 30, 2001): Rep. Peter DeFazio (D-OR)
Requires FERC to return to the cost-based regulation of wholesale interstate sales of electricity, and for other purposes, by regulating rates and charges for (wholesale interstate) electric energy sales within its jurisdiction on the same (cost) basis as they were regulated prior to issuance of specified FERC orders on April 24, 1996.

H.R. 268 - California Electricity Consumers Relief Act of 2001 (Jan. 30, 2001): Rep. Bob Filner (D-CA)
Requires the FERC to order refunds of unjust, unreasonable, unduly discriminatory or preferential rates or charges for electricity, and to establish cost-based rates for electricity sold at wholesale in the Western Systems Coordinating Council. (House version of S. 80)

H.R. 312 - National Electricity Reliability Act (January 30, 2001): Rep. Albert Wynn (D-MD)
Amends the Federal Power Act to provide for the establishment of mandatory reliability standards governing the reliable operation of the bulk-power system. Grants the FERC approval and enforcement jurisdiction regarding compliance by: (1) the Electric Reliability Organization (Organization, approved by FERC pursuant to this Act); (2) all Affiliated Regional Reliability Entities; (3) all system operators; and (4) all users of the bulk-power system. Mandates that: (1) the Organization act to gain recognition in Canada and Mexico; and (2) the United States use its best efforts to enter into international agreements with those countries to effectuate compliance with Organization standards, and to promote the Organization's mission. Requires every system operator to be a member of the electric reliability organization and of any Affiliated Regional Reliability Entity pertinent to the region in which the system operator either operates, or is responsible for the operation of a bulk-power system facility.

H.R. 381 - Ratepayer Protection Act (January 31, 2001): Rep. Cliff Stearns (R-FL)
Prospectively repeals Section 210 of the Public Utility Regulatory Policies Act of 1978.

H.R. 416 - Environmental Priorities Act of 2001 (February 6, 2001): Rep. Robert Andrews (D-NJ)
Requires providers of retail electric services to contribute to the Environmental Priorities Board ten percent of the total consumer savings for the consumer sector for that calendar year. Authorizes States in

which retail electric service choice has been established for any consumer sector to establish public purpose programs and apply for matching funding to support environmental priorities programs.

H.R. 443 - Public Oversight of Wholesale Electric Rates Act (Feb. 6, 2001): Rep. Bob Filner (D-CA)
Amends the Internal Revenue Code of 1986 to impose a windfall profit tax on wholesale electric energy sold in the Western System Coordinating Council of 100 percent of the windfall profit.

H.R. 704 - Energy Time Adjustment Authorization Act (Feb. 14, 2001): Rep. Brad Sherman (D-CA)
Permits States in the Pacific time zone to temporarily adjust standard time in response to the energy crisis.

H.R. 954 - Home Generation Act (March 8, 2001): Rep. Jay Inslee (D-WA)
Amends the Federal Power Act to promote energy independence and self-sufficiency by providing for the use of net metering by certain small electric energy generation systems.

H.R. 971 (March 8, 2001): Rep. Greg Walden (R-OR)
Requires that payment be guaranteed whenever any supplier of electric energy is required to sell electric energy to a purchaser under the emergency authority of section 202(c) of the Federal Power Act.

H.R. 979 (March 13, 2001): Rep. Duncan Hunter (R-CA)
Authorizes the President and the Governor of a State to suspend certain environmental and siting requirements applicable to fossil fuel fired electric power plants to alleviate an electric power shortage that may present a threat to public health and safety, and for other purposes.

H.R. 1045 - Energy Self-Sufficiency Act for the 21st Century (Mar. 15, 2001): Rep. H. Wilson (R-NM)
Encourages the rapid deployment of distributed energy resources.

H.R. 1075 (March 15, 2001): Rep. Duncan Hunter (R-CA)
Allows any business or individual in any state experiencing a power emergency to operate any type of power generation available to ensure their economic stability. Prohibits emissions attributable to generation permitted solely because of such power emergency from being taken into account for purposes of determining the attainment or nonattainment status of an area under the Clean Air Act.

H.R. 1101 - Public Utility Holding Company Act of 2001 (March 20, 2001): Rep. C. Pickering (R-MS)
Repeals the Public Utility Holding Company Act of 1935 and enacts the Public Utility Holding Company Act of 1999. Identical to S. 206.

H.R. 1459 - Electric Power Industry Tax Modernization Act (April 4, 2001): Rep. J.D. Hayworth (R-AZ)
Amends the Internal Revenue Code to permit a governmental unit to make an irrevocable election to terminate certain tax-exempt bond financing for electric output facilities. Sets forth provisions concerning independent transmission companies. Identical to S. 972.

H.R. 1468 - Energy Price and Economic Stability Act of 2001 (April 4, 2001): Rep. Jay Inslee (D-WA)
Directs FERC to implement short-term cost-of-service based energy rates.

H.R. 1601 - Rural Electric Tax Equity Act (April 26, 2001): Rep. Scott McInnis (R-CO)
Amends the Internal Revenue Code of 1986 to facilitate electric cooperative participation in a competitive electric power industry. Identical to S. 794.

H.R. 1647 - The Electricity Emergency Relief Act (May 1, 2001): Rep. Joe Barton (R-TX)
Directs FERC to: (1) establish a clearinghouse system to facilitate agreements between wholesale sellers of electric energy and wholesale purchasers willing to forego temporarily electric energy purchases to

which they are entitled; (2) implement a program that authorizes any electric consumer of any electric utility within the Western Systems to sell at market prices an amount of electric load the consumer is willing to forego; (3) study electric power transmission congestion jointly with the Secretary of Energy; and (4) develop a plan to relieve constraints that reduce the efficiency of electric power transmission, including Canadian and Mexican electric transmission systems. Authorizes the Administrator of the Western Area Power Administration System to expand its transmission system to remove the PATH 15 constraint. Sets guidelines for either a qualifying small power production facility or cogeneration facility suspension of electric energy due to nonpayment. Instructs FERC to promulgate a standard article to permit increased generation at licensed hydroelectric facilities. Permits, upon request of certain State Governors: (1) the Administrator of the Bonneville Power Administration to authorize maximized electric generation at hydropower facilities providing power to the Administration; (2) the Administrator of the EPA to waive Clean Air Act requirements pertaining to oxides of nitrogen for new generation units; and (3) the Secretary to authorize a qualified Federal electric generation facility to generate electric energy for consumption or for sales for local State distribution. Authorizes a State Governor, on any high electricity emergency day, to waive Clean Air Act emission limitations. Provides for a regional transmission organization for the region covered by the Western Systems Coordinating Council.

H.R. 1664 - Emergency Power Production & Consumer Protection Act (5/1/2001): Rep. D. Ose (R-CA)
Authorizes the Secretary of the Interior or the Secretary of the Army to waive any restriction on operation of any of certain facilities, respectively, as necessary to address an emergency electric power shortage declared by the Governor of a State to which power from that facility can be transmitted.

H.R. 1874 (May 16, 2001): Rep. Duncan Hunter (R-CA)
Allows any business or individual in any State experiencing a power emergency to operate any type of power generation available to ensure their economic stability. Prohibits additional emissions attributable to generation permitted solely because of such power emergency from being taken into account for purposes of determining the attainment or nonattainment status under the Clean Air Act.

H.R. 1941 - Electric Refund Fairness Act of 2001 (May 22, 2001): Rep. Doug Ose (R-CA)
Amends the Federal Power Act to provide FERC with authority to order certain refunds of electric rates.

H.R. 1974 (May 23, 2001): Rep. Doug Ose (R-CA)
Amends the Federal Power Act to provide FERC with authority to order certain refunds of electric rates, to require the Commission to expand its market mitigation plan, and to provide the Secretary of Energy with authority to revoke the market mitigation plan under certain circumstances, and for other purposes.

H.R. 2204 - Consumer Energy Commission Act of 2001 (June 14, 2001): Rep. Bobby Rush (D-IL)
Purpose: To establish a Consumer Energy Commission to assess and provide recommendations regarding recent energy price spikes from the perspective of consumers.

H.R. 2274 - Electricity Gouging Relief Act (June 21, 2001): Rep. Anna Eshoo (D-CA)
Instructs FERC to order a refund of unjust and unreasonable rates and charges by public utilities on sales of electric energy for use in the area covered by the Western Systems Coordinating Council of the North American Electric Reliability Council.

H.R. 2587 - Energy Advancement and Conservation Act of 2001 (7/23/2001): Rep. Billy Tauzin (R-LA)
Enhances energy conservation, provides for security and diversity in the energy supply for the American people, and other purposes.

H.R. 2757 (August 2, 2001): Rep. Jane Harman (D-CA)
Provides refunds of certain overcharges for electricity in the Western States, and for other purposes.

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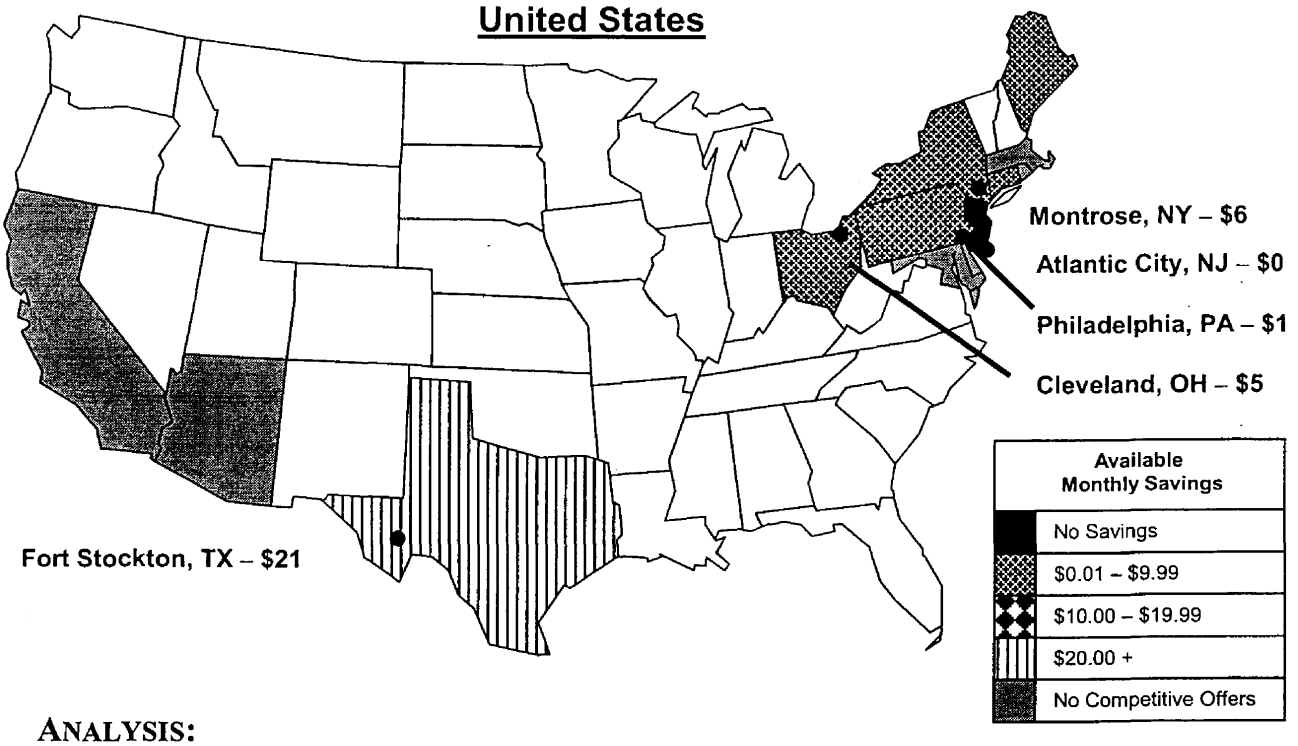
RESIDENTIAL SAVINGS INDEX

Published August 9, 2001



ANALYSIS:

- As of August 9, 2001, residential electricity consumers in Texas have the greatest savings potential on their monthly electric bill in the United States. REASON: With the deregulation pilot program beginning in Texas, competitive suppliers are aggressively discounting service to establish themselves.
- In Pennsylvania, the recent run-up in natural gas prices and the resulting increase in wholesale market electricity prices has caused many competitive suppliers there to stop offering savings to consumers because they are unable to secure electricity supplies at competitive rates. Some suppliers have simply left the market altogether.
- In Ohio, the lack of an active wholesale market and the inability of competitive suppliers to secure electricity limit the savings available to consumers.
- In New York, consumers in New York City and Westchester County have access to competitive electricity offerings with limited savings.
- Despite deregulation laws that allow consumers to choose, there are no suppliers offering service in Arizona, California, Delaware, Maryland, Massachusetts, Rhode Island, and Washington, DC.
- CONSUMER TIP: In many deregulated states, there may be "green" offerings where the source of the electricity is renewable resources. Typically, these are more expensive than the regulated utility rate.

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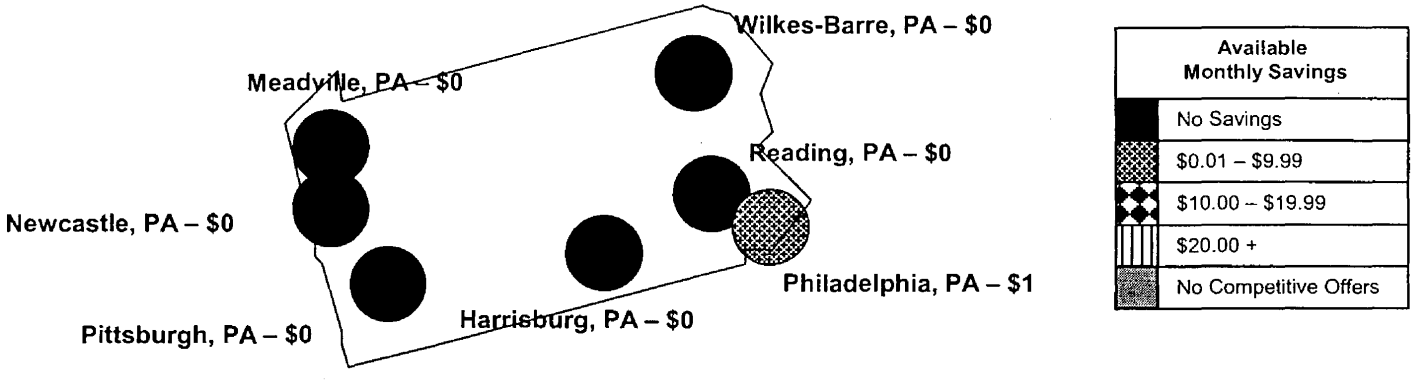
Published August 9, 2001

Pennsylvania



ANALYSIS:

- 25% of Pennsylvania residential electricity consumers can save on their electric bill.
- In Pennsylvania, the recent run-up in natural gas prices and the resulting increase in spot market electricity prices has caused many competitive suppliers there to stop offering savings to consumers because they are unable to secure electricity at competitive rates or to leave the market all together.
- The total number of residential, commercial, and industrial customers using competitive suppliers declined to 591,596 from 787,846 during the second quarter of 2001. REASON: Competitive suppliers have left the market and have given their customers back to the regulated utilities because they were no longer providing service profitably.
- Because the regulated utilities cannot pass along rate increases (except under the order of the Public Utilities Commission), their rates become more attractive to consumers in the short run when price spikes occur in the wholesale market. While good for consumers, this is potentially disastrous for both the utilities who provide service at below market rates and for competitive suppliers who may be forced out of the market.
- CONSUMER TIP: Savvy consumers watch the market and take advantage of savings when they are available. In Philadelphia, for instance, it was possible a few months ago for an average household to save $10 or more per month.

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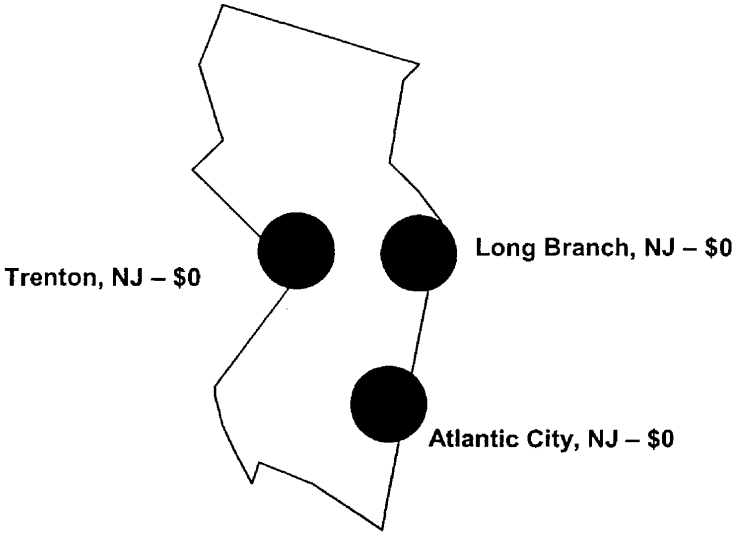
Published August 9, 2001

New Jersey



Available Monthly Savings
No Savings
$0.01 – $9.99
$10.00 – $19.99
$20.00 +
No Competitive Offers

ANALYSIS:

- Currently, there are competitive electricity suppliers offering service in New Jersey, but no one is offering any savings to residential consumers.
- This lack of savings may be attributable to the recent run-up in the price of natural gas that has impacted the price of electricity in the wholesale markets.
- CONSUMER TIP: Now that natural gas prices have begun to abate, more competitive offerings and savings may be available in the future. It is important for consumers to watch the market and take advantage of savings when they are available.
- CONSUMER TIP: 96% of New Jersey residential electricity customers can choose "green" electricity. This is electricity made from renewable resources. However, this kind of electricity is usually priced higher than the regulated utility rate.

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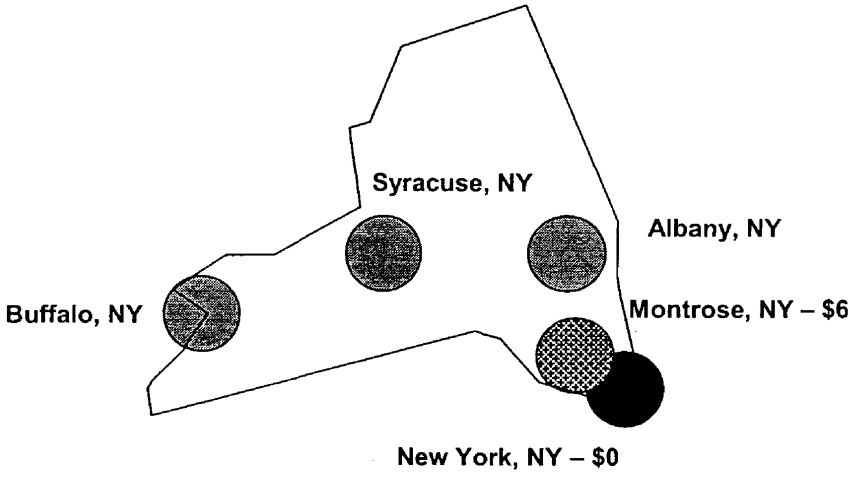
RESIDENTIAL SAVINGS INDEX

Published August 9, 2001

New York



Available Monthly Savings
No Savings
$0.01 – $9.99
$10.00 – $19.99
$20.00 +
No Competitive Offers

ANALYSIS:

- In New York, consumers in New York City and Westchester County have access to competitive electricity offerings with limited savings.
- In other areas, such as upstate New York, there are no competitive electricity suppliers offering service at this time.
- This lack of savings and lack of electricity suppliers may be attributable to the recent run-up in the price of natural gas that has impacted the price of electricity in the wholesale markets.
- CONSUMER TIP: Now that natural gas prices have begun to abate, more competitive offerings and savings may be available in the future. It is important for consumers to watch the market and take advantage of savings when they are available.

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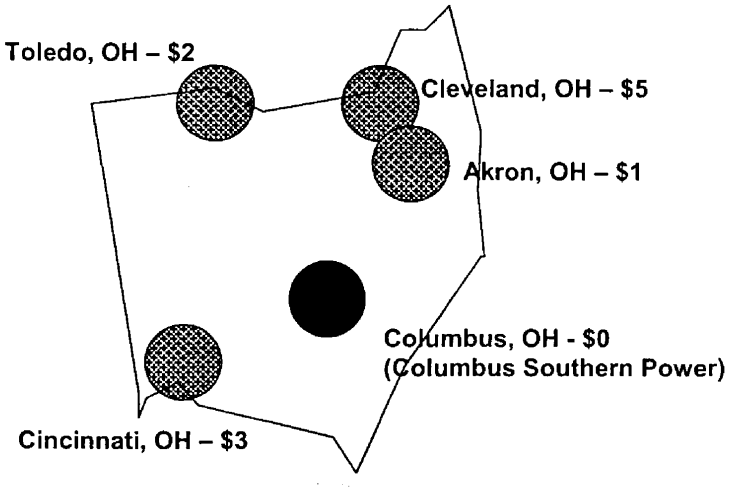
Published August 9, 2001

Ohio



Available Monthly Savings
No Savings
$0.01 – $9.99
$10.00 – $19.99
$20.00 +
No Competitive Offers

ANALYSIS:

- 51% of Ohio residential electricity consumers can save on their electric bill.
- In Ohio, the lack of an active wholesale market and the inability of competitive suppliers to secure supplies of electricity limit the savings available to consumers.
- The area with the highest savings potential is the Cleveland metro area where consumers can save up to $5 per month.
- Ohio consumers might be able to see more savings when the regulators create an active wholesale marketplace that enables competitive suppliers to acquire electricity supplies at competitive prices and therefore offer service profitably.
- CONSUMER TIP: Consumers may be able to achieve savings on their electric bills if their community has joined the Northeast Ohio Public Electric Council (NOPEC). Nearly 100 communities in northeast Ohio have joined together to form the largest aggregation group (or buying group) in the United States. NOPEC represents more than 400,000 electricity customers.

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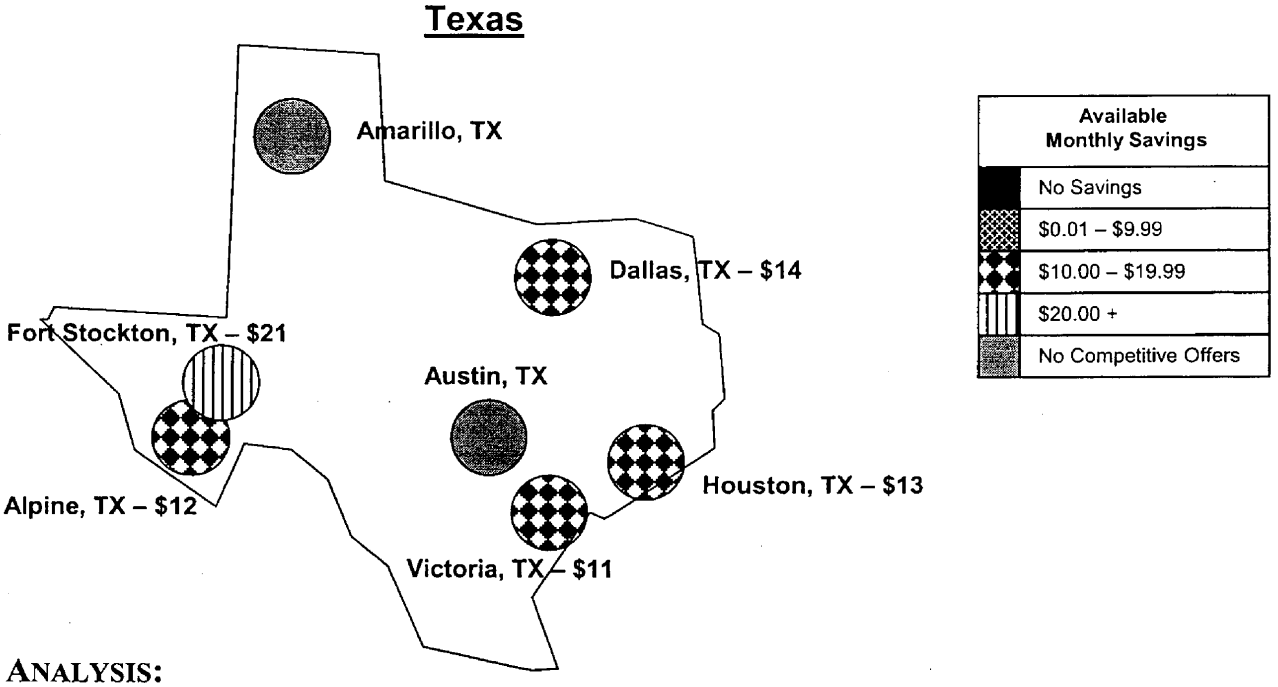
RESIDENTIAL SAVINGS INDEX

Published August 9, 2001



ANALYSIS:

- While only 5% of Texas residential electricity consumers can participate in the Texas electric choice pilot program, 59% of Texas residential electricity consumers live in areas where they can save on their electric bill if they participate in the pilot program.
- Texas has all the ingredients to successfully deregulate – abundant electricity supply, an active wholesale market, and competitors offering significant savings to residential consumers.
- Competitive suppliers began servicing the pilot program participants on July 31. The entire state is scheduled to open for competition on January 1, 2002.
- With the deregulation pilot program beginning in Texas, competitive suppliers are aggressively discounting service to establish themselves. Consumers who take part in the pilot program should see significant savings versus the regulated utility rates.
- CONSUMER TIP: 47% of Texas residential electricity customers can choose "green" electricity. This is electricity made from renewable resources. However, this kind of electricity is usually priced higher than the regulated utility rate.
- CONSUMER TIP: Consumers in the Dallas and Houston metro areas are seeing the most active marketing efforts by competitive suppliers, but the greatest savings are in West Texas in Texas-New Mexico Power's service territory.

Old Mill Power Company

Your Renewable Resource Electric Company
103 Shale Place Charlottesville, VA 22902-6402
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Web Site: www.oldmillpower.com

October 20, 2001

Legislative Transition Task Force of the Virginia Electric Utility Restructuring Act
c/o Frank D. Munyan, Esq.
Division of Legislative Services
General Assembly Building
910 Capitol Street
Richmond, Virginia 23219

Subj: Clarification of Old Mill Power Company's Comments at the October 16, 2001 LTTF Meeting Regarding the Availability of Generation for End-Use in Virginia

Dear Senator Norment and Distinguished Members of the Legislative Transition Task Force (LTTF) of the Virginia Electric Utility Restructuring Act:

It was recently brought to my attention that I may not have expressed myself very clearly during my impromptu comments to the LTTF at its October 16 meeting. I'd like to take this opportunity to clarify my point, which was to inform the LTTF of certain federal limitations on the disposition of surplus capacity and energy (surplus generation) that must be kept in mind as the LTTF considers Item 3 of its October 16 agenda, which was "Ensuring Adequate Generation for Virginia".

The first federal limitation that I sought to bring to the LTTF's attention was that not all surplus capacity and energy from generating entities that border on, or that actually serve, portions of Virginia, can be purchased by competitive service providers (CSPs) to serve loads in Virginia. For example, the Tennessee Valley Authority (TVA), one of the largest generating entities (Capacity = 29,469 MegaWatts[1]) in the Southeast Electric Reliability Council (SERC, of which Dominion Virginia Power is a member), serves as the exclusive provider of bulk power to Powell Valley Electric Cooperative (PVEC), which, in turn, serves retail customers in southwest Virginia. As described to me by a TVA employee responsible for bulk power sales, TVA and its distribution company customers such as PVEC are prohibited from selling surplus generation to entities who might resell such generation at a profit[2].

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[1] Source: TVA 2000 Annual Report at http://www.tva.gov/finance/reports/annualreport_00/00_overview2.htm on October 19, 2001. Note that TVA has about 40% more generating capacity than Dominion, which has "more than 21,000 megawatts of efficient electric power in its generation portfolio" (http://www.dom.com/operations/ on October 19, 2001).

[2] The US Code actually allows the TVA Board to sell its surplus generation to profit-making entities, but requires the Board to "give preference to States, counties, municipalities, and cooperative organizations of citizens or farmers, not organized or doing business for profit, but primarily for the purpose of supplying electricity to its own citizens or members" (16 USC 12A §831i). Judging from the bulk power trader's statement that he is prohibited from selling

In other words, without a change in current practice, surplus power generated by TVA--one of the largest generating entities currently serving retail load in Virginia--is not available to CSPs competing in Virginia's emerging competitive retail electricity market. Artificially restricting the amount of generation available to CSPs who would like to do business in Virginia inevitably increases the cost of their products, discourages the development of a competitive retail energy market, and sets the stage for market disasters such as the recent crisis in California.

The second federal limitation that I sought to bring to the LTTF's attention concerns the disposition of generation that is surplus to utilities that are not on the TVA system, including the disposition of "displaced generation", the generation that becomes surplus to incumbent utilities such as Dominion Virginia Power (DVP) when they lose customers to CSPs.

Prior to June 1, 2000, DVP was prohibited by the terms of its FERC-approved Amended and Restated Market-Based Sales Tariff from selling generation for delivery to loads located within its service territory[3]. The purpose of this restriction appears to have been to prevent DVP from dominating the generation market within its service territory, thereby encouraging the development and continued use of generating assets owned by parties other than DVP that could be used to serve the retail loads of entities such as Old Dominion Electric Cooperatives, Inc., Virginia Municipal Electric Association No. 1, North Carolina Eastern Municipal Power Agency, and North Carolina Electric Membership Corporation.

Last year, DVP applied for, and FERC approved, a special waiver to this restriction expressly for the purposes and duration of DVP's Pilot Program[4]. The waiver allows DVP to offer electricity for serving loads in DVP's service territory to unaffiliated CSPs at the same rate and terms as it offers such electricity to its affiliates. The practical effect of this waiver is to reduce the cost to CSPs of wholesale power within DVP's service territory, thereby encouraging the development of a competitive retail market.

This special market-based rate authority allowing DVP's surplus generation to be sold to CSPs to serve load within DVP's service territory automatically expires on December 31, 2001. Just yesterday[5], an employee of DVP's Wholesale Power Group told me that, to the best of his

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TVA's surplus generation to profit-making entities, it appears that TVA implements the statutorily required preference by simply not offering its surplus generation to profit-making entities.

[3] "On the effective date of this MR Tariff, Virginia Power may (i) provide capacity and/or energy from all or any of its owned generating or purchased power resources under this MR Tariff ...provided, however, that Virginia Power will not provide capacity and/or energy under this MR Tariff for delivery to loads located within its service territory...." (Virginia Electric and Power Company FERC Electric Tariff First Revised Volume No. 4, Effective August 31, 1997, Sheets No. 2-3.)

[4] " Virginia Power may sell capacity and/or energy under this Tariff to affiliates and non-affiliates outside its service territory and to affiliated and non-affiliated Energy Service Providers within its service territory for resale to retail participants in Virginia Power's Retail Access Pilot Program adopted by the Virginia State Corporation Commission inn Virginia Case No. PUE980813." (Virginia Electric and Power Company FERC Electric Tariff Third Revised Volume 4, Original Sheet No. 1, Effective June 1, 2000). Note that this waiver expires with the Pilot Program on December 31, 2001 and that DVP must seek an extension of this waiver in order to prevent the prohibition against providing capacity and/or energy to loads located within its service territory from resuming effect on January 1, 2002.

[5] In a conversation that took place on October 19, 2001.

knowledge, DVP has no plans at this time to seek an extension of that special market-based rate authority.

The practical effect of not asking for an extension of this special market-based rate authority is to significantly diminish the amount of generation within DVP's service territory that is available to CSPs at a cost of only one transmission "wheel". This inevitably increases the cost of wholesale energy to CSPs and creates a barrier to the development of a competitive retail energy market within the Commonwealth.

Another practical effect of not extending this special market-based rate authority is to completely negate any increase to the total amount of generation available for end-use within DVP's service territory that will occur after January 1, 2002 if and when CSPs import electricity to serve load in DVP's territory. This occurs because, under DVP's current market-based sales tariff, the DVP generation displaced by CSP imports after January 1, 2002 will become unavailable for sale within DVP's service territory as quickly as it is displaced. In other words, all other things being equal, after January 1, 2002, CSP imports of generation into DVP's service territory will have no effect on the total amount of generation available to serve load in DVP's territory. This result is the same even if a CSP's source of generation is one of the merchant power plants currently being considered for siting within DVP's service territory and even if a generation set aside is associated with that power plant's permit: As soon as such a set aside was used by a CSP to displace generation within DVP's service territory, the displaced generation would have to be exported.

I do not know to what extent other utilities with certificated territories in Virginia may have provisions in their federally approved market-based rate tariffs that would prevent them from selling generation for delivery to loads located within their respective service territories, but a legislative task force that's charged with supervising Virginia's transition to a competitive retail electricity market ought to be aware of such provisions and of their potentially detrimental effects on competition. I commend Chairman Norment for issuing an appropriate order to find out what the utilities' positions are with respect to this matter.

I hope this clarification of my October 16 comments has been helpful and trust that LTTF members will keep these issues in mind as they consider whether and how to draft legislation that would ensure adequate generation for Virginia. Please feel free to contact me at Voice: 1-434-979-9288 or Email: mitchking@oldmillpower.com if you'd like to discuss this matter further.

Sincerely,

Original signed by

Michel A. (Mitch) King
President and General Manager

REPORT OF THE CONSUMER ADVISORY BOARD TO THE LEGISLATIVE TRANSITION TASK FORCE OF THE VIRGINIA ELECTRIC UTILITY RESTRUCTURING ACT

December 2001

I. INTRODUCTION

The Consumer Advisory Board, established under § 56-595 of the Restructuring Act, is directed to assist the Legislative Transition Task Force in its work of monitoring the transition to retail competition for electric energy. The seventeen-member Board is appointed from all classes of consumers and with geographical representation throughout the Commonwealth. Since its inception in 1999, William Lukhard has chaired the Board and Otis Brown has served as vice-chairman. Delegate Kenneth Plum continues to serve as liaison between the Task Force and the Consumer Advisory Board.

The Consumer Advisory Board continued its work this year, meeting four times in 2001 to address a number of issues. The Board continued its examination of energy efficiency and low-income energy assistance. New issues for this year's study included aggregation, demand-side management, and the effect of deregulation on small business.

The Board was created to assist the Task Force in monitoring the transition from a regulated monopoly system to a competitive market. However, for such a market to come about a knowledgeable demand side should exist as well as a variety of suppliers on the supply side. To date, most of the emphasis has been placed on developing a viable supply market that protects consumers. Much of the Board's work this year has attempted to enhance knowledge among residential and small business consumers and to develop options for improving the demand side of a competitive market.

II. ISSUES STUDIED BY THE BOARD

A. SCC REPORT ON THE STATUS OF COMPETITION

The Board received a presentation by the staff of the State Corporation Commission on the Commission's report on the status of competition prepared pursuant to § 56-596. The Board commends the Commission and its staff for the report. Dick Williams, Director of the Division of Economics and Finance, presented the report, which addressed the status of competition in the Commonwealth and the status of the development of regional competitive markets, and included recommendations to facilitate effective competition as soon as practical. The Commission is charged with seeing that a competitive retail market will exist in the Commonwealth. In Williams' presentation of the report, he concluded that Virginia is on track for the beginning of competition January 1, 2002. The SCC did not recommend any legislative changes for the upcoming session.

The Commission's report included suggestions made by various stakeholders for changes in the restructuring legislation. The Board was particularly interested in the provisions of the section of the report that addressed the issue of supply and demand balance for generation services. Specifically, the Board considered suggestions addressing whether consumers will have necessary tools to monitor prices and make educated buying decisions. The Board also examined recommendations that utilities' rate structures should better reflect seasonal and daily costs in order that customers are able to react to the true cost of power.

B. AGGREGATION

Dick Williams explained the licensing process for aggregators in Virginia. The SCC used its experience from the development of interim rules to develop permanent rules in June 2001. The rules establish the requirements for aggregator license applications. Applicants for licensure for all types of competitive service providers, including aggregators, must pay a $250 license fee and provide the SCC with information regarding the company's technical ability to perform the services and its financial condition. However, when an entity applies to be an aggregator that will not receive payments from customers, the SCC does not examine the applicant's technical ability or financial condition as closely as other applicants. Within 45 days of the application, the SCC will issue a license to applicants that meet all applicable requirements and notify incumbent utilities of that fact. Virginia currently has 10 licensed aggregators, all of which are affiliates of electric service providers. Other entities have applications pending. All licensed aggregators received licenses to participate in the pilot programs, then converted their licenses to allow operation when full competition commences. While a number of aggregators are licensed, the success of aggregation programs will depend largely on the number and types of offers they elect to make to consumers after competition commences.

Bruce Oliver of the AOBA Alliance presented the Board with his experience as an aggregator. The AOBA Alliance is an aggregator/broker licensed in Washington, D.C., Virginia, and Maryland. As an aggregator, AOBA Alliance offered three observations: 1) most AOBA members had little available energy use information or knowledge of rate structure or pricing considerations; 2) few members had the expertise to evaluate the terms of competitive offers; and 3) cost-effectiveness would be increased through aggregation. The objectives of the aggregation program are to (i) educate members on the parameters of competitive markets, (ii) assist members in streamlining the process of evaluating offers and negotiating contracts, and (iii) facilitate competition by evaluating and presenting competitive service offers.

Oliver stressed that organizations need to be able to recognize and identify whether a prospective aggregator can provide adequate services on a cost-effective basis. By acquiring a substantial share of the aggregation market, affiliates of incumbent utilities can spread their fixed costs, and thus may have lower costs than their competitors. While AOBA Alliance expressed concern about the competitive advantages of utility affiliates, the group has attempted to establish a niche in a limited market based on established relationships to extract savings for participants. The market is difficult, and the ability to compete requires much

attention and expertise. He cautioned that small customers have only a limited ability to save money through aggregation.

C. THE EFFECT OF DEREGULATION ON SMALL BUSINESS

Keith Cheatham of the Virginia Chamber of Commerce presented the Board with its survey on the effect of deregulation on small businesses. Because competition has not yet begun in Virginia, the Chamber surveyed other business organizations in states that have restructured. New Jersey and Pennsylvania business groups do not think restructuring has had much impact on small businesses. Montana and Ohio both responded that it is too early to determine the impact of deregulation on small businesses. In Montana, only large industrial users have been able to choose their provider, though small users will have that option starting in July 2002. Ohio's Chamber of Commerce has not studied the impact of deregulation on small business, but agrees that not enough time has passed to allow an adequate review. Some small businesses are suppliers to large manufacturers who are including them in aggregation groups, and therefore may be realizing some of the benefits of competition. In most cases, small businesses do not have the buying power to negotiate lower prices without becoming part of an aggregation group. Cheatham presented the results of an Illinois study on electric utility deregulation that, while not specifically addressing the effects of deregulation on small business, expresses concern that a lack of competition in wholesale and retail markets will create upward pressure on prices paid by consumers.

Gordon Dixon of the National Federation of Independent Businesses told the Board that there is currently no definitive answer regarding the direction deregulation is taking. Nonetheless, small business owners are concerned about impediments to competition. Lack of competition may increase energy costs, and small businesses cannot absorb increases in costs in today's economic climate. Small businesses in Virginia do favor the SCC's education program about choice. Since small businesses usually pay about the same rates for electricity as residential consumers, the consumer education program would be applicable to both classes of consumers.

Linda Decker of the National Small Business Alliance for Fair Utility Deregulation observed that the importance of small business to the state and national economy cannot be overstated. The Alliance concluded in the spring of 2001 that electric restructuring is not working and should be put on hold. Decker cited the lack of competitive offers in Virginia Power's pilot program as evidence that deregulation has not been successful in Virginia. Small businesses are vital to economic recovery, and reliable and efficient energy costs are critical. Decker had three recommendations for legislative action: (i) put deregulation on hold indefinitely, (ii) create an office for a small business advocate in the SCC, and (iii) require the SCC to contract for consumer education for small businesses. The Board did not feel that the first recommendation was appropriate, since the Board is charged with assisting in the implementation of restructuring. The Board's discussion of the remaining two recommendations is included in Part III of this report.

D. ENERGY EFFICIENCY EDUCATION

Last year, the Board recommended that the Task Force ask the Department of Mines, Minerals, and Energy to study energy efficiency education for consumers. Steve Walz presented DMME's report to the Board at its December meeting. A copy of the report is attached as Appendix A. DMME examined existing energy efficiency consumer education efforts, then surveyed consumer awareness and interest, and developed options for increasing education efforts and creating more awareness. The Department developed a matrix to examine the effectiveness of each option, and specifically weighed the advantages and costs of efforts at changing behavior compared to efforts to increase consumer awareness. The DMME study applied only to residential consumers; DMME expects to complete the second phase of the study, addressing small commercial customers, sometime in 2002.

Several national programs, both governmental and private, are educating Virginians about energy efficiency. The largest and most visible of these is Energy Star, a partnership of the U.S. Department of Energy and the Environmental Protection Agency that attempts to increase knowledge and awareness of energy efficient appliances through product labeling, marketing, and consumer education. DOE also provides (i) the Energy Efficiency and Renewable Energy Network, a source of information about energy efficiency, and (ii) the Million Solar Roofs initiative, which is designed to provide incentives for companies that install solar panels on the roofs of buildings. A number of private companies and retailers such as Home Depot and Owens Corning provide energy efficiency education at their point of sale displays in stores.

In Virginia, utilities provide energy efficiency education through their web sites, bill stuffers and other printed materials, magazines, direct customer assistance, and school programs. In state government, DMME operates the State Energy Program, under which it maintains a web site and publishes the Virginia Energy Savers Handbook. The Department of Housing and Community Development administers the Weatherization Assistance Program, which makes homes of low-income families more energy efficient. Energy efficiency education is provided to social services agencies through the Low-Income Home Energy Assistance Program, and the Office of Consumer Affairs and Attorney General's office through their roles in investigating consumer complaints. Non-governmental providers of energy efficiency education include retail sales people, builders and home energy raters, and organizations such as the Association of Energy Conservation Professionals and the National/Virginia Energy Efficiency Databases (NEED/VEED). Finally, DMME's survey revealed that friends and family provide consumers with energy efficiency information.

The survey found that Virginia consumers get most of their information about energy efficiency through point-of-purchase salespeople and materials. The most common reason for a recent appliance purchase was replacement of an existing appliance; only 10 percent of respondents said they were motivated by a desire for greater energy efficiency. Leading factors for future purchases include energy efficiency and fuel type (both at 29 percent) and price (22 percent).

DMME's report also compared the results from the survey of Virginians to those of a national survey. Virginian respondents indicated a willingness to pay a premium of 14 to 18 percent more for energy efficient products. In comparison, nationwide respondents said they would pay an additional 33 to 36 percent. Possible reasons for this discrepancy are Virginia's lower utility rates, and the less seasonal peaking of costs. The survey revealed a gap between energy efficiency awareness and purchasing behavior. While low-income persons placed a great deal of importance on energy efficiency as a factor in buying appliances in the survey responses, their actions, as reflected by the fact that none purchased compact fluorescent bulbs, showed that they do not act in a manner consistent with these findings. Lower-income customers are concerned about first cost, and items such as compact fluorescent light bulbs have a higher up-front cost.

While a majority of respondents believe higher electric rates are likely in the future, there is no correlation between this belief and knowledge of energy efficiency or utility restructuring. Most respondents believe there is a very low likelihood of power disturbances in the future.

The DMME report identified options for high-, medium-, and low-level energy efficiency education programs. A high-level program would be targeted toward behavior change combining energy efficiency education with financial incentives, at a cost of between $2 and $4 million. A medium-level program combining education with limited financial incentives, targeted toward increasing awareness in up to 25 percent of the population, would have a cost of between $1.7 and $2.2 million. The low-level program option, using limited types of communication media, designed to reach 10 percent of the target audience would have a cost between $1,400 and $530,000 per year.

E. DEMAND-SIDE MANAGEMENT

In response to the Board's request, Mark Carsley of the SCC presented the Commission's analysis of the Edison Electric Institute report on demand-side management. The report examines dynamic pricing, traditional load management, and voluntary load reductions, and contends that the majority of U.S. consumers of electricity are insulated from the dynamics of wholesale electricity pricing. Electric prices include the commodity cost and a risk premium, which provides insurance against price spikes. The report recommends that all retail customers should be exposed to wholesale prices. They do not necessarily need to pay those prices, but customers should be given a choice between paying a fixed price with a risk premium or paying dynamic pricing that reflects the prices in an unregulated wholesale market.

While the report argues that dynamic pricing and load reduction programs will promote economic efficiency, reliability, and environmental quality, the SCC's analysis of the report countered that such programs will have limited impact on curtailing the exercise of market power. Market power results from a concentration of generation ownership, and may constrain the development of a fully competitive market. The wholesale market faces greater

problems than lack of retail participation, including generation ownership concentration, insufficient transmission capacity, and poorly designed regional transmission organizations. Retail customers should not be exposed to wholesale prices until other problems are mitigated. Though the wholesale market has been largely deregulated, it is not yet working the way it was intended to work. Until it is, customers should not be exposed to imperfectly-competitive wholesale markets. Additionally, the Restructuring Act limits action that may be taken because the risk premium for electricity is included in the capped rates, which are scheduled to be in effect until 2007.

Continuing the Board's study of demand-side management, Bill Uhr of Uhr Technologies testified that time-based pricing offers benefits for small customers. Uhr explained that a paradigm shift is required because pricing options can leverage load-side technologies. Time-based pricing of both energy and wires services is needed to create value and provide customers with meaningful choices. Since electricity has large peak-driven costs, pricing should drive load shape via technology. Technology maintains comfort and convenience, but customers need a big incentive to invest in it. Interval metering allows incentives based on individual load shape. The customer would pay for an interval meter if it were cost-justified, but an interval meter plus time-based pricing would be a significant market driver. Customers can achieve substantial savings, retailers can combine price with technology, and suppliers can improve load shapes and margins, making the electric grid more efficient. In addition to interval meters, advanced billing systems, automated load management controls, and Internet-based customer interface software are all technologies that enable demand management and efficiency. Uhr testified that time-based pricing should be available at the customer's option, applicable to both energy and wires, because it creates a major incentive for load-side technology investment, makes payback calculations easier, and ties savings directly to actual load reductions. He asserted that the legislature has three options: (i) do nothing and assume a competitive market will develop, (ii) encourage removal of time-based pricing barriers, or (iii) pass legislation that accelerates choice in prices.

F. LOW-INCOME ENERGY ASSISTANCE

At its October 1 meeting, Vickie Johnson-Scott of the Department of Social Services provided the Board with information about the development of regulations for the Home Energy Assistance Fund, created by House Bill 2473 (2001). Regulations were sent to the Board of Social Services which, if approved, will be published for comment. The Consumer Advisory Board is welcome to provide comments on the proposed regulations. The Department also provided a report to the General Assembly on low-income energy assistance. Johnson-Scott agreed to provide Board members with a copy of the report and the proposed regulations. Delegate Plum also asked Johnson-Scott to provide the Board with information on whether DSS is asking for an appropriation of state funds for low-income energy assistance in the upcoming budget.

Tricia Snead, Acting Program Manager at DSS, presented the Board with an update on LIHEAP and the Home Energy Assistance Program at its December meeting. While the President's original budget did not contain an increase in LIHEAP funds, Congress has passed

a bill appropriating $1.7 billion in regular funds and $300 million in contingency funds. The President had not signed the bill as of the date of the meeting. Congress is now trying to release the $300 million. DSS estimates that Virginia will receive approximately $32 million in federal funds, with $4.9 million going to weatherization, a 20 percent increase from last year. This year, Virginia has seen an increased application pool, with 10,000 more applications on November 27 than on that same date in 2000, and 7,000 more applications have been approved this year. Benefits will be prorated among applicants, so the average benefit amount may be smaller this year if increased funding does not match the increased number of applicants. Snead did not know if the Governor would ask for additional funding for LIHEAP in this year's budget.

The chairman raised the question of how LIHEAP assistance would work in a deregulated market, where a customer is delinquent on both his electric supply bill from a competitive service provider (CSP) and the local distribution company (LDC), since LIHEAP only pays the LDC. Ken Schrad of the SCC explained that if the CSP terminates service for non-payment, the customer would then revert to default service. Since the LDC will mostly likely be the provider of default service, the customer would then only have one bill for electric service, and LIHEAP would assist with that bill.

Floris Weston provided the Board with an update on the challenges faced by the Weatherization Assistance Program (WAP) in training and retaining a skilled workforce. The program has 22 subgrantees, and each subgrantee usually has at least one crew consisting of a program administrator, foreman, and two or three crew workers. Because WAP employees often earn the minimum wage in undesirable working conditions, improving employee retention is a focus of the program. The Department is working to identify characteristics that will encourage employees to keep their positions. As the industry becomes professionalized, some agencies have raised wages up to $10 per hour, but are still having difficulty retaining employees.

More than 3500 homes were weatherized last season, but not all agencies keep waiting lists of people waiting to be served. As a result, the amount of unmet need is difficult to identify. Last season, the WAP carried over $50,000 in LIHEAP funds to use this year. DHCD expects an increase in funding this year by about $400,000. The Department of Energy is allowing all states to access their 2002 funds this year as well, often acknowledging that programs face greater administrative costs in handling increased applications. However, Weston indicated that any available state funds provided to the program would be very helpful in addition to the federal funding.

Rita Randolph of Dominion Resources Services gave the Board a snapshot of assistance provided by voluntary utility programs in the last year. Dominion's EnergyShare raised $1.4 million between December 15, 2000, and May 31, 2001, assisting nearly 6,700 households with an average utility bill payment of $212. Neighbor-to-Neighbor, AEP's voluntary assistance program, raised $120,645 between January 1, 2001, and February 28, 2001, assisting nearly 1,400 households with an average utility bill payment of $86. The Richmond Department of Public Utilities has the Metro Care program, assisting 167

households with their energy bill. The program raised $33,714, with an average bill payment of $167. Dominion turned away 1,200 requests for assistance last winter due to lack of funds.

G. VIRGINIA ENERGY CHOICE

The Board received a series of updates on Virginia Energy Choice throughout the year. Ken Schrad, Director of Information Resources at the SCC, explained that the SCC has been working with its Education Advisory Committee, communications and research consultants, and surveys of Virginia consumers to evaluate what Virginia's consumers know about deregulation and to determine the education program needs to emphasize to ensure Virginia's customers make informed decisions about their electric service providers. The SCC has activated a call center, has redesigned the Energy Choice Web site, and has published a 16-page consumer guide to help answer consumer questions. Finally, the SCC is using outreach specialists, media kits, and advertising to get the message about energy choice to Virginia consumers in time for the commencement of competition in certain regions on January 1, 2002.

Advertising for Energy Choice started in November, and was intended to be a soft approach introducing consumers to choice. The advertising began primarily in Northern Virginia because those customers are among the first to have choice under Dominion's phase-in to competition.

H. VIRGINIA CITIZENS CONSUMER COUNCIL PERSPECTIVE

Irene Leech of the Virginia Citizens Consumer Council presented the Board with some general concerns about deregulation and its implementation. Leech indicated that a prevailing belief nationwide is that deregulation is not working. Virginia is the primary state moving forward with restructuring, despite the fact that the regional transmission organizations have not been set up yet. FERC has jurisdiction over transmission, and Pat Wood, FERC Chairman, has stated that it is important to have the wholesale market working first, before the retail market is deregulated. A lot of uncertainty exists in Virginia, particularly about the outcome of the functional separation hearings, and Virginians should be diligent in monitoring restructuring and its potential effects on consumers.

Leech presented several general proposals: (i) the SCC should require all energy suppliers to own or control the quantity of power they intend to sell plus a reasonable (15-18 percent) margin for peak demand; (ii) Virginia needs to establish the conditions under which energy cannot be terminated for very young, very old, sick, or any individual when temperatures drop below a safe level; (iii) the SCC should require that energy companies collect and report data concerning their termination policies and the numbers and types of customers defaulting on their energy bills; (iv) default service should be examined more closely; and (v) Energy Star and other programs should be encouraged. The Board considered these proposals generally within the framework of the legislative proposals it received, discussed in Part III of this report.

III. DELIBERATIONS AND RECOMMENDATIONS

The Consumer Advisory Board considered 12 legislative proposals at its December meeting.

A. ENERGY EFFICIENCY OFFICE

Proposal 1: Energy Efficiency Office in DMME.

The Board considered a proposal from Jack Greenhalgh to create an Energy Efficiency Office in the Department of Mines, Minerals, and Energy. The proposal was to fund DMME to perform the following duties: (i) encourage load management practices (rates, metering, peak signaling), (ii) coordinate with DOE, FERC, EPRI, and other states on programs that could benefit Virginia, (iii) seek worldwide sources to identify emerging technologies and energy efficiency improvements in equipment or practices that could benefit Virginia, (iv) identify potential building code changes that would be beneficial for Virginia and promote them to the appropriate organizations, (v) identify potential changes in the requirements for new buildings or retrofits of old state owned buildings, and (vi) conduct a consumer education program related to energy efficiency and load management following the completion of the SCC's education program.

This proposal was submitted prior to receiving the DMME report on consumer education. In light of that report, Greenhalgh withdrew the proposal, indicating that the Board should first study the DMME report and the small business phase of DMME's study next year. Greenhalgh asked about building codes, and DMME explained that the Board of Housing and Community Development administers those, based on national standards that are updated every few years. Greenhalgh asked staff to contact the Department of Housing and Community Development to find out the status of current energy efficient building codes.

B. DEMAND-SIDE MANAGEMENT

Proposal 2: SCC Study of Signaling Technology.

Greenhalgh submitted a proposal requiring the SCC to conduct a study of the various existing price signaling technologies to evaluate: the potential technologies for such a signaling system, the probability and timing that such a system will emerge on its own out of the deregulation process, the impact that such a system might have on providing the critical mass justifying the emergence of products that use such a signal, and the cost effectiveness of having such a system provided centrally.

The SCC indicated that much of this information is included in their development of rules for competitive metering, and that a study of these issues could be done without any legislative action.

The Board voted 8 to 2, with one abstention, to recommend that the Task Force direct the SCC by letter to include elements of this study in the development of its rules for competitive metering.

Proposal 3: Pilot Program for Demand-Side Management.

Uhr submitted a proposal for a pilot program of demand-side management. The proposal recommended that the General Assembly of Virginia pass legislation that would require Virginia's regulated electric utilities to make available to their customers (i) time-based energy commodity and distribution prices and (ii) the associated interval metering and communications technology at a reasonable monthly cost. The proposal included distribution prices because almost half of a customer's electricity bill after competition begins will consist of charges for transmission and distribution. The proposal was intended to provide a mechanism to educate consumers on how they can benefit from pricing options that carry very high prices during a limited number of peak hours. Such pricing options would be limited to two percent of all customer classes and the target date for the initiation of the program would be January 1, 2003. In as much as participating customers would be voluntarily paying for any premises equipment, such as a load management system, and manufacturers of such equipment would be incurring costs to expand the market for this technology, the incumbent utility should be expected to absorb their cost to conduct the pilot. The recommendation was for a pilot of significant size to encourage manufacturers of customer premises equipment to devote meaningful resources to developing state of the art capabilities.

The SCC indicated that its view was that they would be working with competitive service providers on a voluntary basis. They did not expect a mandate for providing this equipment or absorbing any costs. Barry Thomas of AEP expressed concern that the proposal would impose financial and administrative burdens on the utilities under capped rates. The capped rates may be terminated earlier than 2007, but only if a competitive market has developed. Thomas cautioned that the Board should be considering recommendations that will encourage the competitive market to develop, not imposing additional mandates of rates and equipment on utilities. The proposal engendered much discussion regarding the balancing of consumer education and protection against imposing requirements on a deregulated industry.

The Board recommended unanimously, with one abstention, that the Task Force, by letter, strongly encourage the SCC and utilities to develop these types of programs on a voluntary basis.

C. THE EFFECT OF DEREGULATION ON SMALL BUSINESS

Proposal 4: Small Business Advocate Position at the SCC.

The National Small Business Alliance for Fair Utility Deregulation recommended the creation of a position in the State Corporation Commission for a designated "Advocate for

Small Business" during the implementation of restructuring and deregulation. This position would be a point person for small businesses to use as a resource for information and assistance in handling energy choice. Board members discussed the proposal, and expressed concerns that having an advocate for one particular type of customer class might create a conflict of interest with SCC staff and the Attorney General as consumer counsel.

The Board declined to recommend the proposal, and staff was asked to communicate with the Department of Business Assistance and Small Business Development Centers about their ability to act as an advocate for small business consumers.

Proposal 5: Small Business Consumer Education.

The National Small Business Alliance for Fair Utility Deregulation also recommended that the SCC be required to contract for small business consumer education about restructuring. Small business education should (i) include conservation techniques and how to use energy more wisely, and (ii) let small business consumers know what alternative rates are available from current suppliers. Greenhalgh also submitted a proposal directing the State Corporation Commission to establish a customer education program focused on small business and residential electricity users. The program should include saving potential from energy efficient lighting, energy efficient equipment, and energy management systems. The proposal was designed to educate customers on how energy is used and options used by electricity suppliers for billing, encourage customers to learn about rate options available to them from their electricity suppliers, and understand time-of-use and demand-based rates and how to evaluate their savings potential with such rates.

Since the SCC has already developed its education program and the costs have been allocated, Ken Schrad indicated that they would be more than willing to work with Small Business Development Centers in marketing this information.

The Board recommended unanimously, with one abstention, to have staff talk to the appropriate persons in the SBDC program about working with the SCC to provide consumer education about choice, and for the SBDCs to develop education materials about energy efficiency for distribution to small businesses.

D. LOW-INCOME ENERGY ASSISTANCE

Proposal 6: Collection of Data on Unmet Need for Energy Assistance.

The Board considered its 2001 proposal regarding data collection regarding unmet need for energy assistance. The proposal would expand the nature of the Virginia Home Energy Assistance Program, charging the Department of Social Services with the responsibilities of (i) providing a clearinghouse for information exchange regarding such residential energy needs for low-income Virginians; (ii) collecting and analyzing data on the amounts of energy assistance provided and the extent to which there is unmet need for energy assistance in the Commonwealth; (iii) tracking recipients of low-income energy assistance;

and (iv) developing and maintaining a statewide list of available private and governmental resources for low-income Virginians in need of energy assistance.

The Board voted unanimously to renew its recommendation from 2001 regarding the Department of Social Services' collection of data about low-income energy assistance. A copy of the proposed language is attached as Appendix B.

Proposal 7: Tax Refund Check-offs for Home Energy Assistance Fund.

In 2001, the Board proposed adding a new § 58.1-346.16, permitting any individual, at the time of filing a return, to designate that all or a portion of his expected income tax refund is to be contributed to Low-Income Energy Assistance Programs. Under the proposal, individuals not expecting a refund may pay a contribution in addition to any tax liability. The Tax Commissioner would annually determine the total amount of voluntary contributions and report the same to the State Treasurer for deposit into the fund.

The Board voted unanimously to renew its recommendation from 2001 to allow taxpayers to allocate a portion of their tax refund for the Home Energy Assistance Fund. A copy of the proposed language is attached as Appendix C.

Proposal 8: Neighborhood Assistance Act Contributions for Energy Assistance.

The Board considered its 2001 proposal to increase funding for low-income energy assistance by creating a special incentive for donations by business firms to the fund, through an expansion of the Neighborhood Assistance Act. Businesses contributing to the special fund could be eligible for a tax credit of 45 percent of their gift. The cap on the total amount of tax credits under the Act would increase from $8,000,000 to $9,000,000, with the $1,000,000 increase being earmarked for contributions of money to the special fund. More than $2.2 million would be generated in contributions if the full $1 million in credits were taken.

The Board voted unanimously to recommend the proposal, a copy of which is attached as Appendix D.

Proposal 9: Account Assessment Charge.

The Association of Energy Conservation Professionals recommended that the Home Energy Assistance Fund be funded with the Residential Meters/Account Assessment Charge in the amount of three cents per month, to be incorporated into the existing base customer service charge. If the number of residential accounts is 2,890,609 for 12 months, the charge of $0.36 per account per year would yield $1,040,619 for the Fund that year. The monthly meter/account assessment charge would be collected on a monthly basis by the local distribution company and then deposited into the Treasury of the Commonwealth of Virginia for allocation to the Home Energy Assistance Fund.

The Board voted 6 to 5 to recommend the proposal, and a copy is attached as Appendix E.

Proposal 10: Tax Deductions for Energy Assistance.

The Board considered its 2001 recommendation for the creation of a tax deduction for individuals who do not itemize their returns, providing an incentive to individuals to contribute or increase contributions to private, voluntary energy assistance programs.

The Board did not feel that this type of incentive was appropriate considering the current state of the budget and the economy, and declined to recommend its reintroduction.

E. RENEWABLE ENERGY

Proposal 11: Incentive Grants for Purchase of Solar Equipment.

Though the Board did not study renewable energy this year, it did consider renewing a proposal from 2001 regarding incentives for purchasing solar equipment. Last year, the Board recommended a tax credit for purchase of such equipment, which passed the House of Delegates. The recommendation was amended in the Senate to a grant program, but did not pass. The Board decided that in light of the current budget situation, a grant program was more appropriate. The program provides grants to individuals and corporations equal to 15 percent of the cost incurred in installing photovoltaic property or solar water heating property. Grants are limited to $2,000 for each system of photovoltaic property and $1,000 for each system of solar water heating property. The eligible equipment must be placed in service between January 1, 2002, and December 31, 2006.

The Board recommended the proposal unanimously, and a copy of the proposed legislation is attached as Appendix F.

Proposal 12: Green Power.

Last year, the Board recommended, and Delegate Plum introduced legislation requiring the SCC to define green power. The bill was stricken by the patron due to some complications with it, and this year the Board has two competing recommendations. One proposal recommended using the same definition of green power as in HB 2470 (2001). The other proposal directed the SCC to consult with the federal government and independent certification organizations to set standards for generation providers making unusual or special environmental claims.

The SCC explained that it has provided the structure to address this issue in its rules for competition, and the Board determined that legislation on the matter was not needed.

IV. CONCLUSION

The Consumer Advisory Board appreciates the opportunity to conduct in-depth review of numerous issues affecting Virginia's consumers in a deregulated market. The Board has embraced its role in monitoring the implementation of restructuring through the eyes of consumers, and will continue to do so during the transition to competition, and would like to further study aggregation, energy efficiency, demand-side management, consumer education for residential and small business consumers, and low-income energy assistance, including utility termination policies and default service. A continued examination of these issues is needed to ensure the emergence of a competitive market while retaining protection for consumers.

The Board stands willing to continue to assist the Task Force, as it may direct, in its work in ensuring the successful implementation of the restructuring of Virginia's electric utility industry.

Respectfully submitted,

William Lukhard, Chairman
Otis Brown, Vice Chairman
James Copp
Beth Doughty
Oswald Gasser
Robert Goldsmith
Jack Greenhalgh
Ann Hedgpeth
Jack Hundley
Aubrey Layne
The Rev. J. Fletcher Lowe
Lynda Sharp Anderson
Donald F. Sullivan
Jimmie G. Trent
Steve Walker
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CONSUMER ADVISORY BOARD

ENERGY ASSISTANCE ASSESSMENT

§ 56-581.2. Energy Assistance Assessment.

Each distributor or other provider of billing services shall collect an energy assistance assessment from each of its customers whose billing address is within the Commonwealth in the amount of three cents per month. All energy assistance assessments shall be remitted within thirty days to the Department of Social Services for deposit in the Home Energy Assistance Fund established pursuant to § 63.1-338. Each distributor or other provider of billing services shall reduce collected assessment amounts to the minimum amount necessary to defray costs of collecting the assessments, not to exceed three percent of the amount collected. State and local taxes shall not apply to the energy assistance assessment.

CONSUMER ADVISORY BOARD

SOLAR ENERGY UTILIZATION GRANT PROGRAM.

§ 59.1-284.20. Definitions.

A. As used in this chapter, unless the context clearly requires otherwise:

"Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1.

"Department" means the Department of Mines, Minerals and Energy.

"Fund" means the Solar Energy Utilization Grant Fund.

"Individual" means the same as that term is defined in § 58.1-302.

"Photovoltaic property" means solar energy property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.

"Solar energy property" means equipment that uses solar energy (i) to generate electricity, (ii) to heat or cool a structure or provide hot water for use associated with a structure, or (iii) to provide solar process heat. Solar energy property does not include a swimming pool, hot tub, or any other storage medium that has a function other than storage.

"Solar water heating property" means solar energy property that, when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use associated with the structure and meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.

B. Subject to appropriation of sufficient moneys in the Fund, beginning with calendar year 2002, an eligible individual or corporation may receive a grant payable from the Fund for a portion of the cost of photovoltaic property or solar water heating property placed in service during the calendar year by such

individual or corporation. The grant amount shall be fifteen percent of the total installed cost of photovoltaic property or solar water heating property but shall not exceed an aggregate total of:

1. $2,000 for each system of photovoltaic property; and

2. $1,000 for each system of solar water heating property.

Persons or entities placing eligible property in service for or on behalf of another person or entity shall not be eligible to receive a grant for such property.

§ 59.1-284.21. Requirements for grants generally.

A. The Department shall establish an application process by which eligible individuals and corporations shall apply for a grant under this chapter. The application shall be filed with the director of the Department no later than March 31 each year following the calendar year in which such property was placed in service. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for photovoltaic property or solar water heating property placed in service in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. The application shall provide evidence, satisfactory to the Department, of the total installed cost of each system of photovoltaic property or solar water heating property placed in service by such individual or corporation in the prior calendar year.

C. As a condition of receipt of a grant, an eligible individual or corporation shall make available to the Department for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied.

D. An individual or corporation receiving a grant pursuant to this chapter for a system of photovoltaic property or solar water heating property may not use

such system as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriation act.

§ 59.1-284.22. Solar Energy Utilization Grant Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the Solar Energy Utilization Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.

B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible individuals or corporations did not receive the full amount of any grant to which they were eligible in a prior year pursuant to this chapter and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the Fund available for allocation to such class.

The Department may not allocate an amount in excess of the moneys available in the Fund for the payment of grants.

C. Beginning in calendar year 2003, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible

individuals and corporations, and (ii) certify to the Comptroller and each eligible grant applicant the amount of the grant allocated to such applicant. Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within sixty days of such certification.

D. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year pursuant to this chapter, such individual or corporation shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

E. In no case shall the Department certify grants from the Fund for photovoltaic property or solar water heating property placed in service (i) prior to January 1, 2002, or (ii) after December 31, 2006.

F. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B. 4. of § 2.2-4002.

2. That the provisions of this act shall become effective if the general appropriation act for the 2002-2004 biennium provides funding to the Department of Mines, Minerals and Energy in an amount no less than $_____ for the purpose of funding the administrative costs incurred by the Department in its implementation of this act.

CONSUMER ADVISORY BOARD

INCOME TAX REFUND CHECK-OFFS

§ 58.1-346.19. Voluntary contribution to Home Energy Assistance Fund.

A. For all taxable years beginning on or after January 1, 2003, any individual eligible to receive a tax refund pursuant to § 58.1-309 may designate at the time of filing his return a specified dollar amount of such refund, not less than one dollar, to the Home Energy Assistance Fund established pursuant to § 63.1-338, such funds to be used to assist low-income Virginians in meeting seasonal residential energy needs.

B. All moneys collected pursuant to subsection A, and through voluntary payments by taxpayers designated on state income tax returns for deposit to the Home Energy Assistance Fund over refundable amounts, shall be deposited into the state treasury.

C. The Tax Commissioner shall determine annually the total amount collected pursuant to subsection A, and through voluntary payments by taxpayers designated on state income tax returns for deposit to the Home Energy Assistance Fund over refundable amounts, and shall report the same to the State Treasurer, who shall credit that amount to the Home Energy Assistance Fund.

NEIGHBORHOOD ASSISTANCE ACT

§ 63.1-321. Definitions.

As used in this chapter:

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to impoverished people.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholarship assistance to an individual who is impoverished.

"Energy assistance" means a contribution of money to the Home Energy Assistance Fund established pursuant to Chapter 22 (§ 63.1-336 et seq.) of this title to provide assistance to impoverished people in meeting their seasonal residential energy needs.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of impoverished people.

"Impoverished people" means people in Virginia approved as such by the State Board of Social Services. Such approval shall be made on the basis of generally recognized low income criteria used by federal and state agencies.

"Job training" means any type of instruction to an individual who is impoverished that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Neighborhood assistance" means providing community services, education, energy assistance, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance for impoverished people, and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501 (c) (3) and 501 (c) (4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3. With respect to contributions for energy assistance, such term means the Department of Social Services as administrator of the Home Energy Assistance Program established pursuant to Chapter 22 (§ 63.1-336 et seq.) of this title.

"Professional services" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists,

architects, professional engineers, certified public accountants and attorneys-at-law.

§ 63.1-323. Proposals; regulations; tax credits authorized; amount for programs.

A. Any neighborhood organization may submit a proposal to the Commissioner of Social Services or his designee requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization. The proposal shall set forth the program to be conducted by the neighborhood organization, the impoverished people to be assisted, the estimated amount to be donated to the program and the plans for implementing the program.

B. The State Board of Social Services is hereby authorized to promulgate regulations for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations. Such regulations shall contain a requirement that an annual audit be provided by the neighborhood organization as a prerequisite for approval. Such regulations shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations shall also provide that at least ten percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than ten percent of the available amount of tax credits, the unallocated portion of such ten percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

C. If the Commissioner of Social Services or his designee approves a proposal submitted by a neighborhood organization, the organization shall make

the allocated tax credit amounts available to business firms making donations to the approved program. A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner of Social Services or his designee.

D. The total amount of tax credits granted for programs approved under this chapter for each fiscal year shall not exceed ~~eight~~nine million dollars; however, (i) $2,750,000 shall be allocated to education programs conducted by neighborhood organizations and (ii) one million dollars shall be allocated for contributions by business firms for energy assistance. Such allocation of tax credits to education programs shall constitute the minimum amount of tax credits to be allocated to education programs. However, if the amount of tax credits requested by neighborhood organizations for qualified education programs is less than $2,750,000, the balance of such amount shall be allocated to other types of qualified programs. Tax credits shall not be authorized after fiscal year ~~2004~~2007.

E. The requirements of subsections A, B, and C shall not apply to the allocation of tax credits for energy assistance. For purposes of administering the tax credits allocated for energy assistance pursuant to subsection D, the Home Energy Assistance Program administered by the Department of Social Services shall be deemed to be the neighborhood organization receiving the allocated tax credit amount. The Department shall make the allocated tax credit amounts available to business firms making donations for energy assistance. The provisions of §§ 63.1-325, 63.1-325.1, and 63.1-325.2 shall not apply to contributions for energy assistance.

CONSUMER ADVISORY BOARD

HEAP DATA COLLECTION

§ 63.1-339. Home Energy Assistance Program established.

A. The Department shall establish and operate the Home Energy Assistance Program. In administering the Program, it shall be the responsibility of the Department to:

1. Administer distributions from the Fund;

2. Provide a clearinghouse for information exchange regarding such residential energy needs for low-income Virginians, which clearinghouse shall provide information regarding the extent to which the Commonwealth's efforts in assisting low-income Virginians are adequate, are cost-effective and are not duplicative of similar services provided by utility service providers, charitable organizations, and local governments;

3. Collect and analyze data regarding the amounts of energy assistance provided, categorized by fuel type and the extent to which there is unmet need for energy assistance in the Commonwealth;

4. Track recipients of low-income energy assistance throughout the Commonwealth, based on data provided by program administrators;

5. Develop and maintain a statewide list of available private and governmental resources for low-income Virginians in need of energy assistance; and

~~2~~6. Report annually to the Governor and General Assembly on or before October 1 of each year on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians.

B. The Department is authorized to assume responsibility for administering all or any portion of any private, voluntary low-income energy

assistance program upon the application of the administrator thereof, on such terms as the Department and such administrator shall agree and in accordance with applicable law and regulations. If the Department assumes administrative responsibility for administering such a voluntary program, it is authorized to receive funds collected through such voluntary program and distribute them through the Fund.

INCENTIVES FOR CLEAN AND EFFICIENT ENERGY TECHNOLOGIES

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 58.1-608.1:1 and 58.1-2423.2, by adding in Title 59.1 a chapter numbered 22.5, consisting of sections numbered 59.1-284.20, 59.1-284.21, and 59.1-284.22, and by adding in Title 59.1 a chapter numbered 22.6, consisting of sections numbered 59.1-284.30 , 59.1-284.31, and 59.1-284.32, as follows:

§ 58.1-608.1:1. Refund authorized for certain energy-efficient property.

A. Any organization or person may apply to the Department of Taxation for a refund of a portion of the taxes imposed by this chapter or pursuant to the authority granted in § 58.1-605 or § 58.1-606 that are paid by such organization or person on or after January 1, 2003, on the following tangible personal property:

1. Clothes washers, room air conditioners, dishwashers, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection agency and the United States Department of Energy;

2. A fuel cell that (i) generates electricity and heat using an electrochemical process, (ii) has an electricity-only generation efficiency greater than thirty-five percent, and (iii) has a generating capacity of at least two kilowatts;

3. A natural gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling;

4. An electric heat pump hot water heater that yields an energy factor of at least 1.7;

5. An electric heat pump that has a heating system performance factor of at least 8.0 and a cooling seasonal energy efficiency ratio of at least 13.0;

6. A central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; and

7. An advanced natural gas water heater that has an energy factor of at least 0.65.

B. The Department of Taxation may require that such organization or person submit sales tax receipts along with the refund application to qualify for the refund authorized pursuant to this section. The refund application shall be filed with the Department of Taxation within one year from the date on which such taxes were paid.

C. The refund provided under this section for each item of tangible personal property included in subsection A shall equal the amount of tax paid by such organization or person for such item, up to a maximum of $500 in tax paid for the item, as such tax is imposed under the provisions of this chapter, including any tax imposed pursuant to the authority granted in § 58.1-605 or § 58.1-606. In addition, for each of the items listed in subdivisions A. 1. through A. 7., no organization or person shall receive more than $5,000 in refunds for such items in any calendar year. The refund provided under this section shall be applicable to purchases of such items made on or after January 1, 2003, but prior to January 1, 2007.

D. The amount of such refund attributable to the tax authorized under §§ 58.1-605 or 58.1-606 shall be deducted from the respective locality's share of the net revenue distributable pursuant to subsection C of § 58.1-638. Such deduction from a locality's share of the net revenue distributable shall occur in the month following the month in which such refund has been issued.

E. The provisions of this section shall not apply to any organization or person to the extent that such organization or person already is exempt from the taxes imposed on tangible personal property by this chapter or pursuant to the authority granted in §§ 58.1-605 or 58.1-606.

§ 58.1-2423.2. Refund for motor vehicles using clean special fuels.

A. If a motor vehicle is (i) manufactured to use clean special fuels, as defined in § 46.2-749.3, and uses such fuels as a source of propulsion; (ii) converted or retrofitted to use such clean special fuels within 180 days after the date of titling in the Commonwealth, and uses such fuels as a source of propulsion; or (iii) a hybrid gasoline/electric powered motor vehicle that is propelled primarily by electric charge, the vehicle owner may apply, on or after January 1, 2003, for a refund of a portion of the motor vehicle sales and use tax paid by such person pursuant to subdivisions 1., 2., 3., or 5. of subsection A of § 58.1-2402. In no event shall a refund be paid for such tax on a mobile office, or on a manufactured home as defined in § 36-85.3.B. The refund provided under this section for the eligible motor vehicles described in subsection A shall equal one-half of the motor vehicle sales and use tax paid by the vehicle owner pursuant to subdivisions 1., 2., 3., or 5. of subsection A of § 58.1-2402, up to a maximum of $500 in tax paid on each such motor vehicle. In addition, no person shall receive more than $5,000 in refunds in any calendar year under this section. The refund provided under this section shall be applicable to such motor vehicle sales and use taxes paid by vehicle owners on or after January 1, 2003, but prior to January 1, 2007.

C. The claim for refund shall be in such form as the Commissioner shall prescribe and shall include documentation to verify that the conversion or retrofitting of the motor vehicle to use such clean special fuels, if applicable, took place within 180 days after the date of titling in the Commonwealth. The claim

for refund shall be filed with the Commissioner within one year from the date on which such taxes were paid.

CHAPTER 22.5.

RENEWABLE ELECTRICITY PRODUCTION GRANT PROGRAM.

§ 59.1-284.20. Definitions.

A. As used in this chapter, unless the context clearly requires otherwise:

"Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1.

"Department" means the Department of Mines, Minerals and Energy.

"Fund" means the Renewable Electricity Production Grant Fund.

"Qualified energy resources" means the same as that term is defined by Internal Revenue Code § 45.

"Qualified Virginia facility" means a facility located in the Commonwealth that uses qualified energy resources to produce electricity.B. Subject to appropriation of sufficient moneys in the Fund, an eligible corporation may receive a grant payable from the Fund for certain kilowatts of electricity produced after December 31, 2001. The grant amount shall be 0.85 cents for each kilowatt of electricity (i) produced by the corporation from qualified energy resources at a qualified Virginia facility and (ii) sold in a calendar year. Grant amounts shall be based on each such kilowatt of electricity sold beginning with calendar year 2002 and ending with such kilowatts of electricity sold during calendar year 2006.

§ 59.1-284.21. Renewable Electricity Production Grant Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the Renewable Electricity Production Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not

revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.

B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible corporations did not receive the full amount of any grant to which they were eligible in a prior year pursuant to this chapter and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the Fund available for allocation to such class.

The Department may not allocate an amount in excess of the moneys available in the Fund for the payment of grants.

C. Beginning in calendar year 2003, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible corporations, and (ii) certify to the Comptroller and each eligible corporation the amount of the grant allocated to such corporation. Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within sixty days of such certification.

D. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year pursuant to this chapter, such corporation shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Department to the following

year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

E. In no case shall the Department certify grants from the Fund for kilowatts of electricity produced prior to January 1, 2002 or sold after December 31, 2006.

F. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B. 4. of § 2.2-4002.

§ 59.1-284.22. Requirements for grants generally.

A. The Department shall establish an application process by which eligible corporations shall apply for a grant under this chapter. An application for a grant under this chapter shall not be approved until the Department has verified that the electricity has been produced from qualified energy resources at a qualified Virginia facility.

The application shall be filed with the director of the Department no later than March 31 each year following the calendar year in which such kilowatts of electricity were sold. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for such kilowatts of electricity sold in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. The application shall provide evidence, satisfactory to the Department, of the number of kilowatts of electricity produced by the corporation from qualified energy resources at a qualified Virginia facility that were sold by such corporation in the prior calendar year.

C. As a condition of receipt of a grant, an eligible corporation shall make available to the Department for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of

grants as set forth in this chapter have been satisfied. All such documents appropriately identified by the eligible corporation shall be considered confidential and proprietary.

D. A corporation receiving a grant for the production and sale of kilowatts of electricity under this chapter may not use the production or sale of such kilowatts of electricity as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriations act.

CHAPTER 22.6.

PHOTOVOLTAIC, SOLAR, AND WIND ENERGY UTILIZATION GRANT PROGRAM.

§ 59.1-284.30. Definitions.

A. As used in this chapter, unless the context clearly requires otherwise:

"Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1.

"Department" means the Department of Mines, Minerals and Energy.

"Fund" means the Photovoltaic, Solar, and Wind Energy Utilization Grant Fund.

"Individual" means the same as that term is defined in § 58.1-302.

"Photovoltaic property" means solar energy property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.

"Solar energy property" means equipment that uses solar energy (i) to generate electricity, (ii) to heat or cool a structure or provide hot water for use in a structure, or (iii) to provide solar process heat. Solar energy property does not include a swimming pool, hot tub, or any other storage medium that has a function other than storage.

"Solar water heating property" means solar energy property that, when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use within the structure and meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.

"Wind-powered electrical generator" means an electrical generating unit that (i) has a capacity of not more than ten kilowatts, (ii) uses as its total source of fuel wind, (iii) is located on the individual's or corporation's premises, and (iv) is intended primarily to offset all or part of the individual's or corporation's own electricity requirements.

B. Subject to appropriation of sufficient moneys in the Fund, beginning with calendar year 2002 through, and including, calendar year 2006, an eligible individual or corporation may receive a grant payable from the Fund for a portion of the cost of photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service during the calendar year by such individual or corporation. The grant amount shall be fifteen percent of the total installed cost of photovoltaic property, solar water heating property, or wind-powered electrical generators but shall not exceed an aggregate total of:

1. $2,000 for each system of photovoltaic property;

2. $1,000 for each system of solar water heating property; and

3. $1,000 for each system of wind-powered electrical generators.

Persons or entities placing in service photovoltaic property, solar water heating property, or wind-powered electrical generators for or on behalf of another person or entity shall not be eligible to receive a grant for such property.

§ 59.1-284.31. Photovoltaic, Solar, and Wind Energy Utilization Grant Fund.

A. There is hereby established in the state treasury a special nonreverting fund to be known as the Photovoltaic, Solar, and Wind Energy Utilization Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.

B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible individuals or corporations did not receive the full amount of any grant to which they were eligible in a prior year pursuant to this chapter and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the Fund available for allocation to such class.

The Department may not allocate an amount in excess of the moneys available in the Fund for the payment of grants.

C. Beginning in calendar year 2003, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible individuals and corporations, and (ii) certify to the Comptroller and each eligible grant applicant the amount of the grant allocated to such applicant. Payment of

such grants shall be made by the State Treasurer on warrant of the Comptroller within sixty days of such certification.

D. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year pursuant to this chapter, such individual or corporation shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.

E. In no case shall the Department certify grants from the Fund for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service (i) prior to January 1, 2002, or (ii) after December 31, 2006.

F. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B. 4. of § 2.2-4002.

§ 59.1-284.32. Requirements for grants generally.

A. The Department shall establish an application process by which eligible individuals and corporations shall apply for a grant under this chapter. The application shall be filed with the director of the Department no later than March 31 each year following the calendar year in which such property was placed in service. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. The application shall provide evidence, satisfactory to the Department, of the total installed cost of each system of photovoltaic property, solar water

heating property, or wind-powered electrical generators placed in service by such individual or corporation in the prior calendar year.

C. As a condition of receipt of a grant, an eligible individual or corporation shall make available to the Department for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied.

D. An individual or corporation receiving a grant pursuant to this chapter for a system of photovoltaic property, solar water heating property, or wind-powered electrical generators may not use such system as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriations act.

2. That the provisions of this act relating to refunds of state and local retail sales and use taxes and motor vehicle sales and use taxes shall not apply to any taxable transaction occurring prior to January 1, 2003.

3. That the Tax Commissioner, the Commissioner of the Department of Motor Vehicles, and the Director of the Department of Mines, Minerals and Energy shall promulgate regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), for purposes of carrying out the provisions of this act.

4. That the Tax Commissioner, the Commissioner of the Department of Motor Vehicles, and the Director of the Department of Mines, Minerals and Energy, in consultation with manufacturers, retailers, local government officials and other interested groups, shall develop voluntary labeling and public information materials to identify products eligible for the tax refunds provided under this act.

CITY OF MARTINSVILLE:
SERVICE TERRITORY OF MUNICIPAL ELECTRIC UTILITY

Be it enacted by the General Assembly of Virginia:

1. That § 56-580 of the Code of Virginia is amended and reenacted as follows:

§ 56-580. Transmission and distribution of electric energy.

A. The Commission shall continue to regulate pursuant to this title the distribution of retail 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.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, transmission or any services made competitive pursuant to § 56-581.1, to the extent necessary to prevent impairment of competition.

D. The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and

equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Nothing in this chapter shall impair the Commission's existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer outside the geographic area that was served by such municipality as of July 1, 1999, except (a) any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility or (b) any area that as of that date was not within an exclusive service territory established by the Commission and was served by a company that thereafter allows an electric utility owned or operated by a municipality to acquire its distribution facilities and to distribute electric energy within such area. If an electric utility owned or operated by a municipality as of July 1, 1999, is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in

such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

DRAFT

11/15/2001

BILL NO.

A BILL to amend the Code of Virginia by adding in Chapter 9.1 of Title 56 an article numbered 3, consisting of sections numbered 56-231.53 through 56-231.56, relating to utility consumer services cooperatives; member regulation.

Patrons--

Referred to

Be it enacted by the General Assembly of Virginia:

1. That § 56-582 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9.1 of Title 56 an Article numbered 3, consisting of sections numbered 56-231.53 through 56-231.56, as follows:

ARTICLE 3 – MEMBER REGULATION

§ 56-231.53. Definitions.

As used in this article:

"Board" means the elected board of directors of a cooperative formed under or subject to Article 1 of this chapter.

"Cooperative" means a utility consumer services cooperative formed under or subject to Article 1 of this chapter.

"Member" means any person that holds any class of membership in a cooperative formed under or subject to Article 1 of this chapter.

"Member-regulated cooperative" means a cooperative that has elected member regulation in accordance with this article.

"Member regulation" means regulation by the board of a cooperative that has delivered a certificate of adoption of member regulation to the Commission pursuant to § 56-231.54 D rather than regulation by the Commission, with respect to rates and conditions of electric distribution service as described in this article.

"Referendum" means a referendum of members in accordance with §56-231.54.

§ 56-231.54 Member regulation.

A. After July 1, 2002, within 45 days of the adoption by the board of a cooperative of a resolution recommending member regulation, or within 45 days of the submission to the cooperative of a petition recommending member regulation and signed by one percent or more of the members, the cooperative shall publish notice of a referendum for member regulation. The notice of referendum will pose the following question: "Shall the members of [name of cooperative], through the board, regulate the rates, terms and conditions of electric distribution service of the cooperative as set out in Va. Code §§ 56-231.54, and terminate the regulation of such rates, terms and conditions of service by the Virginia State Corporation Commission?"

B. The notice will set forth the time and place of an annual or special meeting, in accordance with the bylaws of the cooperative, at which the referendum will be held.

C. If two thirds of the votes cast on a referendum are affirmative, then the referendum shall pass, and the cooperative shall thereupon certify to the Commission the adoption of member regulation by the cooperative within 30 days of the passage of a referendum.

D. Upon certification by the cooperative to the Commission of the passage of the referendum and except as provided for in this Article, the Commission shall not regulate the rates, terms and conditions of electric distribution service of a member-regulated cooperative but shall adjudicate rate disputes as set forth in 56-231.56.

E. Each member- regulated cooperative shall remain subject to the provisions of §§56-582, §56-583, and 56-584 of this title, and shall provide default service to their members in accordance with the provisions of §56-585. If the capped rates provided for in § 56-582 are continued after January 1, 2004, a member-regulated cooperative may adopt a one-time change in the nongeneration components of such rates, terms and conditions of service, notwithstanding the provisions of § 56-582 C that require a petition to the Commission for approval of such one-time change.

F. Each member-regulated cooperative shall remain subject to the provisions of § 56-231.34:1 and §56-231.34:2. For the purposes of applying §56-231.34:1 and § 56-231.34:2 to a member-regulated cooperative, "regulated utility services" shall mean utility services that would be subject to regulation as to rates or service by the Commission, but for the election of member regulation under this article. For purposes of Chapter 3 (§56 –55 et seq.) and Chapter 4 (§56-76 et seq.) of this title, a member-regulated cooperative shall be deemed to be a "public service company."

§ 56-231.55 Resumption of regulation of rates, terms and conditions of electric distribution service by the Commission.

A. A cooperative that has elected member-regulation shall publish notice of a referendum for resumption of Commission regulation within 45 days after (i) the adoption by the board of a cooperative of a resolution recommending resumption of such regulation. (ii) after the submission to the cooperative of a petition recommending resumption of such regulation and signed by one percent or more of the members, or (iii) the issuance of an order by the Commission determining, after notice and an opportunity for hearing, that the resumption of regulation by the Commission may be in the public interest. The notice of referendum will pose the following question: "Shall the State Corporation Commission resume regulation of the rates, terms and conditions of electric distribution service of [name of cooperative] and terminate the regulation of such rates, terms and conditions of electric distribution service by the members of the cooperative acting through the board?"

B. The notice will set forth the time and place of an annual or special meeting, in accordance with Article 1 of this chapter and the bylaws of the cooperative, at which the referendum will be held.

C. If two thirds of the votes cast on a referendum are affirmative, then the referendum shall pass.

D. Within 30 days of the passage of a referendum for resumption of Commission regulation, the cooperative shall certify to the commission the resumption of Commission regulation.

E. Within 60 days of certification of the resumption of Commission regulation, a cooperative will file temporary rates, and a rate application, along with such supporting exhibits as shall be necessary for the Commission to resume regulation of the electric distribution rates and services of the cooperative.

§ 56-231.56. Adjudication of Rate Disputes by Commission

A. A member-regulated cooperative shall be required to furnish reasonably adequate electric distribution and default energy services and facilities to each customer. The charges made by any

member-regulated cooperative for any such services shall be nondiscriminatory, reasonable and just and consistent with the provisions of § 56-231.33. Every charge for service shall otherwise be unlawful.

B. A member-regulated cooperative shall make a copy of its current rates, terms and conditions of service for electric distribution and default energy services available for public inspection during regular business hours in its designated business office where bills can be paid. A member-regulated cooperative shall publish notice at least 45 days in advance of any changes in rates, terms and conditions of electric distribution service. Such notice shall identify the nature and effective date of such changes.

C. Any member may address a complaint or dispute regarding the lawfulness of any rate, term or condition of electric distribution service of a member-regulated cooperative to the Commission complaint bureau established and maintained pursuant to § 56-592.E. The Commission shall be authorized to record all such complaints and disputes and inquire into and attempt to mediate any complaints that the Commission, in its sole discretion, deems potentially meritorious.

D. Upon complaint to the Commission by at least 25% of those members in a customer class that a rate, term or condition of service for electric distribution services of a member-regulated cooperative is discriminatory, unjust or unreasonable, a hearing shall be held after notice is provided to the member-regulated cooperative and all customers in the particular customer class. The Commission shall investigate such claim and may find that such rates, terms and conditions of electric distribution service of such member-regulated cooperative are not nondiscriminatory or just and reasonable in accordance with the standards set forth in § 56-231.56.A. in which case the member-regulated cooperative shall develop such new rates, charges, fees and rules and regulations as shall be necessary to correct any defect.

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STATE CORPORATION COMMISSION REVIEW OF GENERATION FACILITIES

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-46.1, 56-265.2 and 56-580 of the Code of Virginia are amended and reenacted as follows:

§ 56-46.1. Commission to consider environmental, economic and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. However, in order to avoid duplication of governmental activities, the Commission shall defer to the jurisdiction and actions of federal, state, and local agencies charged by law with responsibility for issuing permits or approvals reflecting environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans and public safety. In such proceedings it shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (i) may consider the effect of the proposed facility on economic development within the Commonwealth and (ii) shall consider any

improvements in service reliability that may result from the construction of such facility.

B. No overhead electrical transmission line of 150 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least thirty days' advance notice by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, (ii) written notice to the governing body of each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such approval shall not be required for transmission lines constructed prior to January 1, 1983, for which the Commission has issued a certificate of convenience and necessity. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned and, in the case of any application which is filed with the Commission in the years 1991 and 1992, for approval of a line of 500 kilovolts or more, any portion of which is proposed for construction west of the Blue Ridge Mountains, that the applicant will reasonably accommodate requests to wheel or transmit power from new electric generation facilities constructed after January 9, 1991.

C. If, prior to such approval, any interested party shall request a public hearing, the Commission shall, as soon as reasonably practicable after such

request, hold such hearing or hearings at such place as may be designated by the Commission. In any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

If, prior to such approval, written requests therefor are received from twenty or more interested parties, the Commission shall hold at least one hearing in the area which would be affected by construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made available for public inspection at a convenient location in the area for a reasonable time before such local hearing.

D. For purposes of this section, "interested parties" shall include the governing bodies of any counties or municipalities through which the line is proposed to be built, and persons residing or owning property in each such county or municipality and "environment" or "environmental" shall be deemed to include in meaning "historic," as well as a consideration of the probable effects of the line on the health and safety of the persons in the area concerned.

For purposes of this section, "qualifying facilities" means a cogeneration or small power production facility which meets the criteria of 18 C.F.R. Part 292; "public utility" means a public utility as defined in § 56-265.1; and "reasonably accommodate requests to wheel or transmit power" means:

1. That the applicant will make available to new electric generation facilities constructed after January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total megawatts of the additional transmission capacity created by the proposed line, for the purpose of wheeling to public utility purchasers the power generated by such qualifying facilities and other nonutility facilities which are awarded a power purchase contract by a

public utility purchaser in compliance with applicable state law or regulations governing bidding or capacity acquisition programs for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant will extend only to those requests for wheeling service made within the twelve months following certification by the State Corporation Commission of the transmission line and with effective dates for commencement of such service within the twelve months following completion of the transmission line.

2. That the wheeling service offered by the applicant, pursuant to subdivision D 1 of this section, will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L. 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line, the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include in its agreements for such wheeling service.

E. In the event that, at any time after the giving of the notice required in subsection B of this section, it appears to the Commission that consideration of a route or routes significantly different from the route described in the notice is desirable, the Commission shall cause notice of the new route or routes to be published and mailed in accordance with subsection B of this section. The Commission shall thereafter comply with the provisions of this section with respect to the new route or routes to the full extent necessary to give interested parties in the newly affected areas the same protection afforded interested parties affected by the route described in the original notice.

F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances with respect to such transmission line.

§ 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new facilities.

A. It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business, without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege. Any certificate required by this section shall be issued by the Commission only after opportunity for a hearing and after due notice to interested parties. The certificate for overhead electrical transmission lines of 150 kilovolts or more shall be issued by the Commission only after compliance with the provisions of § 56-46.1.

B. In exercising its authority under this section, the Commission, notwithstanding the provisions of § 56-265.4, ~~may~~ shall permit the construction and operation of electrical generating facilities, which shall not be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10 (§ 56-232 et seq.) of this title, upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not otherwise contrary to the public interest. In review of ~~its~~ a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, ~~on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact~~ as provided in § 56-46.1. In its consideration of whether a generating facility and associated facilities are

contrary to the public interest, in order to avoid duplication of governmental activities, the Commission shall defer to the jurisdiction and actions of federal, state, and local agencies charged by law with responsibility for issuing permits or approvals reflecting environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans and public safety. Facilities authorized by a certificate issued pursuant to this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56.

C. A map showing the location of any proposed ordinary extension or improvement outside of the territory in which the public utility is lawfully authorized to operate shall be filed with the Commission, and prior notice of such ordinary extension shall be given to the public utility or other entity authorized to provide the same utility service within said territory. Ordinary extensions outside the service territory of a public utility shall be undertaken only for use in providing its public utility service and shall be constructed and operated so as not to interfere with the service or facilities of any public utility or other entity authorized to provide utility service within any other territory. If, upon objection of the affected utility or entity filed within thirty days of the aforesaid notice and after investigation and opportunity for a hearing the Commission finds an ordinary extension would not comply with this section, it may alter or amend the plan for such activity or prohibit its construction.

D. Whenever a certificate is required under this section for a pipeline for the transmission or distribution of natural or manufactured gas, the Commission may issue such a certificate only after compliance with the provisions of § 56-265.2:1. As used in this section and § 56-265.2:1, "pipeline for the transmission or distribution of manufactured or natural gas" shall include the pipeline and any related facilities incidental or necessary to the operation of the pipeline.

E. This section shall be subject to the requirements of § 56-265.3, if any, and nothing herein shall be construed to supersede § 56-265.3.

§ 56-580. Transmission and distribution of electric energy.

A. The Commission shall continue to regulate pursuant to this title the distribution of retail 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.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, transmission or any services made competitive pursuant to § 56-581.1, to the extent necessary to prevent impairment of competition.

D. The Commission ~~may~~ shall permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of ~~its~~ a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, ~~on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact~~ as provided in § 56-46.1. In its consideration of whether a generating facility and associated facilities are contrary to the public interest, in order to avoid duplication of

governmental activities, the Commission shall defer to the jurisdiction and actions of federal, state, and local agencies charged by law with responsibility for issuing permits or approvals reflecting environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans and public safety.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Nothing in this chapter shall impair the Commission's existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer outside the geographic area that was served by such municipality as of July 1, 1999, except any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility. If an electric utility owned or operated by a municipality as of July 1, 1999, is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

in subsection G, to require any generator or any municipal electric utility to generate, dispatch or sell electricity from a facility that it operates within the Commonwealth, to the Commonwealth for distribution within the areas of the Commonwealth designated in the declaration. The quantity of electricity required to be generated, dispatched or sold, and the duration of such requirements, shall be as determined by the Governor to be necessary to alleviate the electric energy emergency hardship. The Commonwealth shall compensate a entity required to generate, dispatch, or sell electricity pursuant to this subsection, and the operator of any transmission facilities over which the electricity is transmitted, in the manner provided in § 56-522, mutatis mutandis, unless otherwise provided by federal law.

D. During a declared electric energy emergency, the Governor may use the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the Commonwealth, and of the political subdivisions thereof, to the maximum extent practicable and necessary to meet the electric energy emergency. The officers and personnel of all such departments, offices, and agencies shall cooperate with and extend such services and facilities to the Governor upon request.

E. During a declared electric energy emergency, the Governor is authorized to request the Secretary of the United States Department of Energy to invoke section 202(C) of the Federal Power Act, 16 U.S.C. 824a (1935).

F. The General Assembly is authorized by joint resolution to terminate any declaration of an electric energy emergency. The emergency shall be terminated at the time of filing of the concurrent resolution with the Secretary of the Commonwealth.

G. The Commission shall promulgate rules for the implementation of the Governor's powers pursuant to subsection C that protect the public health and

safety and prevent unnecessary or avoidable damage to property with a minimum of economic disruption to generators, transmitters and distributors of electricity. Such rules shall:

1. Define various foreseen types and levels of electric energy emergencies and specifying appropriate measures to be taken for each type of electric energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property;

2. Prescribe appropriate response measures for each type or level of electric energy emergency; and

3. Equitably distribute the burdens and benefits resulting from the implementation of this section among other members of the affected class of persons within all geographic regions of the Commonwealth.

H. During a declared electric energy emergency, the attorney general may bring an action for injunctive or other appropriate relief to secure prompt compliance in the Circuit Court of the City of Richmond. The court may issue an ex parte temporary order without notice that shall enforce the prohibitions, restrictions or actions that are necessary to secure compliance with the rule or order.

I. During a declared electric energy emergency, no person shall intentionally violate any rule adopted or order issued under this section. Any person who violates this section shall be guilty of a Class 1 misdemeanor.

PUBLIC SERVICE TAXATION; ELECTRIC SUPPLIERS

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2600 and 58.1-2628 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2600. Definitions.

A. As used in this chapter:

"Certificated motor vehicle carrier" means a common carrier by motor vehicle, as defined in § 46.2-2000, operating over regular routes under a certificate of public convenience and necessity issued by the Commission or issued on or after July 1, 1995, by the Department of Motor Vehicles. A transit company or bus company that is owned or operated directly or indirectly by a political subdivision of this Commonwealth shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, nor shall such transit company or bus company thereby be subject to the imposition of local property levies. A common carrier of property by motor vehicle shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, but shall be subject to the imposition of local property taxes.

"Commission" means the State Corporation Commission which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency responsible for the assessment of the real and personal property of all public service corporations, except those public service corporations for which the Department of Taxation is so designated, upon which the Commonwealth levies a license tax measured by the gross receipts of such corporations. The State Corporation Commission shall also assess the property

of each telephone or telegraph company, every public service corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity, and each electric supplier, as provided by this chapter.

"Department" means the Department of Taxation which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency to assess the real and personal property of railroads and pipeline transmission companies as defined herein.

"Electric supplier" means any person owning or operating facilities for the generation, transmission or distribution of electricity for sales, except any person owning or operating ~~solar, wind or hydroelectric~~ facilities with a designed generation capacity of ~~less than~~ twenty-five megawatts or less.

"Estimated tax" means the amount of tax which a taxpayer estimates as being imposed by Article 2 (§ 58.1-2620 et seq.) of this chapter for the tax year as measured by the gross receipts received in the taxable year.

"Freight car company" includes every car trust, mercantile or other company or person not domiciled in this Commonwealth owning stock cars, furniture cars, fruit cars, tank cars or other similar cars. Such term shall not include a company operating a line as a railroad.

"Gross receipts" means the total of all revenue derived in the Commonwealth, including but not limited to income from the provision or performance of a service or the performance of incidental operations not necessarily associated with the particular service performed, without deductions for expenses or other adjustments. Such term shall not, however, include interest, dividends, investment income or receipts from the sale of real property or other assets except inventory of goods held for sale or resale.

"Pipeline distribution company" means a corporation, other than a pipeline transmission company, which transmits, by means of a pipeline, natural gas,

manufactured gas or crude petroleum and the products or by-products thereof to a purchaser for purposes of furnishing heat or light.

"Pipeline transmission company" means a corporation authorized to transmit natural gas, manufactured gas or crude petroleum and the products or by-products thereof in the public service by means of a pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

"Tax Commissioner" means the chief executive officer of the Department of Taxation or his designee.

"Tax year" means the twelve-month period beginning on January 1 and ending on December 31 of the same calendar year, such year also being the tax assessment year or the year in which the tax levied under this chapter shall be paid.

"Taxable year" means the calendar year preceding the tax year, upon which the gross receipts are computed as a basis for the payment of the tax levied pursuant to this chapter.

"Telegraph company" means a corporation or person operating the apparatus necessary to communicate by telegraph.

"Telephone company" means a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a person authorized by the Federal Communications Commission to provide commercial mobile service as defined in § 332(d) (1) of the Communications Act of 1934, as amended, where such service includes cellular mobile radio communications services or broadband personal communications services; or a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing domestic telephone service and belonging to an affiliated group including a

person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service. The term "affiliated group" has the meaning given in § 58.1-3700.1.

B. For purposes of this chapter the terms "license tax" and "franchise tax" shall be synonymous.

§ 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, except leased automobiles, leased trucks or leased real estate, 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 gas or steam, except (i) pipeline transmission companies taxed pursuant to § 58.1-2627.1 or (ii) an electric supplier as defined in § 58.1-400.2, 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 for the twelve months ending December 31 next preceding.

C. Every corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to such corporation as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located.

D. Every electric supplier as defined in § 58.1-2600 shall report annually, on April 15, to the Commission all real and tangible personal property owned in the Commonwealth and used directly for the generation, transmission or distribution of electricity for sale as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located.

E. 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.

F. The report required by subsections A through E 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.

G. The report required by this section shall be certified by the oath of the president or other designated official of the corporation or person.

PUBLIC SERVICE TAXATION:

RE-ENACTMENT OF DEFINITION OF "COGENERATOR"

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-2600 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-2600. Definitions

A. As used in this chapter:

"Certificated motor vehicle carrier" means a common carrier by motor vehicle, as defined in § 46.2-2000, operating over regular routes under a certificate of public convenience and necessity issued by the Commission or issued on or after July 1, 1995, by the Department of Motor Vehicles. A transit company or bus company that is owned or operated directly or indirectly by a political subdivision of this Commonwealth shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, nor shall such transit company or bus company thereby be subject to the imposition of local property levies. A common carrier of property by motor vehicle shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, but shall be subject to the imposition of local property taxes.

<u>"Cogenerator" means a qualifying cogenerator or qualifying small power producer within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).</u>

"Commission" means the State Corporation Commission which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the

central state agency responsible for the assessment of the real and personal property of all public service corporations, except those public service corporations for which the Department of Taxation is so designated, upon which the Commonwealth levies a license tax measured by the gross receipts of such corporations. The State Corporation Commission shall also assess the property of each telephone or telegraph company, every public service corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity, and each electric supplier, as provided by this chapter.

"Department" means the Department of Taxation which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency to assess the real and personal property of railroads and pipeline transmission companies as defined herein.

"Electric supplier" means any person owning or operating facilities for the generation, transmission or distribution of electricity for sales, except any person owning or operating solar, wind or hydroelectric facilities with a designed generation capacity of less than twenty-five megawatts.

"Estimated tax" means the amount of tax which a taxpayer estimates as being imposed by Article 2 (§ 58.1-2620 et seq.) of this chapter for the tax year as measured by the gross receipts received in the taxable year.

"Freight car company" includes every car trust, mercantile or other company or person not domiciled in this Commonwealth owning stock cars, furniture cars, fruit cars, tank cars or other similar cars. Such term shall not include a company operating a line as a railroad.

"Gross receipts" means the total of all revenue derived in the Commonwealth, including but not limited to income from the provision or performance of a service or the performance of incidental operations not necessarily associated with the particular service performed, without deductions

§ 332(d) (1) of the Communications Act of 1934, as amended, where such service includes cellular mobile radio communications services or broadband personal communications services; or a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing domestic telephone service and belonging to an affiliated group including a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service. The term "affiliated group" has the meaning given in § 58.1-3700.1.

B. For purposes of this chapter the terms "license tax" and "franchise tax" shall be synonymous.

2. That the provisions of this act that amend § 58.1-2600 of the Code of Virginia by adding a definition of the term "cogeneration" shall be effective retroactive to December 31, 2001.

GENERATION FACILITIES OF DEFAULT SERVICE PROVIDERS

Be it enacted by the General Assembly of Virginia:

1. That § 56-585 of the Code of Virginia is amended and reenacted as follows:

§ 56-585. Default service.

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of default service and (ii) establish one or more programs making such services available to retail customers requiring them commencing with the availability throughout the Commonwealth of customer choice for all retail customers as established pursuant to § 56-577. For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

B. From time to time, the Commission shall designate one or more providers of default service. In doing so, the Commission:

1. Shall take into account the characteristics and qualifications of prospective providers, including proposed rates, experience, safety, reliability, corporate structure, access to electric energy resources necessary to serve customers requiring such services, and other factors deemed necessary to ensure the reliable provision of such services, to prevent the inefficient use of such services, and to protect the public interest;

2. May periodically, as necessary, conduct competitive bidding processes under procedures established by the Commission and, upon a finding that the public interest will be served, designate one or more willing and suitable

providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers;

3. To the extent that default service is not provided pursuant to a designation under subdivision 2, may require a distributor to provide, in a safe and reliable manner, one or more components of such services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates determined pursuant to subsection C and for periods specified by the Commission; however, the Commission may not require a distributor, or affiliate thereof, to provide any such services outside the territory in which such distributor provides service. If the Commission requires a distributor to provide default service pursuant to this subdivision, the Commission is authorized to require the distributor, or an affiliate formed by the distributor, to retain, acquire or build, and thereafter to operate, such electric energy production facilities as the Commission deems will satisfy all or a portion of the distributor's obligation to provide generation services at rates and upon terms and conditions established pursuant to subsection C; and

4. Notwithstanding imposition on a distributor by the Commission of the requirement provided in subdivision 3, the Commission may thereafter, upon a finding that the public interest will be served, designate through the competitive bidding process established in subdivision 2 one or more willing and suitable providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers.

C. If a distributor is required to provide default services pursuant to subdivision B 3, after notice and opportunity for hearing, the Commission shall periodically, for each distributor, determine the rates, terms and conditions for default services, taking into account the characteristics and qualifications set forth in subdivision B 1, as follows:

1. Until the expiration or termination of capped rates, the rates for default service provided by a distributor shall equal the capped rates established pursuant to subdivision A 2 of § 56-582. After the expiration or termination of such capped rates, the rates for default services shall be based upon competitive market prices for electric generation services.

2. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and conditions for default service by such distributor on the basis of the provisions of Chapter 10 (§ 56-232 et seq.) of this title, except that the generation-related components of such rates shall be (i) based upon a plan approved by the Commission as set forth in subdivision 3 or (ii) in the absence of an approved plan, based upon prices for generation capacity and energy in competitive regional electricity markets.

3. Prior to a distributor's provision of default service, and upon request of such distributor, the Commission shall review any plan filed by the distributor to procure electric generation services for default service. The Commission shall approve such plan if the Commission determines that the procurement of electric generation capacity and energy under such plan is adequately based upon prices of capacity and energy in competitive regional electricity markets. If the Commission determines that the plan does not adequately meet such criteria, then the Commission shall modify the plan, with the concurrence of the distributor, or reject the plan.

4. a. For purposes of this subsection, in determining whether regional electricity markets are competitive and rates for default service, the Commission shall consider (i) the liquidity and price transparency of such markets, (ii) whether competition is an effective regulator of prices in such markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the reasonable accessibility of such markets to the regional transmission entity to which the distributor

belongs, and (v) such other factors it finds relevant. As used in this subsection, the term "competitive regional electricity market" means a market in which competition, and not statutory or regulatory price constraints, effectively regulates the price of electricity.

b. If, in establishing a distributor's default service generation rates, the Commission is unable to identify regional electricity markets where competition is an effective regulator of rates, then the Commission shall establish such distributor's default service generation rates by setting rates that would approximate those likely to be produced in a competitive regional electricity market. Such proxy generation rates shall take into account: (i) the factors set forth in subdivision C 4 a, and (ii) such additional factors as the Commission deems necessary to produce such proxy generation rates.

D. In implementing this section, the Commission shall take into consideration the need of default service customers for rate stability and for protection from unreasonable rate fluctuations.

E. On or before July 1, 2004, and annually thereafter, the Commission shall determine, after notice and opportunity for hearing, whether there is a sufficient degree of competition such that the elimination of default service for particular customers, particular classes of customers or particular geographic areas of the Commonwealth will not be contrary to the public interest. The Commission shall report its findings and recommendations concerning modification or termination of default service to the General Assembly and to the Legislative Transition Task Force, not later than December 1, 2004, and annually thereafter.

F. A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation and right to be the supplier of default services in its certificated service territory. A distribution electric cooperative's rates for such

default services shall be the capped rate for the duration of the capped rate period and shall be based upon the distribution electric cooperative's prudently incurred cost thereafter. Subsections B and C shall not apply to a distribution electric cooperative or its rates. Such default services, for the purposes of this subsection, shall include the supply of electric energy and all services made competitive pursuant to § 56-581.1. If a distribution electric cooperative, or one or more affiliates thereof, elects or seeks to be a default supplier of another electric utility, then the Commission shall designate the default supplier for that distribution electric cooperative, or any affiliate thereof, pursuant to subsection B.

RESOLUTION CONTINUING SENATE JOINT RESOLUTION 467 STUDY OF PROCEDURES APPLICABLE TO THE CONSTRUCTION OF NEW ELECTRICITY GENERATING FACILITIES

Continuing the study by the Legislative Transition Task Force of Procedures Applicable to the Construction of New Electricity Generating Facilities.

WHEREAS, Senate Joint Resolution No. 467 (2001) directed the Legislative Transition Task Force to study procedures applicable to the construction of new electricity generation facilities in the Commonwealth; and

WHEREAS, the Legislative Transition Task Force is established pursuant to § 56-595 of the Virginia Electric Utility Restructuring Act to work collaboratively with the State Corporation Commission in conjunction with the phase-in of retail competition within the Commonwealth; and

WHEREAS, Senate Joint Resolution No. 467 specifically directed the Legislative Transition Task Force to recommend amendments to the Commonwealth's administrative and regulatory procedures as are appropriate to facilitate the approval of construction of sufficient electricity generation capacity to provide a competitive market for electricity in the Commonwealth as soon as practical, without lessening necessary environmental considerations including siting and air quality impacts; and

WHEREAS, on June 12, 2001, the State Corporation Commission commenced Case No. PUE010313 to establish new filing requirements for entities seeking authority to construct and operate electric generating facilities; and

WHEREAS, on August 3, 2001, the State Corporation Commission entered a preliminary order holding that § 56-580 D of the Virginia Electric Utility Restructuring Act supplant the applicability of §§ 56-234.3 and 56- 265.2 of the Code of Virginia with regard to the construction and operation of electric generating facilities after January 1, 2002; and

WHEREAS, on December 14, 2001, the State Corporation Commission entered an order adopting regulations amending the filing requirements for applications to construct and operate electric generating facilities; and

WHEREAS, in its December 14, 2001, order the State Corporation Commission also docketed a new proceeding (Case No. PUE010665) in which the Commission will consider (i) additional rules addressing the cumulative environmental impacts of new electric generating facilities, (ii) filing requirements related to market power, and (iii) expedited permitting processes for small generation facilities of fifty megawatts or less; and

WHEREAS, the Legislative Transition Task Force has received briefings from the State Corporation Commission, the Department of Environmental Quality, the Piedmont Environmental Council and other groups regarding the procedures applicable to the construction of new electricity generation facilities in the Commonwealth; and

WHEREAS, during the course of its work the Legislative Transition Task Force has become aware of an issue regarding the effect of the ability of operators of generation facilities within the Commonwealth to exceed the statewide cap on nitrous oxide emissions through the acquisition of air emissions credits from operators of facilities located in other states; and

WHEREAS, the State Corporation Commission's ongoing review of applicable permitting procedures makes it appropriate for the Legislative

Transition Task Force to continue its study of electricity generation facility permitting procedures; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the study by the Legislative Transition Task Force of procedures applicable to the construction of new electricity generating facilities be continued. In conducting the study, the Legislative Transition Task Force shall examine the effects of emissions credit trading on the statewide cap on nitrous oxide emissions.

All agencies of the Commonwealth shall provide assistance to the Legislative Transition Task Force in its conduct of this study, upon request.

The Legislative Transition Task Force shall complete its work by November 30, 2002, and shall submit its written findings and recommendations to the Governor and the 2003 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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WIRES CHARGE PHASE-OUT;
BILLING BY MUNICIPALS AND COOPERATIVES

§ 56-581.1. Competitive retail electric billing and metering.

A. Effective January 1, 2002, (i) distributors shall offer consolidated billing services to licensed suppliers, aggregators, and retail customers, and (ii) licensed suppliers and aggregators shall be permitted to bill all retail customers separately for services rendered on and after the first regular meter reading date after January 1, 2002, subject to conditions, regulations, and licensing requirements established by the Commission.

B. Effective January 1, 2003, licensed suppliers and aggregators may offer consolidated billing service to distributors and retail customers for services rendered on and after the first regular meter reading date after January 1, 2003, subject to conditions, regulations, and licensing requirements established by the Commission.

C. Upon application by a distributor or upon its own motion, the Commission may delay any element of the competitive provision of billing services to retail customers for the period of time necessary, but no longer than one year, to resolve issues arising from considerations of billing accuracy, timeliness, quality, consumer readiness, or adverse effects upon development of competition in electric service. The Commission shall report any such delays and the underlying reasons therefor to the Legislative Transition Task Force within a reasonable time.

D. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section in a manner that is consistent with its Recommendation and Draft Plan filed with the Legislative Transition Task Force on December 12, 2000, to facilitate the development of effective competition in electric service for all customer classes, and to ensure reasonable levels of billing accuracy, timeliness, and quality, and adequate consumer readiness and protection. Such rules

and regulations shall include provisions regarding the licensing of persons seeking to sell, offering to sell, or selling competitive billing services, pursuant to the licensure requirements of § 56-587.

E. The Commission shall implement the provision of competitive metering services by licensed providers for large industrial and large commercial customers of investor-owned distributors on January 1, 2002, and may approve such services for residential and small business customers of investor-owned distributors on or after January 1, 2003, as determined to be in the public interest by the Commission. Such implementation and approvals shall:

1. Be consistent with the goal of facilitating the development of effective competition in electric service for all customer classes;

2. Take into account the readiness of customers and suppliers to buy and sell such services;

3. Take into account the technological feasibility of furnishing any such services on a competitive basis;

4. Take into account whether reasonable steps have been or will be taken to educate and prepare customers for the implementation of competition for any such services;

5. Not jeopardize the safety, reliability or quality of electric service;

6. Consider the degree of control exerted over utility operations by utility customers;

7. Not adversely affect the ability of an incumbent electric utility authorized or obligated to provide electric service to customers who do not buy such services from competitors to provide electric service to such customers at reasonable rates;

8. Give due consideration to the potential effects of such determinations on utility tax collection by state and local governments in the Commonwealth; and

9. Ensure the technical and administrative readiness of a distributor to coordinate and facilitate the provision of competitive metering services for its customers.

Upon the reasonable request of a distributor, the Commission shall delay the provision of competitive metering service in such distributor's service territory until January 1, 2003, for large industrial and large commercial customers, and after January 1, 2004, for residential and small business customers.

F. The Commission shall promulgate such rules and regulations as may be necessary to implement the authorization related to competitive metering services provided for in subsection E. Such rules and regulations shall include provisions regarding the licensing of persons seeking to sell, offering to sell, or selling competitive metering services, pursuant to the licensure requirements of § 56-587.

G. An incumbent electric utility shall coordinate with persons licensed to provide competitive metering service, billing services, or both, as the Commission deems reasonably necessary to the development of such competition The foregoing shall apply to an affiliate of an incumbent electric utility if such affiliate controls a resource that is necessary to the coordination required of the incumbent electric utility by this subsection.

H. Notwithstanding the provisions of § 56-582, the Commission shall allow a distributor to recover its costs directly associated with the implementation of billing or metering competition through a tariff for all licensed suppliers, but not those that would be incurred by such utilities in any event as part of the restructuring under this Act. The Commission shall also determine the most appropriate method of recovering such costs through a tariff for such licensed suppliers; however, such method shall not unreasonably affect any customer for which the service is not made competitive.

I. The Commission shall adjust the rates for any noncompetitive services provided by a distributor so that such rates do not reflect costs associated with or properly allocable to the service made subject to competition. Such adjustment may be

accomplished through unbundled rates, bill credits, the distributor's tariffs for licensed suppliers, or other methods as determined by the Commission.

J. Municipal electric utilities shall not be required to provide consolidated billing services to licensed suppliers, aggregators or retail customers. Municipal electric utilities and utility consumer services cooperatives shall not be required to undertake coordination of the provision of consolidated ~~or direct~~ billing services by suppliers and aggregators; however, the exemptions set forth in this subsection shall not apply if any such municipal electric utility or utility consumer services cooperative, or its affiliate, offers competitive electric energy supply to retail customers in the service territory of any other Virginia incumbent electric utility. The Commission may permit any municipal electric utility or utility consumer services cooperative that pursues such competitive activity to maintain such exemption upon application to the Commission demonstrating good cause for relief. In addition, upon petition by a utility consumer services cooperative, the Commission may approve the provision of competitive metering services by licensed providers for large industrial and large commercial customers of such cooperative on or after January 1, 2002, and for residential and small business customers of such cooperative on or after January 1, 2003, as determined to be in the public interest by the Commission consistent with the criteria set forth in subsection E.

§ 56-583. Wires charges.

A. To provide the opportunity for competition and consistent with § 56-584, the Commission shall calculate wires charges for each incumbent electric utility, effective upon the commencement of customer choice, which shall be the excess, if any, of the incumbent electric utility's capped unbundled rates for generation over the projected market prices for generation, as determined by the Commission; however, where there is such excess, the sum of such wires charges, the unbundled charge for transmission and ancillary services, the applicable distribution rates established by the Commission and the above projected market prices for generation shall not exceed the capped rates

established under § 56-582 A 1 applicable to such incumbent electric utility. The Commission shall adjust such wires charges ~~not more frequently than~~ annually and shall seek to coordinate adjustments of wires charges with any adjustments of capped rates pursuant to § 56-582. The magnitude of any approved wires charge adjustment shall be reduced by a cumulative amount of 20% each successive year in order to promote a gradual transition to full retail competition. No wires charge shall be less than zero. The projected market prices for generation, when determined under this subsection, shall be adjusted for any projected cost of transmission, transmission line losses, and ancillary services subject to the jurisdiction of the Federal Energy Regulatory Commission which the incumbent electric utility (i) must incur to sell its generation and (ii) cannot otherwise recover in rates subject to state or federal jurisdiction.

B. Customers that choose suppliers of electric energy, other than the incumbent electric utility, or are subject to and receiving default service, prior to the expiration of the period for capped rates, as provided for in § 56-582, shall pay a wires charge determined pursuant to subsection A based upon actual usage of electricity distributed by the incumbent electric utility to the customer (i) during the period from the time the customer chooses a supplier of electric energy other than the incumbent electric utility or (ii) during the period from the time the customer is subject to and receives default service until capped rates expire or are terminated, as provided in § 56-582.

C. The Commission shall permit any customer, at its option, to pay the wires charges owed to an incumbent electric utility on an accelerated or deferred basis upon a finding that such method is not (i) prejudicial to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of effective competition, provided that all deferred wires charges shall be paid in full by July 1, 2007.

D. A supplier of retail electric energy may pay any or all of the wires charge owed by any customer to an incumbent electric utility. The supplier may not only pay

such wires charge on behalf of any customer, but also contract with any customer to finance such payments. Further, on request of a supplier, the incumbent electric utility shall enter into a contract allowing such supplier to pay such wires charge on an accelerated or deferred basis. Such contract shall contain terms and conditions, specified in rules and regulations promulgated by the Commission to implement the provisions of this subsection, that fully compensate the incumbent electric utility for such wires charge, including reasonable compensation for the time value of money.

Statement of Support from Old Mill Power Company (Old Mill)

1. The two proposals by AES New Energy will improve Virginia's transition to a competitive retail market. The intent of the first proposal, which modifies Paragraph J of §56-587, is to allow competitive service providers to present their own bills directly to their own customers in municipal electric utility and cooperative service territories where retail electric competition is allowed. The effect of the current law is to allow municipal electric utilities and electric cooperatives to decide whether competitors within their service territories shall be allowed to directly bill their customers. We can think of no justification for this restriction on competitors, but are aware of several good reasons for abandoning it:

a. As Mr. Matheson indicates in his email, some suppliers do not compete in territories where they cannot bill their customers directly. Thus the proposed change may increase the number of suppliers competing in municipal electric utility and cooperative service territories.

b. The proposed change will probably reduce customers' costs, and certainly won't make them any higher. Once a municipal electric utility or electric cooperative redesigns its bills to display its own unbundled distribution charges it incurs additional costs to incorporate competitive suppliers' energy charges in what is referred to as a utility-consolidated bill. These consolidated billing charges are invariable passed on to consumers either directly through the municipal electric utility's or electric cooperatives' customer charges or indirectly by billing competitors for this unwanted "service". Giving competitors the ability to control their own billing costs will almost certainly result in lower costs to consumers...and, in any event, certainly couldn't cause customer billing charges to increase

c. Giving competitors the right to do their own billing does not preclude municipal electric utilities or electric cooperatives from offering consolidated billing services if the municipal electric utilities and electric cooperatives choose to do so. The proposed change to the law simply gives competitors the right to avoid using, and paying for, such services if they are unwanted.

2. It wouldn't take much creative energy to think of other advantages to consumers and competitors that might result from the proposed change, but I won't belabor the point. In the absence of any credible arguments against it, Old Mill urges the Task Force to adopt AES New Energy's suggestion regarding direct billing services.

3. Regarding AES New Energy's proposal for a gradual phase-out of wires charges during the transition period: Old Mill believes that wires charges are the greatest single barrier to the development of effective competition in the restructuring process: The token participation by licensed suppliers during the Pilot Program bears this out.

4. We have no quarrel with the notion of using wires charges as a means of compensating incumbent utilities for their stranded costs, but it is absolutely essential that a robust competitive market develop before capped rates expire. Keeping the wires charges in full effect until the day they drop to zero unnecessarily inhibits the development of competition and will almost certainly result a so-called competitive market on July 1, 2007 dominated by incumbent utilities with excessive market power.

5. The schedule proposed by AES New Energy would reduce the wires charges to 80% of the difference between capped rates and market rates on January 1, 2003; 60% of the difference between capped rates and market rates on January 1, 2004, and so forth. For the last 18 months of the transition period, wires charges under this proposal would be 20% of the difference between capped rates and market rates. Under such a scenario, it seems highly likely that a robust competitive market will be in place on July 1, 2007 when capped rates expire.

6. We realize that this proposal reduces the revenue stream that incumbent utilities are currently guaranteed during the transition period, but we also believe that incumbent utilities must surely realize that the General Assembly is not going to allow capped rates to expire before a robust competitive market has developed. Thus, we believe it would be in all parties' best interests to negotiate now on how Virginia is going to achieve a smooth transition. A "flash-cut" from wires charges that are in full effect at 11:59 PM on June 30, 2007 to wires charges that are zero one minute later is not going to leave anyone with a predictable future.

7. Old Mill urges the Task Force to adopt AES New Energy's proposal for a gradual phase-out of wires charges and respectfully reminds the Task Force that in order for such a phase-out to begin on January 1, 2003, legislative action will have to be taken during the 2002 session.

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