

STATE CORPORATION COMMISSION



One Hundred Ninth Annual Report

of the

State Corporation Commission

of

Virginia

For the Year Ending December 31, 2011

GENERAL REPORT

Letter of Transmittal

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

RICHMOND, VIRGINIA, *December 31, 2011*

To the Honorable Robert F. McDonnell

Governor of Virginia

Sir:

We have the honor to transmit herewith the one hundred ninth Annual Report of the State Corporation Commission for the year 2011.

Respectfully submitted,

Judith Williams Jagdmann, Chairman

Mark C. Christie, Commissioner

James C. Dimitri, Commissioner

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State Corporation Commission

COMMISSIONERS

*James C. Dimitri

Chairman

**Judith Williams Jagdmann

Chairman

Mark C. Christie

Commissioner

Joel H. Peck

Clerk of the Commission

*Term as Chairman expired January 31, 2011

**Elected Chairman effective for term of one year,
February 1, 2011

Commissioners

The three initial Commissioners took office March 1, 1903. From 1903 to 1919 the Commissioners were appointed by the Governor subject to confirmation by the General Assembly. Between 1919 and 1926 they were elected by popular vote. Between 1926 and 1928 they were appointed by the Governor subject to confirmation by the General Assembly. Since 1928 they have been elected by the General Assembly.

The names and terms of office of the Commissioners:

| | | Years |
|-----------------------------------------------------------------------|----------------------------------------|-------|
| Beverly T. Crump | March 1, 1903 to June 1, 1907 | 4 |
| Henry C. Stuart | March 1, 1903 to February 28, 1908 | 5 |
| Henry Fairfax | March 1, 1903 to October 1, 1905 | 3 |
| Jos. E. Willard | October 1, 1905 to February 18, 1910 | 4 |
| Robert R. Prentis | June 1, 1907 to November 17, 1916 | 9 |
| Wm. F. Rhea | February 28, 1908 to November 15, 1925 | 18 |
| J. R. Wingfield | February 18, 1910 to January 31, 1918 | 8 |
| C. B. Garnett | November 17, 1916 to October 28, 1918 | 2 |
| Alexander Forward | February 1, 1918 to December 5, 1923 | 5 |
| Robert E. Williams | November 12, 1918 to July 1, 1919 | 1 |
| (Temporary Appointment during absence of Forward on military service) | | |
| S. L. Lupton | October 28, 1918 to June 1, 1919 | 1 |
| Berkley D. Adams | June 12, 1919 to January 31, 1928 | 9 |
| Oscar L. Shewmake | December 16, 1923 to November 24, 1924 | 1 |
| H. Lester Hooker | November 25, 1924 to January 31, 1972 | 47 |
| Louis S. Epes | November 16, 1925 to November 16, 1929 | 4 |
| Wm. Meade Fletcher | February 1, 1928 to December 19, 1943 | 16 |
| George C. Peery | November 29, 1929 to April 17, 1933 | 3 |
| Thos. W. Ozlin | April 17, 1933 to July 14, 1944 | 11 |
| Harvey B. Apperson | January 31, 1944 to October 5, 1947 | 4 |
| Robert O. Norris | August 30, 1944 to November 20, 1944 | |
| L. McCarthy Downs | December 16, 1944 to April 18, 1949 | 5 |
| W. Marshall King | October 7, 1947 to June 24, 1957 | 10 |
| Ralph T. Catterall | April 28, 1949 to January 31, 1973 | 24 |
| Jesse W. Dillon | July 16, 1957 to January 28, 1972 | 14 |
| Preston C. Shannon | March 10, 1972 to January 31, 1996 | 25 |
| Junie L. Bradshaw | March 10, 1972 to January 31, 1985 | 13 |
| Thomas P. Harwood, Jr. | February 20, 1973 to February 20, 1992 | 19 |
| Elizabeth B. Lacy | April 1, 1985 to December 31, 1988 | 4 |
| Theodore V. Morrison, Jr. | February 15, 1989 to December 31, 2007 | 19 |
| Hullihen Williams Moore | February 26, 1992 to January 31, 2004 | 13 |
| Clinton Miller | February 15, 1996 to January 31, 2006 | 11 |
| Mark C. Christie | February 1, 2004 to | |
| Judith Williams Jagdmann | February 1, 2006 to | |
| James C. Dimitri | September 3, 2008 to | |

From 1903 through 2011 the lines of succession were:

| | Years | | Years | | Years |
|----------|-------|-----------|-------|-----------|-------|
| Crump | 4 | Stuart | 5 | Fairfax | 3 |
| Prentis | 9 | Rhea | 18 | Willard | 4 |
| Garnett | 2 | Epes | 4 | Wingfield | 8 |
| Lupton | 1 | Peery | 3 | Forward | 5 |
| Adams | 9 | Ozlin | 11 | Williams | 1 |
| Fletcher | 16 | Norris | 0 | Shewmake | 1 |
| Apperson | 4 | Downs | 5 | Hooker | 47 |
| King | 10 | Catterall | 24 | Bradshaw | 13 |
| Dillon | 14 | Harwood | 19 | Lacy | 4 |
| Shannon | 25 | Moore | 13 | Morrison | 19 |
| Miller | 11 | Christie | 8 | Dimitri | 3 |
| Jagdmann | 6 | | | | |

Preface

The State Corporation Commission is vested with regulatory authority over many businesses and economic interests in Virginia. These interests are as varied as the SCC's powers, which are derived from the Constitution of Virginia and state statutes. The SCC's authority ranges from setting rates charged by public utilities to serving as the central filing office in Virginia for corporate charters.

Established by the Virginia Constitution of 1902 to oversee the railroad and telephone and telegraph industries operating in the Commonwealth, the SCC's jurisdiction now includes supervision of many businesses that have a direct impact on Virginia consumers. The SCC is charged with administering the Virginia laws related to the regulation of public utilities, insurance, state-chartered financial institutions, investment securities, retail franchising, and utility and railroad safety. In addition, it is the state's central filing office for Uniform Commercial Code financing statements and for documents that create corporations, limited liability companies, business trusts, and limited partnerships.

The SCC's structure is unique. No other state has placed in a single agency such a broad array of regulatory responsibility. Created by the state constitution as a permanent department of government, the SCC possesses legislative, judicial, and administrative powers. The decisions of the SCC can be appealed only to the Supreme Court of Virginia.

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

RULES OF PRACTICE AND PROCEDURE

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RULES OF PRACTICE AND PROCEDURE****PART I.****GENERAL PROVISIONS.***5 VAC 5-20-10. Applicability.*

The State Corporation Commission Rules of Practice and Procedure are promulgated pursuant to the authority of § 12.1-25 of the Code of Virginia and are applicable to the regulatory and adjudicatory proceedings of the State Corporation Commission except where superseded by more specific rules for particular types of cases or proceedings. When necessary to serve the ends of justice in a particular case, the commission may grant, upon motion or its own initiative, a waiver or modification of any of the provisions of these rules, except 5 VAC 5-20-220, under terms and conditions and to the extent it deems appropriate. These rules do not apply to the internal administration or organization of the commission in matters such as the procurement of goods and services, personnel actions, and similar issues, nor to matters that are being handled administratively by a division or bureau of the commission.

5 VAC 5-20-20. Good faith pleading and practice.

Every pleading, written motion, or other document presented for filing by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's mailing address and telephone number, and where available, telefax number and email address, shall be stated. An individual not represented by an attorney shall sign the individual's pleading, motion, or other document, and shall state the individual's mailing address and telephone number. A partnership not represented by an attorney shall have a partner sign the partnership's pleading, motion, or other document, and shall state the partnership's mailing address and telephone number. A nonlawyer may only represent the interests of another before the commission in the presentation of facts, figures, or factual conclusions, as distinguished from legal arguments or conclusions. In the case of an individual or entity not represented by counsel, each signature shall be that of the individual or a qualified officer or agent of the entity. Documents signed pursuant to this rule need not be under oath unless so required by statute.

The commission allows electronic filing. Before filing electronically, the filer shall complete an electronic document filing authorization form, establish a filer authentication password with the Clerk of the State Corporation Commission and otherwise comply with the electronic filing procedures adopted by the commission. Upon establishment of a filer authentication password, a filer may make electronic filings in any case. All documents submitted electronically must be capable of being printed as paper documents without loss of content or appearance.

The signature of an attorney or party constitutes a certification that (i) the attorney or party has read the pleading, motion, or other document; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, the pleading, motion or other document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) the pleading, motion or other document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A pleading, written motion, or other document will not be accepted for filing by the Clerk of the Commission if it is not signed.

An oral motion made by an attorney or party in a commission proceeding constitutes a representation that the motion (i) is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (ii) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

5 VAC 5-20-30. Counsel.

Except as otherwise provided in 5 VAC 5-20-20, no person other than a properly licensed attorney at law shall file pleadings or papers or appear at a hearing to represent the interests of another person or entity before the commission. An attorney admitted to practice in another jurisdiction, but not licensed in Virginia, may be permitted to appear in a particular proceeding pending before the commission in association with a member of the Virginia State Bar. The Virginia State Bar member will be counsel of record for every purpose related to the conduct and disposition of the proceeding.

In all appropriate proceedings before the Commission, the Division of Consumer Counsel, Office of the Attorney General, may appear and represent and be heard on behalf of consumers' interests, and investigate matters relating to such appearance, and otherwise may participate to the extent reasonably necessary to discharge its statutory duties.

5 VAC 5-20-40. Photographs and broadcasting of proceedings.

Electronic media and still photography coverage of commission hearings will be allowed at the discretion of the commission.

5 VAC 5-20-50. Consultation by parties with commissioners and hearing examiners.

No commissioner or hearing examiner shall consult with any party or any person acting on behalf of any party with respect to a pending formal proceeding without giving adequate notice and opportunity for all parties to participate.

5 VAC 5-20-60. Commission staff.

The commissioners and hearing examiners shall be free at all times to confer with any member of the commission staff. However, no facts nor legal arguments likely to influence a pending formal proceeding and not of record in that proceeding shall be furnished ex parte to any commissioner or hearing examiner by any member of the commission staff.

5 VAC 5-20-70. Informal complaints.

All correspondence and informal complaints shall be referred to the appropriate division or bureau of the commission. The head of the division or bureau receiving this correspondence or complaint shall attempt to resolve the matter presented. Matters not resolved to the satisfaction of all participating parties by the informal process may be reviewed by the full commission upon the proper filing of a formal proceeding in accordance with the rules by any party to the informal process.

PART II.**COMMENCEMENT OF FORMAL PROCEEDINGS.***5 VAC 5-20-80. Regulatory proceedings.*

A. Application. Except where otherwise provided by statute, rule or commission order, a person or entity seeking to engage in an industry or business subject to the commission's regulatory authority, or to make changes in any previously authorized service, rate, facility, or other aspect of such industry or business that, by statute or rule, must be approved by the commission, shall file an application requesting authority to do so. The application shall contain (i) a specific statement of the action sought; (ii) a statement of the facts that the applicant is prepared to prove that would warrant the action sought; (iii) a statement of the legal basis for such action; and (iv) any other information required by law or regulation. Any person or entity filing an application shall be a party to that proceeding.

B. Participation as a respondent. A notice of participation as a respondent is the proper initial response to an application. A notice of participation shall be filed within the time prescribed by the commission and shall contain (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any person or entity filing a notice of participation as a respondent shall be a party to that proceeding.

C. Public witnesses. Any person or entity not participating in a matter pursuant to subsection A or B of this section may make known their position in any regulatory proceeding by filing written comments in advance of the hearing if provided for by commission order or by attending the hearing, noting an appearance in the manner prescribed by the commission, and giving oral testimony. Public witnesses may not otherwise participate in the proceeding, be included in the service list, or be considered a party to the proceeding.

D. Commission staff. The commission staff may appear and participate in any proceeding in order to see that pertinent issues on behalf of the general public interest are clearly presented to the commission. The staff may, inter alia, conduct investigations and discovery, evaluate the issues raised, testify and offer exhibits, file briefs and make argument, and be subject to cross-examination when testifying. Neither the commission staff collectively nor any individual member of the commission staff shall be considered a party to the case for any purpose by virtue of participation in a proceeding.

5 VAC 5-20-90. Adjudicatory proceedings.

A. Initiation of proceedings. Investigative, disciplinary, penal, and other adjudicatory proceedings may be initiated by motion of the commission staff or upon the commission's own motion. Further proceedings shall be controlled by the issuance of a rule to show cause, which shall give notice to the defendant, state the allegations against the defendant, provide for a response from the defendant and, where appropriate, set the matter for hearing. A rule to show cause shall be served in the manner provided by § 12.1-19.1 or § 12.1-29 of the Code of Virginia. The commission staff shall prove the case by clear and convincing evidence.

B. Answer. An answer or other responsive pleading shall be filed within 21 days of service of the rule to show cause, unless the commission shall order otherwise. The answer shall state, in narrative form, each defendant's responses to the allegations in the rule to show cause and any affirmative defenses asserted by the defendant. Failure to file a timely answer or other responsive pleading may result in the entry of judgment by default against the party failing to respond.

5 VAC 5-20-100. Other proceedings.

A. Promulgation of general orders, rules, or regulations. Before promulgating a general order, rule, or regulation, the commission shall, by order upon an application or upon its own motion, require reasonable notice of the contents of the proposed general order, rule, or regulation, including publication in the Virginia Register of Regulations, and afford interested persons an opportunity to comment, present evidence, and be heard. A copy of each general order, rule, and regulation adopted in final form by the commission shall be filed with the Registrar of Regulations for publication in the Virginia Register of Regulations.

B. Petitions in other matters. Persons having a cause before the commission, whether by statute, rule, regulation, or otherwise, against a defendant, including the commission, a commission bureau, or a commission division, shall proceed by filing a written petition containing (i) the identity of the parties; (ii) a statement of the action sought and the legal basis for the commission's jurisdiction to take the action sought; (iii) a statement of the facts, proof of which would warrant the action sought; (iv) a statement of the legal basis for the action; and (v) a certificate showing service upon the defendant.

Within 21 days of service of a petition under this rule, the defendant shall file an answer or other responsive pleading containing, in narrative form, (i) a response to each allegation of the petition and (ii) a statement of each affirmative defense asserted by the defendant. Failure to file a timely

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answer may result in entry of judgment by default against the defendant failing to respond. Upon order of the commission, the commission staff may participate in any proceeding under this rule in which it is not a defendant to the same extent as permitted by 5 VAC 5-20-80 D.

C. Declaratory judgments. Persons having no other adequate remedy may petition the commission for a declaratory judgment. The petition shall meet the requirements of subsection B of this section and, in addition, contain a statement of the basis for concluding that an actual controversy exists. In the proceeding, the commission shall by order provide for the necessary notice, responsive pleadings, and participation by interested parties and the commission staff.

PART III.

PROCEDURES IN FORMAL PROCEEDINGS.

5 VAC 5-20-110. Motions. Motions may be filed for the same purposes recognized by the courts of record in the Commonwealth. Unless otherwise ordered by the commission, any response to a motion must be filed within 14 days of the filing of the motion, and any reply by the moving party must be filed within ten days of the filing of the response.

5 VAC 5-20-120. Procedure before hearing examiners.

A. Assignment. The commission may, by order, assign a matter pending before it to a hearing examiner. Unless otherwise ordered, the hearing examiner shall conduct all further proceedings in the matter on behalf of the commission in accordance with these rules. In the discharge of his duties, the hearing examiner shall exercise all the adjudicatory powers possessed by the commission including, inter alia, the power to administer oaths; require the attendance of witnesses and parties; require the production of documents; schedule and conduct pre-hearing conferences; admit or exclude evidence; grant or deny continuances; and rule on motions, matters of law, and procedural questions. The hearing examiner shall, upon conclusion of all assigned duties, issue a written final report and recommendation to the commission at the conclusion of the proceedings.

B. Objections and certification of issues. An objection to a ruling by the hearing examiner during a hearing shall be stated with the reasons therefor at the time of the ruling. Any objection to a hearing examiner's ruling may be argued to the commission as part of a response to the hearing examiner's report. A ruling by the hearing examiner that denies further participation by a party in interest or the commission staff in a proceeding that has not been concluded may be immediately appealed to the commission by filing a written motion with the commission for review. Upon the motion of any party or the staff, or upon the hearing examiner's own initiative, the hearing examiner may certify any other material issue to the commission for its consideration and resolution. Pending resolution by the commission of a ruling appealed or certified, the hearing examiner shall retain procedural control of the proceeding.

C. Responses to hearing examiner reports. Unless otherwise ordered by the hearing examiner, responses supporting or objecting to the hearing examiner's final report must be filed within 21 days of the issuance of the report. A reply to a response to the hearing examiner's report may only be filed with leave of the commission. The commission may accept, modify, or reject the hearing examiner's recommendations in any manner consistent with law and the evidence, notwithstanding an absence of objections to the hearing examiner's report.

5 VAC 5-20-130. Amendment of pleadings.

No amendment shall be made to any pleading after it is filed except by leave of the commission, which leave shall be liberally granted in the furtherance of justice. The commission shall make such provision for notice and for opportunity to respond to the amended pleadings as it may deem necessary and proper.

5 VAC 5-20-140. Filing and service.

A pleading or other document shall be considered filed with the commission upon receipt of the original and required copies by the Clerk of the Commission no later than the time established for the closing of business of the clerk's office on the day the item is due. The original and copies shall be stamped by the Clerk to show the time and date of receipt.

Electronic filings may be submitted at any time and will be deemed filed on the date and at the time the electronic document is received by the commission's database; provided, that if a document is received when the clerk's office is not open for public business, the document shall be deemed filed on the next regular business day. A filer will receive an electronic notification identifying the date and time the document was received by the commission's database. An electronic document may be rejected if it is not submitted in compliance with these rules.

When a filing would otherwise be due on a day when the clerk's office is not open for public business during all or part of a business day, the filing will be timely if made on the next regular business day that the office is open to the public. Except as otherwise ordered by the commission, when a period of 15 days or fewer is permitted to make a filing or take other action pursuant to commission rule or order, intervening weekends or holidays shall not be counted in determining the due date.

Service of a pleading, brief, or other document filed with the commission required to be served on the parties to a proceeding or upon the commission staff, shall be effected by delivery of a true copy to the party or staff, or by deposit of a true copy into the United States mail or overnight express mail delivery service properly addressed and postage prepaid, or via hand-delivery, on or before the date of filing. Service on a party may be made by service on the party's counsel. Alternatively, electronic service shall be permitted on parties or staff in cases where all parties and staff have agreed to such service, or where the commission has provided for such service by order. At the foot of a formal pleading, brief, or other document required to be served, the party making service shall append a certificate of counsel of record that copies were mailed or delivered as required. Notices, findings of fact, opinions, decisions, orders, or other documents to be served by the commission may be served by United States mail. However, all writs, processes, and orders of the commission, when acting in conformity with § 12.1-27 of the Code of Virginia, shall be attested by the Clerk of the Commission and served in compliance with § 12.1-19.1 or 12.1-29 of the Code of Virginia.

5 VAC 5-20-150. Copies and format.

Applications, petitions, motions, responsive pleadings, briefs, and other documents filed by parties must be filed in an original and 15 copies unless otherwise directed by the commission. Except as otherwise stated in these rules, submissions filed electronically are exempt from the copy requirement. One copy of each responsive pleading or brief must be served on each party and the commission staff counsel assigned to the matter, or, if no counsel has been assigned, on the general counsel.

Each document must be filed on standard size white opaque paper, 8-1/2 by 11 inches in dimension, must be capable of being reproduced in copies of archival quality, and only one side of the paper may be used. Submissions filed electronically shall be made in portable document format (PDF).

Each document shall be bound or attached on the left side and contain adequate margins. Each page following the first page shall be numbered. If necessary, a document may be filed in consecutively numbered volumes, each of which may not exceed three inches in thickness. Submissions filed electronically may not exceed 100 pages of printed text of 8-1/2 by 11 inches.

Each document containing more than one exhibit should have dividers separating each exhibit and should contain an index. Exhibits such as maps, plats, and photographs not easily reduced to standard size may be filed in a different size, as necessary. Submissions filed electronically that otherwise would incorporate large exhibits impractical for conversion to electronic format shall be identified in the filing and include a statement that the exhibit was filed in hardcopy and is available for viewing at the commission or that a copy may be obtained from the filing party. Such exhibit shall be filed in an original and 15 copies.

All filed documents shall be fully collated and assembled into complete and proper sets ready for distribution and use, without the need for further assembly, sorting, or rearrangement.

The Clerk of the Commission may reject the filing of any document not conforming to the requirements of this rule.

5 VAC 5-20-160. Memorandum of completeness.

With respect to the filing of a rate application or an application seeking actions, that by statute or rule must be completed within a certain number of days, a memorandum shall be filed by an appropriate member of the commission staff within ten days of the filing of the application stating whether all necessary requirements imposed by statute or rule for filing the application have been met and all required information has been filed. If the requirements have not been met, the memorandum shall state with specificity the remaining items to be filed. The Clerk of the Commission immediately shall serve a copy of the memorandum on the filing party. The first day of the period within which action on the application must be concluded shall be set forth in the memorandum and shall be the initial date of filing of applications that are found to be complete upon filing. Applications found to require supplementation shall be complete upon the date of filing of the last item identified in the staff memorandum. Applications shall be deemed complete upon filing if the memorandum of completeness is not timely filed.

5 VAC 5-20-170. Confidential information.

A person who proposes in good faith in a formal proceeding that information to be filed with or delivered to the commission be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information shall file this information under seal with the Clerk of the Commission, or otherwise deliver the information under seal to the commission staff, or both, as may be required. Items filed or delivered under seal shall be securely sealed in an opaque container that is clearly labeled "UNDER SEAL," and, if filed, shall meet the other requirements for filing contained in these rules. An original and 15 copies of all such information shall be filed with the clerk. One additional copy of all such information shall also be delivered under seal to the commission staff counsel assigned to the matter, or, where no counsel has been assigned, to the general counsel who, until ordered otherwise by the commission, shall disclose the information only to the members of the commission staff directly assigned to the matter as necessary in the discharge of their duties. Staff counsel and all members of the commission staff, until otherwise ordered by the commission, shall maintain the information in strict confidence and shall not disclose its contents to members of the public, or to other staff members not assigned to the matter. The commission staff or any party may object to the proposed withholding of the information.

When an application (including supporting documents and prefiled testimony) contains information that the applicant claims to be confidential, the filing shall be made under seal and accompanied by a motion for protective order or other confidential treatment. The provision to a party of information claimed to be trade secrets, privileged, or confidential commercial or financial information shall be governed by a protective order or other individual arrangements for confidential treatment.

On every document filed or delivered under seal, the producing party shall mark each individual page of the document that contains confidential information, and on each such page shall clearly indicate the specific information requested to be treated as confidential by use of highlighting, underscoring, bracketing or other appropriate marking. All remaining materials on each page of the document shall be treated as nonconfidential and available for public use and review. If an entire document is confidential, or if all information provided in electronic format under Part IV of these rules is confidential, a marking prominently displayed on the first page of such document or at the beginning of any information provided in electronic format, indicating that the entire document is confidential shall suffice.

Upon challenge, the information shall be treated as confidential pursuant to these rules only where the party requesting confidential treatment can demonstrate to the satisfaction of the commission that the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure. If the commission determines that the information should be withheld from public disclosure, it may nevertheless require the information to be disclosed to parties to a proceeding under appropriate protective order.

Whenever a document is filed with the clerk under seal, an original and one copy of an expurgated or redacted version of the document deemed by the filing party or determined by the commission to be confidential shall be filed with the clerk for use and review by the public. A document containing confidential information shall not be submitted electronically. An expurgated or redacted version of the document may be filed electronically. Documents containing confidential information must be filed in hardcopy and in accordance with all requirements of these rules. Upon a determination by the

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commission or a hearing examiner that all or portions of any materials filed under seal are not entitled to confidential treatment, the filing party shall file one original and one copy of the expurgated or redacted version of the document reflecting the ruling.

When the information at issue is not required to be filed or made a part of the record, a party who wishes to withhold confidential information from filing or production may move the commission for a protective order without filing the materials. In considering such a motion, the commission may require production of the confidential materials for inspection in camera, if necessary.

A party may request additional protection for extraordinarily sensitive information by motion filed pursuant to 5 VAC 5-20-110, and filing the information with the Clerk of the Commission under seal and delivering a copy of the information to commission staff counsel under seal as directed above. Whenever such treatment has been requested under Part IV of these rules, the commission may make such orders as necessary to permit parties to challenge the requested additional protection.

The commission, hearing examiners, any party and the commission staff may make use of confidential material in orders, filing pleadings, testimony, or other documents, as directed by order of the commission. When a party or commission staff uses confidential material in a filed pleading, testimony, or other document, the party or commission staff must file both confidential and nonconfidential versions of the pleading, testimony, or other document. Confidential versions of filed pleadings, testimony, or other documents shall clearly indicate the confidential material contained within by highlighting, underscoring, bracketing or other appropriate marking. When filing confidential pleadings, testimony, or other documents, parties must submit the confidential version to the Clerk of the Commission securely sealed in an opaque container that is clearly labeled "UNDER SEAL." Nonconfidential versions of filed pleadings, testimony, or other documents shall expurgate, redact, or otherwise omit all references to confidential material.

The commission may issue such order as it deems necessary to prevent the use of confidentiality claims for the purpose of delay or obstruction of the proceeding.

A person who proposes in good faith that information to be delivered to the commission staff outside of a formal proceeding be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information may deliver the information under seal to the commission staff, subject to the same protections afforded confidential information in formal proceedings.

5 VAC 5-20-180. Official transcript of hearing.

The official transcript of a hearing before the commission or a hearing examiner shall be that prepared by the court reporters retained by the commission and certified by the court reporter as a true and correct transcript of the proceeding. Transcripts of proceedings shall not be prepared except in cases assigned to a hearing examiner, when directed by the commission, or when requested by a party desiring to purchase a copy. Parties desiring to purchase copies of the transcript shall make arrangement for purchase with the court reporter. When a transcript is prepared, a copy thereof shall be made available for public inspection in the clerk's office. If the transcript includes confidential information, an expurgated or redacted version of the transcript shall be made available for public inspection in the clerk's office. Only the parties who have executed an agreement to adhere to a protective order or other arrangement for access to confidential treatment in such proceeding and the commission staff shall be entitled to access to an unexpurgated or unredacted version of the transcript. By agreement of the parties, or as the commission may by order provide, corrections may be made to the transcript.

5 VAC 5-20-190. Rules of evidence.

In proceedings under 5 VAC 5-20-90, and all other proceedings in which the commission shall be called upon to decide or render judgment only in its capacity as a court of record, the common law and statutory rules of evidence shall be as observed and administered by the courts of record of the Commonwealth. In other proceedings, evidentiary rules shall not be unreasonably used to prevent the receipt of evidence having substantial probative effect.

5 VAC 5-20-200. Briefs.

Written briefs may be authorized at the discretion of the commission, except in proceedings under 5 VAC 5-20-100 A, where briefs may be filed by right. The time for filing briefs and reply briefs, if authorized, shall be set at the time they are authorized. The commission may limit the length of a brief. The commission may by order provide for the electronic filing or service of briefs.

5 VAC 5-20-210. Oral argument.

The commission may authorize oral argument, limited as the commission may direct, on any pertinent matter at any time during the course of the proceeding.

5 VAC 5-20-220. Petition for rehearing or reconsideration.

Final judgments, orders, and decrees of the commission, except judgments prescribed by § 12.1-36 of the Code of Virginia, and except as provided in §§ 13.1-614 and 13.1-813 of the Code of Virginia, shall remain under the control of the commission and subject to modification or vacation for 21 days after the date of entry. Except for good cause shown, a petition for rehearing or reconsideration must be filed not later than 20 days after the date of entry of the judgment, order, or decree. The filing of a petition will not suspend the execution of the judgment, order, or decree, nor extend the time for taking an appeal, unless the commission, within the 21-day period following entry of the final judgment, order or decree, shall provide for a suspension in an order or decree granting the petition. A petition for rehearing or reconsideration must be served on all parties and delivered to commission staff counsel on or before the day on which it is filed. The commission will not entertain responses to, or requests for oral argument on, a petition. An order granting a rehearing or reconsideration will be served on all parties and commission staff counsel by the Clerk of the Commission.

5 VAC 5-20-230. Extension of time.

The commission may, at its discretion, grant a continuance, postponement, or extension of time for the filing of a document or the taking of an action required or permitted by these rules, except for petitions for rehearing or reconsideration filed pursuant to 5 VAC 5-20-220. Except for good cause

shown, motions for extensions shall be made in writing, served on all parties and commission staff counsel, and filed with the commission at least three days prior to the date the action sought to be extended is due.

PART IV.

DISCOVERY AND HEARING PREPARATION PROCEDURES.

5 VAC 5-20-240. Prepared testimony and exhibits.

Following the filing of an application dependent upon complicated or technical proof, the commission may direct the applicant to prepare and file the testimony and exhibits by which the applicant expects to establish its case. In all proceedings in which an applicant is required to file testimony, respondents shall be permitted and may be directed by the commission or hearing examiner to file, on or before a date certain, testimony and exhibits by which they expect to establish their case. Any respondent that chooses not to file testimony and exhibits by that date may not thereafter present testimony or exhibits except by leave of the commission, but may otherwise fully participate in the proceeding and engage in cross-examination of the testimony and exhibits of commission staff and other parties. The commission staff also shall file testimony and exhibits when directed to do so by the commission. Failure to comply with the directions of the commission, without good cause shown, may result in rejection of the testimony and exhibits by the commission. With leave of the commission and unless a timely objection is made, the commission staff or a party may correct or supplement any prepared testimony and exhibits before or during the hearing. In all proceedings, all evidence must be verified by the witness before introduction into the record, and the admissibility of the evidence shall be subject to the same standards as if the testimony were offered orally at hearing, unless, with the consent of the commission, the staff and all parties stipulate the introduction of testimony without need for verification. An original and 15 copies of prepared testimony and exhibits shall be filed unless otherwise specified in the commission's scheduling order and public notice, or unless the testimony and exhibits are filed electronically and otherwise comply with these rules. Documents of unusual bulk or weight and physical exhibits other than documents need not be filed in advance, but shall be described and made available for pretrial examination.

5 VAC 5-20-250. Process, witnesses, and production of documents and things.

A. Subpoenas. Commission staff and any party to a proceeding shall be entitled to process, to convene parties, to compel the attendance of witnesses, and to compel the production of books, papers, documents, or things provided in this rule.

B. Commission issuance and enforcement of other regulatory agency subpoenas. Upon motion by commission staff counsel, the commission may issue and enforce subpoenas at the request of a regulatory agency of another jurisdiction if the activity for which the information is sought by the other agency, if occurring in the Commonwealth, would be a violation of the laws of the Commonwealth that are administered by the commission.

A motion requesting the issuance of a commission subpoena shall include:

1. A copy of the original subpoena issued by the regulatory agency to the named defendant;
2. An affidavit of the requesting agency administrator stating the basis for the issuance of the subpoena under that state's laws; and
3. A memorandum from the commission's corresponding division director providing the basis for the issuance of the commission subpoena.

C. Document subpoenas. In a pending proceeding, at the request of commission staff or any party, the Clerk of the Commission shall issue a subpoena. When a matter is under investigation by commission staff, before a formal proceeding has been established, whenever it appears to the commission by affidavit filed with the Clerk of the Commission by the commission staff or an individual, that a book, writing, document, or thing sufficiently described in the affidavit, is in the possession, or under the control, of an identified person and is material and proper to be produced, the commission may order the Clerk of the Commission to issue a subpoena and to have the subpoena duly served, together with an attested copy of the commission's order compelling production at a reasonable place and time as described in the commission's order.

D. Witness subpoenas. In a pending proceeding, at the request of commission staff or any party, the Clerk of the Commission shall issue a subpoena.

5 VAC 5-20-260. Interrogatories or requests for production of documents and things.

The commission staff and any party in a formal proceeding before the commission, other than a proceeding under 5VAC5-20-100 A, may serve written interrogatories or requests for production of documents upon a party, to be answered by the party served, or if the party served is an entity, by an officer or agent of the entity, who shall furnish to the staff or requesting party information as is known. Interrogatories or requests for production of documents, including workpapers pursuant to 5VAC5-20-270, that cannot be timely answered before the scheduled hearing date may be served only with leave of the commission for good cause shown and upon such conditions as the commission may prescribe. Such otherwise timely interrogatories or requests for production of documents, including workpapers pursuant to 5VAC5-20-270, may not be served until such leave is granted. Interrogatories or requests for production of documents may be served upon a member of the commission staff, or an expert or consultant filing testimony on behalf of the commission staff, in a proceeding under 5 VAC 5-20-80 to discover: (i) factual information that supports the workpapers submitted by the staff pursuant to 5VAC5-20-270, including electronic spreadsheets that include underlying formulas and assumptions; (ii) any other documents relied upon as a basis for recommendations or assertions in prefiled testimony, staff reports or exhibits filed by staff, or by an expert or consultant filing testimony on behalf of the staff; or (iii) the identity of other formal proceedings in which an expert or consultant filing testimony on behalf of the staff testified regarding the same or a substantially similar subject matter. The disclosure of communications within the commission shall not be required and, except for good cause shown, no interrogatories or requests for production of documents may be served upon a member of the commission staff, or an expert or consultant filing testimony on behalf of the staff, prior to the filing of staff's testimony. All interrogatories and requests for production of documents shall be filed with the Clerk of the Commission. Responses to interrogatories and requests for production of documents shall not be filed with the Clerk of the Commission.

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The response to each interrogatory or document request shall identify by name the person making the response. Any objection to an interrogatory or document request shall identify the interrogatory or document request to which the objection is raised, and shall state with specificity the basis and supporting legal theory for the objection. Objections shall be served with the list of responses or in such manner as the commission may designate by order. Responses and objections to interrogatories or requests for production of documents shall be served within 10 days of receipt, unless otherwise ordered by the commission. Upon motion promptly made and accompanied by a copy of the interrogatory or document request and the response or objection that is subject to the motion, the commission will rule upon the validity of the objection; the objection otherwise will be considered sustained.

Interrogatories or requests for production of documents may relate to any matter not privileged, which is relevant to the subject matter involved, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of evidentiary value. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.

Where the response to an interrogatory or document request may only be derived or ascertained from the business records of the party questioned, from an examination, audit, or inspection of business records, or from a compilation, abstract, or summary of business records, and the burden of deriving or ascertaining the response is substantially the same for one entity as for the other, a response is sufficient if it (i) identifies by name and location all records from which the response may be derived or ascertained; and (ii) tenders to the inquiring party reasonable opportunity to examine, audit, or inspect the records subject to objection as to their proprietary or confidential nature. The inquiring party bears the expense of making copies, compilations, abstracts, or summaries.

5 VAC 5-20-270. Hearing preparation.

In a formal proceeding, a party or the commission staff may serve on a party a request to examine the workpapers supporting the testimony or exhibits of a witness whose prepared testimony has been filed in accordance with 5 VAC 5-20-240. The movant may request abstracts or summaries of the workpapers, and may request copies of the workpapers upon payment of the reasonable cost of duplication or reproduction. Copies requested by the commission staff shall be furnished without payment of copying costs. In actions pursuant to 5 VAC 5-20-80 A, the commission staff shall, upon the filing of its testimony, exhibits, or report, provide (in either paper or electronic format) a copy of any workpapers that support the recommendations made in its testimony or report to any party upon request and may additionally file a copy of such workpapers with the Clerk of the Commission. The Clerk of the Commission shall make any filed workpapers available for public inspection and copying during regular business hours.

5 VAC 5-20-280. Discovery applicable only to 5 VAC 5-20-90 proceedings.

This rule applies only to a proceeding in which a defendant is subject to a monetary penalty or injunction, or revocation, cancellation, or curtailment of a license, certificate of authority, registration, or similar authority previously issued by the commission to the defendant:

1. Discovery of material in possession of the commission staff. Upon written motion of the defendant, the commission shall permit the defendant to inspect and, at the defendant's expense, copy or photograph (exclusive of investigative notes): (i) any relevant written or recorded statements, the existence of which is known, after reasonable inquiry, by the commission staff counsel assigned to the matter to be within the custody, possession, or control of commission staff, made by (a) the defendant, or representatives or agents of the defendant if the defendant is other than an individual, or (b) any witness whom the commission staff intends, or does not intend, to call to testify at the hearing, to a commission staff member or law enforcement officer; (ii) designated books, tangible objects, papers, documents, or copies or portions thereof, that are within the custody, possession, or control of commission staff and that commission staff intends to introduce into evidence at the hearing or that the commission staff obtained for the purpose of the instant proceeding; and (iii) the list of the witnesses that commission staff intends to call to testify at the hearing. Upon good cause shown to protect the identity of persons not named as a defendant, the commission or hearing examiner may direct the commission staff to withhold disclosure of material requested under this rule. The term "statement" as used in relation to any witness (other than a defendant) described in clause (i) of this subdivision includes a written statement made by said witness and signed or otherwise adopted or approved by him, and verbatim transcriptions or recordings of a witness' statement that are made contemporaneously with the statement by the witness.

A motion by the defendant or staff under this rule shall be filed and served at least 30 days before the hearing date. The motion shall include all relief sought. A subsequent motion may be made only upon a showing of cause as to why the motion would be in the interest of justice. An order or ruling granting relief under this rule shall specify the time, place, and manner of making discovery and inspection permitted, and may prescribe such terms and conditions as the commission may determine.

Upon written motion of the commission staff, staff may also obtain the list of witnesses that the defendant intends to call to testify at the hearing, and inspect, copy, and photograph, at commission staff's expense, the evidence that the defendant intends to introduce into evidence at the hearing.

The commission staff and the defendant shall be required to produce the information described above as directed by the commission or hearing examiner, but not later than 10 days prior to the scheduled hearing; and the admission of any additional evidence not provided in accordance herewith shall not be denied solely on the basis that it was not produced timely, provided the additional evidence was produced to commission staff or the defendant as soon as practicable prior to the hearing, or prior to the introduction of such evidence at the hearing. The requirement to produce the information described in this section shall be in addition to any requirement by commission staff or the defendant to timely respond to an interrogatory or document request made pursuant to 5VAC5-20-260.

Nothing in this rule shall require the disclosure of any information, the disclosure of which is prohibited by statute or other legal privilege. The disclosure of the results of a commission staff investigation or work product of commission staff counsel shall not be required.

2. Depositions. After commencement of a proceeding to which this rule applies, the commission staff or a party may take the testimony of (i) a party, or (ii) a person not a party for good cause shown to the commission or hearing examiner, other than a member of the commission staff, by deposition on oral examination or by written questions. Depositions may be used for any purpose for which they may be used in the courts of record of the

Commonwealth. Except where the commission or hearing examiner finds that an emergency exists, no deposition may be taken later than 10 days in advance of the formal hearing. The attendance of witnesses at depositions may be compelled by subpoena. Examination and cross-examination of the witness shall be as at hearing. Depositions may be taken in the City of Richmond or in the town, city, or county in which the deposed person resides, is employed, or does business. The parties and the commission staff, by agreement, may designate another place for the taking of the deposition. Reasonable notice of the intent to take a deposition must be given in writing to the commission staff counsel and to each party to the action, stating the time and place where the deposition is to be taken. A deposition may be taken before any person (the "officer") authorized to administer oaths by the laws of the jurisdiction in which the deposition is to be taken. The officer shall certify his authorization in writing, administer the oath to the deponent, record or cause to be recorded the testimony given, and note any objections raised. In lieu of participating in the oral examination, a party or the commission staff may deliver sealed written questions to the officer, who shall propound the questions to the witness. The officer may terminate the deposition if convinced that the examination is being conducted in bad faith or in an unreasonable manner. Costs of the deposition shall be borne by the party noticing the deposition, unless otherwise ordered by the commission.

3. Requests for admissions. The commission staff or a party to a proceeding may serve upon a party written requests for admission. Each matter on which an admission is requested shall be stated separately. A matter shall be deemed admitted unless within 21 days of the service of the request, or some other period the commission may designate, the party to whom the request is directed serves upon the requesting party a written answer addressing or objecting to the request. The response shall set forth in specific terms a denial of the matter set forth or an explanation as to the reasons the responding party cannot truthfully admit or deny the matter set forth. Requests for admission shall be filed with the Clerk of the Commission and simultaneously served on commission staff counsel and on all parties to the proceeding.

Adopted: September 1, 1974

Revised: May 1, 1985 by Case No. CLK850262

Revised: August 1, 1986 by Case No. CLK860572 and Repealed June 1, 2001 by Case No. CLK000311

Adopted: June 1, 2001 by Case No. CLK000311

Revised: January 15, 2008 by Case No. CLK-2007-00005

Revised: February 24, 2009 by Case No. CLK-2008-00002

Revised: August 9, 2011 by Case No. CLK-2011-00001

LEADING MATTERS DISPOSED OF BY FORMAL ORDERS
BUREAU OF FINANCIAL INSTITUTIONS

CASE NO. BAN20100749
FEBRUARY 17, 2011

APPLICATION OF
ALLIED TITLE LENDING LLC D/B/A ALLIED CASH ADVANCE

For a license to engage in business as a motor vehicle title lender

ORDER GRANTING A LICENSE

Allied Title Lending LLC d/b/a Allied Cash Advance, a Delaware limited liability company, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-2203 of the Code of Virginia, for a license to engage in the business of making motor vehicle title loans at twenty-four (24) locations (see attachment). The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in Chapter 22 of Title 6.2 of the Code of Virginia.

THEREFORE, the license requested in the application is GRANTED provided that the applicant begins business within one (1) year from the date of this Order and the applicant gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

NOTE: A copy of the Attachment is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

CASE NO. BAN20100750
MARCH 8, 2011

APPLICATION OF
ALLIED TITLE LENDING LLC D/B/A ALLIED CASH ADVANCE

For authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Allied Title Lending LLC d/b/a Allied Cash Advance, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

Therefore, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all

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such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

6. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the Licensee as a result of a motor vehicle title loan transaction.
7. The other business operator and the Licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
8. The Licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.
9. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia.
10. The Licensee and other business operator shall provide each applicant for a motor vehicle title loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20100752
MARCH 8, 2011**

APPLICATION OF
ALLIED TITLE LENDING LLC D/B/A ALLIED CASH ADVANCE

For authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Allied Title Lending LLC d/b/a Allied Cash Advance, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

THEREFORE, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

**CASE NO. BAN20100753
MARCH 8, 2011**

APPLICATION OF
ALLIED TITLE LENDING LLC D/B/A ALLIED CASH ADVANCE

For authority for an other business operator to conduct an open-end credit business from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Allied Title Lending LLC d/b/a Allied Cash Advance, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct an open-end credit business from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

THEREFORE, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall not conduct an open-end credit business if it is licensed as a payday lender under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.
7. The other business operator shall not conduct an open-end credit business at any office, suite, room, or place of business where a person licensed under Chapter 18 of Title 6.2 of the Code of Virginia conducts the business of making payday loans.
8. The other business operator shall not make an open-end loan that is secured by a non-purchase money security interest in a motor vehicle, as such term is defined in § 6.2-2200 of the Code of Virginia.
9. The Licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding open-end loan from the other business operator or (ii) on the same day the person repaid or satisfied in full an open-end loan from the other business operator.
10. The other business operator shall not make an open-end loan to a person if (i) the person has an outstanding motor vehicle title loan from the Licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the Licensee.
11. The other business operator and the Licensee shall not make an open-end loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
12. The Licensee and other business operator shall provide each person seeking a motor vehicle title loan or open-end loan with a separate disclosure, signed by such person, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20100824
JANUARY 27, 2011**

APPLICATION OF
BEACH AUTO TITLE LOANS, INC.

For a license to engage in business as a motor vehicle title lender

ORDER GRANTING A LICENSE

Beach Auto Title Loans, Inc., a Virginia corporation, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-2203 of the Code of Virginia, for a license to engage in the business of making motor vehicle title loans at 696 S. Rosemont Road, Virginia Beach, Virginia 23452. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in Chapter 22 of Title 6.2 of the Code of Virginia.

THEREFORE, the license requested in the application is GRANTED provided that the applicant begins business within one (1) year from the date of this Order and the applicant gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20100886
JANUARY 11, 2011**

APPLICATION OF
KAR KASH OF CLINTWOOD, Inc.

For a license to engage in business as a motor vehicle title lender

ORDER GRANTING A LICENSE

Kar Kash of Clintwood, Inc., a Virginia corporation, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-2203 of the Code of Virginia, for a license to engage in the business of making motor vehicle title loans at 3945 Dickenson Highway, Clintwood, Virginia 24228. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in Chapter 22 of Title 6.2 of the Code of Virginia.

THEREFORE, the license requested in the application is GRANTED provided that the applicant begins business within one (1) year from the date of this Order and the applicant gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20100951
APRIL 11, 2011**

APPLICATION OF
ACE VIRGINIA TITLE LOANS LLC

For authority for an other business operator to conduct the business of tax preparation on and electronic tax filing services from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Ace Virginia Title Loans LLC, a licensed motor vehicle title lender, has applied to the state corporation commission ("commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct the business of tax preparation and electronic tax filing services from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

THEREFORE, the authority requested in the application is granted subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The Licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.
7. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia.

**CASE NO. BAN20100954
APRIL 11, 2011**

APPLICATION OF
ACE VIRGINIA TITLE LOANS LLC

For authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Ace Virginia Title Loans LLC, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

THEREFORE, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the Licensee as a result of a motor vehicle title loan transaction.
7. The other business operator and the Licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.

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8. The Licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.
9. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia.
10. The Licensee and other business operator shall provide each applicant for a motor vehicle title loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20100955
APRIL 11, 2011**

APPLICATION OF
ACE VIRGINIA TITLE LOANS LLC

For authority for an other business operator to conduct a payday lending business from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Ace Virginia Title Loans LLC, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct a payday lending business from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

Therefore, the authority requested in the application is granted subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The Licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a payday loan from the other business operator.
7. The other business operator shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the Licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the Licensee.
8. The other business operator and the Licensee shall not make a payday loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
9. The Licensee and other business operator shall provide each applicant for a motor vehicle title loan or payday loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20100956
APRIL 5, 2011**

APPLICATION OF
ACE VIRGINIA TITLE LOANS LLC

For a license to engage in business as a motor vehicle title lender

ORDER GRANTING A LICENSE

Ace Virginia Title Loans LLC, a Virginia limited liability company, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-2203 of the Code of Virginia, for a license to engage in the business of making motor vehicle title loans at thirty-two (32) locations (see attachment). The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in Chapter 22 of Title 6.2 of the Code of Virginia.

THEREFORE, the license requested in the application is GRANTED provided that the applicant begins business within one (1) year from the date of this Order and the applicant gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

NOTE: A copy of the Attachment is on file and may be examined at the State Corporation Commission, Bureau of Financial Institutions, Tyler Building, 1300 East Main Street, Richmond, Virginia.

**CASE NO. BAN20100980
FEBRUARY 25, 2011**

APPLICATION OF
CAR TITLE LOANS, INC.

For a license to engage in business as a motor vehicle title lender

ORDER GRANTING A LICENSE

Car Title Loans, Inc., a Virginia corporation, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-2203 of the Code of Virginia, for a license to engage in the business of making motor vehicle title loans at 10323 7th Regiment Drive, Suite 102, Manassas, Virginia 20110. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the bureau, the commission finds that the application meets the criteria in Chapter 22 of Title 6.2 of the Code of Virginia.

THEREFORE, the license requested in the application is GRANTED provided that the applicant begins business within one (1) year from the date of this Order and the applicant gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20101065
FEBRUARY 25, 2011**

APPLICATION OF
CHEQUE CASHING, INC.

For authority for an other business operator to conduct a motor vehicle title lending business from the Licensee's payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Cheque Cashing, Inc., a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-200-100 and § 6.2-1820 of the Code of Virginia, for authority for an other business operator to conduct a motor vehicle title lending business from the Licensee's payday lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-200-100 B.

THEREFORE, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a payday loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's payday lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.

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3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a payday loan or vary the terms of a payday loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a payday loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's payday lending business and in a different location within the Licensee's payday lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall be licensed or exempt from licensing under Chapter 22 (§ 6.2-2200 *et seq.*) of Title 6.2 of the Code of Virginia.
7. The Licensee shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the other business operator.
8. The other business operator shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the Licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the Licensee.
9. The other business operator and the Licensee shall not make a motor vehicle title loan and a payday loan contemporaneously or in response to a single request for a loan or credit.
10. The Licensee and other business operator shall provide each applicant for a payday loan or motor vehicle title loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20101066
FEBRUARY 25, 2011**

APPLICATION OF
CAR TITLE LOANS, INC.

For authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Car Title Loans, Inc., a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

Therefore, the authority requested in the application is granted subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.

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5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The Licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a payday loan from the other business operator.
7. The other business operator shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the Licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the Licensee.
8. The other business operator and the Licensee shall not make a payday loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
9. The Licensee and other business operator shall provide each applicant for a motor vehicle title loan or payday loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20101067
FEBRUARY 25, 2011**

APPLICATION OF
CAR TITLE LOANS, INC.

For authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Car Title Loans, Inc., a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the bureau's report, the commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

Therefore, the authority requested in the application is granted subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

**CASE NO. BAN20110030
MARCH 25, 2011**

APPLICATION OF
EVERGREEN SERVICES INC.

For authority for an other business operator To conduct business as an authorized delegate or agent of a money order seller or money transmitter
From the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Evergreen Services Inc., a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

Therefore, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

**CASE NO. BAN20110031
MARCH 21, 2011**

APPLICATION OF
EVERGREEN SERVICES INC.

For a license to engage in business as a motor vehicle title lender

ORDER GRANTING A LICENSE

Evergreen Services Inc., a Virginia corporation, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-2203 of the Code of Virginia, for a license to engage in the business of making motor vehicle title loans at the following locations: (1) 7257 Centreville Road, Manassas, Virginia 20111; and (2) 10526 Lomond Drive, Manassas, Virginia 20109. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in Chapter 22 of Title 6.2 of the Code of Virginia.

THEREFORE, the license requested in the application is GRANTED provided that the applicant begins business within one (1) year from the date of this Order and the applicant gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

**CASE NO. BAN20110044
MARCH 22, 2011**

APPLICATION OF
ANDERSON FINANCIAL SERVICES, LLC LOANMAX (USED IN VIRGINIA BY: ANDERSON FINANCIAL SERVICES, LLC) D/B/A LOANMAX

For authority for an other business operator to conduct a consumer finance business from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Anderson Financial Services, LLC LoanMax (Used in Virginia by: Anderson Financial Services, LLC) d/b/a LoanMax, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-120-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct a consumer finance business from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

THEREFORE, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The Licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding consumer finance loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a consumer finance loan from the other business operator.
7. The other business operator shall not make a consumer finance loan to a person if (i) the person has an outstanding motor vehicle title loan from the Licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the Licensee.
8. The Licensee and other business operator shall not make a motor vehicle title loan and a consumer finance loan contemporaneously or in response to a single request for a loan or credit.
9. The Licensee and other business operator shall provide each applicant for a motor vehicle title loan or consumer finance loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO: BAN20110053
APRIL 11, 2011**

APPLICATION OF
ACE VIRGINIA TITLE LOANS LLC

For authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Ace Virginia Title Loans LLC, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau Of Financial Institutions ("Bureau").

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

Therefore, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

**CASE NO. BAN20110071
MARCH 16, 2011**

APPLICATION OF
AMERICAN NATIONAL BANKSHARES INC.

To acquire MidCarolina Financial Corporation and MidCarolina Bank

ORDER OF APPROVAL

American National Bankshares Inc., a Virginia bank holding company, has filed with the State Corporation Commission ("Commission") the notice required by § 6.2-715 of the Code of Virginia of its proposed acquisition of MidCarolina Financial Corporation, a North Carolina bank holding company, and its bank subsidiary, MidCarolina Bank, a North Carolina state-chartered bank. The Bureau of Financial Institutions ("Bureau") investigated the proposed acquisition.

Having considered the notice and the report of the Bureau, the Commission finds that the proposed acquisition will not have a detrimental effect on the safety or soundness of the Virginia bank subsidiary of American National Bankshares Inc.

THEREFORE, the proposed acquisition of MidCarolina Financial Corporation and its bank subsidiary, MidCarolina Bank, by American National Bankshares Inc. is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and American National Bankshares Inc. notifies the Bureau of the effective date of the transaction within ten (10) days thereof.

**CASE NO. BAN20110090
JUNE 15, 2011**

APPLICATION OF
VCC CREDIT SERVICES, INC. D/B/A CHECK CITY TITLE LOANS

For authority for an other business operator to conduct a payday lending business from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

VCC Credit Services, Inc. d/b/a Check City Title Loans, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct a payday lending business from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

Therefore, the authority requested in the application is **GRANTED** subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The Licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a payday loan from the other business operator.
7. The other business operator shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the Licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the Licensee.
8. The other business operator and the Licensee shall not make a payday loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
9. The Licensee and other business operator shall provide each applicant for a motor vehicle title loan or payday loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20110092
JUNE 15, 2011**

APPLICATION OF
ANYKIND CHECK CASHING, LC D/B/A CHECK CITY

For authority for an other business operator to conduct a motor vehicle title lending business from the Licensee's payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Anykind Check Cashing, LC d/b/a Check City, a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-200-100 and § 6.2-1820 of the Code of Virginia, for authority for an other business operator to conduct a motor vehicle title lending business from the Licensee's payday lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-200-100 B.

THEREFORE, the authority requested in the application is **GRANTED** subject to the following conditions:

1. The Licensee shall not make a payday loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's payday lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

4. The Licensee shall not make a payday loan or vary the terms of a payday loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a payday loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's payday lending business and in a different location within the Licensee's payday lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall be licensed or exempt from licensing under Chapter 22 (§ 6.2-2200 *et seq.*) of Title 6.2 of the Code of Virginia.
7. The Licensee shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the other business operator.
8. The other business operator shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the Licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the Licensee.
9. The other business operator and the Licensee shall not make a motor vehicle title loan and a payday loan contemporaneously or in response to a single request for a loan or credit.
10. The Licensee and other business operator shall provide each applicant for a payday loan or motor vehicle title loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20110093
JUNE 15, 2011**

APPLICATION OF
TOSH OF UTAH, INC. (USED IN VA BY: TOSH, INC.) D/B/A CHECK CITY CHECK CASHING

For authority for an other business operator to conduct a motor vehicle title lending business from the Licensee's payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Tosh of Utah, Inc. (Used in VA by: Tosh, Inc.) d/b/a Check City Cashing, a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-200-100 and § 6.2-1820 of the Code of Virginia, for authority for an other business operator to conduct a motor vehicle title lending business from the Licensee's payday lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-200-100 B.

THEREFORE, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a payday loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's payday lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a payday loan or vary the terms of a payday loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a payday loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's payday lending business and in a different location within the Licensee's payday lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall be licensed or exempt from licensing under Chapter 22 (§ 6.2-2200 *et seq.*) of Title 6.2 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

7. The Licensee shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the other business operator.
8. The other business operator shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the Licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the Licensee.
9. The other business operator and the Licensee shall not make a motor vehicle title loan and a payday loan contemporaneously or in response to a single request for a loan or credit.
10. The Licensee and other business operator shall provide each applicant for a payday loan or motor vehicle title loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20110094
MAY 25, 2011**

APPLICATION OF
VCC CREDIT SERVICES, INC. D/B/A CHECK CITY TITLE LOANS

For a license to engage in business as a motor vehicle title lender

ORDER GRANTING A LICENSE

VCC Credit Services, Inc. d/b/a Check City Title Loans, a Utah corporation, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-2203 of the Code of Virginia, for a license to engage in the business of making motor vehicle title loans at six (6) locations (see attachment). the application was investigated by the commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the bureau, the commission finds that the application meets the criteria in Chapter 22 of Title 6.2 of the Code of Virginia.

THEREFORE, the license requested in the application is GRANTED provided that the applicant begins business within one (1) year from the date of this Order and the applicant gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

NOTE: A copy of the attachment is on file and may be examined at the State Corporation Commission, Bureau of Financial Institutions, Tyler Building, 1300 East Main Street, Richmond, Virginia.

**CASE NO. BAN20110233
JUNE 15, 2011**

APPLICATION OF
VCC CREDIT SERVICES, INC. D/B/A CHECK CITY TITLE LOANS

For authority for an other business operator To conduct the business of tax preparation and electronic tax filing services from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

VCC Credit Services, Inc. d/b/a Check City Title Loans, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct the business of tax preparation and electronic tax filing services from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

THEREFORE, the authority requested in the application is granted subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The Licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.
7. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia.

**CASE NO. BAN20110234
JUNE 15, 2011**

APPLICATION OF
VCC CREDIT SERVICES, INC. D/B/A CHECK CITY TITLE LOANS

For authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

VCC Credit Services, Inc. D/B/A Check City Title Loans, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct the business of facilitating or arranging tax refund anticipation loans or tax refund payments from the Licensee's motor vehicle title lending offices. The application was investigated by the commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

THEREFORE, the authority requested in the application is granted subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall not facilitate or arrange a tax refund anticipation loan or tax refund payment to enable a person to pay any amount owed to the Licensee as a result of a motor vehicle title loan transaction.
7. The other business operator and the Licensee shall not facilitate or arrange a tax refund anticipation loan or tax refund payment and make a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
8. The Licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

9. The other business operator shall not engage in the business of receiving tax refunds or tax refund payments for delivery to individuals unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia.
10. The Licensee and other business operator shall provide each applicant for a motor vehicle title loan or tax refund anticipation loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20110235
JUNE 15, 2011**

APPLICATION OF
VCC CREDIT SERVICES, INC. D/B/A CHECK CITY TITLE LOANS

For authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

VCC Credit Services, Inc. d/b/a Check City Title Loans, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct business as an authorized delegate or agent of a money order seller or money transmitter from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

THEREFORE, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall be and remain a party to a written agreement to act as an authorized delegate or agent of a person licensed or exempt from licensing as a money order seller or money transmitter under Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia. The other business operator shall not engage in money order sales or money transmission services on its own behalf or on behalf of any person other than a licensed or exempt money order seller or money transmitter with whom it has a written agreement.

**CASE NO. BAN201100246
JUNE 14, 2011**

APPLICATION OF
FIRST COMMUNITY BANK

For a certificate of authority to engage in business as a state-chartered bank upon the conversion of First Community Bank, N. A.

ORDER GRANTING AUTHORITY

First Community Bank, a Virginia corporation, has applied to the State Corporation Commission ("Commission"), pursuant to Chapter 8 of Title 6.2 of the Code of Virginia, for a certificate of authority to engage in business as a Virginia state-chartered bank with its main office at 29 College

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Drive, Bluefield, Tazewell County, Virginia. Section 6.2-823 of the Code of Virginia provides for the conversion of a national banking association into a state chartered bank. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

The Bureau reports that First Community Bank has been incorporated as a Virginia corporation empowered by its certificate of incorporation to conduct a banking and trust business. The corporation was formed to be the successor to First Community Bank, N.A., which has its main office at 29 College Drive, Bluefield, Tazewell County, Virginia. The bank has assets of approximately \$2.2 billion and operates 54 branches (see attached Exhibit A for branch locations).

Having considered the application and the investigation report of the Bureau, the Commission finds that the requirements of §§ 6.2-816 and 6.2-823 of the Code of Virginia have been met, and that a certificate of authority should be granted.

IT IS THEREFORE ORDERED that a certificate of authority for First Community Bank to engage in a banking and trust business at the specified locations is GRANTED, provided the following conditions are met before the bank commences business as a state-chartered bank:

- (1) The capital stock of the bank shall be \$6,240,000, its preferred stock shall be \$40,000,000, and its surplus shall be at least \$226,678,000;
- (2) The bank shall obtain insurance for its accounts from the Federal Deposit Insurance Corporation; and
- (3) The bank shall notify the Bureau of the date on which it will commence business as a state-chartered bank.

If the bank does not fulfill the foregoing conditions within six (6) months from the date of this Order, the authority granted herein shall expire unless it is extended by the Commission.

NOTE: A copy of Exhibit A is on file and may be examined at the State Corporation, Bureau of Financial Institutions, Tyler Building, 1300 East Main Street, Richmond, Virginia.

**CASE NO. BAN20110265
JUNE 16, 2011**

APPLICATION OF
VALLEY INDUSTRIAL CREDIT UNION

To merge with Klann Employees Credit Union, Incorporated

ORDER APPROVING A MERGER

Valley Industrial Credit Union, a Virginia state-chartered credit union, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-1344 of the Code of Virginia, to merge with Klann Employees Credit Union, Incorporated, a Virginia state-chartered credit union. Valley Industrial Credit Union will be the survivor of the proposed merger. The application was investigated by the Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that: (1) the field of membership of the credit union that is proposed to result from the merger satisfies the requirements of § 6.2-1327 B of the Code of Virginia; (2) the plan of merger will promote the best interests of the members of the credit unions; and (3) the members of Klann Employees Credit Union, Incorporated, and the board of directors of Valley Industrial Credit Union have approved the plan of merger in accordance with applicable law.

THEREFORE, provided the merging credit unions comply with the applicable provisions of the Virginia Nonstock Corporation Act, the merger of Klann Employees Credit Union, Incorporated, into Valley Industrial Credit Union is APPROVED, effective upon the issuance by the Clerk of the Commission of a certificate of merger. The authority granted herein shall expire one (1) year from the date of this Order unless extended by Commission order prior to the expiration date.

**CASE NO. BAN20110304
JULY 15, 2011**

APPLICATION OF
MAIN ST. PERSONAL FINANCE, INC.

To acquire twenty-five percent or more of Express Check Advance of Virginia, LLC

ORDER OF APPROVAL

Main St. Personal Finance, Inc., a Delaware corporation, has applied to the State Corporation Commission ("Commission") to acquire twenty-five percent or more of the ownership of Express Check Advance of Virginia, LLC, a licensed payday lender under Chapter 22 of Title 6.2 of the Code of Virginia. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.2-2208 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

THEREFORE, the proposed acquisition of Express Check Advance of Virginia, LLC, by Main St. Personal Finance, Inc., is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and that the applicant give written notice to the Bureau stating the date the acquisition occurred within ten (10) days thereafter.

**CASE NO. BAN20110305
JULY 15, 2011**

APPLICATION OF
MAIN ST. PERSONAL FINANCE, INC.

To acquire twenty-five percent or more of Express Check Advance of Virginia, LLC

ORDER OF APPROVAL

Main St. Personal Finance, Inc., a Delaware corporation, has applied to the State Corporation Commission ("Commission") to acquire twenty-five percent or more of the ownership of Express Check Advance of Virginia, LLC, a licensed payday lender under Chapter 18 of Title 6.2 of the Code of Virginia. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.2-1808 of the Code of Virginia.

THEREFORE, the proposed acquisition of Express Check Advance of Virginia, LLC, by Main St. Personal Finance, Inc., is APPROVED, provided the acquisition takes place within one (1) year from the date of this Order and that the applicant give written notice to the Bureau stating the date the acquisition occurred within ten (10) days thereafter.

**CASE NO. BAN20110306
JUNE 30, 2011**

APPLICATION OF
CREDITCORP OF VIRGINIA, LLC, d/b/a CHECK INTO CASH

For authority for an other business operator to conduct an open-end credit business from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Creditcorp of Virginia LLC d/b/a Check Into Cash, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct an open-end credit business from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

Therefore, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business, or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

6. The other business operator shall not conduct an open-end credit business if it is licensed as a payday lender under chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia.
7. The other business operator shall not make an open-end credit business at any office, suite, room, or place of business where a person licensed under Chapter 18 of Title 6.2 of the Code of Virginia conducts the business of making payday loans.
8. The other business operator shall not make an open-end loan that is secured by a non-purchase money security interest in a motor vehicle, as such term is defined in § 6.2-2200 of the Code of Virginia.
9. The Licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding open-end loan from the other business operator or (ii) on the same day the person repaid or satisfied in full an open-end loan from the other business operator.
10. The other business operator shall not make an open-end loan to a person if (i) the person has an outstanding motor vehicle title loan from the Licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the Licensee.
11. The other business operator and the Licensee shall not make an open-end and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
12. The Licensee and other business operator shall provide each person seeking a motor vehicle title loan or open-end loan with a separate disclosure, signed by such person, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20110307
SEPTEMBER 7, 2011**

APPLICATION OF
ENTRUST FINANCIAL CREDIT UNION

For a certificate of authority to engage in business as a state-chartered credit union upon the conversion of Entrust Federal Credit Union

ORDER GRANTING AUTHORITY

Entrust Financial Credit Union, a Virginia corporation, has applied to the State Corporation Commission ("Commission"), pursuant to Chapter 13 of Title 6.2 of the Code of Virginia ("Chapter 13"), for a certificate of authority to engage in business as a Virginia state-chartered credit union at 1801 Dabney Road, Henrico County, Virginia. Section 6.2-1346 of the Code of Virginia provides for the conversion of a federal credit union to a Virginia state-chartered credit union. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

The Bureau reports that Entrust Financial Credit Union has been incorporated under the Virginia Nonstock Corporation Act for the purpose of conducting business as a credit union as provided in Chapter 13. The corporation was formed to be the successor to Entrust Federal Credit Union, which has its main office at 1801 Dabney Road, Henrico County, Virginia.

Having considered the application and the investigation report of the Bureau, the Commission finds that the requirements of §§ 6.2-1346 and 6.2-1321 of the Code of Virginia have been met, and that a certificate of authority should be granted.

IT IS THEREFORE ORDERED that a certificate of authority for Entrust Financial Credit Union to engage in business as a state-chartered credit union at the specified location is GRANTED, provided that the following conditions are met before Entrust Financial Credit Union commences business:

- (1) Entrust Financial Credit Union shall obtain insurance for its share accounts from the National Credit Union Share Insurance Fund; and
- (2) Entrust Financial Credit Union shall notify the Bureau of the date on which it will commence business as a state-chartered credit union.

The authority granted herein shall be effective as of the date that Entrust Federal Credit Union ceases to be a federal credit union. Entrust Financial Credit Union shall be vested with all of the assets and shall continue to be responsible for all of the obligations of Entrust Federal Credit Union to the same extent as though the conversion had not taken place.

If Entrust Financial Credit Union does not fulfill the foregoing conditions within six (6) months from the date of this Order, the authority granted herein shall expire unless it is extended by the Commission.

**CASE NO. BAN20110327
AUGUST 4, 2011**

APPLICATION OF
COMMUNITY CHOICE FINANCIAL, INC.

To acquire twenty-five percent or more of Buckeye Check Cashing of Virginia, Inc, d/b/a Check\$mart

ORDER OF APPROVAL

Community Choice Financial, Inc., an Ohio corporation, has applied to the State Corporation Commission ("Commission") to acquire twenty-five percent or more of the ownership of Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart, a licensed payday lender under Chapter 18 of Title 6.2 of the Code of Virginia. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.2-1808 of the Code of Virginia.

THEREFORE, the proposed acquisition of Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart by Community Choice Financial, Inc. is APPROVED, provided acquisition takes place within one (1) year from the date of this Order and that the applicant give written notice to the Bureau stating the date the acquisition occurred within ten (10) days thereafter.

**CASE NO. BAN20110328
AUGUST 4, 2011**

APPLICATION OF
COMMUNITY CHOICE FINANCIAL, INC.

To acquire twenty-five percent or more of Buckeye Check Cashing of Virginia, Inc, d/b/a Checksmart Consumer Loans

ORDER OF APPROVAL

Community Choice Financial, Inc., an Ohio corporation, has applied to the State Corporation Commission ("Commission") to acquire twenty-five percent or more of the ownership of Buckeye Check Cashing of Virginia, Inc. d/b/a CheckSmart Consumer Loans, a licensed payday lender under Chapter 22 of Title 6.2 of the Code of Virginia. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.2-2208 of the Code of Virginia.

THEREFORE, the proposed acquisition of Buckeye Check Cashing of Virginia, Inc. d/b/a CheckSmart Consumer Loans by Community Choice Financial, Inc. is APPROVED, provided acquisition takes place within one (1) year from the date of this Order and that the applicant give written notice to the Bureau stating the date the acquisition occurred within ten (10) days thereafter.

**CASE NO. BAN20110365
SEPTEMBER 26, 2011**

APPLICATION OF
ACAC, INC.

For authority for another business operator to conduct the business of tax preparation and electronic tax filing services from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

ACAC, Inc., a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for another business operator to conduct the business of tax preparation and electronic tax filing services from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 b.

THEREFORE, the authority requested in the application is granted subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.

3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The Licensee shall not make, arrange, or broker a motor vehicle title loan that is secured by (i) an interest in a borrower's tax refund, (ii) an assignment of income payable to a borrower, or (iii) an assignment of an interest in a borrower's account at a depository institution.
7. The other business operator shall not engage in the business of (i) accepting funds for transmission to the Internal Revenue Service or other government instrumentalities, or (ii) receiving tax refunds for delivery to individuals, unless licensed or exempt from licensing under Chapter 19 (§ 6.2-1900 *et seq.*) of Title 6.2 of the Code of Virginia.

**CASE NO. BAN20110366
SEPTEMBER 26, 2011**

APPLICATION OF
ACAC, INC.

For authority for an other business operator to conduct a payday lending business from the Licensee's motor vehicle title lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

ACAC, Inc., a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-210-70 and § 6.2-2215 (18) of the Code of Virginia, for authority for an other business operator to conduct a payday lending business from the Licensee's motor vehicle title lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-210-70 B.

Therefore, the authority requested in the application is **GRANTED** subject to the following conditions:

1. The Licensee shall not make a motor vehicle title loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's motor vehicle title lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a motor vehicle title loan or vary the terms of a motor vehicle title loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a motor vehicle title loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's motor vehicle title lending business and in a different location within the Licensee's motor vehicle title lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The Licensee shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the other business operator or (ii) on the same day the person repaid or satisfied in full a payday loan from the other business operator.
7. The other business operator shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the Licensee or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the Licensee.

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8. The other business operator and the Licensee shall not make a payday loan and a motor vehicle title loan contemporaneously or in response to a single request for a loan or credit.
9. The Licensee and other business operator shall provide each applicant for a motor vehicle title loan or payday loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's motor vehicle title lending offices along with the corresponding annual percentage rate, interest rate, and other costs associated with each loan product. the disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20110367
SEPTEMBER 19, 2011**

APPLICATION OF
ACAC, INC.

For a license to engage in business as a motor vehicle title lender

ORDER GRANTING A LICENSE

ACAC, Inc., a Delaware corporation, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-2203 of the Code of Virginia, for a license to engage in the business of making motor vehicle title loans at twenty-eight (28) locations (see attachment). The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the commission finds that the application meets the criteria in Chapter 22 of Title 6.2 of the Code of Virginia.

THEREFORE, the license requested in the application is GRANTED provided that the applicant begins business within one (1) year from the date of this Order and the applicant gives written notice to the Bureau stating the date business was begun within ten (10) days thereafter.

NOTE: A copy of the Attachment is on file and may be examined at the State Corporation Commission, Bureau of Financial Institutions, Tyler Building, 1300 East Main Street, Richmond, Virginia.

**CASE NO. BAN20110427
SEPTEMBER 12, 2011**

APPLICATION OF
FAST AUTO LOANS, INC.

For authority to establish an additional office

ORDER APPROVING AN ADDITIONAL OFFICE

Fast Auto Loans, Inc., a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to Chapter 22 of Title 6.2 of the Code of Virginia, for authority to establish an additional office at 722 Merrimac Trail, Williamsburg, Virginia 23185. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.2-2207 B of the Code of Virginia.

THEREFORE, the application is APPROVED provided that the Licensee opens the office within one (1) year from the date of this Order and the Licensee gives written notice to the Bureau stating the date business was begun at the new office location within ten (10) days thereafter.

**CASE NO. BAN20110445
OCTOBER 5, 2011**

APPLICATION OF
APPROVED CASH ADVANCE CENTERS (VIRGINIA), LLC D/B/A APPROVED CASH ADVANCE

For authority for an other business operator to conduct a motor vehicle title lending business from the Licensee's payday lending offices

ORDER GRANTING OTHER BUSINESS AUTHORITY

Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance, a licensed payday lender, has applied to the State Corporation Commission ("Commission"), pursuant to 10 VAC 5-200-100 and § 6.2-1820 of the Code of Virginia, for authority for an other business operator to conduct a motor vehicle title lending business from the Licensee's payday lending offices. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Having considered the application and the Bureau's report, the Commission finds that the application meets the criteria in 10 VAC 5-200-100 B.

THEREFORE, the authority requested in the application is GRANTED subject to the following conditions:

1. The Licensee shall not make a payday loan to a borrower to enable the borrower to purchase or pay any amount owed in connection with the (i) goods or services sold, or (ii) loans offered, facilitated, or made, by the other business operator at the Licensee's payday lending offices.
2. The other business operator shall comply with all federal and state laws and regulations applicable to its other business, including any applicable licensing requirements.
3. The other business operator shall not use or cause to be published any advertisement or other information that contains any false, misleading, or deceptive statement or representation concerning its other business, including the rates, terms, or conditions of the products, services, or loans that it offers. The other business operator shall not make or cause to be made any misrepresentation as to (i) its being licensed to conduct the other business or (ii) the extent to which it is subject to supervision or regulation.
4. The Licensee shall not make a payday loan or vary the terms of a payday loan on the condition or requirement that a person also (i) purchase a good or service from, or (ii) obtain a loan from or through, the other business operator. The other business operator shall not (a) sell its goods or services, (b) offer, facilitate, or make loans, or (c) vary the terms of its goods, services, or loans, on the condition or requirement that a person also obtain a payday loan from the Licensee.
5. The other business operator shall maintain books and records for its other business separate and apart from the Licensee's payday lending business and in a different location within the Licensee's payday lending offices. The Bureau shall be given access to all such books and records and be furnished with any information and records that it may require in order to determine compliance with all applicable conditions, laws, and regulations.
6. The other business operator shall be licensed or exempt from licensing under Chapter 22 (§ 6.2-2200 *et seq.*) of Title 6.2 of the Code of Virginia.
7. The Licensee shall not make a payday loan to a person if (i) the person has an outstanding motor vehicle title loan from the other business operator, or (ii) on the same day the person repaid or satisfied in full a motor vehicle title loan from the other business operator.
8. The other business operator shall not make a motor vehicle title loan to a person if (i) the person has an outstanding payday loan from the Licensee, or (ii) on the same day the person repaid or satisfied in full a payday loan from the Licensee.
9. The other business operator and the Licensee shall not make a motor vehicle title loan and a payday loan contemporaneously or in response to a single request for a loan or credit.
10. The Licensee and other business operator shall provide each applicant for a payday loan or motor vehicle title loan with a separate disclosure, signed by the applicant, that clearly identifies all of the loan products available in the Licensee's payday lending offices along with the corresponding Annual Percentage Rate, interest rate, and other costs associated with each loan product. The disclosure shall also identify the collateral, if any, that will be used to secure repayment of each loan product.

**CASE NO. BAN20110457
NOVEMBER 2, 2011**

APPLICATION OF
VIRGINIA CREDIT UNION, INC.

To merge with Fifth Street Baptist Church Federal Credit Union

ORDER APPROVING MERGER

Virginia Credit Union, Inc., a Virginia state-chartered credit union, has applied to the State Corporation Commission ("Commission"), pursuant to § 6.2-1344 of the Code of Virginia, to merge with Fifth Street Baptist Church Federal Credit Union, a federally chartered credit union. Virginia Credit Union, Inc., will be the survivor of the proposed merger. The application was investigated by the Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that: (1) the field of membership of the credit union that is proposed to result from the merger satisfies the requirements of § 6.2-1327 B of the Code of Virginia; (2) the plan of merger will promote the best interests of the members of the credit unions; and (3) the members of Fifth Street Baptist Church Federal Credit Union and the board of directors of Virginia Credit Union, Inc., have approved the plan of merger in accordance with applicable law.

THEREFORE, provided the merging credit unions comply with the applicable provisions of the Virginia Nonstock Corporation Act, the merger of Fifth Street Baptist Church Federal Credit Union into Virginia Credit Union, Inc., is APPROVED, effective upon the issuance by the Clerk of the Commission of a certificate of merger. The authority granted herein shall expire one (1) year from the date of this Order unless extended by Commission order prior to the expiration date.

**CASE NOS. BAN20110477 AND BAN20110479
NOVEMBER 8, 2011**

APPLICATIONS OF
TITLEMAX OF VIRGINIA, INC. D/B/A TITLEMAX

For authority to establish additional offices

ORDER APPROVING ADDITIONAL OFFICES

TitleMax of Virginia, Inc. d/b/a TitleMax, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to Chapter 22 of Title 6.2 of the Code of Virginia, for authority to establish additional offices at: (1) 2947 South Military Highway, Suites 105 and 106, Chesapeake, Virginia 23323; and (2) 1128 North Battlefield Boulevard, Suites 101 and 102, Chesapeake, Virginia 23320. The applications were investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the applications and the report of the Bureau, the Commission finds that the applications meet the criteria in § 6.2-2207 B of the Code of Virginia.

THEREFORE, the applications are APPROVED provided that the Licensee opens the offices within one (1) year from the date of this Order and the Licensee gives written notice to the Bureau stating the date business was begun at the new office locations within ten (10) days thereafter.

**CASE NO. BAN20110483
NOVEMBER 8, 2011**

APPLICATION OF
ANDERSON FINANCIAL SERVICES, LLC LOANMAX (USED IN VIRGINIA BY:
ANDERSON FINANCIAL SERVICES, LLC) D/B/A LOANMAX

For authority to establish an additional office

ORDER GRANTING APPROVAL

Anderson Financial Services, LLC LoanMax (Used in Virginia by: Anderson Financial Services, LLC) d/b/a LoanMax, a licensed motor vehicle title lender, has applied to the State Corporation Commission ("Commission"), pursuant to Chapter 22 of Title 6.2 of the Code of Virginia, for authority to establish an additional office at 1051 North Main Street, Marion, Virginia 24354. The application was investigated by the Commission's Bureau of Financial Institutions ("Bureau").

Having considered the application and the report of the Bureau, the Commission finds that the application meets the criteria in § 6.2-2207 B of the Code of Virginia.

THEREFORE, the application is APPROVED provided that the Licensee opens the office within one (1) year from the date of this Order and the Licensee gives written notice to the Bureau stating the date business was begun at the new office within ten (10) days thereafter.

**CASE NO. BFI-2010-00028
JANUARY 19, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

CUSTOM HOUSE (USA) LTD. D/B/A CUSTOM HOUSE,
Defendant

SETTLEMENT ORDER

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that Custom House (USA) Ltd. d/b/a Custom House ("Defendant") engaged in the business of money transmission without obtaining a license in violation of § 6.1-371 of the Code of Virginia; and that the Defendant has offered to settle this case by paying a fine in the sum of Twenty-five Thousand Dollars (\$25,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in this case. The Commissioner of Financial Institutions has recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the Defendant's offer of settlement, and the recommendation of the Commissioner, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer in settlement of this case is accepted.

- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2010-00170
APRIL 5, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

NATIONAL FOUNDATION FOR DEBT MANAGEMENT, INC. D/B/A ALTERNATIVE CREDIT SOLUTIONS,
Defendant

SETTLEMENT ORDER

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that National Foundation for Debt Management, Inc. d/b/a Alternative Credit Solutions ("Defendant"), is licensed to engage in the business of providing debt management plans under Chapter 20 of Title 6.2 (formerly Chapter 10.2 of Title 6.1) of the Code of Virginia; that on November 19, 2009, the Bureau of Financial Institutions examined the Defendant and alleged that it had violated §§ 6.1-363.8 C, 6.1-363.10 A, 6.1-363.16, 6.1-363.17, and 6.1-363.18 of the Code of Virginia; and that upon being informed that the Commissioner intended to recommend the imposition of a civil penalty, the Defendant offered to settle this case by surrendering its license to engage in the business of providing debt management plans, surrendered said license, and waived its right to a hearing in the case. The Commissioner has recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the Defendant's offer of settlement, and the recommendation of the Commissioner, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer in settlement of this case is accepted.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2010-00246
MARCH 30, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

APPROVED CASH ADVANCE CENTERS (VIRGINIA), LLC D/B/A APPROVED CASH ADVANCE,
Defendant

SETTLEMENT ORDER

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance ("Defendant") is a licensed payday lender under Chapter 18 of Title 6.2 (formerly Chapter 18 of Title 6.1) of the Code of Virginia ("Code"); that on May 28, 2010, the Commission's Bureau of Financial Institutions examined the Defendant and alleged that it had violated § 6.1-451 A of the Code in one (1) instance, § 6.1-459 (1) of the Code in two (2) instances, § 6.1-459 (6) of the Code in nine (9) instances, § 6.1-459 (7) of the Code in fourteen (14) instances, § 6.1-459 (8) of the Code in fourteen (14) instances, § 6.1-459 (10) of the Code in one (1) instance, § 6.1-459 (14) of the Code in two (2) instances, § 6.1-459 (17) of the Code in twenty-five (25) instances, § 6.1-459 (25) of the Code in eight (8) instances, § 6.1-459 (27) of the Code in one (1) instance, 10 VAC 5-200-20 K in three (3) instances, 10 VAC 5-200-33 C in one (1) instance, 10 VAC 5-200-35 D in one (1) instance, 10 VAC 5-200-60 B in one (1) instance, 10 VAC 5-200-70 C in one (1) instance, 10 VAC 5-200-110 D in eighty-five (85) instances, 10 VAC 5-200-110 G in four (4) instances, 10 VAC 5-200-110 I in ten (10) instances, and 10 VAC 5-200-110 K in one (1) instance; that the Defendant applied for authority to relocate three (3) of its offices as follows: (i) from 13771 Warwick Boulevard, Newport News, Virginia 23602, to 14501-J Warwick Boulevard, Newport News, Virginia 23608, (ii) from 7643 Granby Street, Norfolk, Virginia 23505, to 7637 Granby Street, Norfolk, Virginia 23505, and (iii) from 116 South Independence Boulevard, Suite 104, Virginia Beach, Virginia 23462, to 3864 Holland Road, Virginia Beach, Virginia 23452; that upon investigation of the three (3) applications, it was found that the offices had been relocated without prior approval from the Commission, in violation of § 6.1-451 B of the Code; and that upon being informed that the Commissioner of Financial Institutions intended to recommend the imposition of a civil penalty, the Defendant offered to settle this case by paying, in accordance with the attached schedule, a civil penalty in the sum of One Hundred Twenty Thousand Dollars (\$120,000) and abiding by the provisions of this Order and waived its right to a hearing in this case. The Commissioner of Financial Institutions has recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the Defendant's offer of settlement, and the recommendation of the Commissioner, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer in settlement of this case is accepted.
- (2) The Defendant shall pay, in accordance with the attached schedule, a civil penalty in the sum of One Hundred Twenty Thousand Dollars (\$120,000).
- (3) The Defendant's applications for authority to relocate its three (3) offices are approved.
- (4) This case is continued generally.

**CASE NO. BFI-2010-00246
JULY 8, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
APPROVED CASH ADVANCE CENTERS (VIRGINIA), LLC
D/B/A APPROVED CASH ADVANCE,
Defendant

FINAL ORDER

On March 30, 2011, the State Corporation Commission ("Commission") entered a Settlement Order in this case. The staff of the Bureau of Financial Institutions has now reported to the Commission that the Defendant has fulfilled the requirements of the Settlement Order.

Accordingly, IT IS ORDERED THAT:

- (1) This case is dismissed.
- (2) Entry of this Final Order shall not affect any duty or obligation to disclose the existence or nature of this matter or of any order entered herein.
- (3) The papers herein shall be filed among the ended cases.

**CASE NO. BFI-2010-00255
FEBRUARY 15, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: Mortgage Lenders and Brokers

ORDER ADOPTING REGULATIONS

The Bureau of Financial Institutions ("Bureau") submitted to the Commission proposed amendments to 10 VAC 5-160 ("Chapter 160") of the Virginia Administrative Code, which governs the conduct of licensed mortgage lenders and brokers ("Licensees"). The impetus for the proposed amendments is Chapter 831 of the 2010 Virginia Acts of Assembly ("Chapter 831"), which became effective on July 1, 2010, and required all Licensees to register with the Nationwide Mortgage Licensing System and Registry ("NMLS"). The proposed regulation set forth the requirements for Licensees to transition to NMLS and maintain current and accurate records in NMLS, as well as the requirements for new mortgage lenders and brokers to apply for licensure through NMLS. The proposed regulation also clarified certain operating rules for Licensees through their participation in NMLS and supervision of mortgage loan originators, also licensed through NMLS.

On November 16, 2010, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Commission to amend 10 VAC 5-160, regulations governing mortgage lenders and brokers. The Order and proposed regulations were published in the Virginia Register of Regulations on December 6, 2010, published on the Commission's web site, and mailed to all licensed mortgage lenders and brokers and other interested parties. Interested parties were afforded the opportunity to provide written comments or request a hearing on or before December 20, 2010.

Comments on the proposed regulations were filed by Professional Mortgage Corp., the Virginia Association of Mortgage Brokers, Nfm, Inc., and First Savings Mortgage Corporation. Each party's comments were confined to expressing concern over the proposed requirement that a Licensee disclose its NMLS-assigned unique identifier and that of the applicable mortgage loan originator on all documents provided to a borrower. No party requested a hearing in this matter.

NOW THE COMMISSION, upon consideration of the proposed regulations, the written comments filed, the recommendations of staff, and applicable law, concludes that the proposed regulations should be modified to (i) require a Licensee to disclose its NMLS-assigned unique identifier and that

of the applicable mortgage loan originator only on an application for a mortgage loan; and (ii) accommodate and reflect recodification of Title 6.1 of the Code of Virginia as Title 6.2 of the Code of Virginia.¹

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations, 10 VAC 5-160, as modified herein and attached hereto, are adopted effective as of the date of this Order.
- (2) This Order and the attached regulations shall be posted on the Commission's website at: <http://www.scc.virginia.gov/case>.
- (3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.
- (4) This case is dismissed from the Commission's docket of active cases.

NOTE: A copy of the attachment entitled "Amendments to Mortgage Lenders and Brokers" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

¹ Chapter 794 of the 2010 Virginia Acts of Assembly.

**CASE NO. BFI-2010-00256
FEBRUARY 18, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
FIRST COMMONWEALTH MORTGAGE CORP.,
Defendant

SETTLEMENT ORDER

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that First Commonwealth Mortgage Corp. ("Defendant") is a licensed mortgage broker under Chapter 16 of Title 6.2 (formerly Chapter 16 of Title 6.1) of the Code of Virginia; that on July 28, 2010, the Bureau of Financial Institutions examined the Defendant and alleged that it had received compensation from borrowers other than that specified in written agreements signed by the borrowers in violation of § 6.1-422 B 4 of the Code of Virginia; failed to obtain borrowers' initials on the written disclosure of terms in violation of § 6.1-2.9:5 2 of the Code of Virginia; and failed to file two written reports with the Commissioner in violation of 10 VAC 5-160-20 5; and that upon being informed that the Commissioner intended to recommend the imposition of a civil penalty, the Defendant offered to settle this case by paying a civil penalty in the sum of Ten Thousand Dollars (\$10,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in the case. The Commissioner has recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the Defendant's offer of settlement, and the recommendation of the Commissioner, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer in settlement of this case is accepted.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2010-00258
FEBRUARY 10, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
EXECUTIVE MORTGAGE SERVICES, INC.,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Executive Mortgage Services, Inc. ("Defendant"), is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on October 28, 2010; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 13, 2010, (1) of his intention to recommend revocation of its license

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unless a new bond was filed by January 13, 2011, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before January 3, 2011; and that no new bond or written request for a hearing was received or filed.

Now the Commission finds that the Defendant has failed to maintain its bond in force as required by law, and

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2010-00259
FEBRUARY 11, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
METSTAR MORTGAGE CORP.,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Metstar Mortgage Corp. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on November 26, 2010; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 13, 2010, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 13, 2011, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before January 3, 2011; and that no new bond or written request for a hearing was received or filed.

NOW THE COMMISSION finds that the Defendant has failed to maintain its bond in force as required by law, and

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2010-00260
FEBRUARY 7, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
INDEPENDENCE MORTGAGE CORPORATION,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Independence Mortgage Corporation ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on November 26, 2010; that the Commissioner, pursuant to delegated authority, gave written notice to the Defendant by certified mail on December 13, 2010, (1) of his intention to recommend revocation of its license unless a new bond was filed by January 13, 2011, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before January 3, 2011; and that no new bond or written request for a hearing was received or filed.

Accordingly, the Commission finds that the Defendant has failed to maintain its bond in force as required by law, and

IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2010-00262
FEBRUARY 11, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
GPAL, INC.,
Defendant

CEASE AND DESIST ORDER

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that GPal, Inc. ("Defendant"), is engaging in the business of money transmission without a license in violation of § 6.2-1901 of the Code of Virginia; that the Commissioner, pursuant to § 6.2-1909 of the Code of Virginia, gave written notice to the Defendant by certified mail on December 28, 2010, (1) of his intention to seek an order from the Commission requiring the Defendant to cease and desist from engaging in the business of money transmission without a

license, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before January 14, 2011; and that no written request for a hearing was received or filed.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Commissioner, finds that the Defendant is engaging in the business of money transmission without a license in violation of § 6.2-1901 of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant shall immediately cease and desist from engaging in the business of money transmission without a license.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00002
MARCH 11, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
ALL FINANCIAL SERVICES, INC.,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that All Financial Services, Inc. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on December 30, 2010; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to the Defendant by certified mail on January 20, 2011, (1) of his intention to recommend revocation of its license unless a new bond was filed by February 20, 2011, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before February 10, 2011; and that no new bond or written request for a hearing was received or filed.

Accordingly, IT IS ORDERED THAT:

- (1) The Commission finds that the Defendant has failed to maintain its bond in force as required by law, and
- (2) The license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2011-00005
MARCH 29, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v..
METAVANTE HOLDINGS, LLC,
Defendant

SETTLEMENT ORDER

The Bureau of Financial Institutions has reported to the State Corporation Commission ("Commission") that Metavante Holdings, LLC ("Defendant"), acquired one hundred percent of the ownership of Metavante Payment Services, LLC, a licensed money transmitter under Chapter 19 of Title 6.2 of the Code of Virginia, without prior Commission approval in violation of § 6.2-1914 of the Code of Virginia; and that the Defendant offered to settle this case by payment of a fine in the sum of Five Thousand Dollars (\$5,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in this case. The Commissioner of Financial Institutions recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer in settlement of this case is accepted.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00006
MARCH 22, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

EOS LENDING SERVICES, LLC,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that EOS Lending Services, LLC ("Defendant"), is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the Defendant failed to respond to a request of the Bureau of Financial Institutions ("Bureau") in violation of 10 VAC 5-160-50; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on January 30, 2011; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 8, 2011, (1) of his intention to recommend revocation of the Defendant's license, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 8, 2011; and that no written request for a hearing was filed.

Now the Commission finds that the Defendant has violated applicable law by failing to (1) respond to a Bureau request, and (2) maintain its bond in force as required, and

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2011-00007
APRIL 26, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

DERI FINANCIAL, LLC,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that Deri Financial, LLC ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on January 12, 2011; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 8, 2011, (1) of his intention to recommend revocation of the Defendant's license unless a new bond was filed by March 8, 2011, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 1, 2011; and that no new bond or written request for a hearing was received or filed.

NOW THE COMMISSION finds that the Defendant has failed to maintain its bond in force as required by law, and

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2011-00008
APRIL 26, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

UNITED FINANCIAL MANAGEMENT GROUP, INC.,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that United Financial Management Group, Inc. ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on January 13, 2011; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to the Defendant by certified mail on February 8, 2011, (1) of his intention to recommend revocation of the Defendant's license unless a new bond was filed by March 8, 2011, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before March 1, 2011; and that no new bond or written request for a hearing was received or filed.

NOW THE COMMISSION finds that the Defendant has failed to maintain its bond in force as required by law, and

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2011-00017
APRIL 26, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

BRAR, INC.,
Defendant

SETTLEMENT ORDER

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that Brar, Inc. ("Defendant"), engaged in the business of making motor vehicle title loans without a license in violation of § 6.2-2201 of the Code of Virginia; and that the Defendant has offered to settle this case by paying a civil penalty in the sum of Ten Thousand Dollars (\$10,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in the case. The Commissioner of Financial Institutions has recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the Defendant's offer of settlement, and the recommendation of the Commissioner, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer in settlement of this case is accepted.
- (2) The case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00019
JUNE 21, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

MORTGAGE ACCESS CORP. D/B/A WEICHERT FINANCIAL SERVICES,
Defendant

ORDER APPROVING CONSENT AGREEMENT

The Commissioner of Financial Institutions ("Commissioner") has requested that the State Corporation Commission ("Commission") approve and accept a multi-state Consent Agreement and Order ("Agreement"), a copy of which is attached hereto and made a part hereof, by and between Mortgage Access Corp. d/b/a Weichert Financial Services, a licensed mortgage lender under Chapter 16 of Title 6.2 of the Code of Virginia, and various state mortgage regulators.¹ The Commissioner has recommended that the Commission (i) approve and accept the Agreement, and (ii) authorize the Commissioner to execute any documents attendant to the Agreement necessary to evidence the Commission's approval and acceptance.

NOW THE COMMISSION, having considered the terms of the Agreement and the recommendation of the Commissioner, is of the opinion and finds that the Agreement should be approved and accepted, and that the Commissioner should be authorized to execute any documents attendant to the Agreement necessary to evidence the Commission's approval and acceptance.

Accordingly, IT IS ORDERED THAT:

- (1) The Agreement is approved and accepted.
- (2) The Commissioner is authorized to execute any documents attendant to the Agreement necessary to evidence the Commission's approval and acceptance.

NOTE: A copy of the Attachment is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

¹ The other state mortgage regulators are the Connecticut Department of Banking; the Kentucky Department of Financial Institutions; the Louisiana Office of Financial Institutions; the Massachusetts Division of Banks; the New Jersey Department of Banking and Insurance; the State of New York Banking Department; the North Carolina Office of the Commissioner of Banks; the Pennsylvania Department of Banking; and the Vermont Department of Banking, Insurance, Securities and Health Care Administration.

**CASE NO. BFI-2011-00023
AUGUST 23, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

BUCKEYE CHECK CASHING OF VIRGINIA, INC. D/B/A CHECK\$MART,
Defendant

SETTLEMENT ORDER

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart ("Defendant"), is a licensed payday lender under Chapter 18 of Title 6.2 (formerly Chapter 18 of Title 6.1) of the Code of Virginia ("Code"); that on August 16, 2010, the Commission's Bureau of Financial Institutions examined the Defendant and alleged that it had violated § 6.1-459 (1) of the Code in one (1) instance, § 6.1-459 (6) of the Code in seven (7) instances, § 6.1-459 (7) of the Code in two (2) instances, § 6.1-459 (10) of the Code in one (1) instance, § 6.1-459 (17) of the Code in four (4) instances, § 6.1-459 (26) of the Code in one (1) instance, 10 VAC 5-200-20 K in one (1) instance, 10 VAC 5-200-33 E in one (1) instance, 10 VAC 5-200-35 E in three (3) instances, 10 VAC 5-200-110 D in twenty-four (24) instances, 10 VAC 5-200-110 K in three (3) instances, and 10 VAC 5-200-110 N in one (1) instance; and that upon being informed that the Commissioner intended to recommend the imposition of a civil penalty, the Defendant offered to settle this case by paying a civil penalty in the sum of Thirty Thousand Dollars (\$30,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in the case. The Commissioner has recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the Defendant's offer of settlement, and the recommendation of the Commissioner, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer in settlement of this case is accepted.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00025
APRIL 29, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: amendments to motor vehicle title lending regulations

ORDER TO TAKE NOTICE

Section 6.2-2214 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 22 (§ 6.2-2200 *et seq.*) of Title 6.2 of the Code of Virginia ("Chapter 22"). The Commission's motor vehicle title lending regulations are set forth in Title 10 of the Virginia Administrative Code.

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to 10 VAC 5-210-10 *et seq.* of the Virginia Administrative Code ("Chapter 210"). The primary impetus for the proposed amendments is Chapter 418 of the 2011 Virginia Acts of Assembly ("Chapter 418"), which becomes effective on July 1, 2011. Chapter 418 amends Chapter 22 by eliminating provisions that currently prohibit motor vehicle title lenders from making loans secured by motor vehicles that are registered outside of Virginia.

The Bureau is also proposing to add a new section to Chapter 210 based on § 6.2-2213 of the Code of Virginia, which requires licensed motor vehicle title lenders to pay an annual fee calculated in accordance with a schedule set by the Commission. The annual fee will defray the costs of the examination, supervision, and regulation of Licensees under Chapter 22. The schedule is required to bear a reasonable relationship to the business volume of such Licensees, the actual costs of their examinations, and other factors relating to their supervision and regulation.

Lastly, the Bureau is proposing to add a clarification to 10 VAC 5-210-50 regarding motor vehicle title loans that have been arranged or brokered by another person.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of July 1, 2011, in order to coincide with the effective date of Chapter 418.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations are appended hereto and made a part of the record herein.
- (2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before June 6, 2011. Requests for a hearing shall state why a

hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2011-00025. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached proposed regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

NOTE: A copy of Attachment A entitled "Motor Vehicle Title Lending" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. BFI-2011-00025
JUNE 24, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte : In re: amendments to motor vehicle title lending regulations

ORDER ADOPTING REGULATIONS

On April 29, 2011, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend the Commission's motor vehicle title lending regulations, which are set forth in Chapter 210 of Title 10 of the Virginia Administrative Code. The Order and proposed regulations were published in the Virginia Register of Regulations on May 23, 2011, posted on the Commission's website, and mailed to all licensed motor vehicle title lenders and other interested parties. Licensed motor vehicle title lenders and other interested parties were afforded the opportunity to file written comments or request a hearing on or before June 6, 2011.

Comments on the proposed regulations were timely filed by Ms. Katie L. Grove on behalf of TitleMax of Virginia, Inc. ("TitleMax"). In its comment letter, TitleMax contended that the proposed assessment schedule for motor vehicle title lenders is not consistent with the Commission's assessment schedule for payday lenders, and that virtually every state in which motor vehicle title lending is permitted charges a flat fee per location as an annual fee.

The Bureau considered the comments filed by TitleMax and responded to them in its Statements of Position, which the Bureau filed in this case on June 22, 2011. In response to TitleMax's comments, the Bureau reported that the annual assessment generated by licensed payday lenders has become inadequate, and that the Bureau will soon be proposing amendments to 10 VAC 5-200-90 of the Virginia Administrative Code. Furthermore, because motor vehicle title lenders appear to make significantly fewer loans than payday lenders, the amount assessed per motor vehicle title loan must be considerably higher than the amount assessed per payday loan in order to generate a comparable total assessment. With regard to fees charged by other states, the Bureau pointed out that many of the states referenced by TitleMax impose examination charges in addition to a flat fee per location. The Bureau also noted that the flat fee per location approach advocated by TitleMax is not viable in light of the requirement in § 6.2-2213 of the Code of Virginia that the schedule of annual fees bear a reasonable relationship to the business volume of motor vehicle title lenders.

NOW THE COMMISSION, having considered the proposed regulations, the comments filed, the Bureau's Statements of Position, the record herein, and applicable law, concludes that the proposed regulations should be adopted as proposed.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as attached hereto, are adopted effective July 1, 2011.

(2) This Order and the attached regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/cas>.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

NOTE: A copy of Attachment A entitled "Motor Vehicle Title Lending" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NOS. BFI-2011-00030, BFI-2011-00033, BFI-2011-00036, BFI-2011-00038,
BFI-2011-00042, BFI-2011-00044, BFI-2011-00053, BFI-2011-00054,
BFI-2011-00061, BFI-2011-00064, BFI-2011-00067, AND BFI-2011-00069
JULY 1, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

APPOMATTOX MORTGAGE, LLC; BRINER, INCORPORATED; CAPITOL FINANCING LLC (Used in Virginia by: Capital Funding, LLC); CONSUMER FUNDING, INC.; FUTURES SAFE FINANCIAL CORPORATION; IKON MORTGAGE, INC.; MORTGAGE CORPORATION, THE; MORTGAGECLOSE.COM, INC.; OMAR MORTGAGE INC.; SAVER'S CHOICE MORTGAGE AND FUNDING OF OHIO INC.; SMITH-MYERS CORPORATION d/b/a SMITH-MYERS MORTGAGE GROUP; U.S. MORTGAGE FINANCE CORP.,
Defendants

ORDER REVOKING LICENSES

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that the Defendants are licensed to engage in business under Chapter 16 of Title 6.2 of the Code of Virginia; that the Defendants failed to file the annual report required by § 6.2-1610 of the Code of Virginia; that he, the Commissioner, pursuant to delegated authority, gave written notice to each Defendant by certified mail on May 4, 2011: (1) of his intentions to recommend revocation of their license unless the annual report was received by June 6, 2011 ; and (2) that a written request for a hearing was required to be filed in the office of the Clerk of the Commission on or before May 25, 2011 ; and that no annual report or written request for a hearing was received or filed.

NOW THE COMMISSION finds that the Defendants failed to file their annual reports as required by law.

Accordingly, IT IS ORDERED that the licenses granted to the Defendants to engage in business as a mortgage lender, mortgage broker, or both, as the case may be, are hereby revoked

**CASE NO. BFI-2011-00077
JULY 27, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

LOGICAL MORTGAGE SOLUTIONS, LLC,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that Logical Mortgage Solutions, LLC ("Defendant"), is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on May 8, 2011; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to the Defendant by certified mail on May 20, 2011, (1) of his intention to recommend revocation of the Defendant's license unless a new bond was filed by June 20, 2011, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before June 10, 2011; and that no new bond or written request for a hearing was received or filed.

NOW THE COMMISSION finds that the Defendant has failed to maintain its bond in force as required by law; and

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2011-00081
SEPTEMBER 7, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

AMERICAN HOME LOANS I LLC,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that American Home Loans I LLC ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on June 9, 2011; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to the Defendant by certified mail on June 21, 2011, (1) of his intention to recommend revocation of its license unless a new bond was filed by July 21, 2011, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before July 12, 2011; and that no new bond or written request for a hearing was received or filed.

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NOW THE COMMISSION finds that the Defendant has failed to maintain its bond in force as required by law.

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2011-00082
AUGUST 4, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

EZ LOAN LOOK UP, INC.,
Defendant

CEASE AND DESIST ORDER

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that EZ Loan Look Up, Inc. ("Defendant"), is engaging in the business of arranging or brokering motor vehicle title loans for Virginia residents in violation of § 6.2-2201 (2) of the Code of Virginia; that the Commissioner, pursuant to § 6.2-2220 of the Code of Virginia, gave written notice to the Defendant by certified mail on June 21, 2011, (i) of his intention to seek an order from the Commission requiring the Defendant to cease and desist from engaging in the business of arranging or brokering motor vehicle title loans for Virginia residents, and (ii) that a written request for a hearing was required to be filed in the Office of the Clerk on or before July 21, 2011; and that no written request for a hearing was received or filed.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Commissioner, finds that the Defendant is engaging in the business of arranging or brokering motor vehicle title loans for Virginia residents in violation of § 6.2-2201 (2) of the Code of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant shall immediately cease and desist from engaging in the business of arranging or brokering motor vehicle title loans for Virginia residents in violation of § 6.2-2201 (2) of the Code of Virginia.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00085
JULY 12, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: annual fees paid by licensed payday lenders

ORDER TO TAKE NOTICE

Section 6.2-1814 of the Code of Virginia authorizes the State Corporation Commission ("Commission") to adopt a schedule of annual fees to be paid by licensed payday lenders ("Licensees") to defray the costs of their examination, supervision, and regulation. The schedule is required to bear a reasonable relationship to the business volume of Licensees, the actual costs of their examinations, and to other factors relating to their supervision and regulation. The Commission's schedule of annual fees is prescribed in 10 VAC 5-200-90 of the Virginia Administrative Code.

Over the past few years, there have been significant declines in the total number of Licensees, the total number of offices maintained by Licensees, and the total number of payday loans made by Licensees. According to the most recent annual report published by the Bureau of Financial Institutions ("Bureau"), 31 Licensees operated 288 offices and made 435,273 payday loans in 2010. By comparison, 84 Licensees operated 832 offices and made 3,537,395 payday loans in 2007. While the Bureau's direct examination expenses have consequently decreased in part, such expenses represent only a portion of the total costs incurred by the Bureau in examining, supervising, and regulating Licensees. A large percentage of the Bureau's costs are fixed overhead expenses as well as salaries and benefits for supervisors and support staff, which are unaffected by the contraction of the industry but must nevertheless be recovered through the annual assessment. Moreover, examinations of Licensees have become more complex and time consuming as a result of the extensive statutory and regulatory amendments that went into effect on January 1, 2009. Since the annual assessment calculation is based on the number of offices operated by Licensees and the number of loans made by Licensees, both of which have markedly declined in recent years, the total assessment generated by 10 VAC 5-200-90 has become inadequate. Therefore, the Bureau has now submitted to the Commission proposed amendments to 10 VAC 5-200-90 in order to better recover the sums necessary to examine, supervise, and regulate Licensees.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulation should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulation is appended hereto and made a part of the record herein.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(2) Comments or requests for a hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before August 15, 2011. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2011-00085. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached proposed regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

NOTE: A copy of Attachment A entitled "Schedule of annual fees for the examination, supervision, and regulation of payday lenders" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. BFI-2011-00085
AUGUST 23, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: annual fees paid by licensed payday lenders

ORDER ADOPTING A REGULATION

On July 12, 2011, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend 10 VAC 5-200-90, which prescribes the schedule of annual fees to be paid by licensed payday lenders ("Licensees"). The Order and proposed regulation were published in the Virginia Register of Regulations on August 1, 2011, posted on the Commission's website, and mailed to all Licensees and other interested parties. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before August 15, 2011.

Comments on the proposed regulation were timely filed by RKZ Management, LLC, and the Community Financial Services Association of America.¹ The Commission did not receive any requests for a hearing.

NOW THE COMMISSION, having considered the proposed regulation, the comments filed, the record herein, and applicable law, concludes that the proposed increase in annual fees is necessary in order to recover the various costs incurred by the Bureau in examining, supervising, and regulating Licensees and that the proposed regulation should be adopted. The Commission further concludes that the Bureau should continue to monitor whether the annual fees assessed pursuant to § 6.2-1814 A of the Code of Virginia and 10 VAC 5-200-90 remain offset by the total costs associated with examining, supervising, and regulating Licensees.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, as attached hereto, is adopted effective September 1, 2011.

(2) This Order and the attached regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

NOTE: A copy of Attachment A entitled "Schedule of annual fees for the examination, supervision, and regulation of payday lenders" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

¹ After the comment period deadline, a comment letter was filed by EXTOL Corporation, Inc. d/b/a QUICK CHECK: Cash Advance.

**CASE NOS. BFI-2011-00086, BFI-2011-00096, BFI-2011-00097, BFI-2011-00098,
BFI-2011-00105, BFI-2011-00109, BFI-2011-00111, BFI-2011-00122, BFI-2011-00123, BFI-2011-00126,
BFI-2011-00130, BFI-2011-00132, BFI-2011-00139, BFI-2011-00145, BFI-2011-00152, BFI-2011-00155,
BFI-2011-00157, BFI-2011-00159, BFI-2011-00160, BFI-2011-00161, BFI-2011-00163, BFI-2011-00165,
BFI-2011-00190, BFI-2011-00193, BFI-2011-00194, AND BFI-2011-00196
AUGUST 29, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

1ST CLASS MORTGAGE, INC.; AMERICAN MORTGAGE & LOAN, INC.; AMERICAN MORTGAGE AND INVESTMENT SERVICES, INC.; AMERICAN MORTGAGE BROKERS, LLC; BLUE RIDGE FINANCE CORPORATION; BRUNSWICK MORTGAGE COMPANY INC.; CAPITAL MORTGAGE CORP.; DAVLAW ENTERPRISES, INC. D/B/A. UNION FIRST MORTGAGE; DOMINION FIRST, INC.; EDITH A. INZAINA T/A ADVANTAGE MORTGAGE GROUP; EWIZ MORTGAGE CORPORATION; FAIRFAX TRUST MORTGAGE LLC; GREATER WASHINGTON MORTGAGE, LLC; INTEGRITY MORTGAGE FUNDING, L.L.C.; LOANPOINT MORTGAGE GROUP, INC.; MAIN LINE-TAVISTOCK MORTGAGE, INC.; MARINE 1 MORTGAGE LENDERS, LLC D/B/A MARINE 1 MORTGAGE; MORTGAGE AMERICA COMPANIES, INC.; MORTGAGE CHOICE, LLC; MORTGAGE CONCEPTS, INC.; MORTGAGE ENTERPRISES, INC.; NATIONSFIRST MORTGAGE OF VIRGINIA, LLC; THE PERPETUAL FINANCIAL GROUP, INC.; UNIVERSITY MORTGAGE LLC; US MORTGAGE NETWORK L.P. (USED IN VA BY: US MORTGAGE NETWORK); and ZESHAN FINANCIAL SERVICES, LLC,

Defendants

ORDER REVOKING LICENSES

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that the Defendants are licensed to engage in business under Chapter 16 of Title 6.2 of the Code of Virginia; that the Defendants were licensed to engage in business under Chapter 16 of Title 6.2 of the Code of Virginia prior to January 1, 2011; that the Defendants failed to obtain a unique identifier from and provide all required information to the Nationwide Mortgage Licensing System and Registry ("NMLS") by April 1, 2011 in violation of 10 VAC 5-160-90; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to each Defendant by certified mail on July 7, 2011, (1) of his intention to recommend revocation of their license for failing to obtain a unique identifier from and provide all required information to the NMLS as required by 10 VAC 5-160-90, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before July 28, 2011; and that no written request for a hearing was filed.

NOW THE COMMISSION finds that the Defendants failed to obtain a unique identifier from and provide all required information to the NMLS as required by law.

Accordingly, IT IS ORDERED THAT the licenses granted to the Defendants to engage in business as a mortgage broker, mortgage lender, or both, as the case may be, are hereby revoked.

**CASE NO. BFI-2011-00098
SEPTEMBER 19, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

AMERICAN MORTGAGE BROKERS, LLC,
Defendant

ORDER REINSTATING A LICENSE

On August 29, 2011, the State Corporation Commission ("Commission") entered an Order revoking the mortgage broker license issued to American Mortgage Brokers, LLC ("Defendant"), under Chapter 16 of Title 6.2 of the Code of Virginia for failure to obtain a unique identifier from, and provide all required information to, the Nationwide Mortgage Licensing System and Registry ("NMLS") by April 1, 2011, in violation of 10 VAC 5-160-90. Thereafter, the Staff reported to the Commission that the Defendant subsequently obtained a unique identifier from, and provided all required information to, NMLS, and the Commissioner of Financial Institutions recommended that the Commission reinstate the Defendant's mortgage broker license.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's mortgage broker license is reinstated effective August 29, 2011.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00125
SEPTEMBER 1, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

DREAM AMERICA LLC D/B/A DREAM MORTGAGE,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that Dream America LLC d/b/a Dream Mortgage ("Defendant") is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the Defendant failed to obtain a unique identifier from, and provide all required information to, the Nationwide Mortgage Licensing System and Registry ("NMLS") by April 1, 2011, in violation of 10 VAC 5-160-90; that the Defendant failed to increase the amount of its surety bond, in violation of §§ 6.2-1604 and 6.2-1703 of the Code of Virginia and 10 VAC 5-161-50; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 7, 2011, (1) of his intention to recommend revocation of the Defendant's license, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before August 5, 2011; and that no written request for a hearing was filed.

NOW THE COMMISSION finds that the Defendant has violated applicable law by failing to (1) obtain a unique identifier from, and provide all required information to, the NMLS, and (2) increase its surety bond.

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2011-00163
SEPTEMBER 19, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

MORTGAGE ENTERPRISES, INC.,
Defendant

ORDER REINSTATING A LICENSE

On August 29, 2011, the State Corporation Commission ("Commission") entered an Order revoking the mortgage broker license issued to Mortgage Enterprises, Inc. ("Defendant"), under Chapter 16 of Title 6.2 of the Code of Virginia for failure to obtain a unique identifier from, and provide all required information to, the Nationwide Mortgage Licensing System and Registry ("NMLS") by April 1, 2011, in violation of 10 VAC 5-160-90. Thereafter, the Staff reported to the Commission that the Defendant subsequently obtained a unique identifier from, and provided all required information to, NMLS, and the Commissioner of Financial Institutions recommended that the Commission reinstate the Defendant's mortgage broker license.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's mortgage broker license is reinstated effective August 29, 2011.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00199
AUGUST 23, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

KEEFE COMMISSARY NETWORK, L.L.C. D/B/A ACCESS CORRECTIONS,
Defendant

SETTLEMENT ORDER

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that Keefe Commissary Network, L.L.C. d/b/a Access Corrections ("Defendant"), engaged in the business of money transmission without obtaining a license in violation of § 6.2-1901 of the Code of Virginia; and that the Defendant has offered to settle this case by paying a civil penalty in the sum of Twenty Five Thousand Dollars (\$25,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in this case. The Commissioner of Financial Institutions has recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, having considered the record herein, the Defendant's offer of settlement, and the recommendation of the Commissioner, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer in settlement of this case is accepted.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes

**CASE NO. BFI-2011-00208
JULY 27, 2011**

IN THE MATTER OF
VIRGINIA BUSINESS BANK
9020 Stony Point Parkway, Suite 225
Richmond, Virginia 23235

ORDER CLOSING THE BANK

Upon examination of Virginia Business Bank, a Virginia state-chartered bank operating under Chapter 8 of Title 6.2 of the Code of Virginia and a member of the Federal Reserve System having its deposit accounts insured by the Federal Deposit Insurance Corporation ("FDIC"), and on the basis of other information presented by the Commissioner of Financial Institutions ("Commissioner"), the State Corporation Commission ("Commission") finds that it is necessary in order to protect the public interest to close Virginia Business Bank without prior notice in accordance with § 6.2-913 of the Code of Virginia and to seek the appointment of the FDIC as receiver for Virginia Business Bank, as provided by law. The Commission further finds, based on a report of examination and other information, that (1) Virginia Business Bank is at or near insolvency, (2) Virginia Business Bank has insufficient capital for safe and sound operation, (3) no reasonable prospect for rehabilitation of Virginia Business Bank exists, (4) Virginia Business Bank has failed to devise an acceptable plan for restoration of its capital, (5) action must be taken to protect Virginia Business Bank's depositors and conserve its assets, and (6) disposition of its assets and liabilities by the FDIC as receiver is in the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Virginia Business Bank be closed, and Virginia Business Bank hereby is closed, as of 5:00 pm on Friday, July 29, 2011.
- (2) Virginia Business Bank shall deliver its books, assets, and affairs to the Commissioner or such agents as he may designate.
- (3) The Commissioner or his agents shall take charge of such books, assets, and affairs and then relinquish them to the FDIC as receiver for Virginia Business Bank pursuant to an appropriate order by a circuit court.
- (4) A notice of closing shall be posted at the main entrance of Virginia Business Bank.

**CASE NO. BFI-2011-00209
SEPTEMBER 23, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
COMMONWEALTH MORTGAGE CORPORATION,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that Commonwealth Mortgage Corporation ("Defendant") is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the Defendant failed to respond to a request of the Bureau of Financial Institutions ("Bureau") in violation of 10 VAC 5-160-50; that the Defendant failed to pay the annual fee required under § 6.2-1612 of the Code of Virginia; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to the Defendant by certified mail on July 29, 2011, (1) of his intention to recommend revocation of the Defendant's license, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before August 29, 2011; and that no written request for a hearing was filed.

NOW THE COMMISSION finds that the Defendant has violated applicable law by failing to (1) respond to a request of the Bureau, and (2) pay its annual fee.

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage lender and mortgage broker is hereby revoked.

**CASE NO. BFI-2011-00210
OCTOBER 21, 2011**

PETITION OF
MICHAEL MILLER

For approval of mortgage loan originator license

DISMISSAL ORDER

On July 29, 2011, Mr. Michael Miller ("Petitioner") filed a Petition with the State Corporation Commission ("Commission") for approval of his application for a mortgage loan originator license. On August 16, 2011, the Commissioner of Financial Institutions met with the Petitioner, and the Bureau of Financial Institutions ("Bureau"), by counsel, filed a Motion for Extension of Time in Which to File Responsive Pleading. On August 19, 2011, the Commission granted the Motion for Extension of Time in Which to File Responsive Pleading and extended the Bureau's responsive pleading deadline to September 2, 2011. On September 2, 2011, the Bureau filed its Answer.

On October 14, 2011, the Bureau filed a Motion to Dismiss this case without prejudice ("Motion") that was agreed to by the Petitioner. In its Motion, the Bureau reported that the parties have agreed to resolve this matter.

NOW THE COMMISSION, having considered the Motion, is of the opinion and finds that this case should be dismissed without prejudice.

Accordingly, IT IS ORDERED THAT:

- (1) The Motion is hereby granted.
- (2) This case is dismissed without prejudice.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00211
AUGUST 24, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

F & L MARKETING ENTERPRISES, LLC, D/B/A CASH-2-U PAYDAY LOANS,
Defendant

SETTLEMENT ORDER

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that F & L Marketing Enterprises, LLC d/b/a Cash-2-U Payday Loans ("Defendant") is a licensed payday lender under Chapter 18 of Title 6.2 of the Code of Virginia ("Code"); that on March 11, 2011, the Bureau of Financial Institutions ("Bureau") examined the Defendant and alleged that it had violated § 6.2-1816 (6) of the Code in eighteen instances, § 6.2-1816 (7) of the Code in three instances, § 6.2-1816 (8) of the Code in two instances, § 6.2-1816 (14) of the Code in two instances, § 6.2-1816 (17) of the Code in three instances, § 6.2-1816 (25) of the Code in three instances, § 6.2-1816 (27) of the Code in two instances, 10 VAC 5-200-20 (G) in one instance, 10 VAC 5-200-30 (A) in one instance, 10 VAC 5-200-30 (B) in one instance, 10 VAC 5-200-70 (C) in two instances, 10 VAC 5-200-110 (D) in twenty seven instances, 10 VAC 5-200-110 (I) in one instance, and 10 VAC 5-200-110 (K) in two instances; that upon being informed that the Commissioner intended to recommend the imposition of a civil penalty, the Defendant has offered to settle this case by paying a civil penalty in the sum of Forty Thousand Dollars (\$40,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in the case; and the Commissioner recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code.

NOW THE COMMISSION, having considered the record herein, the Defendant's offer of settlement, and the recommendation of the Commissioner, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's offer in settlement of this case is accepted.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00221
DECEMBER 21, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

JAVIER SIVERONI,
Defendant

ORDER

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Javier Siveroni ("Defendant") of Springfield, Virginia, is a mortgage loan originator licensed under Chapter 17 of Title 6.2 of the Code of Virginia; that on August 1, 2011, the Defendant pled guilty to the felony of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349; that on November 8, 2011, the Defendant was convicted of conspiracy to commit wire fraud in the United States District Court, Eastern District of Virginia (Alexandria Division); and that in the opinion of the Commissioner, the conviction and the acts that led to it are (i) grounds for revoking the Defendant's license, and (ii) reasonably related to the qualifications, functions, or duties of a person employed by, or in a position of management or control of, a mortgage lender or mortgage broker licensed under Chapter 16 of Title 6.2 of the Code of Virginia. On September 15, 2011, the Commissioner gave written notice to the Defendant by certified mail (i) of his intention to recommend that the Defendant's license be revoked pursuant to § 6.2-1716 of the Code of Virginia and that the Defendant be barred, pursuant to § 6.2-1620 of the Code of Virginia, from any position of employment, management, or control of any licensed mortgage lender or mortgage broker; and (ii) that a written request for a hearing was required to be filed in the Office of the Clerk on or before October 15, 2011; and that no written request for a hearing was received or filed.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Commissioner, finds that the Defendant has pled guilty to and been convicted of a felony involving fraud, and that the conviction involved an offense reasonably related to the qualifications, functions, or duties of a person employed by, or in a position of management or control of, a licensed mortgage lender or mortgage broker.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant's mortgage loan originator license is hereby revoked;
- (2) The Defendant is barred from any position of employment, management, or control of a licensed mortgage lender or mortgage broker.
- (3) This case is dismissed.
- (4) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00222
NOVEMBER 8, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

GATEWAY FUNDING DIVERSIFIED MORTGAGE SERVICES, L.P.,
Defendant

SETTLEMENT ORDER

The Commissioner of Financial Institutions ("Commissioner") has reported to the State Corporation Commission ("Commission") that Gateway Funding Diversified Mortgage Services, L.P. ("Defendant"), is licensed to engage in business as a mortgage lender and mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia ("Code"); that on March 25, 2011, the Bureau of Financial Institutions ("Bureau") examined the Defendant and alleged that it had failed to disclose the terms of mortgage applications at the times of application in violation of § 6.2-406 of the Code, obtained agreements or instruments in which blanks were left to be filled in after execution in violation of § 6.2-1614 of the Code, failed to maintain tax and insurance premium funds in an escrow account segregated from its own accounts in violation of § 6.2-1618(A) of the Code, failed to file two written reports with the Commissioner in violation of 10 VAC 5-160-20(5), and failed to have its representatives sign rate lock-in agreements in violation of 10 VAC 5-160-30(B); that upon being informed that the Commissioner intended to recommend the imposition of a civil penalty, the Defendant has offered to settle this case by paying a civil penalty in the sum of Ten Thousand Dollars (\$10,000), tendered said sum to the Commonwealth of Virginia, and waived its right to a hearing in the case; and the Commissioner recommended that the Commission accept the Defendant's offer of settlement pursuant to the authority granted under § 12.1-15 of the Code.

NOW THE COMMISSION, having considered the record herein, the Defendant's offer of settlement, and the recommendation of the Commissioner, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT

:

- (1) The Defendant's offer in settlement of this case is accepted.
- (2) This case is dismissed.
- (3) The papers filed herein shall be placed in the file for ended causes.

**CASE NO. BFI-2011-00223
SEPTEMBER 20, 2011**

IN THE MATTER OF
BANK OF THE COMMONWEALTH
403 Boush Street
Norfolk, Virginia 23510

ORDER CLOSING THE BANK

Upon examination of Bank of the Commonwealth, a Virginia state-chartered bank operating under Chapter 8 of Title 6.2 of the Code of Virginia and a member of the Federal Reserve System having its deposit accounts insured by the Federal Deposit Insurance Corporation ("FDIC"), and on the basis of other information presented by the Commissioner of Financial Institutions ("Commissioner"), the State Corporation Commission ("Commission") finds that it is necessary in order to protect the public interest to close Bank of the Commonwealth without prior notice in accordance with § 6.2-913 of the Code of Virginia and to seek the appointment of the FDIC as receiver for Bank of the Commonwealth, as provided by law. The Commission further finds, based on a report of examination and other information, that (1) under the terms of a Written Agreement dated July 2, 2010, between Bank of the Commonwealth, Commonwealth Bankshares, Inc., the Federal Reserve Bank of Richmond, and the Commission's Bureau of Financial Institutions, Bank of the Commonwealth was required to submit a capital restoration plan designed to maintain sufficient capital and its financial soundness, but its capital subsequently continued to decline; (2) on July 1, 2011, the Board of Governors of the Federal Reserve System ("Board") notified Bank of the Commonwealth in a Prompt Corrective Action Directive that it was critically undercapitalized and that it needed to raise additional capital within 30 days (or such additional time as the Board may permit);¹ (3) Bank of the Commonwealth's capital is dangerously low, quickly deteriorating at an average rate of approximately \$1.5 million per month, and insufficient for safe and sound operation; (4) Bank of the Commonwealth is rapidly approaching insolvency, and no reasonable prospect for rehabilitation of Bank of the Commonwealth exists; (5) action must be taken to protect Bank of the Commonwealth's depositors and conserve its assets; and (6) disposition of its assets and liabilities by the FDIC as receiver is in the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Bank of the Commonwealth be closed, and Bank of the Commonwealth hereby is closed, as of 6:05 pm on Friday, September 23, 2011.
- (2) Bank of the Commonwealth shall deliver its books, assets, and affairs to the Commissioner or such agents as he may designate.
- (3) The Commissioner or his agents shall take charge of such books, assets, and affairs and then relinquish them to the FDIC as receiver for Bank of the Commonwealth pursuant to an appropriate order by a circuit court.
- (4) A notice of closing shall be posted at the main entrance of Bank of the Commonwealth.

¹ In the alternative, the Prompt Corrective Action Directive required Bank of the Commonwealth to enter into and close a contract to be acquired by a depository institution holding company or combine with another insured depository institution.

**CASE NO. BFI-2011-00225
DECEMBER 6, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
BANKERS FINANCIAL GROUP, INC.,
Defendant

ORDER REVOKING A LICENSE

The Commissioner of Financial Institutions has reported to the State Corporation Commission ("Commission") that Bankers Financial Group, Inc. ("Defendant"), is licensed to engage in business as a mortgage broker under Chapter 16 of Title 6.2 of the Code of Virginia; that the bond filed by the Defendant pursuant to § 6.2-1604 of the Code of Virginia was cancelled on August 24, 2011; that the Commissioner of Financial Institutions, pursuant to delegated authority, gave written notice to the Defendant by certified mail on October 4, 2011, (1) of his intention to recommend revocation of the Defendant's license unless a new bond was filed by November 4, 2011, and (2) that a written request for a hearing was required to be filed in the Office of the Clerk on or before October 25, 2011; and that no new bond or written request for a hearing was received or filed.

NOW THE COMMISSION finds that the Defendant has failed to maintain its bond in force as required by law.

Accordingly, IT IS ORDERED THAT the license granted to the Defendant to engage in business as a mortgage broker is hereby revoked.

**CASE NO. BFI-2011-00235
NOVEMBER 28, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: low-income designated credit unions

ORDER TO TAKE NOTICE

Section 6.2-1303 of the Code of Virginia authorizes the State Corporation Commission ("Commission") to adopt such regulations as may be necessary to permit state-chartered credit unions to have powers at least comparable with those of federal credit unions, regardless of any existing statute, regulation, or court decision limiting or denying such powers to state-chartered credit unions. Federal credit unions that predominantly serve low-income members as defined in 12 C.F.R. § 701.34 may obtain a low-income designation. Low-income designated credit unions are eligible under federal law to accept nonmember deposits and secondary capital, participate in the Community Development Revolving Loan Program, and obtain funds from the Community Development Financial Institutions Fund operated by the United States Department of the Treasury. Low-income designated credit unions are also eligible for an exception to the aggregate loan limit on member business loans.

The Commission is informed that certain state-chartered credit unions wish to have the power to obtain a low-income designation so that they can also take advantage of the aforementioned benefits and resources, and the Bureau of Financial Institutions ("Bureau") has submitted to the Commission a proposed parity regulation.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulation should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulation is appended hereto and made a part of the record herein.
- (2) Comments or requests for a hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before January 6, 2012. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2011-00235. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available on the Commission's website: <http://www.scc.virginia.gov/case>.
- (3) This Order and the attached proposed regulation shall be posted on the Commission's website: <http://www.scc.virginia.gov/case>.
- (4) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached proposed regulation, to the Virginia Registrar of Regulations for publication in the [Virginia Register of Regulations](#).

NOTE: A copy of Attachment A entitled "Low-Income Designated Credit Unions" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

CLERK'S OFFICE

**CLK-2009-00002
MARCH 23, 2011**

BIRACH BROADCASTING CORPORATION,
Petitioner,
v.
SIMA BIRACH, JR.,
Respondent.

FINAL ORDER

On February 17, 2009, Birach Broadcasting Corporation ("BBC" or "Petitioner")¹ filed with the State Corporation Commission ("Commission") an Amended Petition ("Amended Petition") seeking relief against Sima Birach, Jr. ("Respondent" or "Birach Jr."). The Amended Petition alleged that the Respondent signed and filed with the Office of the Clerk of the Commission ("Clerk") an application to obtain a certificate of authority to transact business in Virginia without the authority from BBC, and incurred unpaid debt in BBC's name with resulting damage to BBC. In support of its Amended Petition, BBC represented that Sima Birach, Sr. ("Birach Sr."), is the sole officer, director and shareholder of BBC. BBC sought a declaration from the Commission finding that the certificate of authority is void *ab initio* and enjoining the Respondent from representing himself as an officer, director, or authorized agent of BBC.

On February 25, 2009, the Commission entered a Scheduling Order that, among other things, scheduled a hearing on the Amended Petition for May 18, 2009.

On April 2, 2009, Ravi Penat ("Penat"), by counsel, filed a Motion to Intervene in this proceeding to oppose the relief requested by BBC. Penat stated that BBC issued or guaranteed three promissory notes in Virginia in exchange for money he loaned BBC. He filed lawsuits in the Circuit Court of Fairfax County to enforce two of the notes and obtained judgments on those notes.² Penat requested the right to participate in this matter.³

On May 18, 2009, a hearing convened as scheduled. During the hearing, the Hearing Examiner considered the testimony of two witnesses and accepted documentary evidence into the record.⁴

On June 29, 2009, BBC, in its post-hearing brief, moved the Commission to strike all testimony adduced at the hearing by counsel for the Respondent.⁵ On July 24, 2009, BBC filed a Motion for Leave to File Additional Supplemental and Previously Unavailable Evidence.⁶ On August 26, 2009, the Hearing Examiner filed his report ("Report"). In his Report, the Hearing Examiner found:

- (1) BBC's motion to strike the evidence should be denied;
- (2) BBC was doing its primary business in Virginia – operating WDMV radio;
- (3) Pursuant to § 13.1-757 of the Code of Virginia, BBC was required to have a certificate of authority as a foreign corporation during the period in which WDMV operated from a studio at 3975 Fair Ridge Drive, Suite 200 N, Fairfax, Virginia;
- (4) The Commission should deny BBC's petition to void its certificate of authority *ab initio*;
- (5) Since BBC was found to be doing business in Virginia, the issue whether the Respondent had authority to file the request for a certificate of authority on behalf of BBC is moot; and
- (6) There is no need for the Commission to address whether BBC's ownership of FCC licenses for WBVA and WVAB, without studio or transmission facilities in Virginia, requires a certificate of authority as a foreign corporation.

The Hearing Examiner recommended the Commission enter an order adopting the findings and recommendations contained in his Report; denying BBC's motion to strike the evidence; denying BBC's Amended Petition; and passing the papers herein to the file for ended causes.⁷

¹ BBC incorporated in the state of Michigan on January 16, 1986.

² Circuit Court of Fairfax County, Civil Action No. 2008 11920.

³ On April 15, 2009, BBC filed its Opposition to Motion to Intervene and a Motion for Entry of Judgment Against Sima Birach, Jr. by Default ("Motion for Default Judgment"). By Hearing Examiner's Ruling dated April 29, 2009, Penat's Motion to Intervene was granted and BBC's Motion for Default Judgment was denied.

⁴ At the conclusion of the hearing, the Hearing Examiner directed the parties to file post-hearing briefs. Timely post-hearing briefs were filed by BBC, Penat and the Respondent.

⁵ The Hearing Examiner denied the motion to strike. Report at 20.

⁶ The Hearing Examiner found the record in this proceeding closed and disallowed an order from the United States District Court for the Eastern District of Virginia. Hearing Examiner's Report at 5.

On December 16, 2009, the Commission entered an Order in which it found that additional briefing of the legal issues presented by the case was warranted. Specifically, the Commission directed the Clerk to file a brief on or before January 12, 2010, addressing the legal issues relevant to the proceeding, including, but not limited to:

(1) Does the doing of business in the Commonwealth of Virginia by a foreign corporation negate the requirement of § 13.1-604(F) of the Code of Virginia that documents filed with the Commission "in the name of [a] corporation" are to be executed "[b]y the chairman or any vice-chairman of the board of directors, the president, or any other of its officers authorized to act on behalf of the corporation"?

(2) Does the doing of business in the Commonwealth of Virginia by a foreign corporation negate the Commission's authority to "correct Commission records so as to eliminate the effects of . . . filings made by a person or persons without authority to act for the corporation," as set forth in § 13.1-614(C) of the Code of Virginia, if the person who signed the application for the foreign corporation's certificate of authority lacked the legal authority to do so?

(3) What is the statutory remedy or remedies if a foreign corporation is doing business in Virginia without a properly issued certificate of authority?

Additionally, the Commission afforded all parties the opportunity to respond to the Clerk's legal brief.

On January 12, 2010, the Clerk, by counsel, filed its Post-Hearing Brief. In his brief, the Clerk stated that: (i) pursuant to § 13.1-604 of the Code of Virginia, the Commission must first determine whether or not the Respondent had the authority to file the application for BBC's certificate of authority before it can render the certificate of authority valid; (ii) pursuant to § 13.1-614 C of the Code of Virginia, the Commission has the flexibility to correct its records when a corporation discovers that a filing has been made on its behalf by a person lacking the authority to act for the corporation; and (iii) a foreign corporation is required by § 13.1-757 of the Code of Virginia to obtain a certificate of authority to transact business in Virginia before doing so. If the Commission finds that a certificate of authority was filed on behalf of a corporation by a person without the authority to do so, the Commission may declare the certificate void *ab initio*, regardless of whether the corporation was transacting business in Virginia. The Clerk concluded that the transacting of business in Virginia by a foreign corporation does not render moot the question of whether the corporation has a valid certificate of authority to do so, nor does it negate the requirement that the application for the certificate be filed by a person authorized to act on behalf of the corporation. Additionally, a foreign corporation transacting business in Virginia without a valid certificate is not immune from liability for corporate acts committed in Virginia.

On February 11, 2010, Penat, by counsel, filed his response to the Clerk's Post-Hearing Brief. In his response, Penat stated that the Commission should not only enforce the various sections of the Code of Virginia cited by the Clerk of the Commission in his brief, but also render the certification invalid but not *ab initio* as to affect events that have already taken place based on the records of the Commission as they existed at the time of the events that occurred in this matter.

On February 16, 2010, BBC, by counsel, filed its response to the Clerk's Post-Hearing Brief. In its response, BBC stated, among other things, that there is nothing in §§ 13.1-601 *et seq.* of the Code of Virginia that would allow an unauthorized registration to have any effect.

NOW THE COMMISSION, having considered the record herein, supports certain findings and recommendations of the August 9, 2009, Hearing Examiner's Report, and, as such, we adopt only those findings and recommendations expressed below.

We adopt the finding of the Hearing Examiner's Report that BBC's motion to strike the evidence should be denied.

Additionally, we adopt the finding of the Hearing Examiner's Report that BBC's petition to void its certificate of authority *ab initio* should be denied. In the Amended Petition, Petitioner, BBC, alleged, among other things, that Respondent, Birach Jr., filed an application with the Clerk of the Commission for BBC to obtain a certificate of authority to transact business in Virginia as a foreign corporation without authority from BBC, and requested the Commission deem the certificate authorizing BBC to transact business in Virginia void *ab initio*. Based on the record before us, we are not persuaded that BBC met its burden to establish that Birach Jr. was not authorized to act on behalf of BBC by executing and filing documents with the Clerk's Office of the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The Amended Petition is hereby denied;
- (2) The certificate of authority granted to Birach Broadcasting Corporation is not hereby void *ab initio*;⁸ and
- (3) This case is dismissed from the Commission's docket and the papers herein shall be placed in the file for ended causes.

⁷ Penat and BBC filed Comments/Exceptions to the Hearing Examiner's Report on August 31, 2009, and September 16, 2009, respectively.

⁸ On June 30, 2009, pursuant to § 13.1-930 of the Code of Virginia, BBC's certificate of authority to transact business in Virginia was automatically revoked for failure of BBC to timely file a statement of change to appoint a new registered agent in Virginia, after its former registered agent resigned. See, Notice of Revocation of Certification of Authority, S.C.C. Clerk's Office Reports, Microfilm No. 090730331 (July 2, 2009).

**CASE NO. CLK-2010-00004
JULY 12, 2011**

MICHAEL D. MORRISON, TRUSTEE IN LIQUIDATION
and
THE ABBEY FOUNDATION, IN LIQUIDATION,
Petitioners
v.
NOLTE MCCARTHY,
Respondent

DISMISSAL ORDER

On April 15, 2010, Michael D. Morrison, Trustee in Liquidation ("Morrison"), and The Abbey Foundation in Liquidation ("Foundation") (collectively, the "Petitioners") filed with the State Corporation Commission ("Commission") a Petition pursuant to Rule 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure. The Petition alleged, among other things, that the Commission revoked the corporate charter of the Foundation for failure to maintain a registered agent pursuant to § 13.1-915 of the Code of Virginia ("Code");¹ that on or about February 12, 2010, a Corporation Reinstatement Request for the Foundation was filed with the Commission and named McCarthy as a Director; and on March 3, 2010, the Commission issued its Order of Reinstatement of the Foundation. The Petitioners request that the Commission determine that: the Foundation's corporate existence is terminated by operation of law; McCarthy is not a Director of the Foundation; the Order of Reinstatement is void *ab initio*; and the Order of Reinstatement be cancelled, voided, or withdrawn.

On May 6, 2010, the Respondent filed his Answer. The Respondent stated, among other things, that the Respondent was duly appointed as a Director of the Foundation, and the Foundation was properly reinstated by the Commission pursuant to § 13-1.916 of the Code. The Respondent requested that the Commission dismiss the Petition.

Pursuant to a Hearing Examiner's Ruling entered on July 15, 2010, a pre-hearing conference was conducted on August 18, 2010, for the purpose of establishing a procedural schedule for this case including discovery, prefiled testimony and exhibits, and the evidentiary hearing.

On September 20, 2010, the Petitioners, by counsel, filed a Motion to Set Case for Hearing, which provided several mutually convenient dates for the evidentiary hearing. By Hearing Examiner's Ruling, entered on September 28, 2010, an evidentiary hearing was scheduled for January 19, 2011, and the parties were directed to complete all discovery on or before January 7, 2011.

On January 10, 2011, counsel for the Petitioners filed a Motion to Withdraw as Counsel ("Motion to Withdraw") and a Motion for Continuance ("Motion for Continuance"). In support of the Motion to Withdraw, counsel stated that irreconcilable differences had arisen between him and the Petitioners necessitating his withdrawal from the case. In support of the Motion for Continuance, counsel stated that the Petitioners would need additional time to retain new counsel.

By Hearing Examiner's Ruling entered on January 13, 2011, the Motion to Withdraw was granted, the Motion for Continuance was granted, the evidentiary hearing was cancelled, and the case was continued generally.

By Hearing Examiner's Ruling entered on March 15, 2011, the Petitioners were advised that they had been provided a sufficient period of time within which to retain new counsel to represent their interests before the Commission. The Petitioners were directed to have their new counsel file a notice of appearance on or before March 30, 2011. The Petitioners were further advised that their failure to timely retain new counsel might result in a recommendation that this case be dismissed from the Commission's docket of active cases. No notice of appearance was filed with the Commission on behalf of the Petitioners.

On April 11, 2011, the Hearing Examiner issued a Report, in which he found that this case should be dismissed, with prejudice, from the Commission's docket of active cases. The Hearing Examiner found that the Petitioners cannot proceed with their Petition without being represented by counsel and that they have been afforded sufficient time within which to retain counsel to represent their interests before the Commission. No comments to the Hearing Examiner's Report were filed by either party.

NOW THE COMMISSION, upon consideration of the Rules, the record, and the Hearing Examiner's Report, is of the opinion and finds that the Hearing Examiner's findings and recommendations should be adopted, in part, and this case should be dismissed without prejudice.

Accordingly, IT IS ORDERED THAT this matter is dismissed without prejudice and the papers filed herein shall be placed in the file for ended causes.

¹ The Petition and the Commission's Scheduling Order erroneously reference statutes in the Virginia Stock Corporation Act (§§ 13.1-601 to 13.1-781 of the Code). The Foundation is a nonstock corporation; consequently, the appropriate statutory reference is to the Virginia Nonstock Corporation Act and § 13.1-915 of the Code.

**CASE NO. CLK-2010-00009
JANUARY 10, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: annual registration fees for limited liability companies

ORDER TO TAKE NOTICE

Section 13.1-1062 of the Code of Virginia requires each domestic limited liability company and each foreign limited liability company registered to transact business in the Commonwealth to pay an annual registration fee of \$50, assessed in accordance with a schedule set by the State Corporation Commission ("Commission"). The schedule shall be in accordance with subsection B of § 13.1-1062. That subsection requires the Commission to set, by order, the schedule for assessment of limited liability companies organized or registered to transact business in the Commonwealth.

The Office of the Clerk of the Commission ("Clerk") has reported to the Commission that an assessment schedule for limited liability companies based on the date of organization or registration to transact business in Virginia is more efficient for the conduct of the Commission's operations and, specifically, will facilitate the use of electronic commerce for increased customer service. The Clerk has recommended that, if the new schedule based on anniversary dates is adopted, registration fee assessments should begin in May 2011 for limited liability companies that were organized or registered to transact business in the month of July, and continue on a monthly basis thereafter. Payment of assessments under the new schedule for limited liability companies organized or registered to transact business in the months of January through June will not be due until 2012.

NOW THE COMMISSION, based on information supplied by the Clerk, proposes to adopt a regulation revising Rule 5 VAC 5-40-20, with a proposed effective date of April 30, 2011.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revised regulation, entitled "Assessment of limited liability companies," is appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before February 16, 2011. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. CLK-2010-00009. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached proposed regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

NOTE: A copy of Attachment A entitled "Assessment of limited liability companies" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. CLK-2010-00009
MARCH 17, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: annual registration fees for limited liability companies

ORDER ADOPTING A REGULATION

On January 10, 2011, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Clerk of the Commission ("Clerk") to revise an existing regulation, Rule 5 VAC 5-40-20, adopted pursuant to § 13.1-1062 of the Code of Virginia. The proposed revision amends the schedule by which the Commission assesses annual registration fees against limited liability companies to provide for such assessments to be based on the anniversary date of formation or registration to transact business in the Commonwealth, in accordance with § 13.1-1062 of the Code of Virginia. The Order and proposed regulation were published in the Virginia Register of Regulations on January 31, 2011, and on the Commission's web site. Interested parties were afforded the opportunity to provide written comments or request a hearing on or before February 16, 2011.

Two comments were filed in this matter, but no requests for a hearing were made. Mr. Chester Terry of Dale City, Virginia, requested that the amount of the annual registration fee remain the same. The proposed regulation does not provide for an increase in the amount of the registration fee paid by a limited liability company.

The second comment came from Mr. Cullen Seltzer, of Richmond, Virginia, who objected to the proposed regulation because limited liability companies formed or registered in the months of January through June would "avoid being assessed any annual registration fee for 2011." Mr. Seltzer also asserted that the proposed regulation and timetable would result in a loss of nearly \$4,000,000 in revenue to the Commonwealth. Mr. Seltzer proposed assessing in May 2011 those limited liability companies with anniversary dates in January through July.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

During the development process for the proposed regulation, the Clerk evaluated various assessment options, including an assessment schedule such as proposed by Mr. Seltzer. The proposal presented by the Clerk to the Commission avoids requiring any limited liability company to pay a registration fee twice within a twelve-month period. In addition, the proposed regulation is revenue-neutral to the Commonwealth as the new schedule coincides with the start of a fiscal year.

NOW THE COMMISSION, upon consideration of the proposed regulation and applicable law, concludes that the proposed regulation should be adopted herein with an effective date of April 30, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulation, 5 VAC 5-40-20, as attached hereto, is adopted effective April 30, 2011.
- (2) This Order and the attached regulation shall be posted on the Commission's web site: <http://www.scc.virginia.gov/case>.
- (3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.
- (4) This case is dismissed from the Commission's docket of active cases.

NOTE: A copy of Attachment A entitled "Assessment of limited liability companies" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. CLK-2011-00001
JANUARY 10, 2011**

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure

**ORDER FOR NOTICE OF PROCEEDING TO CONSIDER
REVISIONS TO COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

The State Corporation Commission's ("Commission") Rules of Practice and Procedure, at 5 VAC 5-10-10 *et seq.* ("Rules"), were last revised in Case No. CLK-2008-00002,¹ in which the Commission focused primarily on changes to Rule 170.² The Commission's Rules were also revised in Case No. CLK-2007-00005,³ in which the Commission incorporated procedures for electronic filing. Prior to Case No. CLK-2007-00005, the Rules were revised in 2001 in Case No. CLK-2000-00311.⁴ The Commission has concluded that it is appropriate to revisit Part IV of our Rules to review and consider issues related to discovery in Commission proceedings. The Rules currently provide for some discovery of Staff in adjudicatory proceedings in Rule 280 A. Additionally, the Rules also require Commission Staff to file workpapers supporting its recommendations in actions pursuant to Rule 80 A.

Interested parties are invited to comment upon and suggest modifications or supplements to, or request hearing on, provisions of Part IV of the Rules with regard to whether the Commission Staff should be subject to discovery. Interested parties should address, among other things, whether: (i) Commission Staff should be subject to discovery and, if so, what types of discovery and in what types of proceedings; and (ii) whether experts or consultants retained by Commission Staff should be subject to discovery and, if so, what types of discovery and in what types of proceedings.

The Commission is also interested in hearing how subjecting Commission Staff to discovery may affect: (i) the Commission's ability to meet statutory deadlines in certain types of proceedings; (ii) available resources and efficiency in handling cases; (iii) the Commission Staff's ability to interact informally with regulated entities and their customers to effect resolution of disputes; (iv) the ability of Commission Staff to work with regulated entities in competitive industries; and (v) the protection of sensitive information provided to Commission Staff by regulated entities.

A copy of the current Rules is attached hereto. Interested parties, in addition to commenting upon or suggesting modifications to Part IV of the Rules, may also request a hearing on the Rules. The Commission's Division of Information Resources is directed to cause the Rules to be published in the Virginia Register of Regulations and to make the Rules available for inspection on the Commission's website.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. CLK-2011-00001.

¹ *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure*, Case No. CLK-2008-00002, Final Order (Feb. 24, 2009).

² Each Rule discussed herein will be referred to in this short form. The full citation for the Rule is 5 VAC 5-20-170.

³ *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure*, Case No. CLK-2007-00005, Final Order (Jan. 15, 2008).

⁴ *Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure*, Case No. CLK-2000-00311, Final Order (April 30, 2001).

(2) The Commission's Division of Information Resources shall forward this Order to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) The Commission's Division of Information Resources shall make a downloadable version of the current Rules available for access by the public at the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>. The Clerk of the Commission shall make a copy of the Rules available, free of charge, in response to any written request for one.

(4) Interested persons wishing to comment, propose modifications or supplements to, or request a hearing on Part IV of the Rules shall file an original and fifteen (15) copies of such comments, proposals, or requests for hearing with the Clerk of the Commission, State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219, on or before March 18, 2011, making reference to Case No. CLK-2011-00001. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>.

(5) The Commission Staff may, on or before April 8, 2011, provide a response to any comments or requests for hearing that are received.

(6) This matter is continued for further orders of the Commission.

NOTE: A copy of Attachment A entitled "Proposed Amendments to Rules of Practice and Procedure" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. CLK-2011-00001
AUGUST 9, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In the matter concerning revised State Corporation Commission Rules of Practice and Procedure

**ORDER ADOPTING REVISIONS TO PART IV OF
THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE**

On January 10, 2011, the State Corporation Commission ("Commission") issued its Order for Notice of Proceeding to Consider Revisions to the Commission's Rules of Practice and Procedure ("Order for Notice of Proceeding") in this case. The Commission determined that it was appropriate to revisit Part IV of the Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules"), to consider issues related to discovery in Commission proceedings. The Commission invited interested parties to address, among other things, whether: (i) the Commission's Staff ("Staff") should be subject to additional discovery and, if so, what types of additional discovery and in what types of proceedings; and (ii) whether experts or consultants retained by Staff should be subject to discovery and, if so, what types of discovery and in what types of proceedings. The Commission also invited interested parties to address how subjecting Staff to additional discovery may affect: (i) the Commission's ability to meet statutory deadlines in certain types of proceedings; (ii) available resources and efficiency in handling cases; (iii) the Staff's ability to interact informally with regulated entities and their customers to effect resolution of disputes; (iv) the ability of Staff to work with regulated entities in competitive industries; and (v) the protection of sensitive information provided to Staff by regulated entities.

The Commission received eight comments in response to its Order for Notice of Proceeding. The Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates ("Committees"), representing large industrial customers, filed comments in support of maintaining the Commission's existing Rules. The following filed comments suggesting revisions to the Rules: Columbia Gas of Virginia, Inc. ("Columbia Gas"); Washington Gas Light Company ("Washington Gas"); Verizon Virginia Inc. and Verizon South Inc. ("Verizon"); and the Virginia Telecommunications Industry Association ("VTIA"). One individual filed comments adopting the position of the VTIA. The Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel") filed a Notice of Participation and raised no concerns with the existing Rules. Shenandoah Valley Electric Cooperative filed comments in support of electronic filing and management of documents.

On April 8, 2011, the Staff filed its Response to the comments submitted herein, addressing the necessity for the suggested revisions. Staff noted that no electric, water, or sewer utilities filed comments raising concerns with the Commission's Rules, nor did any companies or individuals associated with the financial services industry.

On May 26, 2011, the Commission issued an Order for Notice and Hearing to Consider Proposed Revisions to Part IV of the Commission's Rules of Practice and Procedure ("Order for Notice and Hearing"). The Order for Notice and Hearing, among other things: (1) identified proposed revisions to Part IV of the Rules ("Proposed Rules"), which expand the discovery on Staff in adjudicatory and regulatory cases; (2) directed that public notice of the Proposed Rules be given; (3) permitted interested persons and Staff to file written or electronic comments on the Proposed Rules; and (4) scheduled a public hearing to receive oral comment from interested persons on the Proposed Rules.

The public hearing was convened on July 12, 2011, at which time oral comment was received from the following, *seriatim*: Verizon; Virginia Electric & Power Company ("Virginia Power"); Columbia Gas; Consumer Counsel; Committees; and Staff.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that we shall adopt the rules appended hereto as Attachment A, effective as of September 1, 2011. In making our determination in this matter, the Commission has considered all of the comments and

arguments submitted in this proceeding. The rules approved herein, which satisfy all legal requirements, significantly expand Staff's obligation to respond to discovery in both adjudicatory and regulatory proceedings before the Commission.¹

For example, in adjudicatory cases, Staff is required to provide the following – which will necessarily include any information that is favorable to the defendant:

- All relevant statements made by the defendant;
- All relevant statements made by Staff's witnesses;
- All relevant statements made by witnesses that Staff does not intend to call to testify at the hearing;
- All documents and objects that Staff intends to introduce at the hearing;
- All documents and objects that Staff obtained for purposes of the case (regardless of whether such will be introduced at the hearing); and
- A list of witnesses that Staff intends to call to testify at the hearing.²

In addition, the rules adopted herein likewise require Staff to respond to discovery in regulatory proceedings and to provide the following:

- All factual information supporting workpapers of Staff or an expert or consultant filing testimony on behalf of Staff;
- All electronic spreadsheets, including underlying formulas and assumptions, supporting workpapers of Staff or an expert or consultant filing testimony on behalf of Staff;
- All documents relied upon as a basis for recommendations or assertions in prefiled Staff testimony, Staff reports or exhibits filed by Staff, or by an expert or consultant filing testimony on behalf of Staff; and
- The identity of other formal proceedings in which an expert or consultant filing testimony on behalf of Staff testified regarding the same or a substantially similar subject matter.³

The Commission received no opposition to the Proposed Rules from any investor-owned electric utility, any electric cooperative, any natural gas utility, any water and/or sewer company, any insurance company or agent, the banking industry, the securities industry, or any consumers or representatives thereof.

Virginia Power supported the Proposed Rules, stating that the rules "are adequate and will serve the parties well."⁴ Similarly, Allegheny Power submitted a letter in support of the Proposed Rules.⁵ Columbia Gas stated that the Proposed Rules "adequately address the comments" filed by Columbia Gas in this case.⁶ Washington Gas also "does not object to the Proposed Rules, and does not, at this time, propose any revisions to the Proposed Rules."⁷

The Committees – comprised of large industrial users of electricity – argued that, even though they often take positions "fiercely adverse to those of ... Staff:" (a) no party has shown that a discovery problem actually exists; (b) no additional discovery of Staff should be permitted; (c) the Proposed Rules are not necessary; and (d) additional obligations on Staff would be contrary to the public interest.⁸ The Committees, however, did not ultimately object to adoption of the Proposed Rules.⁹

Consumer Counsel supported the Proposed Rules, explaining that the rules "expand the scope of discovery, both in regulatory and adjudicatory proceedings."¹⁰

Verizon and VTIA objected to the Proposed Rules.¹¹ While these participants asserted that the Proposed Rules should be further modified, we note that the final rules adopted herein extensively and meaningfully increase the discovery on Staff. The new discovery rules, for example, require Staff to provide: (1) evidence favorable to the defendant; (2) hearing exhibits and other documents obtained for the case; (3) a list of witnesses; (4) statements obtained from witnesses and non-witnesses; (5) factual information, including electronic spreadsheets, supporting Staff's workpapers; (6) access to

¹ The rules approved herein also reflect changes to the Proposed Rules that, among other things: (i) require Staff to provide evidence that it does not intend to introduce at the hearing, including evidence favorable to the defendant; (ii) define a witness "statement" as used in these rules; and (iii) clarify that these rules do not require disclosure of information prohibited by statute or other legal privilege.

² Rule 5 VAC 5-20-280.

³ Rule 5 VAC 5-20-260.

⁴ Tr. 49.

⁵ Allegheny Power's June 8, 2011 Letter.

⁶ Tr. 50.

⁷ Washington Gas' July 5, 2011 Comments at 3-4. Washington Gas also "supports discovery of the Staff, and Staff's consultants or experts, to the same extent allowed for the applicant and other parties...." *Id.* at 4.

⁸ Tr. 51-64; Committees' March 18, 2011 Comments at 4.

⁹ Tr. 63.

¹⁰ Tr. 50.

¹¹ *See, e.g.,* Verizon's July 5, 2011 Comments at 2; VTIA's July 5, 2011 Comments at 1.

information from experts testifying on behalf of Staff; and (7) documents relied upon by Staff or its testifying consultant. Indeed, Verizon conceded that, even for criminal cases, (i) Commonwealth Attorneys' prosecutorial staff is not subject to the type of discovery that Verizon seeks herein, and (ii) the federal Jencks Act (regarding discovery in federal criminal cases)¹² does not go as far as the discovery rules adopted here in terms of the discovery requirements placed on federal prosecutorial staff.¹³

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules of Practice and Procedure, as set forth in 5 VAC 5-20-10 *et seq.*, are hereby revised and adopted as set forth on the attachment to this Order Adopting Revisions to Part IV of the Commission's Rules of Practice and Procedure, effective as of September 1, 2011.

(2) The Commission's Division of Information Resources shall forward this Order Adopting Revisions to Part IV of the Commission's Rules of Practice and Procedure and the rules adopted herein to the Registrar of Virginia for publication in the *Virginia Register*.

(3) This case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

NOTE: A copy of Attachment A entitled "Rules of Practice and Procedure" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

¹² See 18 U.S.C. § 3500.

¹³ Tr. 41-46.

**CASE NO. CLK-2011-00003
APRIL 14, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: Uniform Commercial Code Filing rules

ORDER TO TAKE NOTICE

Section 8.9A-526 of the Code of Virginia requires the State Corporation Commission ("Commission") to promulgate rules necessary to implement Title 8.9A of the Code of Virginia, Uniform Commercial Code – Secured Transactions. The existing rules are codified as 5 VAC 5-30 ("Chapter 30") of Title 5 of the Virginia Administrative Code. The Office of the Clerk of the Commission ("Clerk") has reported to the Commission that certain amendments to Chapter 30 are necessary and desirable to update the existing rules and to facilitate the use of electronic commerce for increased customer service.

NOW THE COMMISSION, based on information supplied by the Clerk, proposes to adopt a regulation revising Chapter 30.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revised regulation, entitled "Uniform Commercial Code Filing Rules," is appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulation must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before May 23, 2011. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. CLK-2011-00003. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This Order and the attached proposed regulation shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached proposed regulation, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

NOTE: A copy of Attachment A entitled "Uniform Commercial Filing Rules" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. CLK-2011-00003
JUNE 21, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: Uniform Commercial Code filing rules

ORDER ADOPTING REGULATIONS

On April 14, 2011, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Commission to adopt regulations pursuant to § 8.9A-526 of the Code of Virginia. The proposed regulations, amending Chapter 30 (5 VAC 5-30-10 *et seq.*) of Title 5 of the Virginia Administrative Code, update the existing rules for the implementation of Title 8.9A of the Code of Virginia and facilitate the use of electronic commerce for increased customer service. The Order and proposed regulations were published in the Virginia Register of Regulations on May 9, 2011, posted on the Commission's website, and sent to various interested parties. Interested parties were afforded the opportunity to file written comments or request a hearing on or before May 23, 2011. No comments or requests for a hearing were filed.

NOW THE COMMISSION, upon consideration of the proposed regulations and applicable law, concludes that the proposed regulations should be adopted as proposed.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations, as attached hereto, are adopted effective July 1, 2011.
- (2) This Order and the attached regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.
- (3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.
- (4) This case is dismissed from the Commission's docket of active cases.

NOTE: A copy of Attachment A entitled "Rules Governing Commercial Code" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. CLK-2011-00006
NOVEMBER 10, 2011**

TRUSTEES OF ST. JOHN BAPTIST CHURCH,
Petitioner,
v.
THE ST. JOHN BAPTIST CHURCH,
Respondent.

FINAL ORDER

On July 22, 2011, the Trustees of St. John Baptist Church ("Petitioner" or "Trustees"), by counsel, filed with the State Corporation Commission ("Commission") a petition ("Petition") pursuant to Rule 5 VAC 5-20-100 of the Commission's Rules of Practice and Procedure. In the Petition, the Trustees allege, among other things, that: (i) they are court-appointed trustees who own all the property of The St. John Baptist Church, an unincorporated congregational church located in Alexandria, Virginia; (ii) The St. John Baptist Church ("Respondent") incorporated as a Virginia non-stock corporation on March 23, 2004; (iii) Respondent was merged into a Maryland corporation pursuant to Articles of Merger of Domestic Corporation and Foreign Corporation ("Merger") into Providence Saint John Baptist Church ("Providence") filed in the District of Columbia on August 10, 2007; (iv) the Commission was never made aware of the Merger; (v) the Commission automatically terminated the Respondent on July 31, 2008, for failure to pay its annual registration fees and to file an annual report; and (vi) the Commission granted reinstatement to the Respondent on April 20, 2011, based upon an application for reinstatement filed by the Respondent dated April 18, 2011, and issued a Certificate of Good Standing.

The Trustees further allege that, in substance: (i) the Respondent was never properly organized; (ii) following the Merger, the Respondent ceased to exist pursuant to the laws of the District of Columbia and § 13.1-1263 of the Code of Virginia ("Code"); (iii) the Respondent's failure to pay annual registration fees and to file annual reports following the Merger is evidence that it ceased to exist; (iv) the Respondent's request for reinstatement in April 2011 occurred as a result of conduct which represents intentional deception, fraud, unethical conduct, and withholding of material information; and (v) the Petitioner is currently in litigation with the Respondent.

In the Petition, the Petitioner asks that the Commission: (i) revoke the Certificate of Reinstatement and Certificate of Good Standing that was issued to the Respondent on April 20, 2011; (ii) purge the Respondent from the corporate records of the Commission; (iii) update the records of the Clerk of the Commission ("Clerk") to reflect the corporate purge; and (iv) take such other action against the proper parties as is deemed just and proper.

On September 12, 2011, the Commission entered a Scheduling Order which, among other things, docketed the Petition and directed the Clerk to file a response to the Petition on or before October 7, 2011.

On September 30, 2011, the Clerk filed his Response to the Petition. In his Response, the Clerk stated that: (i) the reinstatement of the Respondent's corporate existence on April 20, 2011, was appropriate; (ii) the requirements for obtaining a certificate of merger involving a Virginia

non-stock corporation and a foreign corporation are found in § 13.1-896 of the Code and there are no allegations that the Respondent or Providence has met those statutory requirements; (iii) absent compliance with § 13.1-896 of the Code, there are insufficient grounds to show that the Respondent ceased to exist as a result of the alleged Merger by operation of law under § 13.1-897 of the Code; and (iv) there is no basis to revoke the Order of Reinstatement, purge the Respondent from the Clerk's records, or update the Clerk's records regarding any such purge.

By Hearing Examiner's Ruling entered on October 6, 2011, the parties were afforded an opportunity to file a Reply to the Clerk's Response, or any other appropriate pleading to dispose of the case.

On October 27, 2011, the Trustees filed their Reply in which they stated, in part, that the matter had proceeded to the extent that is dictated under the circumstances and the matter should be closed and disposed of.

On October 31, 2011, the Hearing Examiner filed his report ("Report"). In his Report, the Hearing Examiner found that there being nothing further for the Commission to decide, the case should be dismissed and the papers should be sent to the file for ended causes. Additionally, the Hearing Examiner found that the comment period to the Report should be waived.

NOW THE COMMISSION, upon consideration of the record in this matter, the Hearing Examiner's Report, and the applicable statutes, is of the opinion that the Hearing Examiner's findings and recommendations should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the Hearing Examiner are hereby ADOPTED;
- (2) The Petition of the Trustees of The St. John Baptist Church is hereby DENIED; and
- (3) This case is dismissed from the Commission's docket and the papers herein shall be placed in the file for ended causes.

**CASE NO. CLK-2011-00008
SEPTEMBER 1, 2011**

IN RE:
NICKERSON LANDSCAPES, INC.

ORDER

On July 31, 2011, the corporate existence of Nickerson Landscapes, Inc. ("Nickerson"), was automatically terminated by operation of law pursuant to § 13.1-752 A of the Code of Virginia because Nickerson failed to file its annual report and pay its annual registration fee in a timely manner as required by the Virginia Stock Corporation Act, § 13.1-601 *et seq.* of the Code of Virginia. On August 9, 2011, the Circuit Court of York County – Poquoson ("Circuit Court") entered a Decree of Dissolution ("Decree") in Case No. CL11003877-00 directing the dissolution of Nickerson. The Circuit Court also directed its Clerk to send a copy of the Decree to the State Corporation Commission ("Commission") pursuant to § 13.1-749 A of the Code of Virginia. The Commission received the Circuit Court's Decree on August 12, 2011.

NOW THE COMMISSION, having considered the record herein and applicable law, finds that the judicial dissolution of Nickerson has been superseded by the preceding termination of Nickerson's corporate existence.

Accordingly, IT IS ORDERED THAT:

- (1) The corporate existence of Nickerson remains terminated as of July 31, 2011.
- (2) There being nothing further to be done in this matter, this case is dismissed and the papers filed herein shall be placed in the file for ended causes.

BUREAU OF INSURANCE

**CASE NO. INS-1991-00068
JANUARY 10, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
FIDELITY BANKERS LIFE INSURANCE COMPANY,
Defendant

**SECOND AMENDMENT TO ORDER APPOINTING DEPUTY
RECEIVER FOR CONSERVATION AND REHABILITATION**

WHEREAS, by Order of the Circuit Court of the City of Richmond dated May 13, 1991, upon application of the State Corporation Commission ("Commission"), the Commission was appointed Receiver of Fidelity Bankers Life Insurance Company ("Fidelity Bankers");

WHEREAS, by Order entered herein May 13, 1991, the Commission appointed Steven T. Foster, Commissioner of Insurance, Bureau of Insurance, State Corporation Commission, Deputy Receiver of Fidelity Bankers, which subsequently became a mutual life insurance company and whose name was changed to First Dominion Mutual Life Insurance Company ("First Dominion"), and vested in the Deputy Receiver certain powers as set forth more particularly in the Commission's Order of May 13, 1991; and

WHEREAS, by Order entered herein April 26, 1996, the Commission amended the order appointing Steven T. Foster as Deputy Receiver and ordered that, effective May 1, 1996, Alfred W. Gross, then Acting Commissioner of Insurance, be appointed as Acting Deputy Receiver of First Dominion and Acting Trustee of Fidelity Bankers Life Insurance Company Trust ("Fidelity Bankers Trust").

IT IS ORDERED that, effective January 1, 2011, Jacqueline K. Cunningham, Commissioner of Insurance, be, and she is hereby, appointed Deputy Receiver of First Dominion.

IT IS FURTHER ORDERED that Commissioner Cunningham, in addition to the powers and authority set forth in the Commission's Order of May 13, 1991, and all subsequent orders entered herein, be, and she is hereby, vested with all the powers and authority express and implied under the provisions of §§ 38.2-1500 through 38.2-1521 and that Commissioner Cunningham may do all acts necessary or appropriate with respect to the receivership of First Dominion.

**CASE NO. INS-1991-00329
JULY 26, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CITIZENS NATIONAL LIFE INSURANCE COMPANY,
Defendant

FINAL ORDER

Citizens National Life Insurance Company ("Defendant"), formerly Combined Underwriters Life Insurance Company, a foreign corporation domiciled in the State of Texas, is licensed to transact the business of insurance in the Commonwealth of Virginia.

By Order Suspending License entered herein February 3, 1992, the Defendant was prohibited from issuing any new contracts or policies of insurance in Virginia. On June 16, 2010, the Defendant's certificate of authority to transact business in Virginia was withdrawn.

By letter of Amy S. Inman, the Defendant's Associate Counsel and Assistant Secretary, dated June 30, 2011, and received by the State Corporation Commission's ("Commission") Bureau of Insurance ("Bureau") on July 6, 2011, the Commission was advised that the Defendant wishes to withdraw its license to transact the business of insurance in Virginia.

The withdrawal of the Defendant's license has been processed by the Bureau effective July 20, 2011.

In light of the foregoing, the Bureau has recommended that the Suspension Order entered by the Commission be vacated and this case be closed.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that the Order Suspending License entered by the Commission should be vacated.

Accordingly, IT IS ORDERED THAT:

(1) The Order Suspending License entered by the Commission should be, and is hereby, VACATED;

- (2) This case be, and is hereby, CLOSED;
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-1994-00218
JANUARY 11, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

HOME WARRANTY CORPORATION,
HOME OWNERS WARRANTY CORPORATION,
and
HOW INSURANCE COMPANY, A RISK RETENTION COMPANY,
Defendants

AMENDMENT TO SECOND ORDER IN AID OF RECEIVERSHIP

WHEREAS, by Order of the Circuit Court of the City of Richmond dated October 14, 1994, upon application of the State Corporation Commission ("Commission"), the Commission was appointed Receiver of HOW Insurance Company, a Risk Retention Group ("HOWIC"), Home Owners Warranty Corporation ("HOW"), and Home Warranty Corporation ("HWC") (collectively referred to herein as the "HOW Companies") and appointed Steven T. Foster, Commissioner of Insurance, as Deputy Receiver of the Companies; and

WHEREAS, by Order entered herein April 24, 1996, the Commission entered an Order in Aid of Receivership, and ordered that, effective May 1, 1996, Alfred W. Gross, then Acting Commissioner of Insurance, be appointed as Acting Deputy Receiver of the HOW Companies.

IT IS ORDERED that, effective January 1, 2011, Jacqueline K. Cunningham, Commissioner of Insurance, be, and she is hereby, appointed Deputy Receiver of the HOW Companies.

IT IS FURTHER ORDERED that Commissioner Cunningham, in addition to the powers and authority set forth in the Circuit Court's Order of October 14, 1994, and all subsequent orders entered herein, be, and she is hereby, vested with all the powers and authority express and implied under the provisions of §§ 38.2-1500 through 38.2-1521 and that Commissioner Cunningham may do all acts necessary or appropriate with respect to the receivership of the HOW Companies.

**CASE NO. INS-2000-00026
MARCH 30, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

FIRST CONTINENTAL LIFE AND ACCIDENT INSURANCE COMPANY,
Defendant

FINAL ORDER

First Continental Life and Accident Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Texas, is licensed to transact the business of insurance in the Commonwealth of Virginia.

By Order Suspending License entered herein June 5, 2000 ("Suspension Order"), the Defendant was prohibited from issuing any new contracts or policies of insurance in Virginia. On February 16, 2011, the Defendant's certificate of authority to transact business in Virginia was withdrawn.

By affidavit of James Taylor and Patrick Stoner, the Defendant's president and vice-president respectively, dated March 17, 2011, and received by the State Corporation Commission's ("Commission") Bureau of Insurance ("Bureau") on March 22, 2011, the Commission was advised that the Defendant wishes to withdraw its license to transact the business of insurance in Virginia. Additionally, the Defendant advised the Commission that all fixed or contingent liabilities of the Defendant to Virginia policyholders and other Virginia creditors have been satisfied or terminated.

The withdrawal of the Defendant's license has been processed by the Bureau effective March 23, 2011.

In light of the foregoing, the Bureau has recommended that the Suspension Order entered by the Commission be vacated and this case be closed.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that the Order Suspending License entered by the Commission should be vacated.

Accordingly, IT IS ORDERED THAT:

- (1) The Order Suspending License entered by the Commission should be, and is hereby, VACATED;
- (2) This case be, and is hereby, CLOSED;
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2001-00056
JANUARY 7, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
FRONTIER INSURANCE COMPANY,
Defendant

FINAL ORDER

Frontier Insurance Company ("Defendant"), a foreign corporation domiciled in the State of New York, was initially licensed to transact the business of insurance in the Commonwealth of Virginia on December 13, 1983.

By Order Suspending License entered herein July 12, 2001, the Defendant was prohibited from issuing any new contracts or policies of insurance in Virginia.

By affidavit of Al Escobar, the Defendant's Chief Executive Officer, dated November 18, 2010, and received by the State Corporation Commission's ("Commission") Bureau of Insurance ("Bureau") on November 23, 2010, the Commission was advised that the Defendant wishes to withdraw its license to transact the business of insurance in Virginia.

The withdrawal of the Defendant's license has been processed by the Bureau effective December 16, 2010.

In light of the foregoing the Bureau has recommended that the Order Suspending License entered by the Commission be vacated and this case be closed.

THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that the Order Suspending License entered by the Commission should be vacated.

Accordingly, IT IS ORDERED THAT:

- (1) The Order Suspending License entered by the Commission should be, and is hereby, VACATED;
- (2) This case be, and is hereby, CLOSED; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2003-00024
JANUARY 10, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
RECIPROCAL OF AMERICA
and
THE RECIPROCAL GROUP,
Respondents

**ORDER APPOINTING JACQUELINE K. CUNNINGHAM
AS DEPUTY RECEIVER FOR REHABILITATION OR LIQUIDATION**

WHEREAS, by Order of the Circuit Court of the City of Richmond dated January 29, 2003, upon application of the State Corporation Commission ("Commission"), the Commission was appointed Receiver of Reciprocal of America ("ROA") and The Reciprocal Group ("TRG") (collectively referred to herein as the "Companies") appointed Alfred W. Gross, Commissioner of Insurance, as Deputy Receiver of the Companies; and

IT IS ORDERED that, effective January 1, 2011, Jacqueline K. Cunningham, Commissioner of Insurance, be, and she is hereby, appointed Deputy Receiver of the Companies.

IT IS FURTHER ORDERED that Commissioner Cunningham, in addition to the powers and authority set forth in the Commission's Order of January 29, 2003, and all subsequent orders entered herein, be, and she is hereby, vested with all the powers and authority express and implied under the provisions of §§ 38.2-1500 through 38.2-1521 and that Commissioner Cunningham may do all acts necessary or appropriate with respect to the receivership of the Companies.

Commissioner Jagdmann did not participate in this matter.

**CASE NO. INS-2003-00024
SEPTEMBER 14, 2011**

APPLICATION OF
RECIPROCAL OF AMERICA
AND
THE RECIPROCAL GROUP

For Order Setting Additional Claims Period

FINAL ORDER

On January 19, 2011, the Deputy Receiver of Reciprocal of America and The Reciprocal Group (collectively, "ROA") filed with the Commission the Deputy Receiver's Application for Order Setting Additional Claims Period and Approving Notice Procedures, Establishing a Response Date, and Setting a Contingent Hearing ("Application"). Therein, the Deputy Receiver sought orders from the Commission which, among other things: (1) set a contingent hearing on the Application, to be held only in the event that written objection to the Application is timely filed; (2) approve notice procedures; (3) establish response procedures; (4) following the contingent hearing, authorize the Deputy Receiver to establish an Additional Claims Period for the claims of certain specified creditors providing them with an additional 90-day period to timely file claims against the Companies; (5) direct that any claims submitted after the applicable Additional Claims Period, if approved, would be subordinated in payment to all timely-filed claims and late-filed claims of a higher priority; and (6) approve the Deputy Receiver's proposal to provide written notice of the Additional Claims Period and proof of claim instructions, by first-class United States mail to the specified creditors at the last known address disclosed in the books and records of ROA, in a form reasonably calculated to provide such persons with notice of the Additional Claims Period and the consequences of failing to timely file claims against ROA.

In support of the Application, the Deputy Receiver asserted, *inter alia*, that although ROA provided notice of receivership claim procedures to approximately 172,000 interested parties, subsequent review of receivership records has revealed that ROA inadvertently failed to mail such notice to 145 known creditors. The Deputy Receiver further asserted that as a result of this inadvertent error, these 145 creditors may have been unduly prejudiced in their ability to perfect their claims against ROA in a timely manner. As such, the Deputy Receiver seeks authority to establish an additional claims period for the specified creditors in order to remedy any potential prejudice that may have resulted from this error.

On July 14, 2011, the Commission entered a Scheduling Order which set a contingent hearing for September 20, 2011, to be held only in the event that written objection to the Application was timely filed, approved notice procedures, established response procedures, and directed the Deputy Receiver to provide a copy of the Scheduling Order to all parties of record in this docket. The Scheduling Order also provided that in the event no person timely filed a written objection to the Application pursuant to the procedures set forth therein, the Commission would decide the Application without a hearing.

No person timely filed a written Notice of Objection to the Application.

NOW THE COMMISSION, having considered the Application, and the entire record in this matter, finds that the Application should be approved and the Additional Claims Period authorized.

Accordingly, IT IS ORDERED THAT:

- (1) The Application of the Deputy Receiver is APPROVED.
- (2) The Deputy Receiver is authorized to establish an Additional Claims Period for the claims of those creditors listed in the schedule below providing them with an additional 90-day period to timely file claims against ROA.
- (3) Any claims submitted after the applicable Additional Claims Period, if approved, are subordinated in payment to all timely-filed claims and late-filed claims of a higher priority.
- (4) The Deputy Receiver shall provide written notice of the Additional Claims Period and proof of claim instructions, by first class United States mail to the specified creditors at the last known address disclosed in the books and records of ROA, in a form reasonably calculated to provide such persons with notice of the Additional Claims Period and the consequences of failing to timely file claims against ROA.
- (5) This matter is closed and the papers herein be passed to the file for ended causes.

Commissioner Jagdmann did not participate in this matter.

NOTE: A copy of the attachment entitled "Schedule of Creditors to Receive Notice of Additional Claims Period" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2004-00282
NOVEMBER 2, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
YORK INSURANCE COMPANY,
Defendant

FINAL ORDER

York Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Rhode Island, is licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia.

By Order Suspending License entered herein February 1, 2005, the Defendant was prohibited from issuing any new contracts or policies of insurance in Virginia. The Order Suspending License was entered due to the Defendant's failure to maintain the minimum capital and surplus as required by § 38.2-1028 of the Code of Virginia.

The Defendant's June 30, 2011 Quarterly Statement, filed with the Commission's Bureau of Insurance, indicates that the Defendant is in compliance with Virginia's minimum capital and surplus requirement. The Bureau of Insurance has recommended that the Defendant's license to transact the business of insurance be restored to good standing and that this case be closed.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that the Order Suspending License entered by the Commission should be vacated.

Accordingly, IT IS ORDERED THAT:

- (1) The Order Suspending License entered by the Commission should be, and is hereby, VACATED;
- (2) This case be, and is hereby, CLOSED;
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2004-00295
APRIL 27, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
GENERAL SECURITY NATIONAL INSURANCE COMPANY,
Defendant

FINAL ORDER

General Security National Insurance Company ("Defendant"), a foreign corporation domiciled in the State of New York, is licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia.

By Consent Order entered herein February 18, 2005, the Defendant was prohibited from issuing any new or renewal contracts or policies of insurance in Virginia. The Consent Order was entered due to financial regulatory concerns.

The Defendant's 2010 Annual Statement, filed with the Commission's Bureau of Insurance, indicates that the Defendant is in compliance with Virginia's minimum capital and surplus requirement. The Bureau of Insurance has recommended that the Defendant's license to transact the business of insurance be restored to good standing and that this case be closed.

THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that the Consent Order entered by the Commission should be vacated.

Accordingly, IT IS ORDERED THAT:

- (1) The Consent Order entered by the Commission should be, and is hereby, VACATED;
- (2) This case be, and is hereby, CLOSED;
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2009-00032
JANUARY 10, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

SHENANDOAH LIFE INSURANCE COMPANY,
Defendant

**AMENDMENT TO ORDER APPOINTING DEPUTY RECEIVER
FOR CONSERVATION AND REHABILITATION**

WHEREAS, by Order of the Circuit Court of the City of Richmond dated February 12, 2009, upon application of the State Corporation Commission ("Commission"), the Commission was appointed Receiver of Shenandoah Life Insurance Company ("Shenandoah"); and

WHEREAS, by Order entered herein February 12, 2009, the Commission appointed Alfred W. Gross, Commissioner of Insurance, Bureau of Insurance, State Corporation Commission, Deputy Receiver of Shenandoah, and vested in the Deputy Receiver certain powers as set forth more particularly in the Commission's Order of February 12, 2009.

IT IS ORDERED that, effective January 1, 2011, Jacqueline K. Cunningham, Commissioner of Insurance, be, and she is hereby, appointed Deputy Receiver of Shenandoah.

IT IS FURTHER ORDERED that Commissioner Cunningham, in addition to the powers and authority set forth in the Commission's Order of February 12, 2009, and all subsequent orders entered herein, be, and she is hereby, vested with all the powers and authority express and implied under the provisions of §§ 38.2-1500 through 38.2-1521 and that Commissioner Cunningham may do all acts necessary or appropriate with respect to the receivership of Shenandoah.

**CASE NO. INS-2009-00272
MAY 26, 2011**

PETITION OF
FRANCES D. STANLEY

For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal

FINAL ORDER

On February 12, 2009, the Circuit Court of the City of Richmond entered an Order appointing the State Corporation Commission ("Commission") as Receiver of Shenandoah Life Insurance Company ("Shenandoah"). In addition, on February 12, 2009, the Commission, by Order Appointing Deputy Receiver for Conservation and Rehabilitation, appointed Alfred W. Gross, Commissioner of the Commission's Bureau of Insurance, as Deputy Receiver, in accordance with Title 38.2, Chapter 15 of the Code of Virginia. Pursuant to his grant of authority, the Deputy Receiver, in his Second Directive of Deputy Receiver Adopting Receivership Appeal Procedure, established appeal procedures for appeals or challenges of any decision made by the Deputy Receiver with respect to claims against Shenandoah.

On December 3, 2009, Frances D. Stanley ("Petitioner") filed a Petition for Review ("Petition") with the Commission contesting the Deputy Receiver's denial of her "Hardship Request" made in connection with Shenandoah Life Policy No. 001030335.

By Order dated December 9, 2009, the Commission docketed the Petition, assigned the matter to a Hearing Examiner, and directed the Deputy Receiver to file an Answer or other responsive pleading to the Petition on or before January 11, 2010.

On January 8, 2010, the Deputy Receiver filed his Answer requesting the Commission deny the Petition and affirm the Deputy Receiver's Determination of Appeal. Specifically, the Deputy Receiver asserted that the Petition must be denied for the following reasons: (1) the Deputy Receiver was not legally obligated to adopt exemptions to the moratorium on cash surrenders imposed by the Commission in its February 12, 2009 Order and by the Deputy Receiver in his February 19, 2009 Notice of Receivership; consequently, the Petitioner possesses no primary right to surrender her policy for cash in any amount; (2) the Deputy Receiver has authority to limit, in "his sole discretion," the amount of available exemptions to the cash surrender moratorium, and he has exercised that discretion to limit available hardship exemptions to 70% of the cash value available under the policy to preserve the Company's cash position and liquidity; (3) the Deputy Receiver has authority to operate the Company, and his decision that hardship exemptions should be limited to 70% of the maximum cash value available under a policy in order to avoid creating an illegal preference is an exercise of discretion that falls under his authority; (4) the Petitioner did not claim that she personally faced an imminent and severe financial need; (5) the Petitioner should be precluded from submitting additional information in support of her claim that was not first provided to the Deputy Receiver when considering the merits of her claim for hardship; and (6) if the Petition for Review were granted without a showing of financial hardship, this would frustrate the rationale of the hardship procedure in violation of the Commission's February 12, 2009 Order.

By Hearing Examiner's Ruling dated May 6, 2010, an evidentiary hearing was scheduled for June 15, 2010, via telephone conference call for the purpose of receiving testimony and evidence on the Petition.

On May 21, 2010, the Deputy Receiver filed a list of witnesses and exhibits to be introduced during the telephonic hearing. On May 27, 2010, the Petitioner, by counsel, filed a list of witnesses to be introduced during the telephonic hearing.

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On June 15, 2010, a hearing was convened as scheduled and the Petitioner moved for a continuance. By Hearing Examiner's Ruling entered on June 15, 2010, the case was continued for a period of ninety (90) days. The Petitioner was directed to submit to the Deputy Receiver, so that he could re-evaluate her claim, additional medical and financial information supporting her claim for a Hardship Request made in connection with Shenandoah Life Policy No. 001030335. The required filing was not made within the time specified in the Ruling and has not been made to date.

On April 13, 2011, the Hearing Examiner issued his Report in which he found that the standard of review in this case is whether the Deputy Receiver abused his discretion in his Determination of Appeal. In her Petition, the Petitioner failed to allege a claim for which relief may be granted. Consequently, the Hearing Examiner found that this case should be dismissed from the Commission's docket of active cases. However, the Hearing Examiner stated that if the Petitioner is able to produce adequate evidence of her hardship claim, she may file another Hardship Request with the Deputy Receiver. The parties were given twenty-one (21) days from the date of entry of the Report in order to comment. No comments were filed.

NOW THE COMMISSION, upon consideration of the record herein and the Report of the Hearing Examiner, is of the opinion that the findings and recommendations of the Hearing Examiner should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition of Frances D. Stanley for review of the Deputy Receiver's Determination of Appeal is hereby DISMISSED;
- (2) The Deputy Receiver's Determination of Appeal in connection with Shenandoah Life Policy No. 001030335 is hereby AFFIRMED; and
- (3) The case is dismissed, and the papers herein are passed to the file for ended causes.

**CASE NO. INS-2010-00019
FEBRUARY 14, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ROBERTA L. GARCIA-GUAJARDO,
GARY J. HUNTER,
and
SANIBEL & LANCASTER INSURANCE, LLC,
Defendants

JUDGMENT ORDER

On March 18, 2010, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Gary J. Hunter ("Hunter"), Sanibel & Lancaster Insurance, LLC ("Sanibel"), and Roberta L. Garcia-Guajardo ("Garcia-Guajardo") (collectively, "Defendants"), in which the Bureau of Insurance ("Bureau") alleged the following: (i) the Defendants violated § 38.2-310 of the Code of Virginia ("Code") by charging customers a fee that is not authorized by law; (ii) the Defendants violated §§ 38.2-502, 38.2-512, and subsections 7 and 10 of § 38.2-1831 of the Code by combining the amount of an administrative service fee with the premium down payment, thereby misrepresenting the actual cost of the insurance; (iii) Sanibel and Hunter violated § 38.2-1809 of the Code by refusing to make agency records available promptly upon request for examination by Bureau investigators; (iv) Sanibel and Hunter violated § 38.2-1812 of the Code by sharing commissions or other compensation with unlicensed individuals for referrals of business; (v) the Defendants violated § 38.2-1812.2 and subsection 10 of § 38.2-1831 of the Code by charging an administrative service fee that exceeded the fee listed on the agency's disclosure form; (vi) Sanibel and Hunter violated § 38.2-1813 of the Code by failing to handle all premiums, return premiums, or other funds received by the agency in a fiduciary capacity and by failing to maintain an accurate record and itemization of the funds deposited into the account; (vii) Sanibel and Hunter violated § 38.2-1822 and subsection 14 of § 38.2-1831 of the Code by knowingly permitting an unlicensed individual to act as an agent of an insurer licensed in Virginia and by knowingly accepting business from such agent; and (viii) Garcia-Guajardo violated § 38.2-1822 of the Code by acting as an agent of an insurer licensed in Virginia without being properly licensed and after having voluntarily surrendered her insurance agent license to the Bureau. The Bureau sought the revocation of Sanibel's and Hunter's insurance agent licenses, the entry of a permanent injunction against Garcia-Guajardo, and the assessment of monetary penalties against each of the Defendants.

The Rule ordered the Defendants to file a responsive pleading on or before April 6, 2010, scheduled a hearing before the Commission on June 24 and 25, 2010, and assigned the matter to a Hearing Examiner to conduct further proceedings. On April 7, 2010, Hunter and Sanibel filed an answer to the Rule in which they denied the allegations of wrongdoing brought by the Bureau. On April 16, 2010, after being granted an extension, Garcia-Guajardo filed an answer to the Rule, in which she also denied the allegations of wrongdoing brought by the Bureau.

On April 27, 2010, the Bureau filed a Motion for Default Judgment concerning Sanibel and Hunter on the grounds that they failed to file a timely response to the Rule and that the responsive pleading was not signed as required by 5 VAC 5-20-20 of the Commission's Rules of Practice and Procedure. Additionally, the Bureau requested that an expedited hearing be scheduled to address its motion. On June 8, 2010, a hearing on the Bureau's Motion for Default Judgment was convened at which time counsel for the Bureau advised that Hunter and the Bureau were in settlement discussions. Based on the progress of the discussions, the Bureau withdrew its motion.

On June 22, 2010, the Bureau filed a Motion to Dismiss the Rule against Hunter and Sanibel after having reached settlement in this matter. The Bureau asked the Commission to enter a proposed Settlement Order that included a copy of an agreed-upon Corrective Action Plan and advised that the

allegations and scheduled hearing in this matter with regard to Garcia-Guajardo should remain intact.¹ In the proposed Settlement Order, Sanibel and Hunter agreed to: (i) comply with the Corrective Action Plan; (ii) be placed on probation for a period of five (5) years; and (iii) be penalized in the amount of Fifteen Thousand Dollars (\$15,000), of which Two Thousand Five Hundred Dollars (\$2,500) would be tendered to the Treasurer of the Commonwealth within thirty (30) days and the remaining Twelve Thousand Five Hundred Dollars (\$12,500) would be suspended during a probation period and waived at the end of the probation period if Sanibel and Hunter abided by the Corrective Action Plan. The Corrective Action Plan agreed to by Sanibel and Hunter required them to make a number of changes to the marketing and business practices of the agency in order to bring the agency into compliance with the insurance laws. In particular, Sanibel and Hunter agreed that Garcia-Guajardo would have no direct or indirect involvement in the management or activities of Sanibel.

In a Hearing Examiner's Ruling and Certification to the Commission dated June 30, 2010, the proposed Settlement Order was certified to the Commission with a recommendation that it be approved. On July 8, 2010, the Commission issued the Settlement Order adopting its terms and provisions.

On September 22, 2010, a second Rule to Show Cause was issued against Sanibel and Hunter based on allegations by the Bureau that Sanibel and Hunter had violated the terms of the Settlement Order by failing to comply with certain provisions of the Corrective Action Plan and by failing to pay any amount of the agreed-upon monetary penalty. The Commission assigned the matter to a Hearing Examiner, scheduled a hearing for October 14, 2010, and directed Sanibel and Hunter to appear and show cause why they should not be: (i) held in contempt and fined pursuant to § 12.1-33 of the Code of Virginia for failing to comply with the Settlement Order; (ii) have their insurance agent licenses revoked; and (iii) be subject to a monetary penalty in the amount of Fifteen Thousand Dollars (\$15,000) for failing to comply with the Corrective Action Plan.

On October 14, 2010, a hearing was convened in this matter. The Bureau appeared by counsel, and Hunter appeared *pro se*. During the hearing, the Bureau called four witnesses: a former employee of Sanibel, a sales manager for Alfa Insurance, and Bureau investigators Linwood G. Bennett, Jr. and Michael E. Nacy. The testimony and evidence presented by the Bureau included specific instances that showed: (i) Garcia-Guajardo was still involved in the management and activities at Sanibel; (ii) Sanibel and Hunter had failed to abide by other provisions of the Corrective Action Plan; and (iii) Sanibel and Hunter had failed to pay any part of the monetary penalty agreed to under the terms of the Settlement Order. Hunter did not call any witnesses and testified on his own behalf.

On December 13, 2010, the Hearing Examiner filed his report ("Report"), which thoroughly summarized the factual and procedural history of this case, as well as the evidence and arguments presented at the hearing. The Hearing Examiner focused his discussion on the terms of the Settlement Order and Corrective Action Plan and how the record showed specific instances of Garcia-Guajardo's continued involvement in Sanibel and Hunter's lack of day-to-day control of the agency's activities. He also noted that Hunter admitted that he and Sanibel had failed to comply with the Settlement Order and Corrective Action Plan. Consequently, the Hearing Examiner found that Sanibel and Hunter failed to comply with, and are therefore in contempt of, the Commission's Settlement Order dated July 8, 2010. The Hearing Examiner recommended that Hunter should have his insurance license suspended for one (1) year, that Sanibel's license should be revoked permanently, and that the fine of \$15,000 should be reinstated for Sanibel.

On January 6, 2011, Hunter filed his comments to the Report ("Comments").

NOW THE COMMISSION, upon consideration of the Rule, the record, the Hearing Examiner's Report, the Comments filed, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations as detailed in his Report should be adopted. We consider the recommended penalties to be appropriate considering the multiple opportunities Sanibel and Hunter were given to correct the problems that were the subject of the original Rule. Furthermore, Hunter was responsible for ensuring that Sanibel was in compliance with the Corrective Action Plan; however, the record revealed that he took no steps to regain day-to-day control of the operations of Sanibel, which resulted in Garcia-Guajardo's continued involvement in the management and operations of the agency.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the December 13, 2010 Hearing Examiner's Report are hereby adopted;
- (2) Pursuant to § 38.2-1831 of the Code, the license of Gary J. Hunter is hereby SUSPENDED for a period of one (1) year from the date of entry of this Order;
- (3) Pursuant to § 38.2-1831 of the Code, the license of Sanibel & Lancaster Insurance, LLC, is hereby permanently REVOKED;
- (4) Pursuant to § 38.2-218 of the Code, Sanibel & Lancaster Insurance, LLC, is hereby penalized in the amount of Fifteen Thousand Dollars (\$15,000);
- (5) The Bureau of Insurance shall notify every company for which Sanibel and Hunter hold an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) This case is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

¹ The Bureau and Garcia-Guajardo, being unable to reach settlement, proceeded to hearing on June 24, 2010. On December 13, 2010, the Commission entered an Order in which it found that the Bureau had proven by clear and convincing evidence that Garcia-Guajardo violated § 38.2-1822 of the Code in ten (10) specific instances. Garcia-Guajardo was penalized the sum of Fifty Thousand Dollars (\$50,000) and permanently enjoined from transacting the business of insurance in Virginia.

**CASE NO. INS-2010-00046
FEBRUARY 7, 2010**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

NATIONAL STATES INSURANCE COMPANY,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") may revoke the license of any insurance company to transact the business of insurance in the Commonwealth of Virginia whenever the Commission finds that the company has been found insolvent by a court of any other state or whenever the company has had its certificate of authority revoked in the Commonwealth of Virginia.

National States Insurance Company, a foreign corporation domiciled in the State of Missouri ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

On July 20, 2010, the Commission suspended the Defendant's license to transact the business of insurance in the Commonwealth of Virginia because of financial regulatory concerns. On November 15, 2010, the Circuit Court of Cole County, Missouri issued a Judgment, Decree, and Final Order of Liquidation against the Defendant in which it found that the Defendant is insolvent. In addition, the Defendant's certificate of authority to transact business in Virginia has not been in good standing since December 1, 2010, for failure to file an annual report and remit an annual registration fee.

The Commission's Bureau of Insurance has recommended that the Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

Accordingly, IT IS ORDERED that the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to February 18, 2011, revoking the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before February 18, 2011, the Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed revocation of the Defendant's license.

**CASE NO. INS-2010-00046
MARCH 1, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

NATIONAL STATES INSURANCE COMPANY,
Defendant

ORDER REVOKING LICENSE

In an Order To Take Notice ("Order") entered herein February 7, 2011, National States Insurance Company, a Missouri domiciled insurer ("Defendant") licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, was ordered to take notice that the Commission would enter an order subsequent to February 18, 2011, revoking the license of the Defendant to transact the business of insurance unless on or before February 18, 2011, the Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of the Defendant's license.

The Order was entered upon the recommendation of the Commission's Bureau of Insurance ("Bureau") based on a Judgment, Decree and Final Order of Liquidation entered against the Defendant by the Circuit Court of Cole County, Missouri, in which it found that the Defendant is insolvent. In addition, the Defendant's certificate of authority to transact business in Virginia has not been in good standing since December 1, 2010, for failure to file an annual report and remit an annual registration fee.

As of the date of this Order the Defendant has not requested a hearing with regards to the proposed revocation of its license. The Bureau has recommended that the Defendant's license to transact the business of insurance in the Commonwealth of Virginia be revoked.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia is hereby REVOKED;
- (2) The Defendant shall transact no further business in the Commonwealth of Virginia;
- (3) The Bureau of Insurance shall cause notice of the revocation of the Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia; and
- (4) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00064
JUNE 20, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

ACE INSURANCE & FINANCIAL GROUP, INC.,

UNYONG KATHY KIM,

and

CHARLIE JOSEPH SHIN,

Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-310 of the Code of Virginia by failing to state in the policy all fees, charges, premiums or other consideration charged for the insurance, and by charging or collecting fees for the procurement of insurance that were not included in the premium or stated in the policy; violated § 38.2-503 by making, publishing, disseminating, circulating, or placing before the public an advertisement, announcement or statement containing an assertion, representation or statement relating to the business of insurance which was untrue, deceptive or misleading; violated § 38.2-504 by making or aiding, abetting or encouraging the making, publishing, dissemination or circulation of any statement that is false, and maliciously critical of, or derogatory to, any person with respect to the business of insurance; violated § 38.2-512 by making or causing or allowing to be made false statements or representations on or relative to applications for insurance policies for the purpose of obtaining a fee, commission, or other benefit; violated § 38.2-1809 by failing to retain all records relative to insurance transactions for the three previous calendar years, and by failing to make records available promptly upon request for examination by the Commission or its employees; violated § 38.2-1812 by paying a commission for services as agents to persons who were not properly licensed and appointed; violated § 38.2-1812.2 by failing to obtain signed consent forms from applicants or policyholders who were charged administrative fees in addition to the premium, and by using improper consent forms when charging administrative fees in addition to the premium; violated § 38.2-1813 by failing to hold all premiums, return premiums, or other funds received by the Defendants in a fiduciary capacity, by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account, and by commingling business or personal funds with funds required to be maintained in a separate fiduciary account; and violated § 38.2-1822 by knowingly permitting unlicensed individuals to act as agents on behalf of the company.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have waived their right to a hearing; agreed to refund all fees that were illegally collected from Virginia insureds and, on or before August 17, 2011, provide to the Bureau of Insurance a copy of all refund checks, along with a complete listing of the names of all insureds who received the refunds and the amount of each refund.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants shall refund all fees that were illegally collected from Virginia insureds and, on or before August 17, 2011, provide to the Bureau of Insurance a copy of all refund checks, along with a complete listing of the names of all insureds who received the refunds and the amount of each refund; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00064
JUNE 30, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
ACE INSURANCE & FINANCIAL GROUP, INC.,
UNYONG KATHY KIM,
and
CHARLIE JOSEPH SHIN,
Defendants

VACATING ORDER

On June 20, 2011, the State Corporation Commission entered into a Settlement Order with the Defendants. The Settlement Order, however, inadvertently failed to include language reflecting that the Defendants had voluntarily surrendered all license authority in the Commonwealth of Virginia effective September 15, 2011.

Accordingly, IT IS ORDERED THAT the Settlement Order entered in this case on June 20, 2011, is hereby vacated.

**CASE NO. INS-2010-00064
JUNE 30, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
ACE INSURANCE & FINANCIAL GROUP, INC.,
UNYONG KATHY KIM,
and
CHARLIE JOSEPH SHIN,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-310 of the Code of Virginia by failing to state in the policy all fees, charges, premiums or other consideration charged for the insurance, and by charging or collecting fees for the procurement of insurance that were not included in the premium or stated in the policy; violated § 38.2-503 by making, publishing, disseminating, circulating, or placing before the public an advertisement, announcement or statement containing an assertion, representation or statement relating to the business of insurance which was untrue, deceptive or misleading; violated § 38.2-504 by making or aiding, abetting or encouraging the making, publishing, dissemination or circulation of any statement that is false, and maliciously critical of, or derogatory to, any person with respect to the business of insurance; violated § 38.2-512 by making or causing or allowing to be made false statements or representations on or relative to applications for insurance policies for the purpose of obtaining a fee, commission, or other benefit; violated § 38.2-1809 by failing to retain all records relative to insurance transactions for the three previous calendar years, and by failing to make records available promptly upon request for examination by the Commission or its employees; violated § 38.2-1812 by paying a commission for services as agents to persons who were not properly licensed and appointed; violated § 38.2-1812.2 by failing to obtain signed consent forms from applicants or policyholders who were charged administrative fees in addition to the premium, and by using improper consent forms when charging administrative fees in addition to the premium; violated § 38.2-1813 by failing to hold all premiums, return premiums, or other funds received by the Defendants in a fiduciary capacity, by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account, and by commingling business or personal funds with funds required to be maintained in a separate fiduciary account; and violated § 38.2-1822 by knowingly permitting unlicensed individuals to act as agents on behalf of the company.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have waived their right to a hearing; agreed to refund all fees that were illegally collected from Virginia insureds and, on or before August 17, 2011, provide to the Bureau of Insurance a copy of all refund checks, along with a complete listing of the names of all insureds who received the refunds and the amount of each refund. The Defendants also agreed to the voluntary surrender of all license authority in the Commonwealth of Virginia effective September 15, 2011. In the event the agency is sold prior to September 15, 2011, the Defendants have agreed to surrender their licenses at or around the time of the sale.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants shall refund all fees that were illegally collected from Virginia insureds and, on or before August 17, 2011, provide to the Bureau of Insurance a copy of all refund checks, along with a complete listing of the names of all insureds who received the refunds and the amount of each refund; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NOS. INS-2010-00123, INS-2010-00124, AND INS-2010-00125
FEBRUARY 28, 2011**

COMMONWEALTH OF VIRGINIA, *ex. rel.*
STATE CORPORATION COMMISSION

v.

DON DELWYN TUZO,
GENESIS BUSINESS GROUP, INC.,
and
GENESIS CAPITAL CORPORATION,
Defendants

JUDGMENT ORDER

On August 12, 2010, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Don Delwyn Tuzo ("Tuzo") and his companies, Genesis Business Group, Inc. ("Genesis Group"), and Genesis Capital Corporation ("Genesis Capital") (collectively, "Defendants"). The Rule alleged that the Defendants had violated numerous statutes under Title 38.2 of the Code of Virginia ("Code") by offering, selling, and issuing surety bonds ("Bonds") to a Virginia construction company for public works projects in the Tidewater region.

Specifically, the Rule alleged that Tuzo and Genesis Group violated: (i) § 38.2-1822 of the Code by acting as agents in the transaction of insurance without first obtaining a license as required by law; (ii) § 38.2-1802 of the Code by selling, soliciting, and negotiating surety contracts in Virginia on behalf of an insurer which was not licensed to transact the business of insurance in the Commonwealth; and (iii) § 38.2-512 of the Code by making false and misleading statements regarding Genesis Capital's authority to transact business as a surety insurer in Virginia in connection with surety contracts as well as making false and misleading statements regarding the existence of assets supporting the Bonds. Additionally, the Rule alleged that Genesis Capital violated § 38.2-2402 of the Code by transacting the business of surety insurance in Virginia without first obtaining a license from the Commission to transact that class of insurance.

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for October 26 and 27, 2010. The Rule also ordered the Defendants to file a responsive pleading on or before September 10, 2010, in which the Defendants were required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that they intended to assert. The Defendants were advised that they may be found in default if they failed to either timely file a responsive pleading or other appropriate pleading, or if they filed such pleading and failed to make an appearance at the hearing. If found in default, the Defendants were advised that they would be deemed to have waived all objections to the admissibility of evidence and may have entered against them a judgment by default imposing some or all of the sanctions permitted by law.

On October 22, 2010, the Bureau of Insurance ("Bureau"), by counsel, filed a Motion for Default Judgment ("Motion") after the Defendants failed to respond to the Rule or otherwise appear in the proceeding despite having been properly served with the Rule. The Motion requested that the Defendants be found in default, fined the maximum amount allowed by law, and permanently enjoined from conducting the business of surety insurance in the Commonwealth of Virginia. As part of the Motion, the Bureau included the Affidavit of Larry Beadles, Senior Investigator for the Property and Casualty Agent Investigations Section of the Bureau's Agent Regulation and Administration Division, together with accompanying attachments containing further details of the allegations set forth in the Rule ("Affidavit").

An evidentiary hearing on the Rule was convened on October 26, 2010. The Defendants failed to appear after receiving notice of the hearing. The Division presented proof of notice that the Defendants were served with the Rule.

During the hearing, the Hearing Examiner heard testimony from Larry Beadles and the Affidavit was made a part of the record. Mr. Beadles testified that in 2009, Tuzo contacted a Virginia company, B&R Construction Management, Inc. ("B&R"), with an offer to sell Bonds for B&R's state and municipal construction projects. Mr. Beadles further testified that Tuzo and Genesis Group, as a surety bond producer, subsequently solicited, negotiated and sold Bonds to B&R and that Genesis Capital issued these Bonds.

Mr. Beadles identified five projects for which the Defendants offered, sold, and issued Bonds to B&R. These projects and Bonds, copies of which were attached to the Affidavit and admitted at the hearing, were as follows:

- (1) A performance and payment bond in the amount of One Million One Hundred Two Thousand Dollars (\$1,102,000) to insure and protect the Portsmouth Redevelopment & Housing Authority in connection with B&R's work on a construction project involving the Jeffrey Wilson Housing Project;
- (2) Performance and payment bonds in the amounts of Seven Hundred Thirteen Thousand Four Hundred Eighty-six Dollars (\$713,486) to insure and protect the City of Portsmouth in connection with B&R's demolition of Hunt Mapp/Willett Hall for the City of Portsmouth;
- (3) A bid bond in the amount of Two Hundred Thousand Dollars (\$200,000) and performance and payment bonds in the amounts of Three Hundred Seventy-three Thousand Dollars (\$373,000) in connection with B&R's construction of a K-9 facility for the City of Virginia Beach;

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(4) A bid bond in the amount of Fifty Thousand Dollars (\$50,000) and performance and payment bonds in the amounts of Seven Hundred Thirty-Two Thousand Six Hundred Sixty Dollars (\$732,616) in connection with B&R's construction of a visitor's center for the Virginia Department of Conservation & Recreation; and

(5) A bid bond in the amount of Twenty-five Thousand Dollars (\$25,000) in connection with B&R's bid for a Jarmin Road/Crossways Boulevard site construction project issued by the City of Chesapeake.

Mr. Beadles testified that each of the Bonds: (a) identifies Genesis Capital as the issuer of the Bonds; (b) identifies Genesis Group as the producer of the Bonds; and (c) that each Bond includes Tuzo's signature as the authorized representative and attorney-in-fact for Genesis Capital. Mr. Beadles also testified that neither Tuzo nor Genesis Group was or ever has been licensed to transact the business of insurance in Virginia. Additionally, Mr. Beadles testified that Genesis Capital was not and never has been licensed to transact the business of surety insurance in Virginia.

Mr. Beadles further testified that Tuzo, when asked by the owner of B&R, had represented that land assets backed the Bonds. Mr. Beadles, however, testified that the records provided to B&R did not identify any financial reserves or other tangible assets held by Genesis Capital, nor did the Bureau establish that any such assets exist to back the Bonds. During his testimony, Mr. Beadles also noted that the Bonds provided to the City of Portsmouth stated that Genesis Capital "is licensed to conduct business in the Commonwealth of Virginia," as well as "named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" under Circular 570 of the United States Treasury Department. Mr. Beadles, however, testified that Genesis Capital was neither licensed to transact the business of surety insurance in Virginia, nor listed in Circular 570 as an acceptable surety on bonds for federal projects.

The Bureau provided legal authority for the Commission to enter default judgment, along with legal authority that due process notice requirements were satisfied. The Bureau requested that the Hearing Examiner: (i) grant its motion for entry of default judgment; (ii) recommend to the Commission that the Commission enter a Judgment Order finding Defendant Tuzo in default and imposing a Five Thousand Dollar (\$5,000) monetary penalty per violation, for a total of One Hundred Fifteen Thousand Dollars (\$115,000) for twenty-three (23) violations; (iii) recommend to the Commission that the Commission enter a Judgment Order finding Defendant Genesis Group in default and imposing a Five Thousand Dollar (\$5,000) monetary penalty for each violation, for a total of One Hundred Fifteen Thousand Dollars (\$115,000) for twenty-three (23) violations; (iv) recommend to the Commission that the Commission enter a Judgment Order finding Defendant Genesis Capital in default and imposing a Five Thousand Dollar (\$5,000) monetary penalty for each violation, for a total of Fifty Thousand Dollars (\$50,000) for ten (10) violations; and (v) permanently enjoin the Defendants from conducting the business of insurance in the Commonwealth of Virginia.

On January 24, 2011, the Hearing Examiner issued his report. In his report and based on the record, he found that: (i) the Motion for Default Judgment should be granted; (ii) Tuzo and Genesis Group each committed ten (10) violations of § 38.2-1822 of the Code, ten (10) violations of § 38.2-1802 of the Code, and three (3) violations of § 38.2-512 of the Code, for a total of twenty-three (23) violations each for Tuzo and Genesis Group; and (iii) Genesis Capital committed ten (10) violations of § 38.2-2402 of the Code. The Hearing Examiner also found that the Defendants should be fined Five Thousand Dollars (\$5,000) for each violation, for a total of One Hundred Fifteen Thousand Dollars (\$115,000) against Tuzo, One Hundred Fifteen Thousand Dollars (\$115,000) against Genesis Group, and Fifty Thousand Dollars (\$50,000) against Genesis Capital. The Hearing Examiner also found that the Defendants should be enjoined from conducting the business of insurance in Virginia. The report allowed the parties twenty-one (21) days in which to file comments. The Defendants did not file comments.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Motion for Default Judgment is GRANTED;
- (2) In accordance with the Commission's regulatory duties and powers pursuant to § 38.2-218 of the Code of Virginia, judgment is entered for the Commonwealth against Defendant Don Delwyn Tuzo in the amount of One Hundred Fifteen Thousand Dollars (\$115,000);
- (3) In accordance with the Commission's regulatory duties and powers pursuant to § 38.2-218 of the Code of Virginia, judgment is entered for the Commonwealth against Defendant Genesis Business Group, Inc., in the amount of One Hundred Fifteen Thousand Dollars (\$115,000);
- (4) In accordance with the Commission's regulatory duties and powers pursuant to § 38.2-218 of the Code of Virginia, judgment is entered for the Commonwealth against Defendant Genesis Capital Corporation in the amount of Fifty Thousand Dollars (\$50,000);
- (5) In accordance with the Commission's regulatory duties and powers pursuant to § 38.2-220 of the Code of Virginia, the Defendants are permanently enjoined from conducting the business of insurance in the Commonwealth of Virginia; and
- (6) This case is dismissed and the papers herein shall be placed in the file for ended causes.

**CASE NO. INS-2010-00132
FEBRUARY 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
EDMUND C. SCARBOROUGH,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant violated § 38.2-2402 of the Code of Virginia by transacting the business of surety insurance in the Commonwealth of Virginia without first obtaining a license from the Commission to transact that class of insurance.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-220 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and issue temporary or permanent injunctions upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of his right to a hearing in this matter, whereupon the Defendant has made an offer of settlement to the Commission wherein the Defendant has, in addition to waiving his right to a hearing, agreed to pay to the Treasurer of the Commonwealth of Virginia the amount of Twenty Thousand Dollars (\$20,000) as a monetary penalty on or before April 1, 2011. The Defendant has also agreed to not issue or deliver any further bonds in the Commonwealth of Virginia as an individual surety to residents or corporations authorized to do business in the Commonwealth of Virginia and/or on construction projects located in the Commonwealth of Virginia based on the position of the Bureau that only licensed insurers may transact the business of insurance in the Commonwealth of Virginia. Furthermore, the Defendant has agreed to make no representations that he and/or other individual sureties may transact the business of insurance in the Commonwealth of Virginia without having to become licensed or otherwise subject to regulation by the Commission.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted to the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendant shall not issue or deliver any further bonds as an individual surety in the Commonwealth of Virginia to residents or corporations authorized to do business in the Commonwealth of Virginia and/or on construction projects located in the Commonwealth of Virginia;
- (3) The Defendant shall make no representations that he and/or other individual sureties may transact the business of insurance in the Commonwealth of Virginia without having to become licensed or otherwise subject to regulation by the Commission;
- (4) The Defendant shall pay to the Treasurer of the Commonwealth of Virginia the amount of Twenty Thousand Dollars (\$20,000) as a monetary penalty on or before April 1, 2011; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00185
JANUARY 26, 2010**

APPLICATION OF
DEPUTY RECEIVER OF RECIPROCAL OF AMERICA AND THE RECIPROCAL GROUP

For Disbursement of Assets

FINAL ORDER

On July 29, 2010, came Alfred W. Gross, Commissioner of Insurance, Bureau of Insurance, State Corporation Commission ("Commission"), in his capacity as Deputy Receiver of Reciprocal of America ("ROA") and The Reciprocal Group in receivership for liquidation, by counsel, and respectfully filed with the Commission the Deputy Receiver's Application for Authority to Issue a 2010 Early Access Distribution, and for an Order Approving Notice Procedures, Establishing a Response Date, and Setting a Contingent Hearing ("Application"). Therein, the Deputy Receiver sought orders from the Commission which, among other things: (1) set a hearing on the Application; (2) approved the Deputy Receiver's service of the Application; (3) scheduled

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dates prior to which the Deputy Receiver and any party in support of, or in opposition to, the Application must provide pre-filed testimony and exhibits; and (4) approved, after the hearing, the Application and the issuance of an early access distribution ("2010 Early Access Distribution").¹

On September 24, 2010, the Commission issued a Scheduling Order ("Scheduling Order") which docketed this case and assigned the matter to a Hearing Examiner. The Scheduling Order set a hearing on the Application for November 16, 2010, and required the Deputy Receiver to send a copy of the Application to all parties of record who participated in Case No. INS-2003-00267 (unless such material was previously provided) on or before September 28, 2010. The Scheduling Order directed all persons desiring to participate as a respondent in this proceeding to file a notice of participation with the Clerk of the Commission, and serve the Deputy Receiver with a copy of same, on or before October 6, 2010.

A Notice of Participation was timely filed by the Kentucky Hospitals.² Prepared testimony and exhibits were filed by the Deputy Receiver in accordance with the Scheduling Order.

On November 16, 2010, an evidentiary hearing was convened by the Hearing Examiner. No post-hearing briefs were filed.

On December 8, 2010, the Report of Michael D. Thomas, Hearing Examiner (the "Report"), was filed in this matter. In his 4-page Report, the Hearing Examiner provided a detailed summary of the record in this proceeding, a discussion of the legal issues involved in this case, and his findings and recommendations. Therein, the Hearing Examiner recommended, among other things, that the Deputy Receiver should issue an early access distribution. Specifically, the Hearing Examiner made the following findings and recommendations:

1. Based on the record, the Deputy Receiver's Application to make a 2010 Early Access Distribution to the Guaranty Associations in the total amount of \$14,723,265.92 should be approved;
2. This amount represents a payment from the receivership estate of \$14,528,992.65 and a redistribution of \$194,273.27 previously paid to the Guaranty Associations;
3. The 2009 ROA Annual Statement filed with the Commission supports the payment of the 2010 Early Access Distribution; and
4. The amount of the distribution was calculated in accordance with the EAP, and the distribution will be made in accordance with the EAA.³

The Hearing Examiner recommends that the Commission adopt the findings and recommendations of his Report, approve the Application, authorize the Deputy Receiver to make a 2010 Early Access Distribution to the Guaranty Associations consistent with the EAP and the EAA adopted by the Commission, and pass the papers of this matter to the file for ended causes.⁴

No party filed a response to the Report.

NOW THE COMMISSION, having considered the Application, testimony and exhibits, the entire record in this matter, the Report, and the applicable law, finds that the Hearing Examiner's findings and recommendations should be adopted in full. The issues raised herein have been thoroughly briefed and argued.

Accordingly, IT IS ORDERED THAT:

- (1) The Deputy Receiver's Application is APPROVED.
- (2) The Deputy Receiver is authorized to make a 2010 Early Access Distribution to the applicable Guaranty Associations in the total amount of \$14,723,265.92, comprised of a payment from the receivership estate of \$14,528,992.65 and a redistribution of \$194,273.27 previously paid to the Guaranty Associations.
- (3) This case is dismissed and the papers herein passed to the file for ended causes.

Commissioner Jagdmann did not participate in this case.

¹ The Application was filed in accordance with the Commission's Final Order dated March 15, 2007, in Case No. INS-2003-00267, which approved and adopted the Early Access Agreement ("EAA"), Early Access Plan ("EAP"), and Early Access Distribution Computation ("EADC"). The EAA, EAP, and EADC were the product of extensive negotiations and pleadings in Case No. INS-2003-00267. The Final Order dated March 15, 2007, approved the application filed by the Virginia Property & Casualty Insurance Guaranty Association ("Virginia Association"), in accordance with § 38.2-1509(A) of the Code of Virginia, to disburse the available assets of the ROA estate to the Virginia Association and the Alabama Insurance Guaranty Association, the District of Columbia Insurance Guaranty Association, the Georgia Insurers Insolvency Pool, the Kansas Insurance Guaranty Association, the Indiana Insurance Guaranty Association, the Louisiana Insurance Guaranty Association, the Maryland Property & Casualty Insurance Guaranty Association, the Mississippi Insurance Guaranty Association, the Missouri Property & Casualty Insurance Guaranty Association, the North Carolina Insurance Guaranty Association, and the Tennessee Insurance Guaranty Association (collectively, the "Guaranty Associations").

² The "Kentucky Hospitals" include Appalachian Regional Healthcare, Hardin Memorial Hospital, Highlands Regional Medical Center, Murray-Calloway County Hospital, Owensboro Mercy Health System, Regional Medical Center/Trover Clinic Foundation, Rockcastle Hospital and Respiratory Care Center, St. Claire Regional Medical Center, and T.J. Samson Community Hospitals.

³ Report at 3-4.

⁴ *Id.* at 4.

**CASE NO. INS-2010-00198
OCTOBER 20, 2011**

PETITION OF
PAULA CALIMAFDE, TRUSTEE OF THE RONALD D. EASTMAN IRREVOCABLE TRUST

For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal

FINAL ORDER

On February 12, 2009, the Circuit Court of the City of Richmond entered an order appointing the State Corporation Commission ("Commission") as Receiver of Shenandoah Life Insurance Company ("Shenandoah Life" or "Company"). In addition, on February 12, 2009, the Commission, by Order Appointing Deputy Receiver for Conservation and Rehabilitation ("Order Appointing Deputy Receiver"), appointed Alfred W. Gross, Commissioner for the Commission's Bureau of Insurance, as Deputy Receiver, in accordance with Title 38.2, Chapter 15 of the Code of Virginia.¹ Pursuant to his grant of authority, the Deputy Receiver in his Second Directive of Deputy Receiver Adopting Receivership Appeal Procedure established appeal procedures for appeals or challenges of any decision made by the Deputy Receiver with respect to claims made against Shenandoah.

On September 1, 2010, Paula Calimafde, Trustee of the Ronald D. Eastman Irrevocable Trust ("Petitioner") filed a Petition for Review ("Petition") with the Commission contesting the Deputy Receiver's denial of the Petitioner's request for reinstatement of Shenandoah Life Policy No. 000698560.

Following a pre-hearing conference which was convened on January 12, 2011, a Ruling was entered on January 13, 2011, establishing various procedural deadlines in this case. Among other things, the Ruling scheduled an evidentiary hearing on the Petition to commence on November 30, 2011, and to continue on December 1 and 2, 2011, if necessary.

On September 30, 2011, the Petitioner and Shenandoah Life filed a Joint Motion to Ratify and Approve Agreement and Motion to Dismiss ("Motion to Dismiss"). In the Motion to Dismiss, the parties stated that they had resolved this dispute and requested that the Petition be dismissed with prejudice and that the terms of their Settlement Agreement, which were attached to the motion, be approved and ratified by the Commission.

On October 4, 2011, the Hearing Examiner issued her Report in which she recommended that the Deputy Receiver's Motion to Dismiss be granted, the Petition be dismissed with prejudice, and the Commission approve and ratify the terms of the Settlement Agreement. Additionally, because the Report recommended dismissal of the proceedings upon the agreement of the parties, the Hearing Examiner found that the comment period on her Report should be waived.

NOW THE COMMISSION, upon consideration of the record herein and the Report of the Hearing Examiner, is of the opinion that the findings and recommendations of the Hearing Examiner should be adopted.

Accordingly, IT IS ORDERED THAT:

1. The Motion to Dismiss is hereby GRANTED;
2. The Petition of Paula Calimafde, Trustee of the Ronald D. Eastman Irrevocable Trust for review of Deputy Receiver's Determination of Appeal is hereby DISMISSED with prejudice;
3. The terms of the Settlement Agreement are hereby APPROVED and RATIFIED; and
4. The case is dismissed, and the papers herein are passed to the file for ended causes.

¹ On January 10, 2011, the Commission entered an Order appointing Jacqueline K. Cunningham as Deputy Receiver of Shenandoah.

**CASE NO. INS-2010-00203
OCTOBER 31, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CONSECO SENIOR HEALTH INSURANCE COMPANY
and
CONSECO LIFE INSURANCE COMPANY,

Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it is alleged that Conseco Senior Health Insurance Company ("Conseco Senior"), duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, in certain instances, has violated §§ 38.2-316 A, 38.2-316 B, 38.2-316 C 1, and 38.2-3407.4 A of the Code of Virginia by failing to comply with policy and form filing requirements; violated §§ 38.2-510 A 1, 38.2-510 A 2, 38.2-510 A 3, 38.2-510 A 5, 38.2-510 A 6, and 38.2-510 A 14 of the Code of

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Virginia, as well as 14 VAC 5-400-40 A, 14 VAC 5-400-50 A, 14 VAC 5-400-50 D, 14 VAC 5-400-60 A, 14 VAC 5-400-60 B, 14 VAC 5-400-70 A, 14 VAC 5-400-70 B, and 14 VAC 5-400-70 D, by failing to properly handle claims; violated § 38.2-514 B of the Code of Virginia by failing to make disclosures; violated § 38.2-3407.1 B of the Code of Virginia by failing to pay interest in accordance with requirements; violated 14 VAC 5-120-50 (9) by failing to comply with general policy requirements of the Rules Governing the Implementation of the Individual Accident and Sickness Insurance Minimum Standards Act with Respect to Specified Disease Policies; and violated 14 VAC 5-170-130 A by failing to comply with policy provision of the Rules Governing Minimum Standards for Medicare Supplement Policies.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that Conseco Senior has committed the aforesaid alleged violations.

Conseco Life Insurance Company ("Conseco Life"), on behalf of Conseco Senior, has been advised of Conseco Senior's right to a hearing in this matter, whereupon, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein Conseco Life has tendered to the Commonwealth of Virginia the sum of Thirty-five Thousand Dollars (\$35,000), waived its right to a hearing, agreed to the entry by the Commission of a cease and desist order, and agreed to comply with the Corrective Action Plan contained in the Market Conduct Examination Report as of March 31, 2008.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants cease and desist from any future conduct which constitutes a violation of §§ 38.2-510 A 1, 38.2-510 A 2, 38.2-510 A 3, 38.2-510 A 5, 38.2-510 A 6, 38.2-510 A 14, 38.2-514 B, 38.2-3407.1 B, or 38.2-3407.4 A of the Code of Virginia, or 14 VAC 5-120-50 (9), 14 VAC 5-400-40 A, 14 VAC 5-400-50 A, 14 VAC 5-400-60 A, 14 VAC 5-400-60 B, 14 VAC 5-400-70 B, or 14 VAC 5-400-70 D; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00214
FEBRUARY 14, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Repealing and Adopting New Rules Governing Advertisement of Life Insurance and Annuities

ORDER REPEALING AND ADOPTING RULES

By Order entered herein October 20, 2010, all interested persons were ordered to take notice that subsequent to December 17, 2010, the State Corporation Commission ("Commission") would consider the entry of an order repealing the Commission's Rules Governing Life Insurance and Annuity Marketing Practices ("Rules"), set forth in Chapter 40 of Title 14 of the Virginia Administrative Code at 14 VAC 5-40-10 through 14 VAC 5-40-80, and adopting new rules proposed by the Bureau of Insurance ("Bureau") entitled Rules Governing Advertisement of Life Insurance and Annuities ("New Rules"), set forth in Chapter 41 of Title 14 of the Virginia Administrative Code at 14 VAC 5-41-10 through 14 VAC 5-41-160, unless on or before December 17, 2010, any person objecting to the repeal of the Rules and adoption of the New Rules filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the repeal of Rules and adoption of New Rules on or before December 17, 2010.

Comments were timely filed by the American Council of Life Insurers ("ACLI") by letter dated December 15, 2010. No request for a hearing was filed with the Clerk.

The Bureau considered the comments filed by the ACLI, and responded to these comments in a Statement of Position, a copy of which was filed in the case file on February 2, 2011. The Bureau recommends that the proposed New Rules be amended as follows in response to these comments:

14 VAC 5-41-30 E: The remainder of the sentence contained in Section 4 B of the National Association of Insurance Commissioners ("NAIC") Model regulations be added to this subsection to clarify use of misleading terms;

14 VAC 5-41-40 D: The provision as proposed be deleted, and the subsection amended using the language in the NAIC Model, Section 5 G to address policies containing graded or modified benefits;

14 VAC 5-41-40 E: The requirement that certain mandatory language pertaining to universal life policies be changed to an advertisement disclosure;

14 VAC 5-41-60 D: A sentence added to this subsection clarifying what an insurer may say with regard to dividends;

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14 VAC 5-41-60 G: This subsection be deleted as the language is outdated;

14 VAC 5-41-80 D: This subsection be deleted as the section is unnecessary; and

14 VAC 5-41-90 M: Change the limit on a gift of substantial value from \$5.00 to \$25.00, keeping in line with other states' regulations on this subject. The Bureau recommends that all other sections of the New Rules remain as proposed.

The repeal of Chapter 40 is necessary because the Rules are old and outdated, and many provisions are no longer applicable to current advertisement practices.

The New Rules in Chapter 41 address and clarify many of the advertisement requirements found in the Code of Virginia, retain some of the provisions from Chapter 40, and more closely follow the NAIC Model Regulation on this subject. The New Rules establish the form and content of advertisements and general disclosure requirements, set standards for advertisements that include information on premiums, nonguaranteed policy elements, and benefits, address policy costs and cost comparison requirements, insurer identity, advertisements using testimonials or offering introductory or special offers, requirements for policies sold to students, licensing, as well as approval and records maintenance requirements.

THE COMMISSION, having considered the repeal of the Rules, the proposed New Rules, the filed comments, the Bureau's Statement of Position response, and the Bureau's recommendation for additional amendments to the New Rules, is of the opinion that the attached New Rules in Chapter 41 be adopted, and the Rules in Chapter 40 be repealed.

Accordingly, IT IS ORDERED THAT:

(1) The Rules in Chapter 40 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Life Insurance and Annuity Marketing Practices" at 14 VAC 5-40-10 through 14 VAC 5-40-80, which are attached hereto and made a part hereof, should be, and they are hereby, REPEALED effective on July 1, 2011;

(2) The New Rules in Chapter 41 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Advertisement of Life Insurance and Annuities" at 14 VAC 5-41-10 through 14 VAC 5-41-160, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED, to be effective July 1, 2011;

(3) AN ATTESTED COPY hereof, together with a copy of the repealed Rules and adopted New Rules, shall be sent by the Clerk of the Commission to Althelia Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the repeal of Rules and adoption of New Rules by mailing a copy of this Order, including a clean copy of the final New Rules, to all insurers licensed by the Commission to write life insurance and annuity contracts in the Commonwealth of Virginia, as well as all interested parties;

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with repealed Rules and adopted New Rules, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations;

(5) The Commission's Division of Information Resources shall make available this Order and the attached Rules on the Commission's website: <http://www.scc.virginia.gov/case>; and

(6) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (3) above.

NOTE: A copy of Attachment A entitled "Rules Governing Advertisement of Life Insurance and Annuities" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2010-00225
MARCH 22, 2011**

PETITION OF
KAREN E. BRIGHT

For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal

FINAL ORDER

On February 12, 2009, the Circuit Court of the City of Richmond entered an Order appointing the State Corporation Commission ("Commission") as Receiver of Shenandoah Life Insurance Company ("Shenandoah" or "Company"). In addition, on February 12, 2009, the Commission, by Order Appointing Deputy Receiver for Conservation and Rehabilitation, appointed Alfred W. Gross, Commissioner of the Commission's Bureau of Insurance as Deputy Receiver, in accordance with Title 38.2, Chapter 15 of the Code of Virginia. Pursuant to his grant of authority, the Deputy Receiver, in his Second Directive of Deputy Receiver Adopting Receivership Appeal Procedure, established appeal procedures for appeals or challenges of any decision made by the Deputy Receiver with respect to claims against Shenandoah.

On October 29, 2010, Karen B. Bright ("Petitioner") filed a Petition for Review ("Petition") with the Commission contesting the Deputy Receiver's denial of her "Hardship Request" made in connection with Shenandoah Life Policy No. 001058006.

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By Order dated November 3, 2010, the Commission docketed the Petition, assigned the matter to a Hearing Examiner, and directed the Deputy Receiver to file an Answer or other responsive pleading to the Petition on or before November 29, 2010.

On November 19, 2010, the Deputy Receiver filed his Answer to the Petition, Motion to Dismiss, and Memorandum in Support of Motion to Dismiss, requesting the Commission deny the Petition and affirm the Deputy Receiver's Determination of Appeal. In support of his Motion to Dismiss, among other things, the Deputy Receiver stated that the issues raised by the Petitioner – that is, the Deputy Receiver's determination that 70% of the amount available under the insured's policy is the maximum amount that may be distributed as a policy loan, partial withdrawal, or full cash surrender – has already been resolved by the Commission in favor of the Deputy Receiver and, therefore, the Petition should be dismissed as a matter of law.

By Hearing Examiner's Ruling dated December 2, 2010, the Motion was taken under advisement and a telephonic hearing was scheduled for January 11, 2011.

On January 11, 2011, a hearing was conducted as scheduled. John O. Cox, Esquire, appeared as counsel to the Bureau of Insurance. Robert A. Dybing, Esquire, appeared as counsel to the Deputy Receiver. The Petitioner appeared *pro se*.

In the Notice of Appeal, and during the hearing, the Petitioner acknowledged receiving a check for surrendering her life insurance policy representing 70% of the cash surrender value of the policy but maintained she should have received 100% of the cash surrender value of the policy. At the hearing, the Petitioner testified that she purchased the policy for future care of her mother and that with the economic climate, she needs the full value of her policy.

Donald Beatty, Esquire, senior counsel in the Commission's Office of General Counsel and receivership manager for Shenandoah, testified as to the day-to-day operations of the Company and its efforts to be rehabilitated. Additionally, Mr. Beatty testified as to the terms of the Order Appointing Deputy Receiver. Specifically, Mr. Beatty testified that paragraph 12(e) of the Order Appointing Deputy Receiver orders Shenandoah to cease payment of policy loans, cash or surrender values, surrenders, and similar payments.¹ Mr. Beatty further testified that paragraph 13(b) of the Order Appointing Deputy Receiver authorizes the Deputy Receiver to implement a hardship exemption from the moratorium on policy loans, cash or surrender values, surrenders, and similar payments.² Mr. Beatty confirmed that prior to establishing the hardship exemption, the Deputy Receiver consulted with outside legal counsel, accounting and investment consultants, as well as the Company's Chief Financial Officer and in-house actuary. Mr. Beatty maintained that the 70% limit was established to preserve the Company's ability to pay claims and continuing business expenses.

Mr. Beatty also noted that the Commission previously found in Case No. INS-2009-00154, *Petition of Juanita B. Jones*, the 70% payout limitation to be a "prudent and reasonable" approach to managing the resources of Shenandoah Life. Finally, he testified that the Company's financial position has grown worse subsequent to the initial implementation of the 70% limitation and opined that such limitation remains necessary.

On January 26, 2011, the Hearing Examiner issued her Report in which she found that the moratorium on the cash surrender of policies, balanced with a 70% payout in hardship cases, is a prudent and reasonable approach to managing the Company's resources. The Hearing Examiner recommended that the Motion be granted and the Petition be denied.

NOW THE COMMISSION, upon consideration of the record herein and the Report of the Hearing Examiner, is of the opinion that the findings and recommendations of the Hearing Examiner should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Deputy Receiver's Motion to Dismiss is hereby GRANTED;
- (2) The Deputy Receiver's Determination of Appeal in connection with Shenandoah Life Policy No. 001058006 is hereby AFFIRMED;
- (3) The Petition of Karen B. Bright for review of Deputy Receiver's Determination of Appeal is hereby DISMISSED; and
- (4) The case is dismissed, and the papers herein are passed to the file for ended causes.

¹ *Commonwealth of Virginia, At the Relation of the State Corporation Commission v. Shenandoah Life Insurance Company*, Case No. INS-2009-00032, Order Appointing Deputy Receiver for Conservation and Rehabilitation (February 12, 2009).

² *Id.*

**CASE NO. INS-2010-00229
JANUARY 27, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MICHAEL P. SCHELLBACH,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of New York.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letters dated October 13, 2010 and December 14, 2010, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of New York.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00246
JULY 19, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MONITOR LIFE INSURANCE COMPANY OF NEW YORK,
Defendant

FINAL ORDER

Monitor Life Insurance Company of New York ("Defendant"), a foreign corporation domiciled in the State of New York, is licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia.

By Consent Order entered herein December 22, 2010, the Defendant was prohibited from issuing any new or renewal contracts or policies of insurance in Virginia. The Consent Order was entered due to the Defendant's surplus being below the \$3,000,000 minimum required by § 38.2-1028 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Defendant's March 31, 2011 Quarterly Statement filed with the Commission's Bureau of Insurance indicates that the Defendant is in compliance with Virginia's minimum capital and surplus requirement. The Bureau of Insurance has recommended that the Defendant's license to transact the business of insurance be restored to good standing and that this case be closed.

THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that the Consent Order entered by the Commission should be vacated.

Accordingly, IT IS ORDERED THAT:

- (1) The Consent Order entered by the Commission should be, and is hereby, VACATED;
- (2) This case be, and is hereby, CLOSED;
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00247
JUNE 10, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
WILLIAM LESLIE YOUNG
and
THE YOUNG INSURANCE AGENCY GROUP, INC.,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1813 of the Code of Virginia, as well as the Final Order entered by the Commission in Case No. INS-2005-00282, by failing to hold all premiums, return premiums, or other funds received by the Defendants in a fiduciary capacity and by failing to pay funds in the ordinary course of business to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Twenty Thousand Dollars (\$20,000), waived their right to a hearing, and agreed to provide the Bureau of Insurance with a copy of the agency's customer aged accounts receivable reports every ninety (90) days for a period of three (3) years from the date of entry of this Order.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants shall provide the Bureau of Insurance with a copy of the agency's customer aged accounts receivable reports every ninety (90) days for a period of three (3) years from the date of entry of this Order; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00251
FEBRUARY 17, 2011**

COMMONWEALTH OF VIRGINIA *ex rel.*
STATE CORPORATION COMMISSION,

Applicant

v.

RECIPROCAL OF AMERICA and THE RECIPROCAL GROUP,
Respondents

Re: Confidential Settlement Agreements

**FINAL ORDER APPROVING DEPUTY RECEIVER'S SETTLEMENTS
WITH CERTAIN FORMER OFFICERS, DIRECTORS, AND OUTSIDE COUNSEL
FOR RECIPROCAL OF AMERICA AND THE RECIPROCAL GROUP**

On November 30, 2010, Alfred W. Gross, as Deputy Receiver ("Deputy Receiver") of Reciprocal of America ("ROA") and The Reciprocal Group ("TRG"), in receivership ("Companies"), filed with the Clerk of the State Corporation Commission ("Commission") his Application for Orders Setting Contingent Hearing, Approving Procedures, Establishing Response Date, and Approving Deputy Receiver's Settlements with Certain Former Officers, Directors, and Outside Counsel of Reciprocal of America and The Reciprocal Group ("Application"), seeking, *inter alia*, that the Commission enter a final order approving: (a) a confidential mediated settlement among the Deputy Receiver and the plaintiffs in other civil actions pending as part of *In Re Reciprocal of America (ROA) Sales Practices Litigation*, Multidistrict Litigation Docket No. 1551 (W.D. Tenn.) ("MDL-1551"), and MDL-1551 defendants John William Crews ("Crews"), Gordon D. McLean ("McLean"), Kenneth R. Patterson ("Patterson"), Carolyn B. Hudgins ("Hudgins"), Judith A. Kelley ("Kelley"), Richard W. E. Bland ("Bland"), Crews & Hancock, P.L.C. ("Crews & Hancock"), William G. Sugg ("Sugg") and Gerald R. Wages ("Wages"),¹ as well as Great American Insurance Company, Executive Liability Division ("Great American ELD"), and Great American Insurance Company, Professional Liability Division ("Great American PLD") (the "D&O Settlement"), effectuated by a confidential mediated settlement agreement among those parties (the "D&O Settlement Agreement");² and (b) a settlement of claims between the Deputy Receiver and Ronald K. Davis, M.D. ("Davis") ("Davis Settlement"),³ effectuated by a confidential settlement agreement between them ("Davis Settlement Agreement"), and making certain requested findings, all as described in the Application.

PROCEDURAL HISTORY

1. On January 29, 2003, in Case No. CH03-135 styled *Commonwealth of Virginia ex rel. State Corporation Commission v. Reciprocal of America, The Reciprocal Group, and Jody M. Wagner, Treasurer of Virginia*, the Circuit Court of the City of Richmond, Virginia entered its Final Order Appointing Receiver for Rehabilitation or Liquidation ("Receivership Order"), appointing the Commission permanent Receiver of the Companies. The Receivership Order also appointed the Deputy Receiver.

2. Pursuant to the terms of the Receivership Order, the Deputy Receiver was authorized, *inter alia*, to institute and prosecute in his name or in the name of the Companies any and all suits and other legal proceedings including, but not limited to, the prosecution of any action which may exist on behalf of the Companies and their subscribers, members, insureds, policyholders, or creditors. In addition, the Receivership Order granted the Deputy Receiver the power to compromise such suits, legal proceedings, or claims on such terms and conditions as may be deemed appropriate.

3. On June 20, 2003, the Commission ordered that, *inter alia*, ROA and TRG be found and declared to be insolvent, and that the Deputy Receiver proceed with the liquidation of ROA and TRG in accordance with the provisions of Title 38.2, Chapter 15 of the Virginia Code, other applicable Virginia law, and the Commission's order, subject to further orders of the Commission.⁴

4. On November 12, 2003, as authorized by the Receivership Order, the Deputy Receiver instituted legal proceedings styled *Alfred W. Gross v. General Reinsurance Corporation, et al.*, Case No. 3:03cv955, in the United States District Court for the Eastern District of Virginia, which the United States Judicial Panel on Multidistrict Litigation subsequently transferred to MDL-1551, where the case is now pending as Case No. 04-CV-2313 ("ROA Lawsuit").

¹ The Deputy Receiver did not assert claims against Sugg or Wages, who were named as defendants by certain other MDL-1551 plaintiffs.

² The other MDL-1551 plaintiffs who are parties to the D&O Settlement Agreement are the plaintiffs in MDL-1551 actions *Leslie A. Newman v. General Reinsurance Corporation, et al.*, Civil Action No. 07-CV-1112, W.D. Tenn., *Leslie A. Newman v. General Reinsurance Corporation, et al.*, Civil Action No. 07-CV-1113, W.D. Tenn., *Leslie A. Newman v. General Reinsurance Corporation, et al.*, Civil Action No. 07-CV-1114, W.D. Tenn., *Crenshaw Community Hospital, et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 03-CV-2696, W.D. Tenn., *Gateway Regional Health System, Inc., et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 04-CV-2936, W.D. Tenn., *Delta Regional Medical Center, et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 06-CV-2155, W.D. Tenn., *Appalachian Regional Healthcare, Inc., et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 06-CV-2676, W.D. Tenn., *David Herrick, et al. v. General Reinsurance Corporation, et al.*, Civil Action No. 03-CV-2705, W.D. Tenn., *Schumacher Group, Inc. v. General Reinsurance Corporation, et al.*, Civil Action No. 04-CV-2410, W.D. Tenn., *Christie Clinic, P.C. v. General Reinsurance Corporation, et al.*, Civil Action No. 03-CV-2859, W.D. Tenn., and *Missouri Hospital Plan, et al. v. Doctors Insurance Reciprocal, et al.*, Civil Action No. 04-CV-2294, W.D. Tenn.

³ The Deputy Receiver is the only MDL-1551 plaintiff who named Davis as a defendant.

⁴ *Commonwealth of Virginia, ex rel. State Corporation Commission, Applicant v. Reciprocal of America and The Reciprocal Group, Respondents*, Case No. INS-2003-00024, 2003 SCC Ann. Rpt. 116, Order of Liquidation with a Finding of Insolvency and Directing the Cancellation of Direct Insurance Policies (June 20, 2003).

5. In the ROA Lawsuit, the Deputy Receiver alleges tort, contract, and statutory claims against, *inter alia*, Crews, McLean, Patterson, Hudgins, Kelley, Bland, Davis, and Crews & Hancock, as well as against a number of other defendants with whom the Deputy Receiver previously entered into settlements subject to certain conditions precedent.⁵

5. By his Application, the Deputy Receiver informed the Commission that he had entered into, and requested the Commission's approval of, the D&O Settlement and the Davis Settlement, which would resolve claims between the Deputy Receiver and Crews, McLean, Patterson, Hudgins, Kelley, Bland, Davis, Crews & Hancock, Great American ELD, and Great American PLD, and pursuant to which the Deputy Receiver would receive aggregate consideration of \$2,290,000 for the benefit of ROA's and TRG's policyholders and creditors, all as described in the Application.

Pursuant to the Commission's December 15, 2010 Scheduling Order which set a contingent hearing on the Application for approval of the D&O Settlement and the Davis Settlement, because no person filed a Notice of Objection, no hearing was held.⁶

NOW THE COMMISSION, having considered the Application, hereby makes the following findings:

(1) The Deputy Receiver has exclusive standing to prosecute and compromise the claims that he seeks to settle pursuant to the D&O Settlement and the Davis Settlement.

(2) The D&O Settlement and the Davis Settlement are fair and reasonable to, and in the best interests of, ROA's policyholders and ROA's and TRG's creditors.

Accordingly, IT IS ORDERED THAT:

(1) Both the D&O Settlement and the Davis Settlement are APPROVED.

(2) The Deputy Receiver's entering into the D&O Settlement Agreement and the Davis Settlement Agreement, according to their terms, is APPROVED.

(3) This matter is dismissed and the papers herein shall be passed to the file for ended cases.

Commissioner Jagdmann did not participate in this matter.

⁵ The Commission approved of those settlements by Final Order dated January 7, 2010, in Case No. INS-2009-00212.

⁶ On January 11, 2011, the Deputy Receiver filed timely proof of notice in compliance with the December 15, 2010 Scheduling Order.

**CASE NO. INS-2010-00253
FEBRUARY 14, 2011**

PETITION OF
GEORGE H. CHRISTIAN

For writ of mandamus and for injunctive and declaratory relief against the Bureau of Insurance of the State Corporation Commission pursuant to the Virginia Freedom of Information Act

FINAL ORDER

On December 6, 2010, George H. Christian ("Petitioner") filed his Petition For Writ of Mandamus and Verified Complaint for Injunctive and Declaratory Relief ("Petition"). The Petition requested that the State Corporation Commission ("Commission") enter an Order directing the Commission's Bureau of Insurance ("Bureau") to provide the Petitioner with access to certain public information previously requested by the Petitioner, enjoining the Bureau from denying the Petitioner access to information afforded by the Virginia Freedom of Information Act ("Act"), and awarding the Petitioner incurred litigation costs. The Petition was filed following the Petitioner's request by letter dated November 6, 2010, that the Bureau provide him with all requests for public records received by the Bureau from 2007 to the present as well as the Bureau's letter response to each request. The Petition alleged that the Bureau did not comply with the Act in its response because the Bureau: (1) denied that the Act is applicable to the Bureau; (2) did not provide the records electronically; (3) invoiced the Petitioner for an amount greater than that provided by the Act; and (4) redacted certain information from the records.

On December 15, 2010, the Petitioner filed his Motion for Temporary Injunction ("Motion") in which he requested that the Commission enter a temporary injunction enjoining the Bureau of Insurance from asserting that the Act was inapplicable to it.

On December 27, 2010, the Bureau filed its Answer of the Bureau of Insurance ("Answer"). Also on December 27, 2010, the Bureau filed its Demurrer to the Petition and a Memorandum in Support of the Bureau of Insurance's Demurrer (collectively, "Demurrer"). In its Demurrer, the Bureau stated that the Petitioner failed to state a claim upon which relief could be granted. In support of its Demurrer, the Bureau argued that the Act is not applicable to the Commission and its operating divisions because the Virginia General Assembly has enacted a statutory framework regarding access to Commission records that is separate and distinct from the Act, and because the Act does not contain an enforcement provision that is applicable to the Commission. The Bureau further argued that the relief requested by the Petitioner is not warranted because the Bureau had provided him with the requested records.

On January 3, 2011, the Bureau filed its Response to Motion for Temporary Injunction ("Response"). In its Response, the Bureau argued that the Petitioner had failed to demonstrate that the Bureau's actions had caused him irreparable harm and that the balance of hardships associated with the issuance of a temporary injunction favored the Bureau.

On January 8, 2011, the Petitioner filed a Motion for Non-Suit in which he requested that this action be dismissed without prejudice pursuant to § 8.01-380 of the Code of Virginia.

On January 25, 2011, the Bureau filed its Response to the Petitioner's Motion for Non-Suit in which it stated that it did not object to the Petitioner's Motion for Non-Suit.

NOW THE COMMISSION, having considered the record, is of the opinion that the Petitioner's Motion for Non-Suit should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) The Petitioner's Motion of Non-Suit is hereby GRANTED; and
- (2) This matter is dismissed without prejudice from the Commission's docket of active cases and the papers herein shall be placed in the file for ended causes.

**CASE NO. INS-2010-00254
MAY 16, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CHOICE HOME WARRANTY,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant has violated § 38.2-2619 of the Code of Virginia by providing home service contracts in the Commonwealth of Virginia without first obtaining a license to provide home service contracts from the State Corporation Commission ("Commission").

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-2627 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Ten Thousand Dollars (\$10,000), waived its right to a hearing, and agreed to the entry by the Commission of a cease and desist order.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendant cease and desist from any conduct which constitutes a violation of § 38.2-2619 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00255
MAY 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
AMERICAS INSURANCE COMPANY,
Defendant

FINAL ORDER

Americas Insurance Company ("Defendant"), a foreign corporation domiciled in the State of Louisiana, is licensed to transact the business of insurance in the Commonwealth of Virginia.

By Impairment Order entered herein December 29, 2010, the Defendant was ordered to eliminate the impairment in its surplus and restore the same to at least \$3,000,000 and advise the State Corporation Commission ("Commission") of the accomplishment thereof by affidavit of the Defendant's president or other authorized officer on or before April 1, 2011.

The Defendant was also ordered not to issue any new contracts or policies of insurance in the Commonwealth of Virginia while the impairment of the Defendant's surplus exists and until further order of the Commission.

By affidavit of the Defendant's President and CEO R. Ray Pate, Jr., dated April 20, 2011, and received by the Commission's Bureau of Insurance on April 27, 2011, the Defendant voluntarily withdrew its license to transact the business of insurance in the Commonwealth of Virginia. The Defendant stated that it has no outstanding liabilities or unpaid losses in the Commonwealth of Virginia.

The withdrawal of the Defendant's license has been processed by the Bureau of Insurance effective May 4, 2011.

In light of the foregoing, the Commission's Bureau of Insurance has recommended that the Impairment Order entered by the Commission be vacated and this case be closed.

THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that the Impairment Order entered by the Commission should be vacated.

Accordingly, IT IS ORDERED THAT:

- (1) The Impairment Order entered by the Commission is hereby, VACATED;
- (2) This case be, and is hereby, DISMISSED; and
- (3) The papers herein be placed in the file for ended causes

**CASE NO. INS-2010-00258
APRIL 18, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
LORETTA L. WADE,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant violated §§ 38.2-1812 and 38.2-1822 of the Code of Virginia by receiving commissions from an insurer for services as an agent prior to becoming licensed and appointed, and by acting as an agent of an insurer without first obtaining a license in the manner and form prescribed by the State Corporation Commission ("Commission").

The Commission is authorized by §§ 38.2-218, 38.2-219 and 38.2-220 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and issue injunctions upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of her right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Seven Thousand Five Hundred Dollars (\$7,500) and waived her right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00259
JANUARY 27, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JEFFREY TYNDALL,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of North Carolina.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated December 7, 2010, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of North Carolina.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00260
JANUARY 27, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ROBERT GOFF,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days administrative actions that were taken against him by the States of Michigan and Kansas.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated December 7, 2010, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days administrative actions that were taken against him by the States of Michigan and Kansas.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2010-00261
JANUARY 27, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
PAUL R. COOPER, JR.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Massachusetts.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated October 13, 2010, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Massachusetts.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00001
JANUARY 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JOSEPH BENEDETTO,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Kansas.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letters dated November 1, 2010, November 22, 2010, and December 14, 2010, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Kansas.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00005
JANUARY 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
ARTHUR GATTSEK,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 55-525.27 (formerly § 6.1-2.24) and 38.2-1809 of the Code of Virginia, as well as 14 VAC 5-395-70, by failing to maintain all settlement records for a minimum of five years after the settlement is completed, and by failing to make all escrow, closing, or settlement records available promptly upon request for examination by the Bureau.

The Commission is authorized by § 55-525.31 of the Code of Virginia to impose certain monetary penalties and to suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations of Chapters 27.2 and 27.3 of Title 55 of the Code of Virginia.

The Commission is also authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letters dated June 21, 2010, June 29, 2010, July 14, 2010, and December 9, 2010, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated §§ 55-525.27 and 38.2-1809 of the Code of Virginia, as well as 14 VAC 5-395-70, by failing to maintain all settlement records for a minimum of five years after the settlement is completed, and by failing to make all escrow, closing, or settlement records available promptly upon request for examination by the Bureau.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00006
MAY 6, 2011**

DELLA UNDERWOOD RAMEY,
Petitioner

v.

VIRGINIA PROPERTY INSURANCE ASSOCIATION,
Respondent

FINAL ORDER

On January 7, 2011, Della Underwood Ramey ("Petitioner"), by counsel, filed with the Clerk of the State Corporation Commission ("Commission") a Petition for review of a decision by the Virginia Property Insurance Association ("VPIA" or "Respondent") pursuant to § 38.2-2712 of the Code of Virginia. Specifically, the Petitioner appealed VPIA's cancellation of her property insurance coverage on the grounds that it failed to provide her with proper and timely notice of the cancellation of the policy.

On January 27, 2011, the Commission entered an Order which, among other things, docketed the Petition; appointed a hearing examiner to conduct all further proceedings and file a report; directed VPIA to file a response to the Petition on or before February 7, 2011; and set a hearing in this matter for February 22, 2011.

On February 3, 2011, VPIA filed a Motion to Dismiss wherein, among other things, it asserted that the Commission lacked jurisdiction to consider the Petition. By Hearing Examiner's Ruling dated February 4, 2011, an abbreviated schedule for the filing of responses and for the filing of any reply associated to the Motion to Dismiss was established.

On February 9, 2011, the Bureau of Insurance ("Bureau") filed a Motion for Continuance and Extension of Time to File ("First Continuance Motion") wherein, among other things, the Bureau requested that the due date for the filing of responses to the Motion to Dismiss be extended from February 10, 2011 to February 23, 2011, and that the due date for filing a reply in support of the Motion to Dismiss be extended from February 16, 2011 to March 9, 2011. Additionally, the Bureau requested that the hearing in connection with this matter be continued to March 31, 2011, and represented that neither the Petitioner nor the Respondent opposed either the new dates for the filing of pleadings associated with the Motion to Dismiss or the continuance of the hearing to March 31, 2011.

By Hearing Examiner's Ruling dated February 9, 2011, the First Continuance Motion was granted and the procedural schedule was revised in accordance with the agreement of the parties and the Bureau.

On February 22, 2011, VPIA filed a Motion to Temporarily Suspend Procedural Schedule ("Second Continuance Motion") wherein VPIA represented that the parties and the Bureau believed that it would be appropriate to temporarily suspend the procedural schedule due to developments that had taken place since the issuance of the February 9, 2011 Hearing Examiner's Ruling in this matter.

By Hearing Examiner's Ruling dated February 22, 2011, the Second Continuance Motion was granted; the hearing scheduled for March 31, 2011, was cancelled; and the procedural schedule was temporarily suspended pending further ruling of the Hearing Examiner.

On April 4, 2011, the Petitioner, by counsel, filed a Withdrawal of Petition for Appeal ("Withdrawal Motion") wherein the Petitioner indicated that she wished to withdraw her Petition. The Petitioner also represented that VPIA did not oppose the Withdrawal Motion.

By Hearing Examiner's Report dated April 13, 2011, the Hearing Examiner granted the Petitioner's Withdrawal Motion. Additionally, because the Withdrawal Motion was unopposed, the Hearing Examiner found that there was no need to provide an opportunity for comments to the Report.

THE COMMISSION, having considered the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion that this matter should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition of Della Underwood Ramey is hereby, DISMISSED; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00010
APRIL 20, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CROSS COUNTRY SETTLEMENTS, LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 55-525.30 of the Code of Virginia by acting as a settlement agent without being properly registered.

The Commission is authorized by § 55-525.31 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Commission is also authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated February 9, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 55-525.30 of the Code of Virginia by acting as a settlement agent without being properly registered.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00011
MARCH 11, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MICHAEL WAYNE BAUMSTARK,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated of §§ 38.2-1812.2 and 38.2-1838 of the Code of Virginia by failing to obtain a signed consent form from applicants or policyholders who were charged administrative fees in addition to the premium, and by acting as an insurance consultant without holding the appropriate license.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of his right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has

1. Waived his right to a hearing;

2. Agreed to offer in writing to certain account holders a credit for the full amount of annuity fees paid from the years 2006 through 2009. Specifically, the Defendant will repay the accounts by issuing a 25-basis point fee reduction for a period of four years. Any remaining balance will be paid in cash to the account holder at the end of the four-year period or upon termination of the account if it occurs prior to the expiration of the four-year period; and

3. Agreed to be placed on probation for a period of four (4) years from the date of the entry of this Settlement Order.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00016
FEBRUARY 28, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ANNETTE TOMS DICKENSON,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days administrative actions that were taken against her by the States of California, Idaho, South Dakota, Delaware, and Massachusetts.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated January 3, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days administrative actions that were taken against her by the States of California, Idaho, South Dakota, Delaware, and Massachusetts.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00017
FEBRUARY 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
JUSTIN A. LEMAL,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of California.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated January 3, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of California.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00018
FEBRUARY 28, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

MICHAEL NAVA,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of California.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated January 3, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of California.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00020
FEBRUARY 28, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

JOHNNA KAY THORNLEY,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against her by the State of Kansas.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

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The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated January 3, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against her by the State of Kansas.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00022
FEBRUARY 28, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
BOBBY JEROME COLLINS,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-613.2 and 38.2-1809 of the Code of Virginia by failing to implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of policyholder information, and by failing to make records available promptly upon request for examination by the Commission or its employees.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letters dated December 14, 2010, December 29, 2010, and January 21, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated §§ 38.2-613.2 and 38.2-1809 of the Code of Virginia by failing to implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of policyholder information, and by failing to make records available promptly upon request for examination by the Commission or its employees.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;

- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00023
FEBRUARY 11, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

AMERICAN INTERNATIONAL GROUP, INC.,
AIU INSURANCE COMPANY,
AMERICAN HOME ASSURANCE COMPANY,
CHARTIS CASUALTY COMPANY,
CHARTIS PROPERTY CASUALTY COMPANY,
COMMERCE AND INDUSTRY INSURANCE COMPANY,
GRANITE STATE INSURANCE COMPANY,
ILLINOIS NATIONAL INSURANCE COMPANY,
LANDMARK INSURANCE COMPANY,
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.,
NEW HAMPSHIRE INSURANCE COMPANY
THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
Defendants

ORDER APPROVING SETTLEMENT AGREEMENT

ON THIS DAY came the Bureau of Insurance ("Bureau"), by counsel, and requested Commission approval and acceptance of a multi-state Regulatory Settlement Agreement ("Agreement") dated December 20, 2010, a copy of which is attached hereto and made a part hereof, by and between the Commissioners of Insurance for the States of Delaware, Florida, Indiana, Massachusetts, Minnesota, New York, Pennsylvania, and Rhode Island, and American International Group Inc., a holding company as defined in § 38.2-1322 of the Code of Virginia, and its affiliated insurers AIU Insurance Company, American Home Insurance Company, Chartis Casualty Company, Chartis Property Casualty Company, Commerce and Industry Insurance Company, Granite State Insurance Company, Illinois National Insurance Company, Landmark Insurance Company, National Union Fire Insurance Company of Pittsburgh, Pa., New Hampshire Insurance Company, and The Insurance Company of Pennsylvania, which are licensed to write workers compensation and employers liability insurance in the Commonwealth of Virginia except Illinois National Insurance Company is not licensed in Virginia and Landmark Insurance Company is approved to issue surplus lines insurance pursuant to § 38.2-4811 of the Code of Virginia.

The Bureau has filed the Compliance Plan as defined and contained in the Agreement UNDER SEAL as allowed by 5 VAC 5-20-170 and has requested that the Compliance Plan be kept confidential as provided in the Agreement.

NOW THE COMMISSION, having considered the terms of the Agreement together with the recommendation of the Bureau that the Commission approve and accept the Agreement, is of the opinion, and finds, and ORDERS that the Agreement be, and is hereby APPROVED AND ACCEPTED.

THE COMMISSION FURTHER ORDERS that the Compliance Plan be kept confidential and be withheld from public disclosure.

**CASE NO. INS-2011-00029
MAY 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

DAVID JASON LANDERS,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C and subsection 1 of

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§ 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Colorado, and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated March 23, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Colorado, and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00032
MARCH 29, 2011**

APPLICATION OF
UNIFIED LIFE INSURANCE COMPANY

For approval of an assumption reinsurance agreement pursuant to § 38.2-136 C of the Code of Virginia

ORDER APPROVING APPLICATION

By petition filed with the State Corporation Commission ("Commission") on February 22, 2011, Unified Life Insurance Company ("Petitioner"), a Texas-domiciled insurer licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, requested approval of an assumption reinsurance agreement pursuant to § 38.2-136 of the Code of Virginia ("Code").

Effective October 1, 2010, the Petitioner entered into an assumption reinsurance agreement that provided for assuming a block of individual life insurance policies and annuity policies from American Community Mutual Insurance Company in Rehabilitation.

On December 2, 2010, the Circuit Court of Ingham County, Michigan, approved the reinsurance agreement upon the petition of the Commissioner of the Michigan Office of Financial and Insurance Regulation in his capacity as Rehabilitator of American Community Mutual Insurance Company. In addition, the Texas Department of Insurance approved the assumption reinsurance agreement on January 26, 2011.

Pursuant to § 38.2-136 C of the Code, the Petitioner has requested that the Commission waive the policyholder consent to this transaction required by § 38.2-136 B of the Code by finding that the transfer of the policies to the Petitioner is in the best interest of policyholders. American Community Mutual Insurance Company has waived its right to a hearing in this matter.

The Bureau of Insurance, having reviewed the application to ensure that Virginia policyholders will not lose any rights or claims afforded under their original contracts pursuant to Chapter 17 of Title 38.2 of the Code, has recommended that the application be approved.

NOW THE COMMISSION, having considered the application, the recommendation of the Bureau of Insurance, and the law applicable hereto, is of the opinion that the application should be approved;

Accordingly, IT IS ORDERED THAT the application of Unified Life Insurance Company for the approval of the reinsurance agreement pursuant to § 38.2-136 C of the Code of Virginia be, and it is hereby, APPROVED.

**CASE NO. INS-2011-00035
MARCH 11, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

SELECTIVE INSURANCE COMPANY OF AMERICA,
SELECTIVE INSURANCE COMPANY OF SOUTH CAROLINA,
SELECTIVE INSURANCE COMPANY OF THE SOUTHEAST, and
SELECTIVE WAY INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1906 D of the Code of Virginia by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendants.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Two Thousand Dollars (\$2,000) per company for an amount totaling Eight Thousand Dollars (\$8,000), waived their right to a hearing, and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated October 11, 2010.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00036
MARCH 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
and
STATE FARM FIRE AND CASUALTY INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1904 D, 38.2-1905 A, and 38.2-2234 B of the Code of Virginia by using information pertaining to motor vehicle accidents or convictions to produce increased rates for a period of more than thirty-six months; by increasing its insureds' premiums or charging points under a safe driver plan as a result of motor vehicle accidents that were not caused either wholly or partially by the named insureds, residents of the same household, or other customary operators; and by using credit information from consumer reports for tier placement or rating renewal policies of motor vehicle insurance issued in the Commonwealth without updating the credit information at least once every three years.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Sixty Thousand Dollars (\$60,000), waived their right to a hearing, and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated February 18, 2011.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00037
APRIL 27, 2011**

PETITION OF
ANTHEM HEALTH PLANS OF VIRGINIA, INC.,
and
HEALTHKEEPERS, INC.

For approval to provide claims processing, customer service and provider services for high deductible products from a location outside of Virginia

FINAL ORDER

On March 4, 2011, Anthem Health Plans of Virginia, Inc., and Healthkeepers, Inc. (collectively, "Petitioners" or "Anthem"), filed a Petition under Rule 5 VAC 5-20-80 of the State Corporation Commission's ("Commission") Rules of Practice and Procedure and the Final Order entered in Case No. INS-2007-00141.¹ In the Final Order, the Commission continued the requirement that Anthem cause the following services to be provided from offices located in Virginia: claims processing and case management, customer service, quality management, provider services, medical management, and network development. The Commission permitted Anthem to provide the following services from offices located outside of the Commonwealth of Virginia: actuarial, underwriting, marketing, community relations, distribution management, and sales. In the Final Order, the Commission also provided that if Anthem seeks to provide any of the aforementioned services currently required to be provided from offices located in Virginia from offices located outside of Virginia, it should seek permission from the Commission by filing a petition "... setting forth a specific and detailed proposal for providing such services out of state, including specific and detailed information on *how* and *where* Anthem will provide such services, as well as safeguards for ensuring adequate levels of service."²

In the Petition, Anthem is asking for relief from the requirement of the Final Order that claims processing and case management, customer service, quality management, provider services, medical management, and network development ("Services") be performed from offices in Virginia with respect to certain high deductible products. Anthem requests that the Services for these products be administered by Anthem's Northeast affiliates (Blue Cross and Blue Shield Plan in Connecticut, Maine, and New Hampshire) from offices outside Virginia.³

On March 11, 2011, the Commission entered a Scheduling Order, in which it provided a deadline of March 25, 2011, for interested persons to comment and directed the Bureau of Insurance ("Bureau") to file a response to the Petition on or before March 25, 2011.

No comments were filed with respect to the Petition.

On March 24, 2011, the Bureau filed its Response to the Petition. The Bureau states that it does not oppose the relief requested by Anthem.

NOW THE COMMISSION, having considered the Petition and the Bureau's response thereto, finds that the Petition should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) Anthem's Petition is GRANTED.
- (2) Anthem is permitted to provide claims processing, customer services and provider services for the following high deductible products: (a) Lumenos Health Savings Account, (b) Lumenos Health Reimbursement Account, and (c) Lumenos Health Incentive Account from locations outside of Virginia, but within the United States, by Anthem's Northeast affiliates (Blue Cross and Blue Shield Plan in Connecticut, Maine, and New Hampshire).

¹ *Petition of Anthem Health Plans of Virginia, Inc., Healthkeepers, Inc., Priority Health Care, Inc., Peninsula Health Care, Inc., WellPoint, Inc., Anthem Southeast, Inc., For Amendment of Final Order in Case No. INS-2002-00131*, Final Order (August 9, 2007) ("Final Order").

² Final Order at 8, ¶4.

³ Petition at 3 and 4.

(3) The other provisions of the Final Order in Case No. INS-2007-00141 are not affected hereby, and Anthem shall continue to comply therewith.

(4) This matter is dismissed and the papers herein shall be placed in the file for ended causes.

**CASE NO. INS-2011-00038
MARCH 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MICHAEL W. HANNA,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-502 of the Code of Virginia by misrepresenting the benefits, advantages, conditions or terms of an insurance policy.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated February 1, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-502 of the Code of Virginia by misrepresenting the benefits, advantages, conditions or terms of an insurance policy.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00039
MARCH 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
RAJISTREE RAMSAMMY,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Maryland.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated February 2, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Maryland.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00040
MARCH 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CHRISTOPHER G. RITCHIE,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Maryland.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated February 3, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Maryland.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00041
MARCH 25, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

ALLIANCE SETTLEMENT SERVICES COMPANY,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days administrative actions that were taken against it by the States of Maryland and Florida.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated February 3, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days administrative actions that were taken against it by the States of Maryland and Florida.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00043
MARCH 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
NICKY JOE ROOT,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Louisiana.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated February 3, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Louisiana.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00044
MARCH 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

JUSTIN BORUFF,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Louisiana.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated February 3, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Louisiana.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00045
APRIL 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

CAPITALCARE, INC.,
Defendant

SETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, has violated §§ 38.2-510 A 2, 38.2-510 A 3, 38.2-510 A 5, 38.2-510 A 6, 38.2-510 A 15, and 38.2-4306.1 B of the Code of Virginia by failing to comply with claim settlement practices; violated § 38.2-1834 D of the Code of Virginia by failing to comply with agent licensing requirements; violated §§ 38.2-5805 C 3, 38.2-5805 C 6, 38.2-5805 C 8, and 38.2-5805 C 10 of the Code of Virginia by failing to comply with MCHIP requirements; and violated §§ 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, 38.2-3407.15 B 9, 38.2-3407.15 B 10, and 38.2-3407.15 B 11 of the Code of Virginia by failing to comply with ethics and fairness requirements for business practices.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-4316 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Ten Thousand Dollars (\$10,000), waived its right to a hearing, and agreed to comply with the Corrective Action Plan contained in the Target Market Conduct Examination Report as of March 31, 2009.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00046
APRIL 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CAREFIRST BLUECHOICE, INC.,
Defendant

SETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, has violated §§ 38.2-4306.1 B and 38.2-510 A 15 of the Code of Virginia by failing to comply with claim settlement practices; violated §§ 38.2-316 B and 38.2-316 C 1 of the Code of Virginia by failing to comply with policy and form filing requirements; violated §§ 38.2-1812 A, 38.2-1833 A 1, and 38.2-1834 D of the Code of Virginia by failing to comply with agent licensing requirements; violated §§ 38.2-5805 C 3, 38.2-5805 C 6, 38.2-5805 C 8, 38.2-5805 C 9, and 38.2-5805 C 10 of the Code of Virginia by failing to comply with MCHIP requirements; violated §§ 38.2-3407.14 A, 38.2-3407.14 B, 38.2-3407.15 B 1, 38.2-3407.15 B 2, 38.2-3407.15 B 3, 38.2-3407.15 B 4, 38.2-3407.15 B 5, 38.2-3407.15 B 6, 38.2-3407.15 B 7, 38.2-3407.15 B 8, 38.2-3407.15 B 9, 38.2-3407.15 B 10, and 38.2-3407.15 B 11 of the Code of Virginia by failing to comply with premium notice requirements and ethics and fairness requirements for business practices; violated subsection 1 of § 38.2-502 and §§ 38.2-503 and 38.2-4312 of the Code of Virginia, as well as 14 VAC 5-90-55 A, 14 VAC 5-90-60 A 1, 14 VAC 5-90-60 A 2, 14 VAC 5-90-60 B 3, 14 VAC 5-90-60 B 4, and 14 VAC 5-90-100 B by failing to comply with advertising requirements; and violated 14 VAC 5-211-60 A and 14 VAC 5-211-90 B by failing to comply with provisions relating to health maintenance organizations.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-4316 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Twenty Thousand Dollars (\$20,000), waived its right to a hearing, agreed to the entry by the Commission of a cease and desist order, and agreed to comply with the Corrective Action Plan contained in the Target Market Conduct Examination Report as of March 31, 2009.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendant cease and desist from any future conduct which constitutes a violation of § 38.2-1834 D of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00048
MAY 6, 2011**

APPLICATION OF
RECIPROCAL OF AMERICA
and
THE RECIPROCAL GROUP

For Approval to Increase Payment Percentage from 25% to 95%

FINAL ORDER

On March 11, 2011, the Deputy Receiver of Reciprocal of America and The Reciprocal Group (collectively, "ROA") filed with the State Corporation Commission ("Commission") the Deputy Receiver's Application to Increase the Payment Percentage from 25% to 95% on Approved ROA Policy Direct Claims ("Application"). Therein, the Deputy Receiver provides a summary of the procedural history of certain aspects of the receivership and seeks a Commission Order that: (i) authorizes increasing from 25% to 95% the percentage that ROA may pay ("Payment Percentage") on approved claims by associations, policyholders, and insureds for losses, indemnification or defense costs covered under ROA insurance policies ("Policy Claims for Economic Damages," a/k/a "Direct Claims"); (ii) authorizes the payment of an additional 70% distribution or credit to all associations, policyholders, and insureds who have received a 25% distribution on their Direct Claims, to account for the difference in payment percentage distributions; (iii) authorizes the continued payment of all administrative expenses and secured creditor claims at 100%; (iv) approves the modification or cancellation of the Ninth Directive¹ to allow the Deputy Receiver to proceed with an increased partial payment on approved Direct Claims; and (v) approves maintaining the provisions of the Tenth Directive² as they relate to the suspension of, and moratorium on, payments on claims by associations, policyholders, and insureds other than Direct Claims, such as claims for non-economic damages, punitive damages, exemplary damages, extra-contractual claims, and awards of attorney fees for substantially prevailing in litigation against ROA ("Other Policy Claims," a/k/a "Indirect Claims"), all as described in greater detail in the Application.

In support of the Application, the Deputy Receiver asserts, *inter alia*, that her advisors have determined that based upon the information in the 2009 ROA Annual Statement, the Deputy Receiver may pay 95% of the approved Direct Claims without creating an unreasonable risk of unlawful preference among similarly situated creditors.³ The Deputy Receiver provided a summary of developments in the ROA receivership that permit the increase proposed by the Deputy Receiver. The Deputy Receiver asserts that ROA has a total of \$499,207,073 in assets available to pay losses and a total of \$422,513,621 in losses to pay with the available assets.⁴

On March 24, 2011, the Commission entered a Scheduling Order, setting for May 18, 2011, a contingent hearing, to be held only in the event that written objection to the Application was timely filed ("Contingent Hearing"), approved notice procedures, established response procedures, referred the matter to a Hearing Examiner ("Examiner") to conduct all further proceedings, if any, and directed the Deputy Receiver to serve a copy of the Application on a number of other potentially interested persons. The Scheduling Order also provided that in the event no person timely filed a written objection to the Application pursuant to the procedures set forth in the Scheduling Order, the Commission would decide the Application without a hearing.

No person timely filed a written Notice of Objection to the Application.

NOW THE COMMISSION, having considered the Application and the entire record in this matter, finds that the Application should be approved and the increased payment percentage of 95% on approved Direct Claims should be authorized.

Accordingly, IT IS ORDERED THAT:

- (1) The Application of the Deputy Receiver is APPROVED.
- (2) The payment by the Deputy Receiver of approved Direct Claims at the increased payment percentage of 95% is APPROVED.
- (3) The payment of an additional 70% on all approved Direct Claims on which a payment of 25% has already been paid to account for the difference in percentage distributions is APPROVED.
- (4) The Deputy Receiver is permitted to continue payment of all administrative expenses and secured creditor claims of ROA at 100%.

¹ By the Ninth Directive, which was issued on May 11, 2007, and took effect when the Commission's March 28, 2007, Final Order in Case No. INS-2007-00065 became final and non-appealable, the Deputy Receiver directed that: (i) ROA make payments at the increased payment percentage of 25% to policyholders, subscribers, third-party claimants, and guaranty associations having made payments to such policyholders and claimants, for approved claims arising under workers' compensation or other ROA insurance policies which had not yet been paid; (ii) ROA make payment of an additional 8% to all claimants who had received a 17% distribution on their claims; (iii) the percentage of such payments might be increased when, and to the extent that, an increased payment percentage was authorized by further orders of the Commission; (iv) ROA continue to pay administrative expenses in full and pay secured claims against ROA at 100%, to the extent of applicable security; (v) The Eighth Directive be cancelled; and (vi) in all other respects, the Fifth Directive effective as of April 30, 2003, remain in full force and effect.

² By the Tenth Directive, which was issued and effective on July 19, 2010, the Deputy Receiver directed that only after the payment in full of Direct Claims, shall any payments be made on Other Policy Claims (Indirect Claims), in that Other Policy Claims (Indirect Claims) are subordinate to Direct Claims.

³ Application at 10 and 11, Exhibits 1, 2 and 3.

⁴ *Id.*

(5) The Deputy Receiver is authorized to modify or cancel the Ninth Directive so as to allow the Deputy Receiver to proceed with an increased partial payment on approved Direct Claims.

(6) The Deputy Receiver is authorized to maintain the provisions of the Tenth Directive as they relate to the suspension of, and moratorium on, payments on Indirect Claims.

(7) This matter is closed and the papers herein be passed to the file for ended causes.

Commissioner Jagdmann did not participate in this matter.

**INS-2011-00049
MARCH 30, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Repealing the Rules Governing Surplus Lines Insurance

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia. Section 38.2-4813 of the Code provides that the Commission may make, approve, and adopt rules and regulations to effect the purposes of Chapter 48 of Title 38.2 of the Code. The rules and regulations issued by the Commission pursuant to §§ 38.2-223 and 38.2-4813 of the Code are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to repeal Chapter 350 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Surplus Lines Insurance" ("Rules"), which are set out at 14 VAC 5-350-10 through 14 VAC 5-350-220.

The proposed repeal is necessitated by the passage of House Bill 2286 during the 2011 Virginia General Assembly Session, which amended Chapter 48 of Title 38.2 of the Code making it administrable without the Rules. The provisions of House Bill 2286 implement provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010, which requires states to adopt nationwide uniform requirements, forms and procedures for the reporting, payment, collection, and allocation of insurance premium license taxes for nonadmitted insurance.¹

The Commission is of the opinion that the Rules contained in Chapter 350 of Title 14 of the Virginia Administrative Code should be considered for repeal with an effective date of July 1, 2011.

Accordingly, IT IS ORDERED THAT:

(1) The proposal that Chapter 350 of Title 14 of the Virginia Administrative Code set out at 14 VAC 5-350-10 through 14 VAC 5-350-220 be repealed shall be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the proposed repeal of the regulations shall file such comments or hearing request on or before May 9, 2011, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Richmond, Virginia 23219, and shall refer to Case No. INS-2011-00049. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) If no written request for a hearing on the proposed repeal of the regulations is filed on or before May 9, 2011, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed repeal of the regulations, may adopt the proposed repeal of the regulations as submitted by the Bureau.

(4) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to repeal the regulations, to be forwarded to the Virginia Registrar for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposal to repeal the regulations on the Commission's website: <http://www.scc.virginia.gov/case>.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed repeal of the regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the proposed revised regulations by mailing a copy of this Order, together with the proposal to repeal the regulations, to all licensed surplus lines brokers, surplus lines insurers and certain interested parties designated by the Bureau.

¹ 111 P.L. 203.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (5) above.

NOTE: A copy of Attachment A entitled "Rules Governing Surplus Lines Insurance" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2011-00049
MAY 31, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex parte: In the matter of Repealing the Rules Governing Surplus Lines Insurance

ORDER REPEALING RULES

By Order To Take Notice entered March 30, 2011, all interested persons were ordered to take notice that subsequent to May 9, 2011, the State Corporation Commission ("Commission") would consider the entry of an order repealing the rules entitled Rules Governing Surplus Lines Insurance ("Rules"), as proposed by the Bureau of Insurance, which repeals the Rules at 14 VAC 5-350-10 through 14 VAC 5-350-220, unless on or before May 9, 2011, any person objecting to the repeal of the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the repeal of the Rules on or before May 9, 2011.

There were no comments or requests for hearing on the proposed repeal of the Rules filed with the Clerk.

The repeal is necessitated by the passage of House Bill 2286 during the 2011 General Assembly Session, which amended Chapter 48 of Title 38.2 of the Code of Virginia making it administrable without the Rules. The provisions of House Bill 2286 implement provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010, which requires states to adopt nationwide uniform requirements, forms and procedures for the reporting, payment, collection, and allocation of insurance premium license taxes for nonadmitted insurance.¹ The Bureau of Insurance recommends that the the Rules be repealed.

NOW THE COMMISSION, having considered the recommendation of the Bureau of Insurance, is of the opinion that the Rules should be repealed.

Accordingly, IT IS ORDERED THAT:

(1) The Rules Governing Surplus Lines Insurance at 14 VAC 5-350-10 through 14 VAC 5-350-220, which are attached hereto and made a part hereof, should be, and they are hereby, REPEALED to be effective July 1, 2011.

(2) AN ATTESTED COPY hereof, together with a copy of the repealed Rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the repeal of the rules by mailing a copy of this Order, together with the attached repealed rules, to all licensed surplus lines brokers, surplus lines insurers and certain interested parties designated by the Bureau of Insurance.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the attached repealed rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the repealed rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(5) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

NOTE: A copy of Attachment A entitled "Rules Governing Surplus Lines Insurance" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

¹ 111 P.L. 203.

**CASE NO. INS-2011-00050
APRIL 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
HORACE MANN INSURANCE COMPANY,
HORACE MANN PROPERTY & CASUALTY INSURANCE COMPANY,
and
TEACHERS INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-304 and 38.2-2112 A of the Code of Virginia by using a binder in excess of sixty (60) days ; violated § 38.2-305 A by failing to include accurate information in policies; violated § 38.2-1906 D by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendants ; violated § 38.2-502 by misrepresenting benefits, advantages, or terms of insurance policies; violated § 38.2-1318 by failing to provide convenient access to the files, documents, and records; violated § 38.2-1812 for paying commissions to agencies that were not appointed by the Defendants ; violated §§ 38.2-305 B, 38.2-604 A, 38.2-604.1 A, 38.2-610 A, 38.2-2118, 38.2-2124, 38.2-2125, 38.2-2126 A, 38.2-2210 A, and 38.2-2234 A by failing to provide proper notices to the insureds; violated §§ 38.2-2114 A, 38.2-2114 C, 38.2-2212 D, and 38.2-2212 E by failing to properly terminate policies; violated §§ 38.2-2126 B and 38.2-2234 B by failing to update the insureds' credit information at least once in a three year period; and violated §§ 38.2-5 10 A 1, 38.2-510 A 3, 38.2-517 A, and 38.2-2201 B, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-50 C, and 14 VAC 5-400-70 D, for failing to properly handle claims.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Forty-eight Thousand Eight Hundred Dollars (\$48,800), waived their right to a hearing, agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated January 14, 2011, and the Defendants have confirmed that restitution was made in accordance with their letters to the Bureau of Insurance dated October 20, 2010, and January 14, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00056
MARCH 30, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
UNIVERSAL CASUALTY COMPANY,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") may suspend or revoke the license of any insurance company to transact the business of insurance in the Commonwealth of Virginia whenever the Commission finds that the company is in a condition that any further transaction of business in this Commonwealth is hazardous to its policyholders, creditors, and the general public in this Commonwealth.

Chapter 290 of Title 14 of the Virginia Administrative Code provides standards that the Commission may use for indentifying insurers in hazardous financial condition. Pursuant to 14 VAC 5-290-30, whenever an insurer's excess of surplus to policyholders over and above its statutorily required surplus to policyholders has decreased by more than fifty percent (50%) in the preceding twelve month period or shorter period of time, the Commission may deem such condition hazardous to policyholders, creditors, and the general public.

Universal Casualty Company, a foreign company domiciled in the State of Illinois ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

The Defendant's Annual Statement, dated December 31, 2010, indicates that the Defendant sustained a net loss of \$17,222,668 for the year ending December 31, 2010 and a decrease in surplus to policyholders from \$19,887,942 to \$7,705,266 for the twelve month period ending December 31, 2010, a decrease of 61%.

The Commission's Bureau of Insurance has recommended that the Defendant's license to transact the business of insurance in the Commonwealth of Virginia be suspended.

Accordingly, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to April 11, 2011, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 11, 2011, the Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed suspension of the Defendant's license.

**CASE NO. INS-2011-00056
MAY 27, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
UNIVERSAL CASUALTY COMPANY,
Defendant

FINAL ORDER

Universal Casualty Company ("Defendant"), a foreign corporation domiciled in the State of Illinois, is licensed to transact the business of insurance in the Commonwealth of Virginia.

By Order To Take Notice ("Order") entered herein March 30, 2011, the Defendant was ordered to take notice that the State Corporation Commission ("Commission") would enter an order subsequent to April 11, 2011, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before April 11, 2011, the Defendant requested a hearing with respect to the proposed suspension of its license.

The Order was entered due to the Defendant sustaining a net loss of \$17,222,668 for the year ending December 31, 2010, and a decrease in surplus to policyholders from \$19,887,942 to \$7,705,266 for the twelve month period ending December 31, 2010, a decrease of 61%.

By affidavit of Roger T. Beck, the Defendant's President and Chief Operating Officer, dated April 7, 2011, and received by the Commission's Bureau of Insurance on April 11, 2011, the Commission was advised that the Defendant wishes to withdraw its license to transact the business of insurance in the Commonwealth of Virginia. Additionally, the Defendant advised the Commission that it has no outstanding policies, claims and related liabilities, or other outstanding obligations in the Commonwealth of Virginia.

In light of the foregoing, the Bureau of Insurance has recommended that the Order entered by the Commission be vacated and this case be closed.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that the Order to Take Notice entered by the Commission should be vacated.

Accordingly, IT IS ORDERED THAT:

- (1) The Order to Take Notice entered by the Commission should be, and is hereby, VACATED;
- (2) This case be, and is hereby, CLOSED;
- (3) The papers herein be placed in the file for ended causes.

CASE NO. INS-2011-00059
APRIL 18, 2011

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
RYAN NICHOLAS SHUBIN,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the Financial Industry Regulatory Authority.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated January 26, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the Financial Industry Regulatory Authority.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

CASE NO. INS-2011-00060
APRIL 19, 2011

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JAMES W. PATTERSON,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Alabama, and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated February 15, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Alabama, and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00061
APRIL 18, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
DERRICK D. PORTER,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of California.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated February 22, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of California.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00062
APRIL 18, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
V.
SATYA BRATA SHAW,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of South Carolina.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated February 15, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of South Carolina.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

CASE NO. INS-2011-00065
APRIL 27, 2011

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

VICTORIA FIRE & CASUALTY INSURANCE COMPANY

and

VICTORIA SELECT INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-2220 of the Code of Virginia by using forms which did not contain the precise language of the standard forms filed and adopted by the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have waived their right to a hearing and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated December 31, 2010.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

CASE NO. INS-2011-00069
NOVEMBER 22, 2011

COMMONWEALTH OF VIRGINIA, *ex. rel.*
STATE CORPORATION COMMISSION

v.

MARLA J. MESSENGER

and

M & R TITLE, INC.,
Defendants

JUDGMENT ORDER

On May 25, 2011, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Marla J. Messenger ("Messenger") and M & R Title, Inc. ("M & R") (collectively, "Defendants"). The Rule alleged that the Defendants violated: (i) § 55-525.24 (formerly § 6.1-2.23)¹ of the Code of Virginia ("Code") by failing to handle funds received in connection with an escrow, settlement, or closing in a fiduciary capacity; (ii) § 55-525.11 (formerly § 6.1-2.13) and § 55-525.24 of the Code by failing to record deeds of trust or other instruments and disburse settlement funds within two (2) business days of settlement; (iii) § 55-525.24 of the Code by failing to disburse funds pursuant to written instructions or agreements specifying how and to whom such funds may be disbursed; (iv) § 55-525.24 of the Code and 14 VAC 5-395-60 by failing to maintain a separate fiduciary account for purposes of handling settlement funds involving real estate located in Virginia; and (v) § 55-525.27 (formerly § 6.1-2.24) and § 38.2-1809 of the Code, as well as 14 VAC 5-395-70, by failing to maintain all settlement records for a minimum of five (5) years after the settlement is completed and/or by failing to make all escrow, closing, or settlement records available promptly upon request for examination by the Bureau of Insurance ("Bureau").

The Rule, among other things, assigned the matter to a Hearing Examiner, established a date upon which the Defendants' responses to the Rule were due, and scheduled a hearing on the Rule for July 19, 2011.

¹ Chapter 27.3, Real Estate Settlement Agents, of Title 55 of the Code of Virginia was formerly Chapter 1.3 Consumer Real Estate Settlement Protection Act of Title 6.1 [§ 6.1-2.19 *et seq.*] of the Code of Virginia. The applicable provisions of Title 6.1 were recodified in Title 55, effective October 1, 2010.

On June 28, 2011, the Bureau filed a Motion to Amend Rule to Show Cause and Request for Continuance ("Motion to Amend"). In its Motion to Amend, the Bureau asserted that M & R had been properly served but that Messenger had not been served. The Bureau requested that the Rule be amended to provide service upon the Secretary of the Commonwealth, and that the hearing date and responsive pleading deadlines be extended.

By Hearing Examiner's Ruling dated July 6, 2011, the hearing scheduled for July 19, 2011, was cancelled, and the Motion to Amend was certified to the Commission with the recommendation that an Amended Rule to Show Cause ("Amended Rule") be issued. On July 19, 2011, the Commission issued an Amended Rule against the Defendants. Among other things, the Amended Rule rescheduled the hearing for September 8, 2011, and directed for service to be made upon the Secretary of the Commonwealth.

The Amended Rule ordered the Defendants to file a responsive pleading by August 1, 2011, in which the Defendants were required to expressly admit or deny the allegations in the Amended Rule and present any affirmative defenses that they intended to assert. The Defendants were advised that they may be found in default if they failed to either timely file a responsive pleading or other appropriate pleading, or if they filed such pleading and failed to make an appearance at the hearing. If found in default, the Defendants were advised that they would be deemed to have waived all objections to the admissibility of evidence and may have entered against them a judgment by default imposing some or all of the sanctions permitted by law. The Defendants failed to file responsive pleadings.

On September 8, 2011, a hearing was convened in this matter. The Bureau appeared by counsel. The Defendants failed to appear after receiving notice of the hearing. The Bureau presented proof of notice that the Defendants were served with the Amended Rule. At the commencement of the hearing, the Bureau moved for the entry of a default judgment against the Defendants. The Bureau then presented the testimony of Latasha Heath Brown, an investigator in the Real Estate Settlement Agent Investigation Section of the Bureau's Property & Casualty Division. Ms. Brown provided testimony in support of the allegations set forth in the Amended Rule.

Ms. Brown testified that Messenger was licensed with the Commission to act as a title insurance agent in the Commonwealth of Virginia and M & R was licensed with the Commission to act as a title insurance agency in the Commonwealth of Virginia. The Defendants were in the business of performing services relevant to the issuance of title insurance commitments and policies, and conducting escrow, closing, and settlement transactions involving the purchase of, or the lending on the security of, real estate located in Virginia, Maryland, and the District of Columbia. Ms. Brown also testified that on August 4, 2003, M & R entered into an agency agreement with Lawyers Title Insurance Corporation ("LTIC") to act as its agent for the purpose of, among other things, issuing title insurance commitments, policies, and endorsements on real estate located in Virginia, Maryland, and the District of Columbia. M & R maintained three separate escrow accounts for the purpose of segregating funds from closings performed on real property located in Virginia from settlement funds involving property located in Maryland and the District of Columbia.

Ms. Brown testified that LTIC conducted an annual analysis of M & R's escrow accounts as required by § 55-525.20 (formerly § 6.1-2.21) of the Code to determine whether funds deposited with M & R were handled according to the provisions of the Real Estate Settlement Agents Act [§ 55-525.16 *et seq.* of the Code] and the Commission's Rules Governing Settlement Agents [14 VAC 5-395-10 *et seq.*]. On June 10, 2009, LTIC conducted the analysis of M & R's accounts and discovered a shortage of Thirty-Four Thousand Four Hundred Sixteen Dollars and Sixty-six Cents (\$34,416.66) in the Virginia escrow account and that M & R did not conduct timely reconciliations, had failed to record documents, and did not adhere to lender instructions. LTIC provided a copy of its report to the Bureau, who then conducted its own audit and analysis of the agency and agency escrow accounts.

Ms. Brown testified that based on the results of the LTIC report and its own analysis, the Bureau initiated an investigation and subsequently conducted an onsite audit of M & R. During the onsite audit and at the request of Ms. Brown, Messenger performed updated reconciliations of the Virginia escrow account. Messenger was unable to verify or account for deposits totaling Seven Hundred Ten Thousand Two Hundred Fifty-three Dollars and Thirty-three Cents (\$710,253.33) and could provide no explanation for a cash withdrawal from the Virginia escrow account in the amount of Three Hundred Ten Thousand Five Hundred Twenty-eight Dollars and Nineteen Cents (\$310,528.19). Messenger failed to respond to subsequent written requests from the Bureau asking for explanations for the discrepancies.

Ms. Brown further testified that after terminating its agency agreement with M & R, LTIC conducted a close-out audit of M & R and, among other things, determined there to be a shortage in the Virginia account of approximately One Hundred Two Thousand Nine Dollars and Ninety-six Cents (\$102,009.96). On May 19, 2010, LTIC filed suit against the Defendants in the Circuit Court for the County of Fairfax seeking injunctive and other relief. On May 13 and May 26, 2010, the Bureau made additional requests to the Defendants requesting certain agency and bank records, along with an explanation for the apparent shortage in the Virginia escrow account. The Defendants failed to respond to the Bureau's requests.

In addition to Ms. Brown's testimony, the Bureau submitted the affidavit of Kevin Hickey of Fidelity National Title Insurance Company ("Fidelity"), the successor company to LTIC, in support of the allegations set forth in the Amended Rule. The affidavit summarized LTIC's reason for cancelling and terminating M & R's status as an authorized agent and the results of LTIC's close-out audit and the amount of losses that Fidelity has suffered at the hand of the Defendants. Mr. Hickey also represented in the affidavit that Fidelity continues to receive claims associated with real estate transactions in Virginia, Maryland, and the District of Columbia in which M & R served as the escrow or settlement agent.

The Bureau provided legal authority for the Commission to enter default judgment, along with legal authority that due process notice requirements were satisfied. At the conclusion of the hearing, the Bureau requested that the Hearing Examiner: (i) grant its motion for entry of default judgment against the Defendants, (ii) recommend that the Commission enter a Judgment Order finding the Defendants in default, imposing a Five Thousand Dollar (\$5,000) monetary penalty per violation, and requiring the Defendants to make restitution to Fidelity and to the Virginia consumers who suffered losses as the result of the Defendants' numerous statutory violations; and (iii) revoke M & R's title insurance agent license.

On October 12, 2011, the Hearing Examiner filed her report ("Report"). In her report and based on the record, the Hearing Examiner made the following findings and recommendations: (i) the Motion for Default Judgment should be granted; (ii) the Bureau established by clear and convincing evidence that the Defendants committed 711 violations of § 6.1-2.13 of the Code based upon the Defendants' failure to satisfactorily perform the duties of a settlement agent with respect to the timely recordation of documents and disbursement of settlement proceeds; (iii) the Bureau established by clear and convincing evidence that the Defendants committed 702 violations of § 6.1-2.23 A of the Code based upon the Defendants' failure to properly handle settlement funds in a fiduciary capacity (these actions also violated 14 VAC 5-395-60); (iv) the Bureau established by clear and convincing evidence that the Defendants committed 700 violations of § 6.1-2.23 B of the Code based upon the Defendants' failure to disburse funds pursuant to written instructions; (v) the Bureau established by clear and convincing evidence that the Defendants committed three violations of § 6.1-2.24 of the Code based upon the Defendants' failure to make records available upon request or to retain settlement records for five years (these actions also violated 14 VAC 5-395-70);

(vi) the evidence supports a finding of 2,116 statutory violations or violations of the Virginia Administrative Code by the Defendants; (vii) M & R's title insurance agency license should be revoked; (viii) pursuant to §§ 6.1-2.27 and 38.2-218 of the Code, the Defendants should be fined in the amount of One Thousand Five Hundred Dollars (\$1,500) per violation for a total penalty of Three Million One Hundred Seventy-four Thousand Dollars (\$3,174,000); (ix) the Defendants should make restitution to Fidelity in the amount of Three Thousand Three Hundred Fifty Dollars and Seventy Cents (\$3,350.70) associated with the claims that Fidelity has paid arising from the Defendants' Virginia real estate settlements; (x) the Defendants should make restitution totaling Seventy Seven Thousand Six Hundred Twenty-eight Dollars and Seventy-two Cents (\$77,628.72) to the Virginia consumers identified, and in the amounts specified, in the Bureau's Exhibit 17 C; and (xi) a portion of the penalty should be waived, and the resulting penalty be reduced to Five Hundred Thousand Dollars (\$500,000), if the Defendants make restitution within sixty (60) days of the date of entry of this Order.

The Report allowed the parties twenty-one (21) days in which to file comments. No comments were filed.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Hearing Examiner's Report, and the applicable law, is of the opinion and finds that the Hearing Examiner's findings and recommendations as detailed in her Report are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the October 12, 2011 Hearing Examiner's Report are hereby adopted;
- (2) The Motion for Default Judgment is GRANTED;
- (3) Pursuant to §§ 38.2-218 and 55-525.31 of the Code of Virginia, the Defendants are hereby penalized in the amount One Thousand Five Hundred Dollars (\$1,500) per violation for a total amount of Three Million One Hundred Seventy-four Thousand Dollars (\$3,174,000);
- (4) Pursuant to §§ 38.2-218 and 55-525.31 of the Code of Virginia, the Defendants shall make restitution to Fidelity in the amount of Three Thousand Three Hundred Fifty Dollars and Seventy Cents (\$3,350.70);
- (5) Pursuant to §§ 38.2-218 and 55-525.31 of the Code of Virginia, the Defendants shall make restitution to the Virginia consumers identified, and in the amounts specified, in the Bureau's Exhibit 17 C, with total restitution of Seventy Seven Thousand Six Hundred Twenty-eight Dollars and Seventy-two Cents (\$77,628.72);
- (6) A portion of the penalty shall be waived and the resulting penalty shall be reduced to Five Hundred Thousand Dollars (\$500,000), provided the Defendants make restitution to Fidelity and the identified Virginia consumers within sixty (60) days of the date of entry of this Order; and
- (7) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate on account of the Defendants' failure to comply with the terms and undertakings of this Order.

**CASE NO. INS-2011-00070
MAY 2, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Amending Rules Governing Independent External Review of Final Adverse Utilization Review Decisions and Adopting New Rules Governing Internal Appeal and External Review

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to amend section 10 in Chapter 215 in Title 14 of the Virginia Administrative Code entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" and adopt a new chapter, Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," as set forth at 14 VAC 5-216-10 through 14 VAC 5-216-130 and accompanying forms.

The amendment to section 10 in Chapter 215 is necessary to limit the chapter's application to final adverse decisions made before or on June 30, 2011.

The proposed new rules in Chapter 216 are necessary because the federal Patient Protection and Affordable Care Act requires that the state's external review program be in conformity with the Uniform Health Carrier External Review Model Act prepared by the National Association of Insurance Commissioners. The 2011 General Assembly passed House Bill 1928 (Acts of the Assembly Ch. 788) to conform Virginia's internal appeal and external review processes to meet these requirements. These rules clarify and implement the provisions contained in House Bill 1928 which becomes effective on July 1, 2011.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is of the opinion that section 10 in Chapter 215 of Title 14 of the Virginia Administrative Code should be amended, and the new rules at proposed Chapter 216 of Title 14 of the Virginia Administrative Code should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposal that section 10 in Chapter 215 of Title 14 of the Virginia Administrative Code be amended and a new chapter proposed at Chapter 216 of Title 14 of the Virginia Administrative Code set forth at 14 VAC 5-216-10 through 14 VAC 5-216-130 and accompanying forms be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of, or in opposition to, or request a hearing to oppose amending section 10 in Chapter 215 and the adoption of the proposed new Chapter 216 shall file such comments or hearing request on or before June 1, 2011, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2011-00070. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) If no written request for a hearing on the proposed amendment and adoption of new rules is filed on or before June 1, 2011, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend section 10 in Chapter 215 and adopt proposed Chapter 216 of Title 14 of the Virginia Administrative Code as proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to amend and adopt new rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to amend current rules and adopt new rules by mailing a copy of this Order, together with the proposal, to all companies, HMOs and health services plans licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend current rules and adopt new rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed revisions to the Rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

NOTE: A copy of Attachment A entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2011-00070
JUNE 10, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Amending Rules Governing Independent External Review of Final Adverse Utilization Review Decisions and Adopting New Rules Governing Internal Appeal and External Review

ORDER ADOPTING RULES

By Order entered herein May 2, 2011, all interested persons were ordered to take notice that subsequent to June 1, 2011, the State Corporation Commission ("Commission") would consider the entry of an order to amend section 10 in Chapter 215 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" ("Rules") and adopt a new chapter, Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," ("new Rules") set forth at 14 VAC 5-216-10 through 14 VAC 5-216-130 and accompanying forms. These amended Rules and new Rules were proposed by the Bureau of Insurance ("Bureau"). The Order to Take Notice required that on or before June 1, 2011, any person objecting to the amended Rules and adoption of the new Rules shall have filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to amending the Rules and adoption of the new Rules on or before June 1, 2011.

No comments were filed with the Clerk of the Commission. Comments were sent to the Bureau from CareFirst BlueCross BlueShield by letter dated May 26, 2011, and from AARP by letter dated June 1, 2011. No request for a hearing was filed with the Clerk.

The Bureau considered the comments sent by both CareFirst and the AARP, and responded to these comments in respective letters back to each of these organizations. No changes to the amended Rules or new Rules were made as a result of the comments received. However, the Bureau recommends that the proposed new Rules be amended as follows:

(1) 14 VAC 5-216-20: The definitions of "pre-service claim" and "post-service claim" be amended to reflect more accurately definitions under federal requirements;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(2) 14 VAC 5-216-100 A: The provision that requires that an application fee of \$500 for an independent review organization be amended to reflect that an application fee of up to \$500 may be required.

(3) Form 216-E be amended to reflect the change noted above in 14 VAC 5-216-100 A.

The Bureau recommends that the amendment to the Rules and all other sections of the new Rules remain as proposed.

The amendment to section 10 in Chapter 215 is necessary to limit the chapter's application to final adverse decisions made before or on June 30, 2011.

The proposed new Rules in Chapter 216 are necessary because the federal Patient Protection and Affordable Care Act requires that the state's external review program be in conformity with the Uniform Health Carrier External Review Model Act prepared by the National Association of Insurance Commissioners. The 2011 Acts of Assembly Chapter 788 conform Virginia's internal appeal and external review processes to meet these federal requirements. These new Rules clarify and implement the provisions contained in Acts of Assembly Chapter 788, which becomes effective on July 1, 2011.

NOW THE COMMISSION, having considered the amendment to the Rules, the proposed new Rules, and the Bureau's recommendation for additional amendments to the new Rules, is of the opinion that the amendment to the Rules in Chapter 215 and the new Rules set forth in Chapter 216 of the Virginia Administrative Code be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendment to section 10 in Chapter 215 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" and the new rules in Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," set forth at 14 VAC 5-216-10 through 14 VAC 5-216-130 and accompanying forms, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED effective on July 1, 2011;

(2) AN ATTESTED COPY hereof, together with a copy of the adopted amended Rules and new Rules, shall be sent by the Clerk of the Commission to Althelia Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the adopted amended Rules and new Rules by mailing a copy of this Order, including a clean copy of the final amended Rules and new Rules, to all companies, HMOs and health services plans licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties;

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the adopted amended Rules and adopted new Rules, to be forwarded to the Virginia Registrar for appropriate publication in the Virginia Register;

(4) The Commission's Division of Information Resources shall make available this Order and the attached adopted amended Rules and new Rules on the Commission's website: <http://www.scc.virginia.gov/case>; and

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.

NOTE: A copy of Attachment A entitled "Rules Governing Internal Appeal and External Review" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2011-00077
JULY 7, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

GREGORY LEWIS WADE,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated subsections 1, 3, and 10 of § 38.2-1831 of the Code of Virginia by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission; by obtaining or attempting to obtain a license through misrepresentation or fraud; and by using fraudulent, coercive, or dishonest practices in the conduct of business in the Commonwealth.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated June 13, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated subsections 1, 3, and 10 of § 38.2-1831 of the Code of Virginia by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission; by obtaining or attempting to obtain a license through misrepresentation or fraud; and by using fraudulent, coercive, or dishonest practices in the conduct of business in the Commonwealth.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to five (5) years from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00078
APRIL 27, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ANITA W. CAMPBELL,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1809 and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees, and by providing materially incorrect, misleading, incomplete or untrue information in her license application filed with the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letters dated February 28, 2011, and April 5, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1809 and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees, and by providing materially incorrect, misleading, incomplete or untrue information in her license application filed with the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00079
MAY 18, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

GRAIN DEALERS MUTUAL INSURANCE COMPANY,

Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1906 D and 38.2-1927 of the Code of Virginia by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendant, and by willfully withholding from the Commission information that affected the rates and premiums filed pursuant to Chapter 19 of Title 38.2.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Seven Thousand Dollars (\$7,000), waived its right to a hearing, agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated April 11, 2011, and has confirmed that no restitution to the twenty-two (22) policyholders in the crime program was required.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00080
MAY 19, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

EMPIRE FIRE AND MARINE INSURANCE,

Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-305 B, 38.2-604 B, 38.2-610 A, 38.2-2118, 38.2-2120, 38.2-2124, and 38.2-2125 of the Code of Virginia by failing to accurately provide the required notices to insureds; violated § 38.2-511 by failing to maintain a complete complaint register; violated §§ 38.2-1812 A and 38.2-1833 by paying commissions for services as an agent to persons who were not properly licensed and appointed; violated § 38.2-1812 E by paying commissions to a trade name that was not registered with the Bureau of Insurance; violated § 38.2-1906 D by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendant; violated §§ 38.2-2113 C, 38.2-2114 A, and 38.2-2114 C by failing to properly terminate insurance policies; violated § 38.2-5020 E by failing to charge the correct annual assessment for the Birth-Related Neurological Injury Fund; violated § 38.2-510 A 1, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-70 A, and 14 VAC 5-400-70 D, by failing to properly handle claims with such frequency as to indicate a general business practice.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Twenty Five Thousand Dollars (\$25,000), waived its right to a hearing, agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated February 24, 2011, and confirmed that restitution was made in accordance with its letter to the Bureau dated February 24, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00081
MAY 19, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MICHAEL BARRY YOUNG,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1809, 38.2-1813, and 38.2-1826 C of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees, by failing to hold all premiums, return premiums, or other funds received by the Defendant in a fiduciary capacity, by failing to pay funds in the ordinary course of business to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment, by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account, and by failing to report to the Commission within thirty days a felony conviction.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated March 31, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated §§ 38.2-1809, 38.2-1813, and 38.2-1826 C of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees, by failing to hold all premiums, return premiums, or other funds received by the Defendant in a fiduciary capacity, by failing to pay funds in the ordinary course of business to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment, by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account, and by failing to report to the Commission within thirty days a felony conviction.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00082
MAY 12, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

KENNETH ERIC PHILLIPS,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the Financial Industry Regulatory Authority.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated April 8, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the Financial Industry Regulatory Authority.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00083
JUNE 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
AUTO-OWNERS INSURANCE COMPANY
and
OWNERS INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-2220 of the Code of Virginia by using forms which did not contain the precise language of the standard forms filed and adopted by the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Ten Thousand Dollars (\$10,000), waived their right to a hearing, and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated October 18, 2010.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00084
MAY 12, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SENTINEL INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-317 of the Code of Virginia by delivering or issuing for delivery insurance policies or endorsements without having filed such policy forms or endorsements with the Commission at least thirty days prior to their effective date.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has waived its right to a hearing and agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated January 3, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00085
JUNE 30, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

AMERICAN RELIABLE INSURANCE COMPANY,

Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-2220 of the Code of Virginia by using forms that did not contain the precise language of the standard forms filed and adopted by the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Fifty Thousand Dollars (\$50,000); waived its right to a hearing; agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated April 22, 2011; and confirmed that all claims incurred since July 1, 2008, have been reviewed and no restitution is owed to any claimant due to the alleged violations.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00086
JUNE 10, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.,

Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated 14 VAC 5-335-10 *et seq.* by issuing claims-made forms in four of its professional liability programs that did not comply with the Rules Governing Claims Made Policies.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Forty Thousand

Dollars (\$40,000), waived its right to a hearing, and agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated July 1, 2009.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00088
JUNE 10, 2011**

PETITION OF
ANTHEM HEALTH PLANS OF VIRGINIA, INC.,
and
HEALTHKEEPERS, INC.

For approval to provide quality management services for Healthkeepers Medicaid products from a location outside of Virginia

FINAL ORDER

On May 9, 2011, Anthem Health Plans of Virginia, Inc., and HealthKeepers, Inc. (collectively, "Petitioners"), filed a Petition under Rule 5 VAC 5-20-80 of the State Corporation Commission's ("Commission") Rules of Practice and Procedure and the Final Order entered in Case No. INS-2007-00141 ("Final Order").¹ In the Final Order, the Commission continued the requirement that Anthem cause the following services to be provided from offices located in Virginia: claims processing and case management, customer service, quality management, provider services, medical management, and network development. The Commission permitted Anthem to provide the following services from offices located outside of Virginia: actuarial, underwriting, marketing, community relations, distribution management, and sales. In the Final Order, the Commission also provided that if Anthem seeks to provide any of the aforementioned services currently required to be provided from offices located in Virginia from offices located outside of Virginia, it should file a petition with the Commission "setting forth a specific and detailed proposal for providing such services out of state, including specific and detailed information on *how* and *where* Anthem will provide such services, as well as safeguards for ensuring adequate levels of service."²

In the Petition, Anthem is asking that disease management member outreach services for Healthkeepers Medicaid members be performed from offices outside of Virginia.³

On May 16, 2011, the Commission entered a Scheduling Order, in which it provided a deadline of June 5, 2011, for interested persons to comment and directed the Bureau of Insurance ("Bureau") to file a response to the Petition on or before June 5, 2011.

No comments were filed with respect to the Petition.

On June 3, 2011, the Bureau filed its Response to the Petition. The Bureau states that it does not oppose the relief requested by Anthem.

NOW THE COMMISSION, having considered the Petition and the Bureau's response thereto, finds that the Petition should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) Anthem's Petition is GRANTED.
- (2) Anthem is permitted to provide disease management member outreach services for Healthkeepers Medicaid members from locations outside of Virginia, but within the United States.
- (3) The other provisions of the Final Order in Case No. INS-2007-00141 are not affected hereby, and Anthem shall continue to comply therewith.
- (4) This matter is dismissed and the papers filed herein shall be placed in the file for ended causes.

¹ *Petition of Anthem Health Plans of Virginia, Inc., Healthkeepers, Inc., Priority Health Care, Inc., Peninsula Health Care, Inc., WellPoint, Inc., Anthem Southeast, Inc., For Amendment of Final Order in Case No. INS-2002-00131, Case No. INS-2007-00141*, 2007 S.C.C. Ann. Rept. 114, Final Order (Aug. 9, 2007).

² *Id.* at 116, ¶ 4.

³ Petition at 2.

**CASE NO. INS-2011-00089
MAY 18, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CAROL ANN SMITH,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-512 of the Code of Virginia by making false or fraudulent statements or representations on or relative to an application or any document or communication relating to the business of insurance for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, premium finance company, or individual.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated April 14, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-512 of the Code of Virginia by making false or fraudulent statements or representations on or relative to an application or any document or communication relating to the business of insurance for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, premium finance company, or individual.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to one (1) year from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00091
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
KIMBERLY ANN SMALLWOOD,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days administrative actions that were taken against her by the State of Colorado, the State of Wisconsin, and the State of North Carolina.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated April 19, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days administrative actions that were taken against her by the State of Colorado, the State of Wisconsin, and the State of North Carolina.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00092
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CHRIS J. DELGADO,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty (30) days administrative actions that were taken against him by the State of South Dakota and the State of Washington, and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated April 18, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty (30) days administrative actions that were taken against him by the State of South Dakota and the State of Washington, and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00093
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
AMBER D. HELMUTH,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against her by the State of Oklahoma.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated April 19, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against her by the State of Oklahoma.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00094
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CARL L. RYKARD, JR.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Wisconsin.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated April 20, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Wisconsin.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00095
JUNE 7, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
AUTOMOTIVE RISK MANAGEMENT & INSURANCE SERVICES, INC.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Defendant has been notified of its right to a hearing in this matter by certified letter dated April 28, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

NOW THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00097
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

ARTHUR JOHN PRIESTON,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of his right to a hearing in this matter by certified letter dated April 28, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00098
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
RODNEY NEIL TAYLOR,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of his right to a hearing in this matter by certified letter dated April 28, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00099
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SAVICH INSURANCE SERVICES, INC.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of its right to a hearing in this matter by certified letter dated April 28, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, failed to request a hearing.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00100
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
GEORGE F. BROWN & SONS, INC.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of its right to a hearing in this matter by certified letter dated April 28, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00101
JUNE 6, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
COURTNEY W. WADE,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of her right to a hearing in this matter by certified letter dated April 28, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

NOW THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein shall be placed in the file for ended causes.

**CASE NO. INS-2011-00102
JUNE 6, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
STEPHEN JAMES BLACK,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of his right to a hearing in this matter by certified letter dated April 28, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, failed to request a hearing.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

NOW THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein shall be placed in the file for ended causes.

**CASE NO. INS-2011-00103
JUNE 6, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CITON AGENCY OF INDIANA, LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of its right to a hearing in this matter by certified letter dated April 28, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

NOW THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein shall be placed in the file for ended causes.

**CASE NO. INS-2011-00104
JUNE 6, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
GENATT ASSOCIATES, INC.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of its right to a hearing in this matter by certified letter dated April 28, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

NOW THE COMMISSION, is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to file the Annual Gross Premium Tax Report for 2010 on or before March 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein shall be placed in the file for ended causes.

**CASE NO. INS-2011-00106
JUNE 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ELECTRIC INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-305 A and 38.2-610 A of the Code of Virginia by failing to accurately provide the required notices to insureds; violated § 38.2-502 by misrepresenting the benefits, advantages, conditions or terms of an insurance policy; violated § 38.2-510 A 1, as well as 14 VAC 5-400-30, by failing to properly handle claims with such frequency as to indicate a general business practice; violated § 38.2-1318 by failing to properly terminate insurance policies; violated § 38.2-1905 A by increasing its insureds' premiums or charging points under safe driver plans as a result of motor vehicle accidents that were not caused either wholly or partially by the named insureds, residents of the same household, or other customary operator; violated § 38.2-1906 D by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendant; and violated §§ 38.2-2208 A, 38.2-2208 B, and 38.2-2212 E by failing to provide convenient access to files, documents, and records.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Eighteen Thousand Eight Hundred Dollars (\$18,800), waived its right to a hearing, agreed to comply with the Corrective Action Plan set forth in its letters to the Bureau of Insurance dated January 24, 2011, March 9, 2011, and March 28, 2011, and confirmed that restitution was made to 36 consumers in the amount of Two Thousand Four Hundred Sixty-five Dollars and Fifty Cents (\$2,465.50).

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00107
JUNE 10, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
PROPERTY & CASUALTY INSURANCE COMPANY OF HARTFORD
and
TRUMBULL INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-305 A, 38.2-610 A and 38.2-2118 of the Code of Virginia by failing to accurately provide the required notices to insureds; violated § 38.2-317 A by delivering or issuing for delivery insurance policies or endorsements without having filed such policy forms or endorsements with the Commission at least thirty days prior to their effective date; violated §§ 38.2-510 A 1 and 38.2-510 A 10, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-50 C, 14 VAC 5-400-70 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D, by failing to properly handle claims with such frequency as to indicate a general business practice; violated § 38.2-1318 by failing to properly terminate insurance policies; violated § 38.2-1833 by paying commissions for services as an agent to persons who were not properly licensed and appointed; violated § 38.2-1905 A by failing to notify insureds in writing when their policies were surcharged for at-fault accidents; violated § 38.2-1905 C by assigning points under a safe-driver insurance policy to a vehicle other than the vehicle customarily driven by the operator responsible for incurring points; violated §§ 38.2-1906 A and 38.2-1906 D by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendants; violated §§ 38.2-2208 B, 38.2-2212 D, 38.2-2212 E, and 38.2-2214 by failing to properly terminate insurance policies; violated § 38.2-2220 by using forms which did not contain the precise language of the standard forms filed and adopted by the Commission; and violated § 38.2-2234 B by using credit information from a consumer report for tier placement or rating renewal policies of motor vehicle insurance issued in the Commonwealth without updating the credit information at least once every three years.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Twenty-six Thousand One Hundred Dollars (\$26,100), waived their right to a hearing, agreed to comply with the Corrective Action Plan set forth in their letters to the Bureau of Insurance dated February 17, 2011, and March 18, 2011, and confirmed that restitution was made to 1,825 consumers in the amount of One Hundred Thousand Two Hundred Eighty-six Dollars and Thirty-six Cents (\$100,286.36).

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00108
JUNE 30, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
WALTER SCOTT MCCABE
and
MID ATLANTIC CONSULTING GROUP, PLLC,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-310 of the Code of Virginia by charging or collecting fees for the procurement of insurance that were not included in the premium or stated in the policy; violated § 38.2-512 by making or causing or allowing to be made false statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, or other benefit; violated § 38.2-1809 by failing to retain all records relative to insurance transactions for the three previous calendar years and by failing to make records available promptly upon request for examination by the Commission or its employees; violated § 38.2-1812.2 by failing to obtain a signed consent form from an applicant or policyholder who has been charged an administrative fee in addition to the premium; violated § 38.2-1813 by failing to hold all premiums, return premiums, or other funds received by the Defendants in a fiduciary capacity, by failing to pay funds in the ordinary course of business to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment, by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account, and by commingling business or personal funds with funds required to be maintained in a separate fiduciary account; and violated 14 VAC 5-390-20 E 2 by creating insurance premium finance contracts that provided for the financing of other charges, costs, or fees that were unrelated to the policies of insurance.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have waived their right to a hearing and agreed to refund all fees that were collected without proper disclosure to their customers and provide the Bureau of Insurance with a complete listing of all customers who have received refunds, the amount of each refund, and the name of the insurer, policy year, and policy number. Additionally, the Defendants have agreed to voluntarily surrender all license authority in the Commonwealth of Virginia and not make application to transact the business of insurance in the Commonwealth of Virginia for a period of five (5) years from the date of the voluntary surrenders and not until all financial obligations resulting from the alleged violations have been resolved.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants shall refund all fees that were collected without proper disclosure to their customers and provide the Bureau of Insurance with a complete listing of all customers who have received refunds, the amount of each refund, and the name of the insurer, policy year, and policy number; and
- (3) The papers herein are placed in the file for ended causes.

**CASE NO. INS-2011-00109
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
LEONARDO GARCIA,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of New York.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated April 22, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of New York.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00112
JUNE 8, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

ACE AMERICAN INSURANCE COMPANY,

Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1906 D of the Code of Virginia by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendant.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has waived its right to a hearing and agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated May 5, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00114
JUNE 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
CAROLINA CASUALTY INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated 14 VAC 5-335-10 *et seq.* by issuing claims-made forms that did not comply with the Rules Governing Claims Made Policies.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Ten Thousand Dollars (\$10,000), waived its right to a hearing, and agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated May 3, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00115
JUNE 13, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA
and
THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-317 of the Code of Virginia by delivering or issuing for delivery insurance policies or endorsements without having filed such policy forms or endorsements with the Commission at least thirty (30) days prior to their effective date.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Five Thousand Dollars (\$5,000) per company for an amount totaling Ten Thousand Dollars (\$10,000), waived their right to a hearing, and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated May 20, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00116
JUNE 30, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-317 of the Code of Virginia by delivering or issuing for delivery insurance policies or endorsements without having filed such policy forms or endorsements with the Commission at least thirty (30) days prior to their effective date.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Five Thousand Dollars (\$5,000); waived its right to a hearing; and agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance dated May 2, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00118
JULY 15, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

ANGELA DENISE HARRIS
and
COLE INSURANCE AGENCY OF RICHLANDS, INC.,
Defendants

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1809 and 38.2-1813 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees; by failing to hold all premiums, return premiums, or other funds received by the Defendants in a fiduciary capacity; and by commingling business or personal funds with funds required to be maintained in a separate fiduciary account.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Defendants have been notified of their right to a hearing before the Commission in this matter by certified letter dated June 15, 2011, and mailed to the Defendants' address shown in the records of the Bureau of Insurance.

The Defendants, having been advised in the above manner of their right to a hearing in this matter, have failed to request a hearing and have not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendants' failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendants' licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendants have violated §§ 38.2-1809 and 38.2-1813 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees; by failing to hold all premiums, return premiums, or other funds received by the Defendants in a fiduciary capacity; and by commingling business or personal funds with funds required to be maintained in a separate fiduciary account.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendants to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendants transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendants shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendants hold an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00118
AUGUST 4, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ANGELA DENISE HARRIS
and
COLE INSURANCE AGENCY OF RICHLANDS, INC.,
Defendants

ORDER GRANTING RECONSIDERATION

On July 15, 2011, the State Corporation Commission ("Commission") issued an Order Revoking License in this docket. On August 2, 2011, the Defendants filed a Petition for Reconsideration requesting that the Commission reconsider the revocation of their Virginia insurance agent licenses.

NOW THE COMMISSION, upon consideration of this matter, grants reconsideration for the purposes of continuing jurisdiction over this matter and considering the above-referenced request.

According, IT IS ORDERED THAT:

- (1) Reconsideration is granted for the purpose of continuing jurisdiction over this matter and considering the above-referenced request.
- (2) This matter is continued pending further order of the Commission.

**CASE NO. INS-2011-00118
AUGUST 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

ANGELA DENISE HARRIS

and

COLE INSURANCE AGENCY OF RICHLANDS, INC.,
Defendants

ORDER ON RECONSIDERATION

By Order Revoking License entered on July 15, 2011, the State Corporation Commission ("Commission") ordered, among other things, the revocation of the licenses of the Defendants to transact the business of insurance in the Commonwealth of Virginia for violating §§ 38.2-1809 and 38.2-1813 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees; by failing to hold all premiums, return premiums, or other funds received by the Defendants in a fiduciary capacity; and by commingling business or personal funds with funds required to be maintained in a separate fiduciary account.

On August 2, 2011, the Defendants filed a Petition for Reconsideration in which they requested that their licenses be reinstated.

By Order entered on August 4, 2011, the Commission granted reconsideration for the purpose of continuing our jurisdiction over this matter and considering the Defendants' request.

The Defendants have subsequently made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of One Thousand Dollars (\$1,000) and waived their right to a hearing.

The Bureau of Insurance has recommended that the Commission reinstate the Defendants' licenses, and it further recommends that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, upon further reconsideration of this matter and having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' licenses should be reinstated and their offer of settlement accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendants' request for reconsideration is hereby GRANTED;
- (2) The Order of August 4, 2011, is VACATED;
- (3) The Defendants' licenses are hereby REINSTATED;
- (4) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00119
JUNE 10, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Amending Rules Governing Health Maintenance Organizations

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to amend certain sections in Chapter 211 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Maintenance Organizations," specifically set forth at 14 VAC 5-211-10, 14 VAC 5-211-20, 14 VAC 5-211-70, 14 VAC 5-211-90, 14 VAC 5-211-100, 14 VAC 5-211-140, 14 VAC 5-211-150, 14 VAC 5-211-180, and 14 VAC 5-211-210 through 14 VAC 5-211-230.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The amendments to these sections of Chapter 211 are necessary to comply with the provisions of Chapter 882 of the 2011 Virginia Acts of Assembly, which in part establishes Article 6 of Chapter 34 of Title 38.2 of the Code of Virginia. These amendments clarify and implement the provisions of Chapter 882 which becomes effective on July 1, 2011.

The Commission is of the opinion that sections 10, 20, 70, 90, 100, 140, 150, 180, and 210 through 230 of Chapter 211 of Title 14 of the Virginia Administrative Code should be amended and considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposal that certain sections in Chapter 211 of Title 14 of the Virginia Administrative Code be amended at 14 VAC 5-211-10, 14 VAC 5-211-20, 14 VAC 5-211-70, 14 VAC 5-211-90, 14 VAC 5-211-100, 14 VAC 5-211-140, 14 VAC 5-211-150, 14 VAC 5-211-180, and 14 VAC 5-211-210 through 14 VAC 5-211-230, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amending sections 10, 20, 70, 90, 100, 140, 150, 180, and 210 through 230 of Chapter 211 of Title 14 of the Virginia Administrative Code shall file such comments or hearing request on or before July 15, 2011, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case No. INS-2011-00119. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(3) If no written request for a hearing on the proposed amendments is filed on or before July 15, 2011, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend sections 10, 20, 70, 90, 100, 140, 150, 180, and 210 through 230 of Chapter 211 of Title 14 of the Virginia Administrative Code as proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to amend rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to amend rules by mailing a copy of this Order, together with the proposal, to all health maintenance organizations licensed by the Commission to conduct the business of a health maintenance organization in the Commonwealth of Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments to the rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

NOTE: A copy of Attachment A entitled "Rules Governing Health Maintenance Organizations" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2011-00119
JULY 25, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Amending Rules Governing Health Maintenance Organizations

ORDER ADOPTING RULES

By Order entered herein June 10, 2011, all interested persons were ordered to take notice that subsequent to July 15, 2011, the State Corporation Commission ("Commission") would consider the entry of an order to amend certain sections in Chapter 211 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Maintenance Organizations" ("Rules"), specifically set forth at 14 VAC 5-211-10, 14 VAC 5-211-20, 14 VAC 5-211-70, 14 VAC 5-211-90, 14 VAC 5-211-100, 14 VAC 5-211-140, 14 VAC 5-211-150, 14 VAC 5-211-180 and 14 VAC 5-211-210 through 14 VAC 5-211-230. These amended Rules were proposed by the Bureau of Insurance ("Bureau"). The Order to Take Notice required that on or before July 15, 2011, any person objecting to the amended Rules shall have filed a request for hearing with the Clerk of the Commission (the "Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to amending the Rules on or before July 15, 2011.

No comments were filed with the Clerk of the Commission. No request for a hearing was filed with the Clerk.

The Bureau recommends that no changes be made to the Rules and that they be adopted as proposed.

The amendments to sections 10, 20, 70, 90, 100, 140, 150, 180, and 210 through 230 of Chapter 211 are necessary to comply with the provisions of Chapter 882 of the 2011 Virginia Acts of Assembly, which, in part, establishes Article 6 of Chapter 34 of Title 38.2 of the Code of Virginia. These amendments clarify and implement the provisions of Chapter 882 which became effective on July 1, 2011.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, having considered the amendments to the Rules and the Bureau's recommendation, is of the opinion that the amendments to sections 10, 20, 70, 90, 100, 140, 150, 180 and 210 through 230 of Chapter 211 of Title 14 of the Virginia Administrative Code be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to certain sections in Chapter 211 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Health Maintenance Organizations" specifically set forth at 14 VAC 5-211-10, 14 VAC 5-211-20, 14 VAC 5-211-70, 14 VAC 5-211-90, 14 VAC 5-211-100, 14 VAC 5-211-140, 14 VAC 5-211-150, 14 VAC 5-211-180 and 14 VAC 5-211-210 through 14 VAC 5-211-230, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED effective on September 1, 2011;

(2) AN ATTESTED COPY hereof, together with a copy of the adopted amended Rules shall be sent by the Clerk of the Commission to Althelia Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the adopted amended Rules by mailing a copy of this Order, including a clean copy of the amended Rules, to all Health Maintenance Organizations licensed by the Commission to conduct the business of a health maintenance organization in the Commonwealth of Virginia, as well as all interested parties;

(3) The Commission's Division of Information Resources shall cause a copy of this Order, together with the adopted amended Rules, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register;

(4) The Commission's Division of Information Resources shall make available this Order and the attached adopted amended Rules on the Commission's website: <http://www.scc.virginia.gov/case>; and

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.

NOTE: A copy of Attachment A entitled "Rules Governing Health Maintenance Organizations" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2011-00126
JUNE 14, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

RICHARD LEE ROBINSON,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated subsection 10 of § 38.2-1831 of the Code of Virginia by using fraudulent, coercive, or dishonest practices in the conduct of business in the Commonwealth, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated May 24, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated subsection 10 of § 38.2-1831 of the Code of Virginia by using fraudulent, coercive, or dishonest practices in the conduct of business in the Commonwealth, or demonstrating financial irresponsibility in the handling of applicant, policyholder, agency, or insurance company funds.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to one (1) year from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00128
JULY 1, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ALLIED PROPERTY & CASUALTY INSURANCE COMPANY,
AMCO INSURANCE COMPANY,
and
DEPOSITORS INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1906 D of the Code of Virginia by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendants.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Three Thousand Dollars (\$3,000) per company for an amount totaling Nine Thousand Dollars (\$9,000); waived their right to a hearing; agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated May 23, 2011; and confirmed that restitution was made to 86 consumers in the amount of Eighteen Thousand Nine Hundred Eleven Dollars and One Cent (\$18,911.01).

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00130
SEPTEMBER 7, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
VICTORIA AUTOMOBILE INSURANCE COMPANY
and
VICTORIA SELECT INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-2220 of the Code of Virginia by using forms which did not contain the precise language of the standard forms filed and adopted by the Commission.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Ten Thousand Dollars (\$10,000), waived their right to a hearing, and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated August 8, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00132
JUNE 14, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SHIRONDA REKAY HABIB,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against her by the State of Georgia and the State of Michigan.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated May 10, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against her by the State of Georgia and the State of Michigan.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00133
JUNE 14, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
DANIEL ROBERT ROBINSON,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of California, and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letters dated May 5, 2011, and May 10, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of California, and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00134
JULY 27, 2011**

APPLICATION OF
GUGGENHEIM LIFE AND ANNUITY COMPANY

For approval of an assumption reinsurance agreement pursuant to § 38.2-136 C of the Code of Virginia

ORDER APPROVING APPLICATION

By petition filed with the State Corporation Commission ("Commission") on June 9, 2011, Guggenheim Life and Annuity Company ("Petitioner"), a Delaware-domiciled insurer licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia, requested approval of an assumption reinsurance agreement pursuant to § 38.2-136 of the Code of Virginia ("Code").

Effective March 2, 2011, the Petitioner entered into an assumption reinsurance agreement that provided for assuming a block of annuity contracts from Standard Life Insurance Company of Indiana ("Standard Life"), an Indiana-domiciled insurer.

On December 18, 2008, the Circuit Court of Marion County, Indiana, entered an order placing Standard Life into rehabilitation. On January 28, 2009, the Commission entered an order suspending the license of Standard Life to transact the business of insurance in Virginia.

Pursuant to § 38.2-136 C of the Code, the Petitioner has requested that the Commission waive the policyholder consent to this transaction required by § 38.2-136 B of the Code because a delinquency proceeding has been instituted against the insurer for the purpose of conserving, rehabilitating, or liquidating the insurer. Standard Life has waived its right to a hearing in this matter.

The Bureau of Insurance, having reviewed the application to ensure that Virginia policyholders will not lose any rights or claims afforded under their original contracts pursuant to Chapter 17 of Title 38.2 of the Code, has recommended that the application be approved.

NOW THE COMMISSION, having considered the application, the recommendation of the Bureau of Insurance that the application be approved, and the law applicable hereto, is of the opinion that the application should be approved;

Accordingly, IT IS ORDERED THAT the application of Guggenheim Life and Annuity Company for the approval of the reinsurance agreement pursuant to § 38.2-136 C of the Code of Virginia be, and it is hereby, APPROVED.

**CASE NO. INS-2011-00140
JUNE 23, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

ANCHOR BAY INSURANCE MANAGERS, INC.,

Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of its right to a hearing in this matter by certified letter dated May 18, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00141
JUNE 23, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
PATRICIA ANN HARRELL,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of her right to a hearing in this matter by certified letter dated May 18, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00142
JUNE 20, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SHG INSURANCE SERVICES, LLC,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of its right to a hearing in this matter by certified letter dated May 18, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, failed to request a hearing.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00144
JUNE 20, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
F. DARRELL LINDSEY,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of his right to a hearing in this matter by certified letter dated May 18, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00146
JUNE 23, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JOSEPH JOHN GEORGE,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of his right to a hearing in this matter by certified letter dated May 18, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00147
JUNE 23, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JL VON ARX & ASSOCIATES,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of its right to a hearing in this matter by certified letter dated May 18, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, failed to request a hearing.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00148
JUNE 20, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
BRAD T. HOGAN,
Defendant

ORDER REVOKING LICENSE

Based on an investigation by the Bureau of Insurance ("Bureau"), it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia, violated § 38.2-4807 A of the Code of Virginia ("Code") by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

The Commission is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1857.7 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid violation.

The Defendant has been notified of his right to a hearing in this matter by certified letter dated May 18, 2011, and mailed to the Defendant's address shown in the records of the Bureau.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, failed to request a hearing.

The Bureau, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent and a surplus lines broker.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-4807 A of the Code by failing to pay the Bureau of Insurance Maintenance Assessment and related fines and penalties.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent and a surplus lines broker in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said insurance licenses are hereby VOID;
- (3) The Defendant shall transact no further business in the Commonwealth of Virginia as an insurance agent or a surplus lines broker;
- (4) The Bureau of Insurance shall cause a copy of this Order to be sent to every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (5) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00151
JULY 14, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JANETTA GAIL CUNNINGHAM,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated subsection 1 of § 38.2-1831 of the Code of Virginia by providing materially incorrect, misleading, incomplete or untrue information in her license application filed with the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letters dated February 14, 2011, and May 3, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated subsection 1 of § 38.2-1831 of the Code of Virginia by providing materially incorrect, misleading, incomplete or untrue information in her license application filed with the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00152
JUNE 23, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MAJESTIC INSURANCE COMPANY,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") may suspend or revoke the license of any insurance company to transact the business of insurance in the Commonwealth of Virginia whenever the Commission finds that the company is insolvent, or is in a condition that any further transaction of business in this Commonwealth is hazardous to its policyholders, creditors, and public in this Commonwealth.

Majestic Insurance Company, a foreign corporation domiciled in the State of California ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

By order entered April 21, 2011, by the Superior Court of the State of California, City and County of San Francisco – Unlimited Jurisdiction, the Defendant was placed into conservation due to financial regulatory concerns. The California Commissioner of Insurance was appointed the conservator for the Defendant.

The Commission's Bureau of Insurance has recommended that the Defendant's license to transact the business of insurance in the Commonwealth of Virginia be suspended.

Accordingly, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to July 8, 2011, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before July 8, 2011, the Defendant files with Joel H. Peck, Clerk, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed suspension of the Defendant's license.

**CASE NO. INS-2011-00152
JULY 21, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
MAJESTIC INSURANCE COMPANY,
Defendant

ORDER SUSPENDING LICENSE

In an Order to Take Notice entered herein June 23, 2011, Majestic Insurance Company, a California corporation ("Defendant") licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, was ordered to take notice that the Commission would enter an order subsequent to July 8, 2011, suspending the license of the Defendant to transact new business unless on or before July 8, 2011, the Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of the Defendant's license.

The Order to take Notice was entered due to the Superior Court of the State of California, City and County of San Francisco – Unlimited Jurisdiction placing the Defendant into conservation due to financial regulatory concerns.

As of the date of this Order, the Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of the Defendant's license.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia is hereby **SUSPENDED**;
- (2) The Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission;
- (3) The appointments of the Defendant's agents to act on behalf of the Defendant in the Commonwealth of Virginia are hereby **SUSPENDED**;
- (4) The Defendant's agents shall transact no new insurance business on behalf of the Defendant in the Commonwealth of Virginia until further order of the Commission;
- (5) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of the Defendant's agents appointed to act on behalf of the Defendant in the Commonwealth of Virginia as notice of the suspension of such agent's appointment; and
- (6) The Bureau of Insurance shall cause notice of the suspension of the Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2011-00155
OCTOBER 20, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION,

v.
SHENANDOAH LIFE INSURANCE COMPANY,
Defendant

**FINAL ORDER APPROVING PLAN OF CONVERSION, REHABILITATION PLAN,
AND ACQUISITION OF CONTROL, AND GRANTING RELATED RELIEF**

Before the State Corporation Commission ("Commission") is the "Application for: (A) a Final Order Approving Rehabilitation Plan (Including Plan of Conversion) and Acquisition of Control, and Granting Related Relief; and (B) a Final Order Terminating Rehabilitation Proceeding" ("Application"), filed on June 24, 2011, by Jacqueline K. Cunningham, in her capacity as Deputy Receiver ("Deputy Receiver") of Shenandoah Life Insurance Company ("Shenandoah" or "Company").

PROCEDURAL HISTORY

(1) The Circuit Court of the City of Richmond, Virginia ("Court"), found Shenandoah to be in a hazardous financial condition, placed the Company into receivership, and appointed the Commission as receiver of the Company (in such capacity, "Receiver") with all the powers and authority expressed or implied under the provisions of Title 38.2, Chapter 15 of the Code of Virginia and as set forth in the Court's Final Order Appointing Receiver for Rehabilitation or Liquidation, dated February 12, 2009 ("Receivership Order").

(2) Pursuant to the Receivership Order, the Receiver is authorized to take any and all actions that it deems advisable in connection with the liquidation or rehabilitation of the Company and is further authorized to act as the receivership court of record, to oversee the rehabilitation or liquidation of the Company, and to approve any other authorized steps that it considers advisable in connection with the affairs of the Company pursuant to § 38.2-1508 of the Code of Virginia and Article IX, § 3 of the Constitution of Virginia without need for further order of the Court.

(3) The Receiver, in accordance with authority granted to it by the Court under the Receivership Order, pursuant to the Receiver's Order Appointing Deputy Receiver for Conservation and Rehabilitation, dated February 12, 2009, as amended by the Receiver's Amendment to Order Appointing Deputy Receiver for Conservation and Rehabilitation, dated January 10, 2011 ("Order Appointing Deputy Receiver"), appointed the Deputy Receiver to act on behalf of the Commission in its capacity as Receiver for the period the Commission is the Receiver of the Company.

(4) The Receivership Order, the Order Appointing Deputy Receiver, and applicable Virginia law vest title, both legal and equitable, in the Receiver to all of the Company's property, including its affairs, business, assets, records, and all other property of any kind or nature, and give the Receiver and the Deputy Receiver the sole right to conduct the business of the Company and each of its subsidiaries.

(5) The Application recites that the Deputy Receiver has determined that (i) the proposed conversion ("Conversion") of the Company from a domestic mutual life insurance company to a domestic stock life insurance company pursuant to a plan of conversion ("Plan of Conversion") and rehabilitation would be in the best interests of the Company, its members ("Members"), policyholders ("Policyholders"), insureds ("Insureds"), subscribers ("Subscribers"), creditors ("Creditors"), and the public, and in connection with the foregoing adopted a plan of rehabilitation ("Rehabilitation Plan") on May 4, 2011; and (ii) the purposes of the rehabilitation proceeding would be accomplished under the Rehabilitation Plan, such that, upon the last to occur of the "Closing," expiration of the "Bar Date," and expiration or termination of any "Extension of Moratorium on Cash Withdrawals" (as those three terms are defined in the Application), the Company could safely and properly resume possession of its property and the conduct of its business in accordance with the Rehabilitation Plan, and the rehabilitation proceeding could be terminated.

(6) The Rehabilitation Plan provides for and is contingent upon the Conversion and subsequent sale ("Sale") by the Deputy Receiver, acting in her capacity as such and on behalf of the Company, immediately following the Conversion, of 1,000 newly created shares of common stock, par value \$.01 per share of the Company, representing all of the issued and outstanding shares of capital stock or other equity interests of the Company, and as part of the Conversion in accordance with and subject to the terms and conditions of a confidential stock purchase agreement ("Stock Purchase Agreement") dated as of May 4, 2011, by and among the Deputy Receiver, the Company, and United Prosperity Life Insurance Company ("United Prosperity" or "Purchaser").¹

(7) The Purchaser filed its Application for Approval of Acquisition of Control seeking the Commission's approval of the Sale and change of control of the Company and included therein the Purchaser's Form A statement (collectively, "Form A"), in accordance with § 38.2-1323 of the Code of Virginia and other applicable law, requesting that, among other things, the Commission schedule a hearing thereon.²

(8) By scheduling order dated June 27, 2011 ("Scheduling Order"), the Commission set a single hearing on the Rehabilitation Plan, the Plan of Conversion, the Form A, and the termination of the rehabilitation proceeding pursuant to § 38.2-1519 (A) of the Code of Virginia, said hearing to be held on October 11, 2011 ("Hearing").

(9) The Scheduling Order also approved the notice and response procedures proposed by the Deputy Receiver.

¹ Concurrent with the filing of the Application, the Deputy Receiver filed a Motion for Protective Order and Incorporated Memorandum in Support with respect to the Stock Purchase Agreement.

² That Application was initially designated as Case No. INS-2011-00124.

(10) The Scheduling Order also provided for the manner in which any interested person could file a notice of objection ("Notice of Objection") to the Rehabilitation Plan (including the Plan of Conversion), the Form A, the requested termination of the rehabilitation proceeding upon certain conditions, or the requested related relief.

(11) On August 12, 2011, Global, IQX, Inc., timely filed its Notice of Objection, objecting to the Application only to the extent that it might cut off its rights as a creditor. Subsequently, following communications with representatives of the Deputy Receiver, on September 12, 2011, Global, IQX, Inc., withdrew its objection. No other party timely filed an objection to the Application, the Plan of Conversion, or the Rehabilitation Plan. Therefore, as of the date of the Hearing on the Application, no objections were pending.

(12) The Commission held the Hearing as scheduled.

(13) Counsel made appearances at the Hearing on behalf of the Deputy Receiver and United Prosperity. Insurance Commissioner Jacqueline K. Cunningham, Donald C. Beatty, and Ed Dinkel testified at the behest of the Deputy Receiver, and José Montemayor testified at the behest of United Prosperity. No other person appeared or testified at the Hearing.

NOW THE COMMISSION, having considered the Application, the evidence, and argument of counsel, makes the following findings:

(1) On July 15, 2011, in accordance with the Scheduling Order, the Deputy Receiver filed a Submission of Affidavits of Notice by Mailing and Publication in Support of Application for: (A) a Final Order Approving Rehabilitation Plan (Including Plan of Conversion) and Acquisition of Control, and Granting Related Relief; and (B) a Final Order Terminating Rehabilitation Proceeding. The Commission now finds that the notice requirements set forth in the Scheduling Order have been satisfied.

(2) With respect to the Plan of Conversion for purposes of § 38.2-1005.1 of the Code of Virginia:

- a. The terms and conditions of the Plan of Conversion are fair and equitable to Policyholders;
- b. The Plan of Conversion is subject to approval by a vote of more than two-thirds of all votes cast on the Plan of Conversion at a meeting of Members called for that purpose at which a quorum is present;
- c. The Plan of Conversion allocates and directs that the entire consideration to be distributed upon consummation of the Conversion and Sale, if any, be distributed to the Policyholders;
- d. The methods set forth in the Plan of Conversion for determining the aggregate amount of consideration, if any, to be distributed to Policyholders upon consummation of the Conversion and Sale, and for determining each eligible Policyholder's share of any such distribution, are fair and equitable;
- e. As of February 12, 2009, on a liquidation basis of accounting, Shenandoah was insolvent as that term is defined in § 38.2-1501 of the Code of Virginia;
- f. Although Shenandoah properly reported that it was solvent on a statutory basis as of December 31, 2009, and December 31, 2010, it would have been statutorily insolvent as of those dates were it not for certain dispensation from reporting requirements of § 38.2-1400 *et seq.* of the Code of Virginia available only because it was in receivership as of those dates;
- g. As of the date of the Hearing, and subject to said dispensation, Shenandoah had statutory surplus substantially in excess of \$10,000,000 and is projected to retain at least that surplus on that basis as of the expected Closing Date; and
- h. Immediately after consummation of the Conversion and Sale, Shenandoah would have the fully paid capital stock and surplus required by applicable law.

(3) With respect to the Rehabilitation Plan for purposes of § 38.2-1518 of the Code of Virginia:

- a. The "Due Diligence and Bid Proposal Procedures," as defined and discussed in the Application, were in the best interests of Policyholders and Creditors;
- b. The Stock Purchase Agreement is in the best interests of Policyholders and Creditors;
- c. The optional "Extension of Moratorium on Cash Withdrawals," as defined and described in the Rehabilitation Plan, is necessary to the success of the Rehabilitation Plan; and
- d. It is in the best interests of the Policyholders and Creditors that Shenandoah be rehabilitated pursuant to the Rehabilitation Plan.

(4) With respect to the Form A for purposes of § 38.2-1326 of the Code of Virginia:

- a. There has been no showing that, after the change of control, Shenandoah would not be able to satisfy the requirements for the issuance of a license to write the classes of insurance for which it was licensed prior to receivership;
- b. There has been no showing that the acquisition of control would lessen competition substantially or tend to create a monopoly in insurance in this Commonwealth;
- c. There has been no showing that the financial condition of the Purchaser might jeopardize the financial stability of Shenandoah, or prejudice the interests of the Policyholders;

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- d. There has been no showing that any plans or proposals of the Purchaser to liquidate Shenandoah, sell its assets, or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair or unreasonable to Policyholders and not in the public interest;
- e. There has been no showing that the competence, experience, and integrity of those persons who would control the operation of Shenandoah are such that it would not be in the interest of Policyholders and of the public to permit the acquisition of control; and
- f. There has been no showing that, after the change of control, Shenandoah's surplus to Policyholders would not be reasonable in relation to its outstanding liabilities or adequate to its financial needs.

(5) With respect to the proposed termination of the rehabilitation proceeding pursuant to § 38.2-1519 (A) of the Code of Virginia, following implementation of the Rehabilitation Plan, and upon the last to occur of the Closing, expiration of the Bar Date, and expiration or termination of any Extension of Moratorium on Cash Withdrawals, all as described and proposed in the Application, the purposes of the rehabilitation proceeding will be accomplished, and Shenandoah can safely and properly resume possession of its property and the conduct of its business.

The Commission further finds that the Rehabilitation Plan (including the Plan of Conversion) and the Form A should be approved, that the rehabilitation proceeding should be terminated upon the conditions set forth herein, and that all related relief requested by the Application should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) The Due Diligence and Bid Proposal Procedures are hereby RATIFIED and APPROVED.
- (2) The Stock Purchase Agreement is hereby RATIFIED and APPROVED.
- (3) Because of the findings made herein regarding Shenandoah's financial condition, the formula set forth in § 2.4 of the Stock Purchase Agreement shall be used to determine the payment, if any, to which eligible Policyholders would be entitled upon consummation of the Conversion, and that formula is hereby found to be fair and equitable to Policyholders.
- (4) The Rehabilitation Plan is APPROVED.
- (5) Under authority of § 38.2-1518 of the Code of Virginia, the optional Extension of Moratorium on Cash Withdrawals is APPROVED.
- (6) The Form A is APPROVED.
- (7) The Plan of Conversion is APPROVED, subject to the required vote of Members.
- (8) The form of Information Statement attached as part of Exhibit A to the Application is APPROVED.
- (9) The Deputy Receiver's proposal to provide written notice of the Special Meeting by first class United States mail to all Members at their last known address disclosed in Shenandoah's books and records, in a form reasonably calculated to provide interested persons with notice of the Special Meeting and the procedures for voting on the Plan of Conversion, including enclosing a copy of the finalized Information Statement, is APPROVED, and the Deputy Receiver shall not be required to mail a notice if she reasonably believes that a Member's last known address is no longer valid.
- (10) The Deputy Receiver's proposal to publish notice of the Special Meeting on the Company's website and for one day each week for two consecutive weeks in The Roanoke Times, Richmond Times-Dispatch, The Wall Street Journal, and USA Today is APPROVED, provided that the publication notice shall be of a form reasonably calculated to provide sufficient notice of the Special Meeting and voting procedures to any Member who does not receive direct notice of the Special Meeting by first class United States mail.
- (11) The rights of Members, Insureds, Policyholders, Subscribers, and Creditors shall be fixed as of the date of this Order.
- (12) The Company will remain fully obligated under all of its insurance policies and other contracts in that, subject to any Extension of Moratorium on Cash Withdrawals, the benefits, values, and rights described in the Company's insurance policies and other contracts will not be reduced or altered, and the premiums required to be paid as specified in the insurance policies and other contracts will not be increased above their contractual maximum rates.
- (13) The Shenandoah Life Insurance Company Employees Retirement Plan ("Pension Plan") shall remain in effect and be continued in accordance with its terms, and United Prosperity shall satisfy the minimum funding standards pursuant to 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083 and be liable for the payment of Pension Benefit Guaranty Corporation premiums in accordance with 29 U.S.C. §§ 1306 and 1307 subject to any and all applicable rights and defenses of United Prosperity, and administer the Pension Plan in accordance with the provisions of ERISA and the Internal Revenue Code. In the event that the Pension Plan terminates after consummation of the Conversion and Sale, United Prosperity and each of its controlled group members will be responsible for the liabilities imposed by Title IV of ERISA.
- (14) The Deputy Receiver, in her reasonable discretion, is hereby authorized to establish by directive a Bar Date for Members, Insureds, Policyholders, Subscribers, and Creditors to file proofs of claims against Shenandoah, such filing period to end on the Bar Date and to be no less than ninety (90) days, nor more than three hundred sixty-five (365) days, following the date of the Deputy Receiver's issuance of the directive. All "Claims" (including contingent claims and unliquidated claims) against Shenandoah shall be required to be filed before the Bar Date except that the following claims shall not be subject to the Bar Date:
 - a. Claims of Members, Insureds, Policyholders, Subscribers, or Creditors for benefits contemplated by the Rehabilitation Plan;
 - b. Claims currently pending before the Deputy Receiver or the Commission in accordance with the Receivership Appeal Procedure;

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- c. Proper administrative expense claims (*i.e.*, claims for payment of services rendered, or goods supplied, to Shenandoah at the request of the Deputy Receiver after February 12, 2009); and
- d. Claims first arising after the date of this Order.

(15) Disputes concerning any claims against Shenandoah subject to the Bar Date shall be resolved in accordance with the Receivership Appeal Procedure previously adopted pursuant to the Deputy Receiver's Second Directive. Appeals to the Commission or from an order of the Commission resulting from such Procedure shall constitute independent cases that may proceed after any order terminating rehabilitation proceeding entered by the Commission pursuant to § 38.2-1519 (A) of the Code of Virginia. Any resulting order entered after an order terminating rehabilitation proceeding shall be directed to the Company in lieu of the Deputy Receiver.

(16) All claims subject to the Bar Date but filed after the Bar Date shall be precluded from sharing in the assets of Shenandoah through United Prosperity or otherwise, and all claims subject to the Bar Date shall be filed in accordance with the proof of claim forms to be promulgated by the Deputy Receiver.

(17) All claims and liabilities filed against Shenandoah before the Bar Date shall be adjudicated and meritorious claims paid, to the extent of available assets, according to the Rehabilitation Plan and the priority scheme outlined therein.

(18) The Deputy Receiver's proposal to provide written notice of the Bar Date (and any extension thereof) and proof of claim instructions, by first class United States mail to all known Members, Insureds, Policyholders, Subscribers, and Creditors at their last known address disclosed in Shenandoah's books and records, in a form reasonably calculated to provide interested persons with notice of the proposed Bar Date (and any extension thereof) and the consequences of failing to timely file claims against Shenandoah, is approved, and the Deputy Receiver shall not be required to mail a notice if she reasonably believes that the last known address is no longer valid.

(19) The Deputy Receiver's proposal to publish notice of the Bar Date (and any extension thereof) and proof of claim instructions for one day each week for two consecutive weeks in The Roanoke Times, Richmond Times-Dispatch, The Wall Street Journal, and USA Today is APPROVED. The publication notice shall be of a form reasonably calculated to provide sufficient notice to any Policyholder or Creditor who does not receive direct notice by first class United States mail of the Bar Date (and any extension thereof) and proof of claim instructions. The notice admitted into evidence as Exhibit 16 at the Hearing is hereby deemed sufficient in that respect.

(20) Under authority of § 38.2-1400 of the Code of Virginia, Shenandoah is granted an exemption from § 38.2-1405 of the Code of Virginia, such that for the first financial statement filed after termination of the rehabilitation proceeding, Shenandoah shall be permitted to use, as the base for purposes of § 38.2-1405, its surplus after the capital infusion that will be made if the Plan of Conversion is approved by vote of the Members and the Conversion and Sale are consummated, rather than its surplus as reported in its most recently filed pre-capital infusion annual or quarterly financial statement.

(21) The Deputy Receiver and United Prosperity are hereby authorized to take such steps as are necessary to implement the transaction described in the Stock Purchase Agreement, the Rehabilitation Plan, and the Plan of Conversion provided the same are not inconsistent with other provisions of this Order.

(22) If United Prosperity elects not to invoke an Extension of Moratorium on Cash Withdrawals, the Deputy Receiver shall file notice with the Commission for purposes of this Order's findings with respect to § 38.2-1519 (A) of the Code of Virginia, advising that the Rehabilitation Plan will have been fully and successfully completed as of the Closing, whereupon the Commission will enter a final order terminating the rehabilitation proceeding on condition that the Closing be effective within twenty-four (24) hours of the entry of said final order.

(23) If United Prosperity elects to invoke an Extension of Moratorium on Cash Withdrawals, and whether or not United Prosperity invokes the option for early termination of such Extension of Moratorium on Cash Withdrawals, United Prosperity shall give the Deputy Receiver and Policyholders not less than thirty (30) days' notice of the termination of the Extension of Moratorium on Cash Withdrawals ("Notice of Termination of Extension of Moratorium on Cash Withdrawals"). Within five (5) days of receiving the Notice of Termination of Extension of Moratorium on Cash Withdrawals, the Deputy Receiver shall file notice with the Commission for purposes of this Order's findings with respect to § 38.2-1519 (A) of the Code of Virginia, advising that the Rehabilitation Plan will have been fully and successfully completed as of the scheduled expiration or termination of the Extension of Moratorium on Cash Withdrawals, whereupon the Commission will enter an order terminating the rehabilitation proceeding as of the scheduled expiration of the Extension of Moratorium on Cash Withdrawals.

(24) If and when it becomes reasonably apparent to the Deputy Receiver and United Prosperity that the Closing and transactions as described in the Application cannot or will not be consummated (*e.g.*, in the event of an incurable and non-waived failure of a condition precedent), the Deputy Receiver and United Prosperity shall as soon as practicable jointly file notice with the Commission of that circumstance and seek appropriate relief.

**CASE NO. INS-2011-00157
JULY 22, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
AMERICAN AUTOMOBILE INSURANCE COMPANY,
ASSOCIATED INDEMNITY CORPORATION,
FIREMAN'S FUND INSURANCE COMPANY,
NATIONAL SURETY CORPORATION,
and
THE AMERICAN INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1906 D of the Code of Virginia by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendants.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of One Thousand Dollars (\$1,000) per company for an amount totaling Five Thousand Dollars (\$5,000), waived their right to a hearing, agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated June 2, 2011, and confirmed that restitution was made to 6 consumers in the amount of Five Thousand Nine Hundred Seventy-three Dollars (\$5,973).

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00158
AUGUST 9, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
DELTA DENTAL OF VIRGINIA,
Defendant

SETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of a dental plan organization in the Commonwealth of Virginia, in certain instances, has violated subsection 1 of § 38.2-502 and § 38.2-503 of the Code of Virginia, as well as 14 VAC 5-90-50 B 14, 14 VAC 5-90-90 C, 14 VAC 5-90-110, 14 VAC 5-90-120 B, and 14 VAC 5-90-160, by failing to comply with advertising requirements; violated § 38.2-3407.15 B 7 of the Code of Virginia by failing to comply with the requirements for provider contracts and claims; and violated §§ 38.2-5802 C and 38.2-5804 A of the Code of Virginia by failing to comply with MCHIP requirements.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Five Thousand Dollars (\$5,000), waived its right to a hearing, and agreed to comply with the Corrective Action Plan contained in the Target Market Conduct Examination Report as of March 31, 2009.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00160
JULY 14, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
DANIEL FOGLE,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Florida.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated May 31, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Florida.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00161
JULY 14, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
LISA GIACOMINO,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against her by the States of California, Kansas, Kentucky, Washington, New York, South Carolina and Michigan; and by providing materially incorrect, misleading, incomplete or untrue information in her license application filed with the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated June 7, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against her by the States of California, Kansas, Kentucky, Washington, New York, South Carolina and Michigan; and by providing materially incorrect, misleading, incomplete or untrue information in her license application filed with the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to one (1) year from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00163
DECEMBER 1, 2011**

APPLICATION OF
NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC.

For revisions of advisory loss costs and assigned risk workers' compensation insurance rates

FINAL ORDER

On July 15, 2011, the National Council on Compensation Insurance, Inc. ("NCCI"), filed an application with the State Corporation Commission ("Commission") for approval of certain changes applicable to voluntary market advisory loss costs and assigned risk rates and rating values for new and renewal workers' compensation insurance policies becoming effective on or after April 1, 2012 ("Application"). The Application consists of two separate filings: a voluntary market loss cost filing and an assigned risk market rate filing. The voluntary loss cost filing addresses two categories of workers' compensation classifications: (i) industrial classifications, including coal mine classifications, and (ii) federal ("F") classifications. The assigned risk rate filing addresses the same two categories.

With respect to voluntary loss costs, NCCI proposed an overall increase of 10.5% for industrial classifications; an increase of 2.8% for F classifications; an increase of 16.8% for the surface coal mine classification; and an increase of 13.4% for the underground coal mine classification.

With respect to the assigned risk rates, NCCI proposed an overall increase of 8.8% for industrial classifications; 0% change for F classifications; an increase of 15.7% for the surface coal mine classification; and an increase of 10.1% for the underground coal mine classification.

Jay A. Rosen ("Rosen") and Dr. Harry L. Shuford ("Shuford") filed direct testimony and exhibits on behalf of NCCI. Rosen stated that NCCI has recommended four changes to the current methodology upon which the voluntary loss costs, assigned risk rates, and rating values are based. First, NCCI recommended a change to the formula used to spread excess losses in the class ratemaking process by hazard group. The current methodology recognizes differences in excess losses by between \$500,000 and \$2 million. NCCI recommended increasing this upper limit to \$3 million. Second, NCCI recommended applying a single factor applicable to all class codes to the final voluntary loss costs in order to calculate assigned risk rates. Third, NCCI recommended changes to the approach used in calculating the occupational disease component of the two coal mine classification codes, 1005 (surface coal mining) and 1016 (underground coal mining). Finally, NCCI recommended incorporating an uncollectible premium provision in the final assigned risk rates as an expense item rather than including it in the internal rate of return analysis.

On July 28, 2011, the Commission entered an Order Scheduling Hearing, wherein the Commission docketed the case; required publication of the notice of proceeding; outlined a procedural schedule that provided respondents with the opportunity to participate and file testimony and exhibits; and scheduled an evidentiary hearing to investigate whether the rates and advisory loss costs set forth in the Application are excessive, inadequate, or unfairly discriminatory and if there were any other issues subject to investigation.

On August 11, 2011, the Iron Workers Employers Association and the Washington Construction Employers Association (collectively, "Respondents") filed their Notice of Participation. On August 16, 2011, the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel") filed its Notice of Participation.

On September 16, 2011, Matthew P. Merlino ("Merlino"), Glenn A. Watkins ("Watkins") and David C. Parcell ("Parcell") filed direct testimony and exhibits on behalf of the Bureau of Insurance ("Bureau"). The Bureau supported NCCI's proposed changes to the current methodology, as well as its proposed changes to the voluntary loss costs. With respect to the assigned risk rates, the Bureau recommended the following: (i) an overall increase of 11.4% for industrial classifications compared to an 8.8% increase proposed by NCCI; (ii) an increase of 1.7% for F classifications compared to a 0.0% change proposed by NCCI; (iii) an increase of 19.1% for the surface coal mine classification compared to a 15.7% increase proposed by NCCI; and (iv) an increase of 13.4% for the underground mine classification compared to a 10.1% increase proposed by NCCI. The discrepancy between the Bureau's and NCCI's proposed increases to the assigned risk rates is attributable to changes in the underlying financial market data between the time of NCCI's and Watkins' analyses.

John H. Schlecht ("Schlecht") filed direct testimony on behalf of the Respondents on October 27, 2011. In his testimony, Schlecht noted that NCCI's proposed changes to the voluntary loss costs would result in an average increase of 12% for the contracting classifications. He also maintained that the proposed increases to the loss costs applicable to the contracting classifications, as well as changes to the methodology recently adopted by the Commission,¹ will negatively impact many construction employers' experience modifications and therefore make them ineligible to bid on certain construction projects.

On October 6, 2011, Rosen filed rebuttal testimony in which he accepted the proposed voluntary loss cost changes and assigned risk rate changes recommended by Bureau witness Merlino in his direct testimony. Rosen also addressed the Respondents' concerns regarding the impact on construction employers' experience modifications as a result of the proposed changes in experience rating values. Rosen indicated that according to an analysis conducted by NCCI, only 0.01% of intrastate construction employers would have their experience modifications increase from equal to or below 1.00 to greater than 1.00 using the proposed changes in experience rating values.

On October 21, 2011, the Bureau and NCCI filed a Joint Pre-Trial Motion for Approval of Stipulation to Admit Testimony ("Joint Pre-Trial Motion") requesting that the testimony and exhibits of Shuford, Parcell, and Watkins be admitted into the record without personal appearances or verifications by those witnesses at the hearing.²

On October 27, 2011, the hearing was held in the Commission's courtroom in Richmond, Virginia, to consider the Application. Charles H. Tenser, Esquire, appeared on behalf of NCCI; Scott A. White, Esquire, appeared on behalf of the Bureau; Kiva Bland Pierce, Esquire, appeared on behalf of Consumer Counsel; and Fred H. Coddling, Esquire, appeared on behalf of the Respondents. No public witnesses addressed the Application.

Rosen testified on behalf of NCCI. He discussed NCCI's proposed changes to the methodology, three of which resulted from discussions within the Working Group. He also addressed NCCI's proposed loss costs for the voluntary market and rates for the assigned risk market as revised based on the proposed changes to the methodology.

Merlino testified on behalf of the Bureau. He stated that there were no issues of disagreement between NCCI and the Bureau. He also addressed the primary factors that drove the proposed increases to the voluntary loss costs and assigned risk rates.

Schlecht testified on behalf of the Respondents. He expressed concern that the movement in construction employers' experience modifications due to the proposed changes in the experience rating values would adversely affect certain construction employers' eligibility to bid on many construction projects. In order to temper the impact of the proposed changes on certain construction employers, the Respondents recommended that the "swing limits" procedure, which caps class changes at plus or minus a certain percentage of the industry group overall change, be reduced from plus or minus 15% to plus or minus 5% of the industry group overall change. Finally, Schlecht testified that he was not satisfied that NCCI's analysis fully addressed the impact on construction employers' experience modifications.

¹ In Case No. INS-2009-00142, the Commission approved a change to the methodology that calculates certain parameters required to determine the experience modifications of individual employers.

² The Commission granted the Joint Motion during the hearing held on October 27, 2011.

NOW THE COMMISSION, having considered the record in its entirety, including the Application, the pre-filed testimony and rebuttal testimony, the Joint Pre-Trial Motion to stipulate certain witnesses' testimony, and the evidence and exhibits presented at the hearing, finds that the proposed changes to the methodology, as well as the proposed changes to the voluntary market advisory loss costs and assigned risk rates, should be approved. However, we recognize the concerns raised by the Respondents regarding the potential impact of these approved changes on certain construction employers' experience modifications in terms of their eligibility to bid on certain construction projects. We therefore instruct the Working Group to examine the appropriateness of reducing the currently approved swing limits from plus or minus 15% to plus or minus 5% of the industry group overall change.

Accordingly, IT IS ORDERED THAT:

- (1) The following changes applicable to voluntary market advisory loss costs and assigned risk rates shall be, and they are hereby, APPROVED, for use with respect to new and renewal workers' compensation insurance policies effective on or after April 1, 2012: (i) an overall increase of 10.5% to the voluntary loss costs for industrial classifications; (ii) an increase in the voluntary loss costs of 2.8% for "F" classifications; (iii) an increase in the voluntary loss costs of 16.8% for the surface coal mine classifications; (iv) an increase in the voluntary loss costs of 13.4% for the underground coal mine classifications; (v) an overall increase of 11.4% to the assigned risk rates for industrial classifications; (vi) an increase to the assigned risk rates of 1.7% for "F" classifications; (vii) an increase to the assigned risk rates of 19.1% for the surface coal mine classifications; and (viii) an increase to the assigned risk rates of 13.4% for the underground coal mine classification.
- (2) The proposal by NCCI to change the methodology used to determine excess loss factors for each hazard group, increasing the upper limit of losses included in the determination of the factor from \$2 million to \$3 million, is hereby approved.
- (3) The proposal by NCCI to change the methodology used to determine assigned risk rates, using a single differential to be applied to the voluntary loss costs, is hereby approved.
- (4) The proposal by NCCI to change the methodology used to calculate the occupational disease component of coal mine classification codes 1005 (surface coal mining) and 1016 (underground coal mining), is hereby approved.
- (5) The proposal by NCCI to change the methodology used to determine assigned risk rates, to account for uncollectible premiums as an expense item and not in the internal rate of return model, is hereby approved.
- (6) Except as otherwise ordered herein, the proposed revisions that have been filed by NCCI in this proceeding on behalf of its members and subscribers, including those relating to minimum premiums, rating values, rules, regulations and procedures for writing workers' compensation voluntary loss costs and assigned risk rates shall be, and they are hereby, APPROVED for use with respect to new and renewal policies effective on or after April 1, 2012.
- (7) The Working Group should, in addition to ongoing activities, examine the appropriateness of reducing the currently approved swing limits from plus or minus 15% to plus or minus 5% of the industry group overall change and present this information in the next proceeding for the approval of changes applicable to voluntary market advisory loss costs and assigned risk rates and rating values for new and renewal workers' compensation insurance policies.
- (8) On or before June 1, 2012, NCCI, the Bureau, Consumer Counsel, and the Respondents in this proceeding, shall endeavor to recommend jointly to the Commission a proposed schedule for any year 2012 voluntary loss costs/assigned risk rate revision proceeding before the Commission. The proposed schedule shall address: (i) "pre-filing" of any discovery requests by the Bureau, Consumer Counsel, and any other parties; (ii) the date on which NCCI proposes to file with the Commission any voluntary loss costs/assigned risk rate revision application and its direct testimony; (iii) the date on which NCCI proposes to file its responses to pre-filed discovery requests; (iv) the dates for the pre-filing of the direct testimony of the Bureau, Consumer Counsel, and any respondents; (v) the date for filing by NCCI of its rebuttal testimony; and (vi) the date of any proposed hearing before the Commission.
- (9) NCCI and any other persons participating in future voluntary loss costs and assigned risk rate application proceedings before the Commission, when proposing methodologies or data sources that are different from the methodologies or data sources upon which then current voluntary loss costs and/or assigned risk rate or rating values are based, shall be required to disclose the impact on voluntary loss costs and/or assigned risk rate or rating values of the change employing both the methodology it proposes to replace as well as the newly proposed methodology.

**CASE NO. INS-2011-00164
JULY 15, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
JOANN VALADEZ,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant violated §§ 38.2-1809, 38.2-1822, and 38.2-1826 of the Code of Virginia by failing to make records available promptly upon request for examination by the State Corporation Commission ("Commission") or its employees; by acting as an agent of an insurer without first obtaining a license in the manner and form prescribed by the Commission; and by failing to report within thirty (30) days to the Commission and to every insurer for which she is appointed any change in her residence or name.

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The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated June 1, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated §§ 38.2-1809, 38.2-1822, and 38.2-1826 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees; by acting as an agent of an insurer without first obtaining a license in the manner and form prescribed by the Commission; and by failing to report within thirty (30) days to the Commission and to every insurer for which she is appointed any change in her residence or name.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00166
JULY 22, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
PINNACLE TITLE CORP.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 55-525.20 of the Code of Virginia by failing to timely provide the Commission with a copy of the Defendant's analysis or audit report of its escrow account.

The Commission is authorized by § 55-525.31 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Commission is also authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated May 11, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of its right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

THE COMMISSION is of the opinion and finds that the Defendant has violated § 55-525.20 of the Code of Virginia by failing to timely provide the Commission with a copy of the Defendant's analysis or audit report of its escrow account.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00167
AUGUST 11, 2011**

PETITION OF
BARRINGTON A. LAWRENCE

For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal

FINAL ORDER

On February 12, 2009, the Circuit Court of the City of Richmond entered an order appointing the State Corporation Commission ("Commission") as Receiver of Shenandoah Life Insurance Company ("Shenandoah" or "Company"). In addition, on February 12, 2009, the Commission, by Order Appointing Deputy Receiver for Conservation and Rehabilitation ("Order Appointing Deputy Receiver"), appointed Alfred W. Gross, Commissioner for the Commission's Bureau of Insurance, as Deputy Receiver, in accordance with Title 38.2, Chapter 15 of the Code of Virginia. Pursuant to his grant of authority, the Deputy Receiver in his Second Directive of Deputy Receiver Adopting Receivership Appeal Procedures established appeal procedures for appeals or challenges of any decision made by the Deputy Receiver with respect to claims made against Shenandoah.

On July 13, 2011, Barrington A. Lawrence ("Petitioner") filed a Petition for Review ("Petition") with the Commission contesting the Deputy Receiver's payment of \$503.20 on his "Hardship Request" made in connection with Shenandoah Life Policy No. 000982794. The Petitioner requested payment of an additional \$215.65.

By Order dated July 22, 2011, the Commission docketed the Petition, assigned the matter to a Hearing Examiner, and directed the Deputy Receiver to file an Answer or other responsive pleading to the Petition on or before August 26, 2011.

On July 26, 2011, the Deputy Receiver filed his Answer to the Petition, Motion to Dismiss, and Memorandum in Support of Motion to Dismiss. In support of his motion, the Deputy Receiver stated that the dispute between Shenandoah and the Petitioner has been resolved.

On July 27, 2011, the Chief Hearing Examiner issued her Report in which she recommended that the Deputy Receiver's Motion to Dismiss be granted and the Petition be dismissed with prejudice. Additionally, the Chief Hearing Examiner found that the comment period on her Report should be waived as the Petitioner has received the relief requested.

NOW THE COMMISSION, upon consideration of the record herein and the Report of the Chief Hearing Examiner, is of the opinion that the findings and recommendations of the Chief Hearing Examiner should be adopted.

Accordingly, IT IS ORDERED THAT:

1. The Deputy Receiver's Motion to Dismiss is hereby GRANTED;
2. The Petition of Barrington A. Lawrence for review of Deputy Receiver's Determination of Appeal is hereby DISMISSED with prejudice; and
3. The case is dismissed, and the papers herein are passed to the file for ended causes.

**CASE NO. INS-2011-00169
AUGUST 29, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1812 and 38.2-1822 of the Code of Virginia by paying directly or indirectly a commission or other valuable consideration to a person for services as an agent while such person was not a duly appointed agent of such insurer at the time of the transaction out of which arose the right to such commission or other valuable consideration, and by knowingly permitting unlicensed individuals to act as agents on behalf of the company.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Ten Thousand Dollars (\$10,000), waived its right to a hearing, agreed to the entry by the Commission of a cease and desist order, and agreed to comply with the Corrective Action Plan set forth in its letter to the Bureau of Insurance.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendant cease and desist from any conduct which constitutes a violation of § 38.2-1812 or § 38.2-1822 of the Code of Virginia; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00171
AUGUST 4, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

TITLESERV OF VIRGINIA, INC.,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 55-525.27 of the Code of Virginia, as well as 14 VAC 5-395-70, by failing to maintain sufficient records of its affairs; and by failing to make all escrow, closing, or settlement records available promptly upon request for examination by the Bureau of Insurance.

The Commission is authorized by § 55-525.31 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Commission is also authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of its right to a hearing before the Commission in this matter by certified letter dated July 7, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Defendant, having been advised in the above manner of its right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 55-525.27 of the Code of Virginia, as well as 14 VAC 5-395-70, by failing to maintain sufficient records of its affairs and by failing to make all escrow, closing, or settlement records available promptly upon request for examination by the Bureau of Insurance.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to five (5) years from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00175
AUGUST 11, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ADOLPHUS NOLAN,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 A and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report within thirty days to the Commission and to every insurer for which he is appointed any change in his residence or name and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated June 27, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 A and subsection 1 of § 38.2-1831 of the Code of Virginia by failing to report within thirty days to the Commission and to every insurer for which he is appointed any change in his residence or name and by providing materially incorrect, misleading, incomplete or untrue information in his license application filed with the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;

- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00181
AUGUST 12, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JEFFREY ROBERT O'BRIEN,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days administrative actions that were taken against him by the States of Oregon, Wisconsin, Vermont, and Utah.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated July 7, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days administrative actions that were taken against him by the States of Oregon, Wisconsin, Vermont, and Utah.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00186
SEPTEMBER 1, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SCOTT PAUL TENBROOK,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1809 and 38.2-1813 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees; by failing to hold all premiums, return premiums, or other funds received by the Defendant in a fiduciary capacity; by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account; and by failing to pay funds in the ordinary course of business to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated July 25, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated §§ 38.2-1809 and 38.2-1813 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees; by failing to hold all premiums, return premiums, or other funds received by the Defendant in a fiduciary capacity; by failing to maintain an accurate record and itemization of funds deposited into a separate fiduciary account; and by failing to pay funds in the ordinary course of business to the insured or his assignee, insurer, insurance premium finance company or agent entitled to the payment.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to five (5) years from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00187
SEPTEMBER 1, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
WILMA R. HILLS,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1822 of the Code of Virginia by

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

knowingly permitting persons to act as insurance agents without such persons first obtaining a license in the manner and form prescribed by the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated July 13, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1822 of the Code of Virginia by knowingly permitting persons to act as insurance agents without such persons first obtaining a license in the manner and form prescribed by the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00188
SEPTEMBER 1, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
JONATHAN A. FRAZER,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-512 of the Code of Virginia by making false or fraudulent statements or representations on or relative to an application or any document or communication relating to the business of insurance for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, premium finance company, or individual.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated August 2, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-512 of the Code of Virginia by making false or fraudulent statements or representations on or relative to an application or any document or communication relating to the business of insurance for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, premium finance company, or individual.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00189
SEPTEMBER 1, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
LATOYA LESHAE HILLS,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1822 of the Code of Virginia by knowingly permitting persons to act as insurance agents without such persons first obtaining a license in the manner and form prescribed by the Commission.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated July 13, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1822 of the Code of Virginia by knowingly permitting persons to act as insurance agents without such persons first obtaining a license in the manner and form prescribed by the Commission.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00191
DECEMBER 16, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

DENNIS ROY CHASE

and

DSD, INC./HOLE-IN-ONE CLEARING HOUSE,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants violated §§ 38.2-1802 and 38.2-1024 of the Code of Virginia by selling, soliciting, or negotiating contracts of insurance in this Commonwealth on behalf of an insurer not licensed to transact the business of insurance in this Commonwealth and by acting as an insurer without being properly licensed in the Commonwealth of Virginia.

The State Corporation Commission ("Commission") is authorized by §§ 38.2-218, 38.2-219, 38.2-1831, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have agreed to cease writing hole-in-one and related coverages in the Commonwealth of Virginia; agreed to the entry of a cease and desist order prohibiting them from any further sale of hole-in-one and related insurance coverages until such time as they are properly licensed as an agent, agency, or insurer; and waived their right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants cease and desist from any further sale of hole-in-one and related insurance coverages until such time as they are properly licensed as an agent, agency, or insurer; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00192
DECEMBER 14, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

ROBERT ROUGH

and

TOURNAMENT PROS, INC.,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants violated §§ 38.2-1802 and 38.2-1812 of the Code of Virginia by selling, soliciting, or negotiating contracts of insurance in this Commonwealth on behalf of an insurer not licensed to transact the business of insurance in this Commonwealth and by receiving commissions for the sale of insurance while not being properly licensed and appointed.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have agreed to cease writing hole-in-one and related coverages in the Commonwealth of Virginia; agreed to the entry of a cease and desist order prohibiting them from any further sale of hole-in-one and related insurance coverages until such time as they are properly licensed as an agent, agency, or insurer; and waived their right to a hearing.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants cease and desist from any further sale of hole-in-one and related insurance coverages until such time as they are properly licensed as an agent, agency, or insurer; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00193
NOVEMBER 15, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
HOLE IN ONE, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant violated §§ 38.2-1802 and 38.2-1812 of the Code of Virginia by selling, soliciting, or negotiating contracts of insurance in this Commonwealth on behalf of an insurer not licensed to transact the business of insurance in this Commonwealth, and by receiving commissions from an insurer for services as an agent prior to becoming licensed and appointed.

The State Corporation Commission ("Commission") is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has agreed to cease writing hole-in-one and related insurance coverages in the Commonwealth of Virginia; agreed to the entry of a cease and desist order prohibiting it from any further sale of hole-in-one and related insurance coverages until such time as it is properly licensed as an agent; and waived its right to a hearing.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendant cease and desist from any further sale of hole-in-one and related insurance coverages until such time as it is properly licensed as an agent; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00196
SEPTEMBER 19, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
WESTERN INSURANCE COMPANY,
Defendant

IMPAIRMENT ORDER

Western Insurance Company, a foreign corporation domiciled in the state of Nevada ("Defendant") and licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, is required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

Section 38.2-1036 of the Code of Virginia provides that if the Commission finds an impairment of the required minimum surplus of any foreign insurer, the Commission may order the insurer to eliminate the impairment and restore the minimum surplus to the amount required by law and may prohibit the insurer from issuing any new policies in the Commonwealth of Virginia while the impairment of its surplus exists.

The Quarterly Statement of the Defendant, dated June 30, 2011, and filed with the Commission's Bureau of Insurance, indicates capital of \$3,840,355 and surplus of negative \$622,156, an impairment in surplus of \$3,622,156.

Accordingly, IT IS ORDERED THAT:

(1) On or before December 19, 2011, the Defendant eliminate the impairment in its surplus and restore the same to at least \$3,000,000 and advise the Commission of the accomplishment thereof by affidavit of the Defendant's president or other authorized officer.

(2) The Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia while the impairment of the Defendant's surplus exists and until further order of the Commission.

**CASE NO. INS-2011-00197
OCTOBER 6, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
EMANUEL FRANCISCO CID,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of North Dakota.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated August 15, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of North Dakota.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00198
OCTOBER 6, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
LUKE T. WILLIAMSON,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1809 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated August 9, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1809 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes .

**CASE NO. INS-2011-00199
OCTOBER 6, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

JASON ALAN PAINTER,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against him by the State of Maine.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated August 8, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against him by the State of Maine.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00200
SEPTEMBER 27, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Repealing the Rules Governing Independent External Review of Final Adverse Utilization Review Decisions and Amending the Rules Governing Internal Appeal and External Review

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to repeal the Rules Governing Independent External Review of Final Adverse Utilization Review Decisions at Chapter 215 of Title 14 of the Virginia Administrative Code (14 VAC 5-215-10 through 14 VAC 5-215-130

and Forms), to be effective on May 16, 2012, and amend certain sections in Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," specifically set forth at 14 VAC 5-216-20, 14 VAC 5-216-40 and 14 VAC 5-216-70, as well as add a new section at 14 VAC 5-216-45.

The repeal of Chapter 215 is necessary because pertinent provisions of the Code of Virginia § 38.2-5900 and §§ 38.2-5901 through 38.2-5905 were repealed by the General Assembly in 2011, and the external review process was replaced with a new process found in Chapter 35.1 (§§ 38.2-3556 through 38.2-3571) of the Code. External review under Chapter 215 will not be available after May 15, 2012. Amendments and an added section to Chapter 216 are necessary because the federal government has issued amendments to its regulations relating to internal appeal and external review, addressing exhaustion and notice issues. The amendments and added section to Chapter 216 conform to the federal requirements. These amendments are required to be effective by January 1, 2012.

The Commission is of the opinion that Chapter 215 of Title 14 of the Virginia Administrative Code should be repealed effective May 16, 2012; that 14 VAC 5-216-20, 14 VAC 5-216-40 and 14 VAC 5-216-70 should be amended, and that 14 VAC 5-216-45 should be added and considered for adoption to be effective January 1, 2012.

THEREFORE, IT IS ORDERED THAT:

(1) The proposal that Chapter 215 of Title 14 of the Virginia Administrative Code be repealed, that 14 VAC 5-216-20, 14 VAC 5-216-40 and 14 VAC 5-216-70 be amended, and 14 VAC 5-216-45 be added, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose repealing Chapter 215, amending sections 20, 40 and 70 and adding section 45 in Chapter 216 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before November 21, 2011, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2011-00200. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(3) If there is no written request for a hearing on the proposal to repeal Chapter 215 or to amend Chapter 216 on or before November 21, 2011, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may repeal Chapter 215 and amend Chapter 216 of Title 14 of the Virginia Administrative Code as proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to repeal and amend rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to repeal and amend rules by mailing a copy of this Order, together with the proposal, to all companies, HMOs and health service plans licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to repeal and amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal to repeal and amend the rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

NOTE: A copy of Attachment A entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2011-00200
DECEMBER 1, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Repealing the Rules Governing Independent External Review of Final Adverse Utilization Review Decisions and Amending the Rules Governing Internal Appeal and External Review

ORDER REPEALING AND ADOPTING RULES

By Order entered herein September 27, 2011 ("Order to Take Notice"), all interested persons were ordered to take notice that subsequent to November 21, 2011, the State Corporation Commission ("Commission") would consider the entry of an order to repeal the "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" at Chapter 215 of Title 14 of the Virginia Administrative Code (14 VAC 5-215-10 through 14 VAC 5-215-130 and Forms) to be effective on May 16, 2012, and amend certain sections in Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," specifically set forth at 14 VAC 5-216-20, 14 VAC 5-216-40, and 14 VAC 5-216-70, as well as add a new section at 14 VAC 5-216-45. These amendments were proposed by the Bureau of Insurance ("Bureau"). The Order to Take Notice required that on or before November 21, 2011, any person objecting to the repeal of Chapter 215 or the amendments to Chapter 216 shall have filed a request for hearing with the Clerk of the Commission ("Clerk").

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the repeal of Chapter 215 and the amendments to Chapter 216 on or before November 21, 2011.

No comments were filed with the Clerk. No request for a hearing was filed with the Clerk.

The Bureau recommends the repeal of Chapter 215 and the adoption of the amendments to Chapter 216 as proposed.

The repeal of Chapter 215 is necessary because pertinent provisions of § 38.2-5900 and §§ 38.2-5901 through 38.2-5905 of the Code of Virginia ("Code") were repealed by the General Assembly in 2011, and the external review process was replaced with a new process found in Chapter 35.1 (§§ 38.2-3556 through 38.2-3571) of the Code. External review under Chapter 215 will not be available after May 15, 2012. Amendments, including a new section in Chapter 216, are necessary because the federal government has issued amendments to its regulations relating to internal appeal and external review, addressing exhaustion and notice issues. The amendments and new section in Chapter 216 conform to the federal requirements. These amendments are required to be effective by January 1, 2012.

NOW THE COMMISSION, having considered the Bureau's recommendation to repeal Chapter 215 effective on May 16, 2012, and amend as well as add a new section to Chapter 216, is of the opinion that Chapter 215 should be repealed effective May 16, 2012, and the amendments to 14 VAC 5-216-20, 14 VAC 5-216-40, and 14 VAC 5-216-70, as well as a new section at 14 VAC 5-216-45, should be adopted effective January 1, 2012.

Accordingly, IT IS ORDERED THAT:

(1) Chapter 215 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Independent External Review of Final Adverse Utilization Review Decisions" at 14 VAC 5-215-10 through 14 VAC 5-215-130 and Forms used in the administration of the Chapter, which are attached hereto and made a part hereof, should be, and they are hereby, REPEALED effective on May 16, 2012;

(2) The amendments to certain sections in Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review" specifically set forth at 14 VAC 5-216-20, 14 VAC 5-216-40, and 14 VAC 5-216-70, as well as a new section at 14 VAC 5-216-45, which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED effective on January 1, 2012;

(3) AN ATTESTED COPY hereof, together with a copy of the repealed Chapter 215 and adopted amendments to Chapter 216 shall be sent by the Clerk of the Commission to Althelia Battle, Deputy Commissioner, Bureau of Insurance, State Corporation Commission, who forthwith shall give further notice of the repeal of Chapter 215 and the adopted amendments to Chapter 216 by mailing a copy of this Order, including a clean copy of the repeal of Chapter 215 and the amendments to Chapter 216, to all companies, health maintenance organizations and health service plans licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties;

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the repealed Chapter 215 and adopted amendments to Chapter 216, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations;

(5) The Commission's Division of Information Resources shall make available this Order and the attached repealed Chapter 215 and adopted amendments to Chapter 216 on the Commission's website: <http://www.scc.virginia.gov/case>; and

(6) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (3) above.

NOTE: A copy of Attachment A entitled "Rules Governing Internal Appeal and External Review" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. INS-2011-00201
OCTOBER 19, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

BRISTOL WEST INSURANCE COMPANY

and

BRISTOL WEST CASUALTY INSURANCE COMPANY,

Defendants

SETTLEMENT ORDER

Based on a market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-305 A of the Code of Virginia by failing to provide the information required by statute in insurance policies; violated § 38.2-502 by misrepresenting the benefits, advantages, conditions or terms of an insurance policy; violated § 38.2-1905 C by assigning points under a safe-driver insurance policy to any vehicle other than the vehicle customarily driven by the operator responsible for incurring points; violated § 38.2-1906 D by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendants; violated §§ 38.2-2208 B, 38.2-2212 D, 38.2-2212 E, and 38.2-2212 F by failing to properly terminate policies; violated § 38.2-2220 by using forms which did not contain the precise language of the standard forms filed and adopted by the Commission; violated §§ 38.2-305 B, 38.2-517 A 3, 38.2-604 B, 38.2-610 A, 38.2-2202 A, 38.2-2202 B, and 38.2-2234 by failing to accurately provide the required notices to insureds; violated § 38.2-1905 A by failing to notify insureds in writing when their policies were surcharged for at-fault accidents; violated §§ 38.2-1812 and 38.2-1833 for paying commissions to agencies that were not appointed by the Defendants; and violated

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§§ 38.2-510 A 1, 38.2-510 A 3 and 38.2-510 A 10, as well as 14 VAC 5-400-30, 14 VAC 5-400-40 A, 14 VAC 5-400-50 C, 14 VAC 5-400-70 A, 14 VAC 5-400-70 D, and 14 VAC 5-400-80 D, by failing to properly handle claims with such frequency as to indicate a general business practice.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of Seventy-five Thousand Four Hundred Dollars (\$75,400), waived their right to a hearing, agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated July 13, 2011, and confirmed that restitution was made in accordance with its letter to the Bureau dated July 13, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00202
OCTOBER 6, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
STEPHANIE MARIE SULLIVAN,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-1809 and 38.2-1826 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees, and by failing to report within thirty (30) days to the Commission and to every insurer for which she is appointed a change in her residence address.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated August 19, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated §§ 38.2-1809 and 38.2-1826 of the Code of Virginia by failing to make records available promptly upon request for examination by the Commission or its employees, and by failing to report within thirty days to the Commission and to every insurer for which she is appointed a change in her residence address.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00204
SEPTEMBER 19, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

SOUTHERN TITLE INSURANCE CORPORATION.,

Defendant

ORDER SUSPENDING LICENSE

Southern Title Insurance Corporation ("Defendant") is a domestic corporation licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia. The Defendant notified the Commission's Bureau of Insurance ("Bureau") that as a result of agent defalcation recently discovered in the state of Texas and resulting title insurance claims arising therefrom, certain financial regulatory concerns have arisen and that the Defendant has suspended all new insurance activity. Accordingly, the Bureau requested that the Defendant consent to the entry of an order suspending its license and prohibiting it from soliciting or issuing any new insurance policies or contracts in the Commonwealth of Virginia.

By letter of Eugene Ross McCullough, the Defendant's president, dated September 16, 2011, and received by the Bureau on September 16, 2011, the Defendant consented to the entry of an order suspending its license and prohibiting it from soliciting or issuing any new insurance policies or contracts in the Commonwealth of Virginia.

In light of the foregoing, the Bureau has recommended that the Defendant's license to transact the business of insurance in Virginia be suspended.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's license to transact the business of insurance in Virginia should be suspended.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia is hereby **SUSPENDED**;

(2) The Defendant shall issue no new insurance contracts or policies in the Commonwealth of Virginia until further order of the Commission;

(3) The Defendant shall notify all agents that their authority to act on behalf of Southern Title under their Issuing Agency Contract is terminated except for taking such actions as are necessary to finalize previously binding contracts for title insurance;

(4) The appointments of the Defendant's agents to act on behalf of the Defendant in the Commonwealth of Virginia are hereby **SUSPENDED**, except for such actions required to comply with Ordering Paragraph (3) hereof;

(5) The Defendant's agents shall transact no new insurance business on behalf of the Defendant in the Commonwealth of Virginia until further order of the Commission;

(6) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of the Defendant's agents appointed to act on behalf of the Defendant in the Commonwealth of Virginia as notice of the suspension of such agent's appointment; and

(7) The Bureau of Insurance shall cause notice of the suspension of the Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2011-00204
NOVEMBER 4, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SOUTHERN TITLE INSURANCE COMPANY,
Defendant

IMPAIRMENT ORDER

Southern Title Insurance Company, a Virginia domestic corporation ("Defendant") licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, is required to maintain minimum capital of \$1,000,000 and minimum surplus of \$3,000,000.

Section 38.2-1035 of the Code of Virginia provides that if the Commission finds an impairment of the required minimum surplus of any domestic insurer, the Commission shall order the insurer to eliminate the impairment and restore the minimum surplus to the amount required by law and may prohibit the insurer from issuing any new policies in the Commonwealth of Virginia while the impairment of its surplus exists.

The Monthly Report of the Defendant, dated September 30, 2011, and filed with the Commission's Bureau of Insurance, indicates capital of \$1,001,123 and surplus of \$122,622, an impairment in surplus of \$2,877,378.

Accordingly, IT IS ORDERED THAT:

- (1) On or before February 3, 2012, the Defendant eliminate the impairment in its surplus and restore the same to at least \$3,000,000 and advise the Commission of the accomplishment thereof by affidavit of the Defendant's president or other authorized officer.
- (2) The Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia while the impairment of the Defendant's surplus exists and until further order of the Commission.

**CASE NO. INS-2011-00204
NOVEMBER 28, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
SOUTHERN TITLE INSURANCE COMPANY,
Defendant

CORRECTING ORDER

In an Impairment Order entered herein November 4, 2011, in the caption set forth on page 1 of the Order, there is a reference to "Southern Title Insurance Company." The correct reference, however, should be "Southern Title Insurance Corporation."

Accordingly, IT IS ORDERED THAT:

- (1) The reference in the caption set forth on page 1 of the Order, entered November 4, 2011, shall be corrected to read "Southern Title Insurance Corporation"; and
- (2) All other provisions of the Impairment Order entered November 4, 2011, shall remain in full force and effect.

**CASE NO. INS-2011-00208
OCTOBER 7, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
REPUBLIC MORTGAGE INSURANCE COMPANY,
Defendant

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") may suspend or revoke the license of any insurance company to transact the business of insurance in the Commonwealth of Virginia whenever the Commission finds that the company is in a condition that any further transaction of business in this Commonwealth is hazardous to its policyholders, creditors, and public in this Commonwealth.

Section 38.2-1038 of the Code provides that the Commission may order an insurer to take appropriate action whenever the Commission finds that after review of an insurer's financial condition, method of operation, or manner of doing business, that the company is in a condition that any further transaction of business in this Commonwealth is hazardous to its policyholders, creditors, and public in the Commonwealth.

Chapter 290 of Title 14 of the Virginia Administrative Code provides standards which the Commission may use for identifying insurers in hazardous financial condition. Pursuant to 14 VAC 5-290-30, if an insurer's operating loss excluding net capital gains over the last twelve (12) months or any shorter period of time is greater than 20% of the insurer's remaining surplus as regards to policyholders in excess of the minimum required, the Commission may deem such condition to be hazardous to policyholders, creditors, or the general public.

Republic Mortgage Insurance Company, a foreign corporation domiciled in the state of North Carolina ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

The Defendant timely filed its June 30, 2011, Quarterly Statement with the Bureau of Insurance ("Bureau") reporting a net loss of \$193,108,223 and net realized capital gains of \$1,714,017. The net loss, excluding net realized capital gains, is greater than 20% of the Defendant's remaining surplus as regards to policyholders in excess of the minimum requirement of \$1,000,000 in capital and \$3,000,000 in surplus.

The Bureau has recommended that, based on the foregoing, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia be suspended.

Accordingly, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to October 18, 2011, suspending the license of the Defendant to transact new insurance business in the Commonwealth of Virginia unless on or before October 18, 2011, the Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed suspension of the Defendant's license.

**CASE NO. INS-2011-00208
DECEMBER 7, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

v.

REPUBLIC MORTGAGE INSURANCE COMPANY,

Defendant

ORDER SUSPENDING LICENSE

In an order entered herein October 7, 2011, Republic Mortgage Insurance Company, a North Carolina corporation ("Defendant") licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, was ordered to take notice that the Commission would enter an order subsequent to October 18, 2011, suspending the license of the Defendant to transact new business unless on or before October 18, 2011, the Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of the Defendant's license.

The Order to take Notice was entered due to the Defendant's hazardous financial condition pursuant to § 38.2-1038 of the Code of Virginia and Chapter 290 of Title 14 of the Virginia Administrative Code.

As of the date of this Order, the Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of the Defendant's license.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia is hereby **SUSPENDED**;

(2) The Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission;

(3) The appointments of the Defendant's agents to act on behalf of the Defendant in the Commonwealth of Virginia are hereby **SUSPENDED**;

(4) The Defendant's agents shall transact no new insurance business on behalf of the Defendant in the Commonwealth of Virginia until further order of the Commission;

(5) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of the Defendant's agents appointed to act on behalf of the Defendant in the Commonwealth of Virginia as notice of the suspension of such agent's appointment; and

(6) The Bureau of Insurance shall cause notice of the suspension of the Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2011-00209
OCTOBER 7, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

REPUBLIC MORTGAGE INSURANCE COMPANY OF NORTH CAROLINA,
Defendant

ORDER TO TAKE NOTICE

Section 38.2-1040 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") may suspend or revoke the license of any insurance company to transact the business of insurance in the Commonwealth of Virginia whenever the Commission finds that the company is in a condition that any further transaction of business in this Commonwealth is hazardous to its policyholders, creditors, and public in this Commonwealth.

Section 38.2-1038 of the Code provides that the Commission may order an insurer to take appropriate action whenever the Commission finds that after review of an insurer's financial condition, method of operation, or manner of doing business, that the company is in a condition that any further transaction of business in this Commonwealth is hazardous to its policyholders, creditors, and public in the Commonwealth.

Chapter 290 of Title 14 of the Virginia Administrative Code provides standards which the Commission may use for identifying insurers in hazardous financial condition. Pursuant to 14 VAC 5-290-30, if an insurer's operating loss excluding net capital gains over the last twelve (12) months or any shorter period of time is greater than 20% of the insurer's remaining surplus as regards to policyholders in excess of the minimum required, the Commission may deem such condition to be hazardous to policyholders, creditors, or the general public.

Republic Mortgage Insurance Company of North Carolina, a foreign corporation domiciled in the state of North Carolina ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

The Defendant timely filed its June 30, 2011, Quarterly Statement with the Bureau of Insurance ("Bureau") reporting a net loss of \$36,930,765 and net realized capital gains of \$263,555. The net loss, excluding net realized capital gains, is greater than 20% of the Defendant's remaining surplus as regards to policyholders in excess of the minimum requirement of \$1,000,000 in capital and \$3,000,000 in surplus.

The Bureau has recommended that, based on the foregoing, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia be suspended.

Accordingly, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to October 18, 2011, suspending the license of the Defendant to transact new insurance business in the Commonwealth of Virginia unless on or before October 18, 2011, the Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed suspension of the Defendant's license.

**CASE NO. INS-2011-00209
DECEMBER 9, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

REPUBLIC MORTGAGE INSURANCE COMPANY OF NORTH CAROLINA,
Defendant

ORDER SUSPENDING LICENSE

In an order entered herein October 7, 2011, Republic Mortgage Insurance Company of North Carolina, a North Carolina corporation ("Defendant") licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, was ordered to take notice that the Commission would enter an order subsequent to October 18, 2011, suspending the license of the Defendant to transact new business unless on or before October 18, 2011, the Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of the Defendant's license.

The Order to Take Notice was entered due to the Defendant's hazardous financial condition pursuant to § 38.2-1038 of the Code of Virginia and Chapter 290 of Title 14 of the Virginia Administrative Code.

As of the date of this Order, the Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of the Defendant's license.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia is hereby **SUSPENDED**;

(2) The Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(3) The appointments of the Defendant's agents to act on behalf of the Defendant in the Commonwealth of Virginia are hereby **SUSPENDED**;

(4) The Defendant's agents shall transact no new insurance business on behalf of the Defendant in the Commonwealth of Virginia until further order of the Commission;

(5) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of the Defendant's agents appointed to act on behalf of the Defendant in the Commonwealth of Virginia as notice of the suspension of such agent's appointment; and

(6) The Bureau of Insurance shall cause notice of the suspension of the Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2011-00210
OCTOBER 7, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

PMI MORTGAGE INSURANCE COMPANY,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") may suspend or revoke the license of any insurance company to transact the business of insurance in the Commonwealth of Virginia whenever the Commission finds that the company is insolvent, or is in a condition that any further transaction of business in this Commonwealth is hazardous to its policyholders, creditors, and public in this Commonwealth.

PMI Mortgage Insurance Company, a foreign corporation domiciled in the State of Arizona ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

On August 19, 2011, the Arizona Department of Insurance issued a Notice of Determination, Order for Supervision and Notice of Appeal Rights ("Order") against the Defendant. The Order was entered due to the Defendant's unsound financial condition.

The Commission's Bureau of Insurance has recommended that the Defendant's license to transact the business of insurance in the Commonwealth of Virginia be suspended.

Accordingly, **IT IS ORDERED THAT** the Defendant **TAKE NOTICE** that the Commission shall enter an order subsequent to October 18, 2011, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before October 18, 2011, the Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed suspension of the Defendant's license.

**CASE NO. INS-2011-00210
DECEMBER 7, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

PMI MORTGAGE INSURANCE COMPANY,
Defendant

ORDER SUSPENDING LICENSE

In an order entered herein October 7, 2011, PMI Mortgage Insurance Company, an Arizona corporation ("Defendant") licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, was ordered to take notice that the Commission would enter an order subsequent to October 18, 2011, suspending the license of the Defendant to transact new business unless on or before October 18, 2011, the Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of the Defendant's license.

The Order to take Notice was entered due to the Arizona Department of Insurance issuing a Notice of Determination, Order for Supervision and Notice of Appeal Rights ("Order") against the Defendant. The Order was entered due to the Defendant's unsound financial condition.

As of the date of this Order, the Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of the Defendant's license.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia is hereby SUSPENDED;
- (2) The Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission;
- (3) The appointments of the Defendant's agents to act on behalf of the Defendant in the Commonwealth of Virginia are hereby SUSPENDED;
- (4) The Defendant's agents shall transact no new insurance business on behalf of the Defendant in the Commonwealth of Virginia until further order of the Commission;
- (5) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of the Defendant's agents appointed to act on behalf of the Defendant in the Commonwealth of Virginia as notice of the suspension of such agent's appointment; and
- (6) The Bureau of Insurance shall cause notice of the suspension of the Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2011-00211
OCTOBER 7, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
PMI INSURANCE COMPANY,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") may suspend or revoke the license of any insurance company to transact the business of insurance in the Commonwealth of Virginia whenever the Commission finds that the company is insolvent, or is in a condition that any further transaction of business in this Commonwealth is hazardous to its policyholders, creditors, and public in this Commonwealth.

PMI Insurance Company, a foreign corporation domiciled in the State of Arizona ("Defendant"), is licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia.

On August 19, 2011, the Arizona Department of Insurance issued a Notice of Determination, Order for Supervision and Notice of Appeal Rights ("Order") against the Defendant. The Order was entered due to the Defendant's unsound financial condition.

The Commission's Bureau of Insurance has recommended that the Defendant's license to transact the business of insurance in the Commonwealth of Virginia be suspended.

Accordingly, IT IS ORDERED THAT the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to October 18, 2011, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before October 18, 2011, the Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing.

**CASE NO. INS-2011-00211
DECEMBER 7, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
PMI INSURANCE COMPANY,
Defendant

ORDER SUSPENDING LICENSE

In an order entered herein October 7, 2011, PMI Insurance Company, an Arizona corporation ("Defendant") licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, was ordered to take notice that the Commission would enter an order subsequent to October 18, 2011, suspending the license of the Defendant to transact new business unless on or before October 18, 2011, the Defendant filed with the Clerk of the Commission a request for a hearing before the Commission to contest the proposed suspension of the Defendant's license.

The Order to take Notice was entered due to the Arizona Department of Insurance issuing a Notice of Determination, Order for Supervision and Notice of Appeal Rights ("Order") against the Defendant. The Order was entered due to the Defendant's unsound financial condition.

As of the date of this Order, the Defendant has not filed a request to be heard before the Commission with respect to the proposed suspension of the Defendant's license.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 38.2-1040 of the Code of Virginia, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia is hereby SUSPENDED;

(2) The Defendant shall issue no new contracts or policies of insurance in the Commonwealth of Virginia until further order of the Commission;

(3) The appointments of the Defendant's agents to act on behalf of the Defendant in the Commonwealth of Virginia are hereby SUSPENDED;

(4) The Defendant's agents shall transact no new insurance business on behalf of the Defendant in the Commonwealth of Virginia until further order of the Commission;

(5) The Bureau of Insurance shall cause an attested copy of this Order to be sent to each of the Defendant's agents appointed to act on behalf of the Defendant in the Commonwealth of Virginia as notice of the suspension of such agent's appointment; and

(6) The Bureau of Insurance shall cause notice of the suspension of the Defendant's license to be published in the manner set forth in § 38.2-1043 of the Code of Virginia.

**CASE NO. INS-2011-00212
NOVEMBER 16, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.

PEERLESS INDEMNITY INSURANCE COMPANY,
PEERLESS INSURANCE COMPANY,
EXCELSIOR INSURANCE COMPANY,
MONTGOMERY MUTUAL INSURANCE COMPANY,
THE NETHERLANDS INSURANCE COMPANY,
AMERICAN ECONOMY INSURANCE COMPANY,
AMERICAN STATES INSURANCE COMPANY,
FIRST NATIONAL INSURANCE COMPANY OF AMERICA,
AMERICAN FIRE & CASUALTY COMPANY,
OHIO CASUALTY INSURANCE COMPANY,
and
WEST AMERICAN INSURANCE COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1906 D of the Code of Virginia by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendants.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of One Thousand Dollars (\$1,000) per company for an amount totaling Eleven Thousand Dollars (\$11,000), waived their right to a hearing, agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated September 1, 2011, and confirmed that restitution was made to 635 consumers in the amount of Twenty-nine Thousand Fifty-seven Dollars (\$29,057).

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and

(2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00216
OCTOBER 19, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
CHASE TITLE, INC.
and
MITCHELL STUART HYATT,
Defendants

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 55-525.25 of the Code of Virginia, as well as 14 VAC 5-395-60, by intentionally making any materially false or misleading statement or entry on a settlement statement, and by failing to maintain a separate fiduciary account for the purposes of handling settlement funds involving real estate located in Virginia.

The Commission is authorized by § 55-525.31 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Commission is also authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been notified of their right to a hearing before the Commission in this matter by certified letter dated August 2, 2011, and mailed to the Defendants' address shown in the records of the Bureau of Insurance.

The Defendants, having been advised in the above manner of their right to a hearing in this matter, have failed to request a hearing and have not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendants' failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendants' licenses to transact the business of insurance in the Commonwealth of Virginia as insurance agents.

NOW THE COMMISSION is of the opinion and finds that the Defendants have violated § 55-525.25 of the Code of Virginia, as well as 14 VAC 5-395-60, by intentionally making any materially false or misleading statement or entry on a settlement statement, and by failing to maintain a separate fiduciary account for the purposes of handling settlement funds involving real estate located in Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendants to transact the business of insurance as insurance agents in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendants transact no further business in the Commonwealth of Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.
- (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
- (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
- (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00221
OCTOBER 19, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ALEXANDRIA PRIFTIS WEST,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty days an administrative action that was taken against her by the State of West Virginia.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violation.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated September 19, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1826 C of the Code of Virginia by failing to report to the Commission within thirty (30) days an administrative action that was taken against her by the State of West Virginia.

Accordingly, IT IS ORDERED THAT:

- REVOKED;
- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
 - (2) All appointments issued under said licenses are hereby VOID;
 - (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;
 - (4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;
 - (5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and
 - (6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00222
DECEMBER 9, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
OPTIMA HEALTH PLAN,
Defendant

SETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of a health maintenance organization in the Commonwealth of Virginia, in certain instances, has violated §§ 38.2-316 B, 38.2-316 C 1, and 38.2-3407.4 A of the Code of Virginia by failing to comply with policy and form filing requirements; violated § 38.2-510 A 5 of the Code of Virginia by failing to comply with claim settlement practices; violated § 38.2-4306.1 B of the Code of Virginia by failing to comply with the requirements of processing interest on claim proceeds; and violated 14 VAC 5-211-90 B by failing to comply with maximum copayment requirements.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-4316 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter, whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth of Virginia the sum of Sixteen Thousand Dollars (\$16,000), waived its right to a hearing, agreed to the entry by the Commission of a cease and desist order, and agreed to comply with the Corrective Action Plan contained in the Target Market Conduct Examination Report as of March 31, 2010.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendant cease and desist from any future conduct which constitutes a violation of §§ 38.2-316 B, 38.2-316 C 1, 38.2-510 A 5, 38.2-3407.4 A or 38.2-4306.1 B of the Code of Virginia, or 14 VAC 5-211-90 B of the Rules Governing Health Maintenance Organizations; and
- (3) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00229
NOVEMBER 15, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
ESTHER LAVINIA WALKER,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated §§ 38.2-512, 38.2-1809, and 38.2-1826 of the Code of Virginia by making or causing or allowing to be made false statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, or other benefit; by failing to make records available promptly upon request for examination by the Commission or its employees; and by failing to report within thirty days to the Commission a felony conviction.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of her right to a hearing before the Commission in this matter by certified letter dated October 7, 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of her right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

THE COMMISSION is of the opinion and finds that the Defendant has violated §§ 38.2-512, 38.2-1809, and 38.2-1826 of the Code of Virginia by making or causing or allowing to be made false statements or representations on or relative to an application for an insurance policy for the purpose of obtaining a fee, commission, or other benefit; by failing to make records available promptly upon request for examination by the Commission or its employees; and by failing to report within thirty days to the Commission a felony conviction.

Accordingly, IT IS ORDERED THAT:

- (1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;
- (2) All appointments issued under said licenses are hereby VOID;
- (3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to five (5) years from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00230
NOVEMBER 22, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION
v.
ADAM BRETT GREEN,
Defendant

ORDER REVOKING LICENSE

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendant, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1813 of the Code of Virginia by failing to pay funds in the ordinary course of business to the insurer entitled to the payment.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1831 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that the Defendant has committed the aforesaid alleged violations.

The Defendant has been notified of his right to a hearing before the Commission in this matter by certified letter dated September 13 2011, and mailed to the Defendant's address shown in the records of the Bureau of Insurance.

The Defendant, having been advised in the above manner of his right to a hearing in this matter, has failed to request a hearing and has not otherwise communicated with the Bureau of Insurance.

The Bureau of Insurance, upon the Defendant's failure to request a hearing, has recommended that the Commission enter an order revoking all of the Defendant's licenses to transact the business of insurance in the Commonwealth of Virginia as an insurance agent.

NOW THE COMMISSION is of the opinion and finds that the Defendant has violated § 38.2-1813 of the Code of Virginia by failing to pay funds in the ordinary course of business to the insurer entitled to the payment.

Accordingly, IT IS ORDERED THAT:

(1) The licenses of the Defendant to transact the business of insurance as an insurance agent in the Commonwealth of Virginia are hereby REVOKED;

(2) All appointments issued under said licenses are hereby VOID;

(3) The Defendant transact no further business in the Commonwealth of Virginia as an insurance agent;

(4) The Defendant shall not apply to the Commission to be licensed as an insurance agent in the Commonwealth of Virginia prior to sixty (60) days from the date of this Order;

(5) The Bureau of Insurance shall notify every insurance company for which the Defendant holds an appointment to act as an insurance agent in the Commonwealth of Virginia; and

(6) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00231
NOVEMBER 22, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL RESERVE COMPANY,
Defendant

ORDER TO TAKE NOTICE

Pursuant to § 38.2-1040 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") may suspend or revoke the license of any insurance company to transact the business of insurance in the Commonwealth of Virginia whenever the Commission finds that the company has violated any law of this Commonwealth.

Pursuant to § 38.2-5801 of the Code, a managed care health insurance plan is required to hold an active certificate of quality assurance from the Virginia Department of Health. Section 38.2-5809 of the Code provides that the Commission may suspend or revoke any license issued to a health carrier whenever the Commission determines that a request for a renewal of the health carrier's certificate of quality assurance has been denied or disapproved by the State Health Commissioner.

Health Care Service Corporation, A Mutual Legal Reserve Company, a foreign corporation domiciled in the State of Illinois ("Defendant"), was initially licensed by the Commission to transact the business of insurance in the Commonwealth of Virginia on August 13, 2007.

By letter dated June 17, 2011, the State Health Commissioner informed the Commission's Bureau of Insurance that the Defendant's application for a certificate of quality assurance had been denied.

The Bureau of Insurance has recommended that, based on the foregoing, the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia be suspended.

Accordingly, IT IS ORDERED that the Defendant TAKE NOTICE that the Commission shall enter an order subsequent to December 18, 2011, suspending the license of the Defendant to transact the business of insurance in the Commonwealth of Virginia unless on or before December 18, 2011, the Defendant files with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, a request for a hearing before the Commission with respect to the proposed suspension of the Defendant's license.

**CASE NO. INS-2011-00236
DECEMBER 20, 2011**

COMMONWEALTH OF VIRGINIA
At the relation of the
STATE CORPORATION COMMISSION

v.
AMERICAN ECONOMY INSURANCE COMPANY,
AMERICAN STATES INSURANCE COMPANY,
GENERAL INSURANCE COMPANY OF AMERICA,
FIRST NATIONAL INSURANCE COMPANY OF AMERICA,
SAFECO INSURANCE COMPANY OF AMERICA,
MONTGOMERY MUTUAL INSURANCE COMPANY,
PEERLESS INSURANCE COMPANY,
PEERLESS INDEMNITY INSURANCE COMPANY,
THE NETHERLANDS INSURANCE COMPANY,
THE OHIO CASUALTY INSURANCE COMPANY,
WEST AMERICAN INSURANCE COMPANY,
and
AMERICAN FIRE AND CASUALTY COMPANY,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Bureau of Insurance, it is alleged that the Defendants, duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia, violated § 38.2-1906 D of the Code of Virginia by making or issuing insurance contracts or policies not in accordance with the rate and supplementary rate information filings in effect for the Defendants.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code of Virginia to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke the Defendants' licenses upon a finding by the Commission, after notice and opportunity to be heard, that the Defendants have committed the aforesaid alleged violations.

The Defendants have been advised of their right to a hearing in this matter, whereupon the Defendants, without admitting any violation of Virginia law, have made an offer of settlement to the Commission wherein the Defendants have tendered to the Commonwealth of Virginia the sum of One

Thousand Dollars (\$1,000) per company for an amount totaling Twelve Thousand Dollars (\$12,000), waived their right to a hearing, and agreed to comply with the Corrective Action Plan set forth in their letter to the Bureau of Insurance dated September 1, 2011.

The Bureau of Insurance has recommended that the Commission accept the offer of settlement of the Defendants pursuant to the authority granted the Commission in § 12.1-15 of the Code of Virginia.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Bureau of Insurance, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted; and
- (2) The papers herein be placed in the file for ended causes.

**CASE NO. INS-2011-00239
DECEMBER 20, 2011**

COMMONWEALTH OF VIRGINIA

At the relation of the
STATE CORPORATION COMMISSION

v.

SOUTHERN TITLE INSURANCE CORPORATION,
Defendant

**ORDER APPOINTING DEPUTY RECEIVER
FOR CONSERVATION AND REHABILITATION**

By order entered in the Circuit Court of the City of Richmond on December 20, 2011, in Case No. CL11-5660-RDT (the "Order of the Circuit Court"), the State Corporation Commission ("Commission") was appointed the Receiver of Southern Title Insurance Corporation ("Southern"). The Bureau of Insurance has recommended that a Deputy Receiver be appointed to conserve the assets of Southern and to determine whether Southern should be rehabilitated.

NOW THE COMMISSION, having considered the record herein, is of the opinion that Jacqueline K. Cunningham, the Commissioner of Insurance, State Corporation Commission, Bureau of Insurance, should be appointed Deputy Receiver to act on behalf of the Commission for the period the Commission is the Receiver of Defendant, whether it be Temporary Receiver or Permanent Receiver;

Accordingly, IT IS ORDERED THAT:

(1) Jacqueline K. Cunningham, Commissioner of Insurance, State Corporation Commission, Bureau of Insurance, and her successors in office, are hereby appointed Deputy Receiver of Southern to act on behalf of the Commission and are vested, in addition to the powers set forth herein, with all the powers and authority expressed or implied under the provisions of §§ 38.2-1500 through 38.2-1521 of the Code of Virginia. The Deputy Receiver may do all acts necessary or appropriate for the conservation or rehabilitation of Southern.

(2) The Deputy Receiver is hereby vested with exclusive title both legal and equitable to all of Southern's assets, books, records, property, real and personal, including all property or ownership rights, choate or inchoate, whether legal or equitable of any kind or nature including, but not limited to, all real and personal property, interests of any kind in subsidiaries and affiliates, causes of action, defenses, letters of credit relating to Southern or its business, all stocks, bonds, certificates of deposit, cash, cash equivalents, contract rights, reinsurance contracts and reinsurance recoverables, in force insurance contracts and business, deeds, mortgages, leases, book entry deposits, bank deposits, certificates of deposit, evidences of indebtedness, bank accounts, securities of any kind or nature, both tangible and intangible (including, but without being limited to, any contingent rights, hedges, warrants, and other potential recoveries), any special, statutory, or other deposits or accounts made by or for Southern with any officer or agency of any state government or the federal government or with any banks, savings and loan associations, or other depositories and including such property of Southern which may be discovered hereafter, wherever the same may be located and in whatever name or capacity it may be held (all of the foregoing being hereinafter referred to as the "Property"), and is hereby directed to take immediate and exclusive possession and control of same. In addition to vesting title to all of the Property in the Deputy Receiver or her successors, the said Property is hereby placed in the *custodia legis* of the Commission, and the Commission hereby assumes and exercises sole and exclusive jurisdiction over all the Property and any claims or rights respecting such Property to the exclusion of any other court or tribunal, such exercise of sole and exclusive jurisdiction being hereby found to be essential to the safety of the public and of the claimants against Southern.

(3) The Deputy Receiver is authorized to employ and to fix the compensation of such deputies, counsel, employees, accountants, actuaries, investment counselors, asset managers, consultants, assistants, and other personnel as she considers necessary. All compensation and expenses of such persons and of taking possession of Southern and conducting this proceeding shall be paid out of the funds and assets of Southern in accordance with § 38.2-1510 of the Code of Virginia.

(4) Until further order of the Commission all persons, corporations, partnerships, associations, and all other entities wherever located, are hereby enjoined and restrained from interfering in any manner with the Deputy Receiver's possession of the property or her title to or right therein and from interfering in any manner with the conduct of the receivership of Southern. Said persons, corporations, partnerships, associations, and all other entities are hereby enjoined and restrained from wasting, transferring, selling, disbursing, disposing of, or assigning the Property and from attempting to do so.

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(5) The Deputy Receiver may change to her own name the name of any of Southern's accounts, funds, or other property or assets held with any bank, savings and loan association, or other financial institution, wherever located, and may withdraw such funds, accounts, and other assets from such institutions or take any lesser action necessary for the proper conduct of the receivership.

(6) All secured creditors or parties, pledge holders, lien holders, collateral holders, or other persons claiming secured, priority, or preferred interest in any property or assets of Southern, including any governmental entity, are hereby enjoined from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of, or exercise purported rights in or against the Property.

(7) The officers, directors, trustees, partners, affiliates, agents, creditors, insureds, employees, and policyholders of Southern, and all other persons or entities of any nature including, but not limited to, claimants, plaintiffs, petitioners, and any governmental agencies who have claims of any nature against Southern, including crossclaims, counterclaims, and third party claims, are hereby permanently enjoined and restrained from doing or attempting to do any of the following except in accordance with the express instructions of the Deputy Receiver:

- a. conducting any portion or phase of the business of Southern;
- b. commencing, bringing, maintaining, or further prosecuting any action at law, suit in equity, arbitration, or special or other proceeding against Southern or its estate, or the Deputy Receiver and her successors in office, as Deputy Receiver thereof, or any person appointed to assist them in the discharge of their duties hereunder;
- c. making or executing any levy upon, selling, hypothecating, mortgaging, wasting, conveying, dissipating, or asserting control or dominion over the Property or the estate of Southern;
- d. seeking or obtaining any preferences, judgments, foreclosures, attachments, levies, or liens of any kind against the Property;
- e. interfering in any way with these proceedings or with the Deputy Receiver, or any successor in office, in her acquisition of possession of, the exercise of dominion or control over, or her title to the Property, or in the discharge of her duties as Deputy Receiver thereof; or
- f. commencing, maintaining, or further prosecuting any direct or indirect actions, arbitrations, or other proceedings against any insurer of Southern for proceeds of any policy issued to Southern.

(8) However, notwithstanding any other provision of this Order, the commencement of conservatorship, receivership, liquidation, or other delinquency proceedings against Southern in another jurisdiction by an official lawfully authorized to commence such proceeding shall not constitute a violation of this Order.

(9) No bank, savings and loan association, or other financial institution shall, without first obtaining permission of the Deputy Receiver, exercise any form of setoff, alleged setoff, lien, or other form of self-help whatsoever or refuse to transfer the Property to the Deputy Receiver's control.

(10) The Deputy Receiver shall have the power:

- a. to collect all debts and monies due and claims belonging to Southern, wherever located, and for this purpose: (i) to institute and maintain timely actions in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts; (ii) to do such other acts as are necessary or expedient to marshal, collect, conserve or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as she deems appropriate, and the power to initiate and maintain actions at law or equity or any other type of action or proceeding of any nature, in this and other jurisdictions; (iii) to pursue any creditor's remedies available to enforce her claims;
- b. to conduct public and private sales of the assets and property of Southern, including any real property;
- c. to acquire, invest, deposit, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any asset or property of Southern, and to sell, reinvest, trade, or otherwise dispose of any securities or bonds presently held by, or belonging to, Southern upon such terms and conditions as she deems to be fair and reasonable, irrespective of the value at which such property was last carried on the books of Southern. She shall also have the power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the receivership;
- d. to borrow money on the security of Southern's assets, with or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the receivership;
- e. to enter into such contracts as are necessary to carry out this Order and to affirm or disavow any contracts to which Southern is a party;
- f. to institute and to prosecute, in the name of Southern or in her own name, any and all suits and other legal proceedings, to defend suits in which Southern or the Receiver is a party in this state or elsewhere, whether or not such suits are pending as of the date of this Order, to abandon the prosecution or defense of such suits, legal proceedings, and claims which she deems inappropriate, and to pursue further and to compromise suits, legal proceedings, or claims on such terms and conditions as she deems appropriate;
- g. to prosecute any action which may exist on behalf of the policyholders, insureds or creditors of Southern, against any officer or director of Southern, or any other person;
- h. to remove any or all records and other property of Southern to the offices of the Deputy Receiver or to such other place as may be convenient for the purposes of the efficient and orderly execution of the receivership; and to dispose of or destroy, in the usual and ordinary course, such of those records and property as the Deputy Receiver may deem or determine to be unnecessary for the receivership;
- i. to file any necessary documents for recording in the office of any recorder of deeds or record office in this Commonwealth or wherever the Property of Southern is located;

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j. to intervene in any proceeding wherever instituted that might lead to the appointment of a conservator, receiver, or trustee of Southern, or its subsidiaries, and to act as the receiver or trustee whenever the appointment is offered;

k. to enter into agreements with any ancillary conservator, receiver, insurance commissioner, or guaranty association of any state as she may deem to be necessary or appropriate; and

l. to perform such further and additional acts as she may deem necessary or appropriate for the accomplishment of or in aid of the purpose of the receivership, including, but not limited to, the exercise of the full authority granted in the Order of the Circuit Court, it being the intention of this Order that the aforestated enumeration of powers shall not be construed as a limitation upon the Deputy Receiver.

(11) Southern, its officers, directors, partners, agents, and employees, and all other persons having any property or records belonging to Southern, including data processing information and records of any kind such as, by way of example only, source documents, are hereby directed to assign, transfer, and deliver to the Deputy Receiver all of such property in whatever name the same may be held, and any persons, firms, or corporations having any books, papers, or records relating to the business of Southern shall preserve the same and submit these to the Deputy Receiver for examination at all reasonable times;

(12) The Deputy Receiver and all deputies, special deputies, attorneys, accountants, actuaries, investment counselors, asset managers, peace officers, and other consultants are deemed to be public officers acting in their official capacities on behalf of the state and shall have no personal liability for or arising out of their acts or omissions performed in good faith in connection with their services performed in connection with these or related proceedings or pursuant to this or related orders except as regards to claims by the Receiver or Deputy Receiver.

(13) No judgment, order, attachment, garnishment sale, assignment, transfer, hypothecation, lien, security interest, or other legal process of any kind, with respect to or affecting Southern or the Property, shall be effective or enforceable or form the basis for a claim against Southern or the Property unless entered by the Commission or unless the Commission has issued its specific order, upon good cause shown and after due notice and hearing, permitting same.

(14) All costs, expenses, fees, or any other charges of the Receivership, including, but not limited to, fees and expenses of accountants, peace officers, actuaries, investment counselors, asset managers, attorneys, special deputies, and other assistants employed by the Deputy Receiver; the giving of the Notice required herein; and other expenses incurred in connection herewith shall be paid from the assets of Southern. Provided further, the Deputy Receiver may, in her sole discretion, require third parties, if any, who propose rehabilitation plans with respect to Southern, to reimburse the estate of Southern for the expenses, consulting or attorney's fees, and other costs of evaluating and/or implementing any such plan.

(15) If any provision of this Order or the application thereof is for any reason held to be invalid, the remainder of this Order and the application thereof to other persons or circumstances shall not be affected thereby.

(16) The Deputy Receiver may at any time make further application for such further and different relief as she sees fit.

(17) The Commission shall retain jurisdiction for all purposes necessary to effectuate and enforce this Order.

(18) The Deputy Receiver is authorized to deliver to any person or entity a certified copy of this Order, or of any subsequent order of the Commission, such certified copy, when so delivered, being deemed sufficient notice to such person or entity of the terms of such Order. But nothing herein shall relieve from liability, nor exempt from punishment by contempt, any person or entity who, having actual notice of the terms of any such Order, shall be found to have violated the same.

DIVISION OF PUBLIC SERVICE TAXATION

CASE NO. PST-2009-00015 AUGUST 30, 2011

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
GLOBAL NAPS SOUTH, INC.,
Defendant

DISMISSAL ORDER

On October 30, 2009, the State Corporation Commission ("Commission") entered its Rule to Show Cause against Global NAPS South, Inc. ("Global NAPS" or "Company") for failure to file annual reports of property and gross receipts for tax years 2006, 2007, 2008, and 2009, as required by § 58.1-2628 A of the Code of Virginia ("Code"). The Commission directed the Company to appear on January 11, 2010, and show cause why the penalty set by § 58.1-2610 of the Code should not be imposed.

By Hearing Examiner's Ruling of January 7, 2010, the hearing was rescheduled for March 10, 2010. At the conclusion of the hearing, Chief Hearing Examiner Deborah V. Ellenberg announced that she would defer the preparation and filing of a report to permit Global NAPS and the Commission Staff to work toward a resolution of issues.

In a Motion for Stay of Proceedings filed on May 11, 2010, and its Supplemental Motion for Stay of Proceedings filed May 17, 2010, the Company advised the Commission of the entry by the United States District Court for the District of Massachusetts of an Order for Appointment of Keeper and Receiver in Civil Action Nos. 02-12489-RWZ and 05-10079-RWZ, *Global NAPS, Inc. v. Verizon New England Inc.*, on May 6, 2010. Subsequently, on April 12, 2011, the Commission Staff moved to dismiss the rule in light of superior liens created by various federal judgments against affiliates of the Company and continuing developments in the receivership in the federal District of Massachusetts.

On August 22, 2011, Chief Hearing Examiner Ellenberg filed her Final Report in this case. The Chief Hearing Examiner found that further proceedings appear futile, and further commitment of Commission resources would appear to be unjustified. She recommended that this case be dismissed.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that we will adopt the recommendation of the Chief Hearing Examiner.

Accordingly, IT IS ORDERED THAT Case No. PST-2009-00015 be dismissed from the Commission's Docket and be placed in closed status in the records maintained by the Clerk of the Commission.

CASE NOS. PST-2009-00026 AND PST-2010-00033 DECEMBER 21, 2011

APPLICATION OF
WILTEL COMMUNICATIONS, LLC

For review and correction of certification of gross receipts for the twelve months ending December 31, 2007

APPLICATION OF
WILTEL COMMUNICATIONS, LLC

For review and correction of certification of gross receipts for the year ending December 31, 2008

FINAL ORDER

On November 12, 2009, WilTel Communications, LLC ("WilTel"), filed an application with the State Corporation Commission ("Commission"), as provided by § 58.1-2674.1 of the Code of Virginia ("Code"), for review and correction of the Commission's certification to the Department of Taxation of WilTel's gross receipts for the year ended December 31, 2007. Similarly, on November 12, 2010, WilTel filed an application¹ with the Commission, as provided by § 58.1-2674.1 of the Code, for review and correction of the Commission's certification to the Department of Taxation of WilTel's gross receipts for the year ended December 31, 2008. Generally, the Applications contest the inclusion of any amount of revenue from the sale of Internet access, completion, origination or transport services and Internet network facilities. The Applications also seek additional deductions from gross receipts for amounts attributable to completion, origination, or interconnection of telephone calls within WilTel's network and transport of telephone calls over WilTel's network.

¹ The 2009 and 2010 filings are collectively referred to herein as "Applications."

The Commission assigned consideration of each of the Applications to a hearing examiner to conduct all further proceedings. By agreement of WilTel and the Commission Staff ("Staff"), further proceedings in these matters were stayed pending the final disposition of Case No. PST-2004-00030, a proceeding involving Level 3 Communications, LLC, which is now complete.

On November 15, 2011, WilTel filed its Motions to Amend Application and for Entry of Hearing Examiner Report Approving Settlement ("Motions") in each of the above docketed cases.² WilTel stated that the Staff and WilTel have agreed that the appropriate deduction for gross receipts from resale of telephone services to telecommunications companies from the amount certified to the Department of Taxation for the year ended December 31, 2007, is \$266,962 and that the Commission's certification should be corrected to \$7,344,388. Similarly, WilTel and the Staff agreed that the appropriate deduction for gross receipts from resale of telephone services to telecommunications companies from the amount certified to the Department of Taxation for the year ended December 31, 2008, is \$1,173,619 and that the Commission's certification should be corrected to \$14,362,980.

On November 22, 2011, Senior Hearing Examiner Alexander F. Skirpan, Jr. ("Senior Hearing Examiner") filed reports ("Reports") in each case. In the Reports, the Senior Hearing Examiner found that WilTel should be permitted to amend its Applications as set forth in the Motions, that the amount of gross receipts certified to the Department of Taxation for the year ended December 31, 2007, should be reduced to \$7,344,388, and that the amount of gross receipts certified to the Department of Taxation for the year ended December 31, 2008, should be reduced to \$14,362,980. The Senior Hearing Examiner recommended that the Commission enter an order adopting the findings of his Reports and dismissing each case.

NOW THE COMMISSION, upon consideration of these matters, is of the opinion and finds that we will adopt the Senior Hearing Examiner's findings and recommendations. The Commission will correct the gross receipts certification to the Department of Taxation for the years ending December 31, 2007, and December 31, 2008.

Accordingly, IT IS ORDERED THAT:

(1) The Applications for review and correction of the Commission's certification of gross receipts filed in Case Nos. PST-2009-00026 and PST-2010-00033 are granted to the extent discussed above and otherwise are dismissed from the Commission's docket. The papers in these cases shall be placed in closed status in the records maintained by the Clerk of the Commission.

(2) The Commission's certification of May 12, 2008, to the Department of Taxation, "Gross Receipts of Telecommunications Companies: A Statement Showing the Gross Receipts subject to the minimum tax for the year ending December 31, 2007, of Telecommunications Companies in the Commonwealth of Virginia pursuant to Title 58.1, Chapter 3, Article 10, of the Code of Virginia," page 17 for WilTel Communications, LLC, is corrected by striking the figure \$7,611,350 and inserting the figure \$7,344,388.

(3) The Commission's certification of May 12, 2009, to the Department of Taxation, "Gross Receipts of Telecommunications Companies: A Statement Showing the Gross Receipts subject to the minimum tax for the year ending December 31, 2008, of Telecommunications Companies in the Commonwealth of Virginia pursuant to Title 58.1, Chapter 3, Article 10, of the Code of Virginia," page 18 for WilTel Communications, LLC, is corrected by striking the figure \$15,536,599 and inserting the figure \$14,362,980.

(4) The Commission's Public Service Taxation Division shall promptly provide to the Department of Taxation a copy of this Final Order and such other information as the Department may require.

² We note that WilTel attempted to file electronically its Motions on November 14, 2011, prior to 5:00 p.m. but received a server error message. WilTel then used the Commission's back-up procedures to file its Motions. The Commission recognizes the Motions as timely filed.

**CASE NOS. PST-2009-00033, PST-2010-00041, AND PST-2010-00042
AUGUST 19, 2011**

APPLICATIONS OF
VERIZON SOUTH INC.,
and
VERIZON VIRGINIA INC.

For review and correction of the equalized assessment of the value of property subject to local taxation – Tax Year 2009

APPLICATION OF
VERIZON SOUTH INC.

For review and correction of the equalized assessment of value of property subject to local taxation – Tax Year 2010

APPLICATION OF
VERIZON VIRGINIA INC.

For review and correction of the equalized assessment of value of property subject to local taxation – Tax Year 2010

ORDER GRANTING WITHDRAWAL

On December 9, 2009, Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon" or "Companies"), filed applications ("2009 Applications"), later supplemented and consolidated, with the State Corporation Commission ("Commission") for a review and correction of their personal property assessments for tax year 2009. The Commission issued an Order for Notice and Hearing on April 13, 2010, that, among other things, assigned a hearing examiner to rule on the 2009 Applications. On August 3, 2011, Verizon filed its Notice of Withdrawal of Applications in Case No.

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PST-2009-00033, seeking to withdraw the 2009 Applications pursuant to §§ 8.01-380 and 56-7 of the Code of Virginia ("Code"). On August 5, 2011, Chief Hearing Examiner Deborah V. Ellenberg issued her Report, suspending the procedural schedule and any outstanding discovery related to the 2009 Applications and recommending that the Commission enter an order dismissing Case No. PST-2009-00033 with prejudice from the Commission's docket. Parties were provided five (5) calendar days to comment on the Chief Hearing Examiner's Report; no such comments were filed.

On December 13, 2010, Verizon filed with the Commission applications for review and correction of its personal property assessments for tax year 2010 ("2010 Applications"). On August 3, 2011, Verizon filed a Notice of Withdrawal of Applications in Case Nos. PST-2010-00041 and PST-2010-00042, seeking to withdraw the 2010 Applications pursuant to §§ 8.01-380 and 56-7 of the Code.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that Verizon's August 3, 2011 Notices of Withdrawal of Applications filed in Case Nos. PST-2009-00033, PST-2010-00041, and PST-2010-00042 shall be, and hereby are, granted.¹

Accordingly, IT IS ORDERED THAT Case Nos. PST-2009-00033, PST-2010-00041, and PST-2010-00042 hereby are dismissed with prejudice from the Commission's docket of active cases, and the papers filed therein shall be placed in the file for ended causes.

¹ Any matters pending in Case Nos. PST-2009-00033, PST-2010-00041, or PST-2010-00042 are now moot, and we do not herein rule thereon.

**CASE NO. PST-2010-00024
MARCH 31, 2011**

APPLICATION OF
LIGHTSQUARED, LP d/b/a LIGHTSQUARED I LP

For review and correction of certification of gross receipts

FINAL ORDER

On October 12, 2010, LightSquared, LP, doing business in Virginia as LightSquared I LP ("LightSquared" or "Company") filed with the State Corporation Commission ("Commission") its application for correction of certification ("Application") to the Virginia Department of Taxation. As provided by § 58.1-2674.1 of the Code of Virginia, LightSquared seeks correction of the Commission's 2009 certification of its gross receipts subject to the greater of the minimum tax on telecommunications companies or state income tax.¹ By Order for Notice of October 28, 2010, the Commission docketed the Application and directed the Company to serve notice on the Tax Commissioner. On November 8, 2010, LightSquared served copies of the Commission's Order for Notice and the Company's Application on the Tax Commissioner. No notices of participation as a respondent or comments on the Application were received.

On February 17, 2011, Lightsquared and the Commission Staff ("Staff") filed their Joint Motion for Approval of Stipulation and Dismissal of Application ("Motion") and Proposed Stipulation and Recommendation ("Stipulation"). As set out in the Motion and Stipulation, the Company and the Staff had exchanged information and reached agreement to recommend to the Commission that the certification to the Virginia Department of Taxation be reduced from \$18,032,306 to \$6,090,837.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that we will accept the recommended settlement and grant LightSquared's Application.

ACCORDINGLY, IT IS ORDERED THAT:

- (1) The Company's Application is granted.
- (2) The Commission's certification of May 12, 2009, to the Virginia Department of Taxation, "Gross Receipts of Telecommunications Companies: A Statement showing the Gross Receipts subject to the minimum tax for the year ending December 31, 2008, of Telecommunications Companies in the Commonwealth of Virginia pursuant to Title 58.1, Chapter 3, Article 10, of the Code of Virginia," for Mobile Satellite Ventures Subsidiary LLC, is corrected by striking the figure \$18,032,306 and inserting the figure \$6,090,837.
- (3) The Commission's Public Service Taxation Division shall promptly provide to the Virginia Department of Taxation a copy of this Order and such other information as the Virginia Department of Taxation may require.
- (4) This matter is dismissed from the Commission's docket and placed in closed status in the records maintained by the Clerk of the Commission.

¹ The certification was made in the name of Mobile Satellite Ventures Subsidiary LLC. As shown in the Commission's records, the name was changed to Skyterra LP on April 6, 2009. The name was again changed on July 30, 2010, to LightSquared, LP, which does business in Virginia as LightSquared I LP.

**CASE NO. PST-2010-00043
MARCH 31, 2011**

APPLICATION OF
BIRCHWOOD POWER PARTNERS, L.P.

For review and correction of the equalized assessment of value of property subject to local taxation - Tax Year 2010

DISMISSAL ORDER

On December 21, 2010, Birchwood Power Partners, L.P. ("Birchwood" or the "Company") filed with the State Corporation Commission ("Commission") an application for review and correction of the equalized assessment of the value of its property in King George County, Virginia, as of January 1, 2010. Birchwood sought review of the assessment as provided by § 58.1-2670 of the Code of Virginia ("Code"). On March 22, 2011, the Company filed its Motion to Withdraw Application.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that we will grant the motion and dismiss the application.

Accordingly, IT IS ORDERED THAT:

- (1) As provided by § 58.1-2670 of the Code, the application is docketed as Case No. PST-2010-00043, and all associated papers shall be filed therein.
- (2) The Company's Motion to Withdraw Application is granted.
- (3) This matter is dismissed from the Commission's docket and placed in closed status in the records maintained by the Clerk of the Commission.

DIVISION OF COMMUNICATIONS**CASE NO. PUC-1997-00018
JANUARY 18, 2011**

APPLICATION OF
VERIZON VIRGINIA INC.
AND
ADELPHIA BUSINESS SOLUTIONS OF VIRGINIA, L.L.C.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

ORDER CLOSING CASE

By Order entered August 6, 2009, in Case No. PUC-2009-00034, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to Adelphia Business Solutions of Virginia, L.L.C. ("Adelphia" or "Company"), as all assets and customers of Adelphia were transferred to Level 3 Communications, LLC.¹ The Company accordingly requested the cancellation of its certificates of public convenience and necessity.

On July 9, 2010, Verizon Virginia Inc., by counsel, filed with the Commission a Notification of Termination of Interconnection Agreement.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-1997-00018 is hereby closed.

¹ The corporate identity of Adelphia has been addressed numerous times since the instant docket was opened in 2001. *Application of Adelphia Business Solutions of Virginia, L.L.C., For update of certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services to reflect the new company name*, Case No. PUC-2004-00071, 2004 S.C.C. Ann. Rept. 257, Order (June 11, 2004) (TelCove of Virginia, LLC); *Joint Petition of TelCove of Virginia, LLC, and TelCove Operations, LLC, For approval of an internal reorganization and direct transfer of control of TelCove of Virginia, LLC, to TelCove Operations, LLC*, Case No. PUC-2007-00043, 2007 S.C.C. Ann. Rept. 263, Order Granting Approval (June 28, 2007); and *Joint Petition of TelCove Operations, LLC, Level 3 Communications, LLC, and Eldorado Acquisition Three, LLC, For approval of an internal reorganization and pro forma transfer of control of TelCove Operations, LLC, from Eldorado Acquisition Three, LLC, to Level 3 Communications, LLC*, Case No. PUC-2008-00063, 2008 S.C.C. Ann. Rept. 307, Order Granting Approval (Oct. 1, 2008) (Eldorado Acquisition Three, LLC, is a wholly owned subsidiary of Level 3 Communications, LLC).

**CASE NO. PUC-1998-00089
MARCH 16, 2011**

APPLICATION OF
VERIZON VIRGINIA INC.
and
BELLSOUTH BSE OF VIRGINIA, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

ORDER CLOSING CASE

By Order entered May 4, 2006, in Case No. PUC-2006-00054, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to BellSouth BSE of Virginia, Inc. ("BellSouth" or "Company"), in order to obviate the need for Commission review under the Utility Transfers Act, Virginia Code § 56-88 *et seq.* of the merger of BellSouth Corporation into AT&T Inc. Accordingly, the Company requested the cancellation of its certificates of public convenience and necessity.

On August 26, 2010, Verizon Virginia Inc., by counsel, filed with the Commission a Notification of Termination of Interconnection Agreement.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-1998-00089 is hereby closed.

**CASE NO. PUC-1998-00150
FEBRUARY 14, 2011**

APPLICATION OF
1-800-RECONEX, INC.

For cancellation of a certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER CANCELING CERTIFICATE

By Order dated March 31, 1999, the State Corporation Commission ("Commission") issued certificate of public convenience and necessity No. T-439 permitting the provision of local exchange telecommunications services to 1-800-RECONEX, INC. ("RECONEX" or "Company").

By e-mail dated February 7, 2011, the Commission was advised by the Company's former Vice President and General Counsel, William E. Braun, that RECONEX was dissolved in July 2009, which information was confirmed by the Oregon Secretary of State. Mr. Braun also requested cancellation of the Company's certificate because RECONEX is no longer operational.

NOW THE COMMISSION, being sufficiently advised, will cancel Certificate No. T-439, previously issued to RECONEX.

Accordingly, IT IS ORDERED that:

- (1) Certificate No. T-439, issued to 1-800-RECONEX, INC., is hereby cancelled.
- (2) Any tariffs associated with Certificate No. T-439 on file with the Division of Communications are hereby cancelled.

(3) There being nothing further to be done in this matter, this case shall be removed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. PUC-1999-00090
MARCH 4, 2011**

APPLICATION OF
FIRST REGIONAL TELECOM, LLC

For a waiver of certain Rules For Local Exchange Competition

ORDER CLOSING CASE

By Final Order of February 17, 1998, in Case No. PUC-1997-00178, the State Corporation Commission ("Commission") issued certificate of public convenience and necessity No. T-404 permitting the provision of local exchange telecommunications services to First Regional TeleCOM, LLC ("First Regional" or "Company").

By Order Granting Waivers, entered in the instant docket on July 9, 1999, the Commission granted certain waivers to allow the Company to provide prepaid, month-by-month, residential local exchange service. The case remained open for the purpose of evaluating First Regional's approved service.

On August 4, 2005, in Case No. PUC-2005-00095, the Commission entered an Order cancelling First Regional's certificate of public convenience and necessity.

NOW THE COMMISSION, being sufficiently advised, finds that due to the cancellation of the Company's certificate of public convenience and necessity, this case should be closed.

Accordingly, IT IS ORDERED THAT the captioned matter is hereby dismissed from the Commission's docket of active cases.

CASE NO. PUC-2000-00122
JUNE 15, 2011

APPLICATION OF
 CENTRAL TELEPHONE COMPANY OF VIRGINIA
 and
 RHYTHMS LINKS INC. - VIRGINIA

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered November 9, 2001, in Case No. PUC-2001-00177, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to Rhythms Links Inc. - Virginia ("Rhythms" or "Company") at the Company's request.¹

On June 2, 2011, Central Telephone Company of Virginia ("Sprint") advised the Commission of the termination of the Interconnection Agreement between Sprint and Rhythms.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2000-00122 is hereby closed.

¹ *Application of Rhythms Links Inc. - Virginia, For authority to discontinue local exchange and interexchange telecommunications services, Case No. PUC-2001-00177.*

CASE NO. PUC-2000-00123
JUNE 15, 2011

APPLICATION OF
 UNITED TELEPHONE - SOUTHEAST, INC.
 and
 RHYTHMS LINKS INC. - VIRGINIA

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered November 9, 2001, in Case No. PUC-2001-00177, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to Rhythms Links Inc. - Virginia ("Rhythms" or "Company") at the Company's request.¹

On June 2, 2011, United Telephone - Southeast, Inc. ("Sprint"), advised the Commission of the termination of the Interconnection Agreement between Sprint and Rhythms.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2000-00123 is hereby closed.

¹ *Application of Rhythms Links Inc. - Virginia, For authority to discontinue local exchange and interexchange telecommunications services, Case No. PUC-2001-00177.*

**CASE NO. PUC-2000-00227
JUNE 27, 2011**

APPLICATION OF
VERIZON VIRGINIA INC.

and

CLEARTEL TELECOMMUNICATIONS OF VIRGINIA, INC. F/K/A ESSEX TELECOMMUNICATIONS OF VIRGINIA, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered July 14, 2009, in Case No. PUC-2009-00026, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to Cleartel Telecommunications of Virginia, Inc. ("Cleartel" or "Company"), at the Company's request.¹

On August 26, 2010, Verizon Virginia Inc. ("Verizon"), advised the Commission of the termination of the Interconnection Agreement between Verizon and Cleartel.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2000-00227 is hereby closed.

¹ *Petition of Cleartel Telecommunications of Virginia, Inc., For authority to discontinue the provision of local exchange and intrastate long distance telecommunications services in the Commonwealth of Virginia*, Case No. PUC-2009-00026.

**CASE NO. PUC-2000-00230
MARCH 15, 2011**

APPLICATION OF
VERIZON VIRGINIA INC.

and

WILTEL COMMUNICATIONS OF VIRGINIA, INC.

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

ORDER CLOSING CASE

By Order entered August 14, 2009, in Case No. PUC-2009-00043, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to WilTel Communications of Virginia, Inc. ("WilTel" or "Company"), as all assets and customers of WilTel were transferred to Level 3 Communications, LLC.¹ The Company accordingly requested the cancellation of its certificates of public convenience and necessity.

On July 9, 2010, Verizon Virginia Inc., by counsel, filed with the Commission a Notification of Termination of Interconnection Agreement.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2000-00230 is hereby closed.

¹ The certificates were originally issued in the name of Williams Communications of Virginia, Inc., and were reissued upon the Company's name change to WilTel.

**CASE NO. PUC-2000-00232
JUNE 15, 2011**

APPLICATION OF
CENTRAL TELEPHONE COMPANY OF VIRGINIA
AND
UNITED TELEPHONE - SOUTHEAST, INC.
and
BROADBAND OFFICE COMMUNICATIONS, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered August 3, 2001, in Case No. PUC-2001-00147, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to BroadBand Office Communications - Virginia, Inc. ("BroadBand" or "Company"), at the Company's request.¹

On June 2, 2011, Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Sprint"), advised the Commission of the termination of the Interconnection Agreement between Sprint and BroadBand.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2000-00232 is hereby closed.

¹ Application of BroadBand Office Communications – Virginia, Inc., For termination of local exchange and interexchange telecommunications services, Case No. PUC-2001-00147.

**CASE NO. PUC-2000-00233
JUNE 15, 2011**

APPLICATION OF
CENTRAL TELEPHONE COMPANY OF VIRGINIA
AND
UNITED TELEPHONE - SOUTHEAST, INC.
and
IG2, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered August 22, 2005, in Case No. PUC-2005-00112, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to IG2, Inc. ("IG2" or "Company"), because of the Commission's termination of IG2's corporate existence.¹

On June 2, 2011, Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Sprint"), advised the Commission of the termination of the Interconnection Agreement between Sprint and IG2.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2000-00233 is hereby closed.

¹ Application of IG2, Inc., For cancellation of certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services, Case No. PUC-2005-00112.

**CASE NOS. PUC-2000-00264 AND PUC-2005-00156
MARCH 18, 2011**

APPLICATION OF
VERIZON SOUTH INC.
and
SPRINT COMMUNICATIONS COMPANY OF VIRGINIA, INC.

APPLICATION OF VERIZON SOUTH INC.
and
SPRINT COMMUNICATIONS COMPANY OF VIRGINIA, INC.

For approval of interconnection agreement

ORDER CLOSING CASES

On August 25, 2006, pursuant to 20 VAC 5-419-20 of the Rules Governing the Filing of Interconnection Agreements, Verizon South Inc. ("Verizon") and Sprint Communications Company of Virginia, Inc. ("Sprint"), filed Amendments 1 and 2 to a negotiated Interconnection Agreement ("Amended Agreement") with the State Corporation Commission ("Commission"). The Amended Agreement was assigned Case No. PUC-2006-00111. Verizon and Sprint indicated that the Amended Agreement replaced the agreement approved by the Commission in Case No. PUC-2005-00156 on February 6, 2006. The agreement approved in Case No. PUC-2005-00156 replaced an earlier agreement approved in Case No. PUC-2000-00264.

NOW THE COMMISSION finds that the Amended Agreement supersedes the agreements approved in these matters. The Commission is of the opinion, therefore, that Case Nos. PUC-2000-00264 and PUC-2005-00156 may be closed.

Accordingly, IT IS ORDERED THAT the captioned matters are hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2001-00031
JANUARY 18, 2011**

APPLICATION OF
VERIZON SOUTH INC.
AND
SINGLE SOURCE OF VIRGINIA, INCORPORATED

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

ORDER CLOSING CASE

By Order Approving Agreement, the State Corporation Commission ("Commission") approved an interconnection agreement between Verizon South Inc. ("Verizon") and Single Source of Virginia, Incorporated ("Single Source" or "Company").

On May 25, 2007, Verizon, by counsel, filed with the Commission a Notification of Termination of Interconnection Agreement with Single Source because the Company has no business activity with Verizon. Attached to the Notification was a letter signed by the President of Single Source agreeing to the termination of the interconnection agreement with Verizon.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2001-00031 is hereby closed.

**CASE NO. PUC-2001-00128
MARCH 7, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In the matter of establishing rules governing the discontinuance of local exchange telecommunications services provided by competitive local exchange carriers

ORDER CLOSING CASE

On June 20, 2001, the State Corporation Commission ("Commission") issued an Order for Notice and Comment or Requests for Hearing with respect to proposed Rules Governing the Discontinuance of Local Exchange Telecommunications Services Provided by Competitive Local Exchange Carriers ("Discontinuance Rules").

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

After receiving comments from several competitive local exchange carriers and other interested parties, on March 5, 2002, the Commission entered its Order Promulgating Rules Governing the Discontinuance of Local Exchange Telecommunications Services by Competitive Local Exchange Carriers and Requesting Further Comments ("March 5, 2002 Order").

The March 5, 2002 Order adopted the Discontinuance Rules and granted leave for additional comments to be filed on the Discontinuance Rules.

NOW THE COMMISSION, after consideration of the foregoing, is of the opinion and finds that the Discontinuance Rules, as approved in this docket, have adequately addressed all issues; therefore, the case should be closed. However, based on pending legislation, we believe that the Discontinuance Rules may need to be revised, and any outstanding issues can be addressed in any new docket that may be opened.

Accordingly, IT IS ORDERED THAT Case No. PUC-2001-00128 is hereby closed.

**CASE NO. PUC-2001-00167
SEPTEMBER 21, 2011**

APPLICATION OF
R.T.O. COMMUNICATIONS, L.L.C. d/b/a BEST-WAY PHONES,
BEST-WAY COMMUNICATIONS,
BEST-WAY RENT TO OWN,
and
BEST-WAY SALES

For a certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER CANCELLING CERTIFICATE AND CLOSING CASE

By Final Order issued November 27, 2001, the State Corporation Commission ("Commission") issued a certificate of public convenience and necessity No. T-573 permitting the provision of local exchange telecommunications services to R.T.O. Communications, L.L.C. ("RTO" or "Company").

RTO requested cancellation of its certificate for local exchange telecommunications services by letter to the Commission filed September 12, 2011, as there are no customers whose service would be impacted by the cancellation, and RTO has no plans for future operations in Virginia.

Therefore, the Commission finds that the above-named certificate of public convenience and necessity should be cancelled and that Case No. PUC-2001-00167 may be closed.

NOW THE COMMISSION, being sufficiently advised, will cancel Certificate No. T-573, previously issued to RTO.

Accordingly, IT IS ORDERED THAT:

(1) Certificate No. T-573 is hereby cancelled.

(2) Any tariffs on file associated with Certificate No. T-573 are hereby cancelled.

(3) There being nothing further to be done in this matter, this case shall be removed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. PUC-2002-00186
JUNE 15, 2011**

APPLICATION OF
UNITED TELEPHONE - SOUTHEAST, INC.
AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
COMM SOUTH COMPANIES OF VIRGINIA, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered February 22, 2006, in Case No. PUC-2006-00022, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to Comm South Companies of Virginia, Inc. ("Comm South" or "Company"), at the Company's request.¹

¹ Application of Comm South Companies of Virginia, Inc., For cancellation of certificate of public convenience and necessity, Case No. PUC-2006-00022.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On June 2, 2011, United Telephone - Southeast, Inc., and Central Telephone Company of Virginia (collectively, "Sprint") advised the Commission of the termination of the Interconnection Agreement between Sprint and Comm South.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2002-00186 is hereby closed.

**CASE NO. PUC-2003-00011
JUNE 15, 2011**

APPLICATION OF
CENTRAL TELEPHONE COMPANY OF VIRGINIA
AND
UNITED TELEPHONE - SOUTHEAST, INC.
and
TELECONEX OF VIRGINIA, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered April 26, 2004, in Case No. PUC-2002-00141, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to TeleConex of Virginia, Inc. ("TeleConex" or "Company"), at the Company's request.¹

On June 2, 2011, Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Sprint"), advised the Commission of the termination of the Interconnection Agreement between Sprint and TeleConex.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00011 is hereby closed.

¹ *Application of TeleConex of Virginia, Inc., For cancellation of certificate of public convenience and necessity, Case No. PUC-2002-00141.*

**CASE NO. PUC-2003-00021
JUNE 15, 2011**

APPLICATION OF
UNITED TELEPHONE - SOUTHEAST, INC.
AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
NOW COMMUNICATIONS, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered August 18, 2005, in Case No. PUC-2005-00077, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to NOW Communications of Virginia, Inc. ("NOW" or "Company"), at the Company's request.¹

On June 2, 2011, United Telephone - Southeast, Inc., and Central Telephone Company of Virginia (collectively, "Sprint") advised the Commission of the termination of the Interconnection Agreement between Sprint and NOW.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00021 is hereby closed.

¹ *Application of NOW Communications of Virginia, Inc., For cancellation of a certificate of public convenience and necessity to provide local telecommunications services, Case No. PUC-2005-00077.*

**CASE NO. PUC-2003-00023
JUNE 15, 2011**

APPLICATION OF
UNITED TELEPHONE - SOUTHEAST, INC.
AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
EAST TENNESSEE NETWORK, LLC

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered November 1, 2007, in Case No. PUC-2007-00089, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to East Tennessee Network, LLC ("East Tennessee" or "Company"), at the Company's request.¹

On June 2, 2011, United Telephone - Southeast, Inc., and Central Telephone Company of Virginia (collectively, "Sprint") advised the Commission of the termination of the Interconnection Agreement between Sprint and East Tennessee.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00023 is hereby closed.

¹ *Application of East Tennessee Network, LLC, For Authority to Discontinue Telecommunications Services in Virginia and Cancellation of Certificate and Tariffs*, Case No. PUC-2007-00089.

**CASE NO. PUC-2003-00024
JUNE 15, 2011**

APPLICATION OF
CENTRAL TELEPHONE COMPANY OF VIRGINIA
AND
UNITED TELEPHONE - SOUTHEAST, INC.
and
EAST TENNESSEE NETWORK, LLC

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered November 1, 2007, in Case No. PUC-2007-00089, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to East Tennessee Network, LLC ("East Tennessee" or "Company"), at the Company's request.¹

On June 2, 2011, Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Sprint"), advised the Commission of the termination of the Interconnection Agreement between Sprint and East Tennessee.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00024 is hereby closed.

¹ *Application of East Tennessee Network, LLC, For Authority to Discontinue Telecommunications Services in Virginia and Cancellation of Certificate and Tariffs*, Case No. PUC-2007-00089.

**CASE NO. PUC-2003-00074
JUNE 15, 2011**

APPLICATION OF
UNITED TELEPHONE - SOUTHEAST, INC.
AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
ALTICOMM OF VIRGINIA, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered January 12, 2005, in Case No. PUC-2004-00159, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to Alticomm of Virginia, Inc. ("Alticomm" or "Company"), at the Company's request.¹

On June 2, 2011, United Telephone - Southeast, Inc., and Central Telephone Company of Virginia (collectively, "Sprint") advised the Commission of the termination of the Interconnection Agreement between Sprint and Alticomm.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00074 is hereby closed.

¹ Application of Alticomm of Virginia, Inc., For cancellation of a certificate of public convenience and necessity to provide local exchange services, Case No. PUC-2004-00159.

**CASE NO. PUC-2003-00088
MARCH 15, 2011**

APPLICATION OF
VERIZON VIRGINIA INC.
and
NEW CENTURY TELECOM, INC. D/B/A CLM TELCOM

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

ORDER CLOSING CASE

By Order entered June 19, 2003, the State Corporation Commission ("Commission") approved an interconnection agreement between Verizon Virginia Inc. ("Verizon") and New Century Telecom, Inc. d/b/a CLM Telcom ("CLM" or "Company").

On February 17, 2009, Verizon, by counsel, filed with the Commission a Notification of Termination of Interconnection Agreement due to non-payment of certain undisputed charges owed to Verizon by CLM.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00088 is hereby closed.

**CASE NO. PUC-2003-00089
MARCH 15, 2011**

APPLICATION OF
VERIZON SOUTH INC.
and
NEW CENTURY TELECOM, INC. D/B/A CLM TELCOM

For approval of an interconnection agreement under § 252(e) of the Telecommunications Act of 1996

ORDER CLOSING CASE

By Order entered June 19, 2003, the State Corporation Commission ("Commission") approved an interconnection agreement between Verizon South Inc. ("Verizon") and New Century Telecom, Inc. d/b/a CLM Telcom ("CLM" or "Company").

On February 17, 2009, Verizon, by counsel, filed with the Commission a Notification of Termination of Interconnection Agreement due to non-payment of certain undisputed charges owed to Verizon by CLM.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00089 is hereby closed.

**CASE NO. PUC-2003-00147
JUNE 15, 2011**

APPLICATION OF
UNITED TELEPHONE - SOUTHEAST, INC.
AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
METRO TELECONNECT, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered December 9, 2005, in Case No. PUC-2005-00166, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to Metro Teleconnect, Inc. ("Metro" or "Company"), at the Company's request.¹

On June 2, 2011, United Telephone - Southeast, Inc., and Central Telephone Company of Virginia (collectively, "Sprint") advised the Commission of the termination of the Interconnection Agreement between Sprint and Metro.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00147 is hereby closed.

¹ *Application of Metro Teleconnect, Inc., For cancellation of its local certificate of public convenience and necessity and for authorization to discontinue service to its customers*, Case No. PUC-2005-00166.

**CASE NO. PUC-2003-00188
JUNE 15, 2011**

APPLICATION OF
UNITED TELEPHONE - SOUTHEAST, INC.
AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
MCI WORLDCOM COMMUNICATIONS, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered October 19, 2004, in Case No. PUC-2003-00183, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to MCI WORLDCOM Communications of Virginia, Inc. ("MCI" or "Company"), at the Company's request.¹

On June 2, 2011, United Telephone - Southeast, Inc., and Central Telephone Company of Virginia (collectively, "Sprint") advised the Commission of the termination of the Interconnection Agreement between Sprint and MCI.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2003-00188 is hereby closed.

¹ *Joint Petition of MCI WORLDCOM, Inc., et al., For approval of transfer of control and cancellation of certificates*, Case No. PUC-2003-00183.

**CASE NO. PUC-2004-00075
MARCH 30, 2011**

APPLICATION OF
UNITED TELEPHONE - SOUTHEAST, INC.
AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
SHENTEL COMMUNICATIONS COMPANY

For approval of interconnection agreement

ORDER CLOSING CASE

On October 29, 2010, pursuant to 20 VAC 5-419-20 of the Rules Governing the Filing of Interconnection Agreements, United Telephone – Southeast, Inc., Central Telephone Company of Virginia, (collectively, "Sprint"), and Shentel Communications Company ("ShenTel") filed a negotiated Interconnection Agreement ("Agreement") with the State Corporation Commission ("Commission"). The Agreement was assigned Case No. PUC-2010-00071. The Commission approved the Agreement on January 27, 2011. Sprint and ShenTel indicated that the Agreement replaced the original agreement approved by the Commission in Case No. PUC-2004-00075 on August 2, 2004.

NOW THE COMMISSION finds that the Agreement supersedes the agreement approved in this matter. The Commission is of the opinion, therefore, that Case No. PUC-2004-00075 may be closed.

Accordingly, IT IS ORDERED THAT the captioned matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2004-00082
JUNE 15, 2011**

APPLICATION OF
UNITED TELEPHONE - SOUTHEAST, INC.
AND
CENTRAL TELEPHONE COMPANY OF VIRGINIA
and
TELCOVE OF VIRGINIA, LLC

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered August 6, 2009, in Case No. PUC-2009-00034, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to TelCove of Virginia, LLC ("TelCove" or "Company"), at the Company's request.¹

On June 2, 2011, United Telephone - Southeast, Inc., and Central Telephone Company of Virginia (collectively, "Embarq") advised the Commission of the termination of the Interconnection Agreement between Embarq and TelCove.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2004-00082 is hereby closed.

¹ Application of TelCove of Virginia, LLC, For cancellation of its local and interexchange certificates of public convenience and necessity and to cancel its tariffs, Case No. PUC-2009-00034.

**CASE NO. PUC-2005-00007
JUNE 27, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Investigating Directory Errors and Omissions of Verizon Virginia Inc. and Verizon South Inc.

ORDER RULING ON DIRECTORY AUDITS AND CLOSING INVESTIGATION

On January 21, 2005, the State Corporation Commission ("Commission") entered an Order Establishing Investigation ("January 21, 2005 Order") to address the errors and omissions in the directories of Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon"). In its January 21, 2005 Order, the Commission directed the Division of Communications ("Division" or "Staff") to investigate Verizon's directory listing process; to identify the

source or sources of the ongoing errors and omissions in Verizon's directories; and to file a Report with the Commission containing the Staff's findings and recommendations.¹

On September 7, 2006, the Staff filed its Report ("Report")² containing its findings and recommendations developed as a result of its investigation. The Report found that the errors and omissions in Verizon's directories were caused by several factors, including the modernization and merger of Verizon's automated directory listing systems; the inability of Verizon's automated directory systems to synchronize accurately the local directory listing data with the automated directory system used by the publisher of Verizon's directories; and human error.³ The Report also described the actions undertaken by Verizon to correct the automated directory system problems identified by the Staff.⁴

Simultaneously with the filing of the Report on September 7, 2006, the Staff and Verizon also filed a Joint Motion to Approve Offer of Settlement ("Joint Motion"). The Joint Motion was designed to resolve this investigation; to provide relief for past and future customers with directory errors and omissions; and to establish appropriate financial incentives to assure that Verizon's directories do not experience the same level of errors and omissions as in the past.⁵

On February 13, 2007, the Commission entered an Order Approving Offer of Settlement ("February 13, 2007 Order") which, among other things, granted the Joint Motion and approved the Offer of Settlement ("Settlement") proposed by the Division and Verizon. The Settlement approved by the Commission in its February 13, 2007 Order contained the following terms and conditions:

- A corrective action plan that would distribute up to \$2 million to customers affected by past directory errors and omissions;
- An incentive plan under which eighty (80) future Verizon directories would be audited by the Division for accuracy. Under the incentive plan, directories audited by the Division had to meet a 99% accuracy rate (no more than ten (10) service affecting errors per 1,000 listings), with a \$50,000 payment to the Treasurer of Virginia by Verizon for every directory that failed to meet the accuracy rate;
- Tariff revisions that provided for additional bill credits for Verizon customers who experience errors and omissions in their directory listings;
- Payments to the Treasurer of Virginia by Verizon for errors and omissions in business listings that occurred for more than one year without being corrected by Verizon;
- The initiation of new processes for customer verification of directory listings prior to publication;
- Clarification that Verizon is in command and control with regard to decisions on republishing or supplementing a directory;
- Reporting requirements imposed on Verizon so the Division could monitor the progress in correcting the problems that caused the errors and omissions in Verizon's directories; and
- The establishment of a toll-free directory hotline and e-mail address for directory listing complaints and inquiries with a waiting time of no more than three (3) minutes, on average, before a "live" person is connected to handle telephone complaints and inquiries.⁶

Subsequent to the Commission's February 13, 2007 Order, the Division processed the claims filed by Verizon's customers under the corrective action plan; audited eighty (80) of Verizon's directories under the incentive plan; continued to assist customers who experienced errors and omissions in their listings; and monitored Verizon's progress in correcting the problems that caused the errors and omissions in its directories.

On February 1, 2011, the Staff filed its Final Report ("Final Report") which described the implementation of the various components of the Settlement approved by the Commission. The Final Report noted, among other things, that almost \$2 million was distributed to customers under the corrective action plan for errors and omissions in their directory listings.⁷ In addition, almost \$370,000 was paid to customers as a result of the tariff revisions made pursuant to the Settlement, which increased significantly the bill credits available to customers who experienced errors and omissions in their directory listings.⁸

¹ January 21, 2005 Order at 2-3.

² On August 31, 2005, the Staff also filed a Status Report which contained the Staff's preliminary findings on the causes of the errors and omissions in Verizon's directories. In the Status Report, the Staff stated that it appeared that the errors and omissions were attributable to several interrelated problems, including the merger of directory operations; converting directory related computer systems; unnecessarily cumbersome processes for both wholesale and retail listings; and human error.

³ Report at 5-8.

⁴ *Id.* at 10-12.

⁵ Joint Motion at 1-2; *Id.* at Appendix A.

⁶ February 13, 2007 Order at 3-5.

⁷ As noted on page 2 of the Final Report, "[o]n February 11, 2010, Verizon submitted for deposit to the Treasurer of Virginia a check in the amount of \$24,238.41, which was the balance remaining from the \$2 million set aside for the claims process." Accordingly, Verizon's customers received \$1,975,761.59 under the settlement's corrective action plan for errors or omissions in their directory listings.

⁸ Final Report at 3.

The Final Report further noted that of the eighty (80) directory audits conducted by the Staff under the incentive plan, the Staff found that five (5) Verizon directories failed to meet the 99% accuracy rate.⁹ Verizon did not contest two (2) of the directory audits and, therefore, submitted a check to the Treasurer of Virginia in the amount of \$100,000 for the two (2) directories that failed to meet the incentive plan's accuracy rate.¹⁰ However, the Final Report noted that Verizon challenged the audit results for three (3) of its directories, including the 2007 Northern Virginia Directory; the 2007 Montgomery County Directory; and the 2007 Accomack-Northampton Counties Directory.¹¹

The Final Report also found that the Settlement approved by the Commission had improved the quality of Verizon's directories by reducing the number of errors and omissions contained in Verizon's directories. As stated on page 3 of the Final Report, "[t]he corrective action and incentive plans approved by the Commission appear to have worked" because "Verizon's on-going work to synchronize its database with that of its publisher has resulted in a dramatic reduction in directory-related complaints." The Final Report noted, for example, that the Division received one hundred fifty-nine (159) customer complaints regarding directory listing errors and omissions in 2007, but by 2010, the number of complaints had decreased to seven (7).¹² The Final Report further noted that there were no directory audit failures in 2009 or 2010.¹³ Given this improvement in the quality of Verizon's directories, the Final Report recommended that this docket be closed after the three (3) contested directory audits are ruled upon by the Commission.¹⁴

On March 2, 2011, the Commission entered an Order on Final Report of the Staff of the State Corporation Commission ("March 2, 2011 Order"), which allowed Verizon and interested parties and persons to file responses to the Final Report, and allowed the Staff to file a reply to any such responses. The Commission's March 2, 2011 Order also directed those filing responses to "advise the Commission whether a hearing is necessary before the Commission rules on the three (3) directory audits in dispute between the Staff and Verizon."¹⁵

On March 14, 2011, Verizon filed a response ("Response") to the Final Report. In its Response, Verizon did not request a hearing on the directory audits in dispute because the pleadings of Verizon and Staff "contain all the information the Commission needs to determine whether the three contested directories pass or fail the 99 percent accuracy rate."¹⁶ Verizon's Response further agreed with the Final Report's recommendation that this docket be closed once the Commission rules on the three (3) directory audits in dispute. No additional responses were filed to the Final Report, and the Staff did not file a reply to Verizon's Response.

On April 1, 2011, the Commission entered an Order ("April 1, 2011 Order") assigning this matter "to the Office of Hearing Examiners for the purpose of making a factual determination on the three directory audits in dispute and issuing a written final report and recommendation to the Commission."¹⁷

On April 28, 2011, the Hearing Examiner issued his Report on the three (3) directory audits in dispute. In his Report, the Hearing Examiner made the following findings:

(1) Verizon's 2007 Northern Virginia Directory and 2007 Montgomery County Directory failed to meet the 99% accuracy rate established by the Commission's Order Approving Offer of Settlement;

(2) Verizon's 2007 Accomack-Northampton Counties Directory met the 99% accuracy rate established by the Commission's Order Approving Offer of Settlement; and

(3) Verizon should forward a total payment of \$100,000 to the Treasurer of Virginia for the two (2) non-compliant directories.¹⁸

The Hearing Examiner further recommended that the Commission enter a Final Order that adopts the findings and recommendations contained in his Report; directs Verizon to forward a total payment of \$100,000 to the Treasurer of Virginia; and passes the papers herein to the file for ended causes.

On May 18, 2011, the Division filed comments on the Hearing Examiner's Report. The Division's comments supported the Hearing Examiner's findings with respect to the 2007 Northern Virginia Directory and the 2007 Montgomery County Directory, but disagreed with the Hearing Examiner's finding that the 2007 Accomack-Northampton Counties Directory met the incentive plan's 99% accuracy rate. Verizon did not file comments on the Hearing Examiner's Report.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ March 2, 2011 Order at 2.

¹⁶ Verizon Response at 3.

¹⁷ April 1, 2011 Order at 3.

¹⁸ Hearing Examiner's Report at 5.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds as follows:

First, we find that the findings of fact and the recommendations of the Hearing Examiner should be adopted. Accordingly, we find the 2007 Northern Virginia Directory and the 2007 Montgomery County Directory failed to meet the 99% accuracy rate imposed by the incentive plan.

Second, we find that this docket should be closed and that the papers herein be passed to the file for ended causes. We commend Verizon for working with our Staff in a cooperative and joint effort to improve the quality of its directories. As indicated in the Final Report, the number of complaints for directory listing errors and omissions has dropped dramatically since this investigation was initiated in 2005. In 2004, the Division received three hundred fifty-four (354) complaints from Verizon's customers for errors and omissions in their directory listings.¹⁹ Given the efforts of Verizon and Staff during the course of this investigation, the number of complaints dropped to seven (7) during 2010.²⁰ Moreover, as further indicated in the Final Report, there were no directory audit failures in 2009 or 2010.²¹ These statistics prove that the Settlement approved by the Commission has contributed to significant improvements in the quality of Verizon's directories by substantially reducing the number of errors and omissions in the directories. Given the improvements in the quality of Verizon's directories, we find this docket should be closed, although the Staff is directed to continue to monitor the accuracy of Verizon's directories to ensure the widespread errors and omissions do not become a problem again.

Accordingly, IT IS ORDERED THAT:

(1) Verizon shall submit a check payable to the Treasurer of Virginia in the amount of One Hundred Thousand Dollars (\$100,000) for the failure of the 2007 Northern Virginia Directory and the 2007 Montgomery County Directory to meet the 99% accuracy rate contained in the incentive plan approved by the Commission.

(2) The check made payable to the Treasurer of Virginia, as described in Ordering Paragraph (1) above, shall be sent, on or before August 1, 2011, to William Irby, Director, Division of Communications, State Corporation Commission, P.O. Box 1197, Richmond, Virginia, 23218-1197.

(3) The Staff shall continue to monitor the accuracy of Verizon's directories to ensure the widespread errors and omissions do not become a problem again.

(4) This docket be, and the same is hereby, closed and the papers herein passed to the file for ended causes.

Commissioner Shannon participated in this matter.

Commissioners Jagdmann and Dimitri did not participate in this matter.

¹⁹ September 7, 2006 Report at 1.

²⁰ Final Report at 3.

²¹ *Id.*

**CASE NO. PUC-2005-00080
JUNE 17, 2011**

APPLICATION OF
CENTRAL TELEPHONE COMPANY OF VIRGINIA
AND
UNITED TELEPHONE - SOUTHEAST, INC.
and
KMC TELECOM V OF VIRGINIA, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered June 16, 2006, in Case No. PUC-2006-00075, the State Corporation Commission ("Commission") cancelled the certificate of public convenience and necessity previously issued to KMC Telecom V of Virginia, Inc. ("KMC" or "Company"), at the Company's request, in granting KMC's Petition requesting cancellation of its certificate and associated tariffs.¹

On June 2, 2011, Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Sprint"), advised the Commission of the termination of the Interconnection Agreement between Sprint and KMC.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, IT IS ORDERED THAT Case No. PUC-2005-00080 is hereby closed.

¹ *Application of KMC Telecom V of Virginia, Inc., For cancellation of a certificate of public convenience and necessity to provide local exchange telecommunications services*, Case No. PUC-2006-00075.

**CASE NO. PUC-2005-00083
JUNE 17, 2011**

APPLICATION OF
CENTRAL TELEPHONE COMPANY OF VIRGINIA
AND
UNITED TELEPHONE - SOUTHEAST, INC.
and
KMC TELECOM OF VIRGINIA, INC.

For approval of an interconnection agreement

ORDER CLOSING CASE

By Order entered August 26, 2005, in Case No. PUC-2005-00100, the State Corporation Commission ("Commission") cancelled the certificates of public convenience and necessity previously issued to KMC Telecom of Virginia, Inc. ("KMC" or "Company"), at the Company's request, in granting KMC's Petition requesting cancellation of its certificates and withdrawal of its tariffs.¹

On June 2, 2011, Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Sprint"), advised the Commission of the termination of the Interconnection Agreement between Sprint and KMC.

NOW THE COMMISSION, being sufficiently advised, finds that there is nothing further to be acted upon in the instant case, wherein the Commission approved an interconnection agreement between the parties named in the caption (or their legal predecessors), and the case should be closed.

Accordingly, **IT IS ORDERED THAT** Case No. PUC-2005-00083 is hereby closed.

¹ *Application of KMC Telecom of Virginia, Inc., For cancellation of certificate of public convenience and necessity and to withdraw its tariffs, Case No. PUC-2005-00100.*

**CASE NO. PUC-2006-00005
JUNE 7, 2011**

BENGAL COMMUNICATIONS INTERNATIONAL, INC. OF VIRGINIA

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

ORDER CLOSING CASE

On May 5, 2006, the State Corporation Commission ("Commission") issued Certificate No. T-654 for the provision of local exchange telecommunications services and Certificate No. TT-221A for the provision of interexchange telecommunications services to Bengal Communications International, Inc. of Virginia ("Bengal" or "Company"). The matter was left open to evaluate Bengal's potential offering of prepaid month-by-month local exchange telecommunications services. It appears that such an offering was never made by the Company. On December 2, 2009, the Commission revoked Certificate No. T-654, Bengal's local exchange certificate, because the Company failed to maintain a bond or letter of credit with the Commission's Division of Economics and Finance, as required by the Commission.¹

NOW THE COMMISSION, upon consideration of the record herein, is of the opinion and finds, that with nothing further to come before the Commission in this proceeding, this matter should be closed.

Accordingly, **IT IS ORDERED THAT** Case No. PUC-2006-00005 is hereby dismissed from the Commission's docket of active cases.

¹ *Commonwealth of Virginia, ex rel. State Corp. Comm'n v. Bengal Comm'ns Int'l, Inc. of Virginia, Case No. PUC-2009-00023, 2009 S.C.C. Ann. Rept. 246, Final Order (Dec. 2, 2009).* The Final Order did not cancel the interexchange certificate, Certificate No. TT-221A.

**CASE NO. PUC-2009-00074
JANUARY 12, 2011**

APPLICATION OF
THE VIRGINIA TELECOMMUNICATIONS INDUSTRY ASSOCIATION

For authority to eliminate the current requirement for a Two Free Call Allowance for Local Directory Assistance Service

FINAL ORDER

On December 29, 2009, the Virginia Telecommunications Industry Association ("VTIA" or "Applicant") filed an application with the State Corporation Commission ("Commission") requesting the elimination of the requirement that Virginia's local exchange carriers ("LECs") include a monthly two free call allowance for local directory assistance ("DA") calls as part of dial tone telephone service ("Application"). The Applicant requested that the requirement be eliminated in order to allow LECs to have the same flexibility as non-regulated providers of DA services to determine the number of free local DA calls they provide to their customers.

On January 22, 2010, the Commission issued an Order for Notice and Comment that, among other things, directed the Applicant to give notice to the public of its Application and afforded interested persons an opportunity to comment or to request a hearing on the Application.

Comments concerning the VTIA's Application were filed by AT&T Communications of Virginia, LLC and TCG Virginia, Inc., United Telephone Southeast LLC and Central Telephone of Virginia (collectively, "CenturyLink"), Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon"), and Cox Virginia Telcom, LLC. Each of the foregoing telephone companies supported the VTIA's Application. The Commission also received electronically submitted comments from five individuals in Virginia; each of these individuals opposed eliminating the two free calls per month for local DA.

On March 12, 2010, the VTIA filed a Request for Hearing in which it asserted that "[a] hearing will ensure that the Commission has all of the evidence that it needs to consider the Application and to grant the VTIA's request, and will allow the participants in this proceeding to present their arguments to the Commission in a clear, direct and immediate manner."¹

On April 9, 2010, the Staff of the Commission ("Staff") filed comments on the Application. The Staff did not object to eliminating the DA call allowance and stated, among other things, that "[i]t would be reasonable to phase out the DA call allowance requirement in two steps."² In a response filed April 22, 2010, the VTIA opposed the Staff's recommendation for a phase-out and asked for the complete elimination of the local DA allowance requirement by January 1, 2011.

By Order Scheduling Hearing entered September 20, 2010, the Commission granted the VTIA's request for hearing and scheduled a hearing for November 10, 2010. The hearing was convened as scheduled, at which the following appeared: VTIA; Verizon; CenturyLink; and the Staff.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that a minimum of one free monthly local DA call allowance is, and will remain, an essential part of dial tone telephone service provided by LECs in the Commonwealth.³

As explained by the Staff, free DA calls have long been considered a necessary element of telephone service in the Commonwealth.⁴ In 1983 the monthly DA allowance was increased from six to eight, in 1989 the DA allowance was reduced from eight to three, and in 2008 the allowance was reduced to two.⁵ As the Staff further noted, the Commission has consistently found that – since there will be listings that are not available in the white page directories or from alternative sources – some amount of free DA allowance is reasonable.⁶

We recognize that technological and market advancements provide many customers with alternatives to white page listings.⁷ Some of the alternatives, however, may not be as readily accessible to telephone users to be considered an equivalent substitute for the directory assistance that has been a part of their telephone service for many years. Moreover, those alternatives do not necessarily fulfill an essential function provided by the free DA allowance; that is, those alternatives will not necessarily contain the listings that are absent from the white page directory or from other sources. Accordingly, we find that a minimum of one free monthly local DA call allowance is, and will remain, an essential part of dial tone telephone service provided by Virginia's LECs.⁸

¹ Request for Hearing at 1.

² Staff Comments at 13.

³ In addition, we agree with the Staff "that customers need to be notified at least 30 days in advance of any LEC's subsequent tariff changes reducing . . . the DA call allowance." *Id.*

⁴ Staff Comments at 3-5.

⁵ *Id.* at 3-4 (citing Case Nos. PUC-1983-00025, PUC-1989-00025, and PUC-2008-00046).

⁶ *See, e.g., id.* at 3-5, 9.

⁷ *See, e.g., id.* at 8-10.

⁸ In addition, we note that no participant asserted that statutory or regulatory requirements prohibit LECs from recovering the cost of this service. Indeed, there was evidence presented suggesting that, when the free DA call allowance is reduced to one, revenue for LECs may increase – *i.e.*, from additional revenues collected from Virginia consumers for DA calls that previously were provided for free. *See, e.g.*, Tr. 51-59.

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Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Virginia's LECs are hereby authorized to file tariffs to implement a reduction of the current two free monthly local DA call allowance to one free monthly local DA call allowance.
- (2) Virginia's LECs shall notify customers at least 30 days in advance of any tariff changes reducing the local DA call allowance.
- (3) This case is dismissed.

**CASE NO. PUC-2010-00025
JANUARY 19, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

JEFFREY W. SMITH d/b/a S.T.S.,
Defendant

ORDER

On June 21, 2010, the State Corporation Commission ("Commission") issued its Rule to Show Cause ("Rule") against Jeffrey W. Smith d/b/a S.T.S. ("Defendant"). The Rule appointed a Hearing Examiner to conduct all further proceedings and scheduled a hearing at which the Defendant was required to appear and show cause why penalties should not be imposed for alleged violations of the Pay Telephone Registration Act, § 56-508.15 *et seq.* of the Code of Virginia ("Act"), and the Rules for Payphone Services and Instruments, 20 VAC 5-407-10 *et seq.* ("Payphone Rules"), promulgated pursuant to the Act.

On August 12, 2010, counsel for the Commission's Division of Communications ("Staff") filed a Motion to Accept Stipulation and Dismiss Case ("Motion to Dismiss"), which stated that the Staff and the Defendant had entered into a Stipulation to resolve all matters encompassed in the Rule.

On August 17, 2010, the Hearing Examiner filed her Report finding that the Stipulation resolves the issues in controversy and should be accepted. The Report directed that the September 1, 2010 hearing be cancelled.

Further, the Hearing Examiner recommended that the Commission adopt the findings of her Report, accept the Stipulation, direct the Defendant to comply with the terms of the Stipulation, and dismiss the Rule.

NOW THE COMMISSION, having considered the Stipulation appended hereto as Exhibit A, and the Hearing Examiner's Report, is of the opinion and finds that the recommendations of the Hearing Examiner should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Stipulation dated July 22, 2010, is accepted.
- (2) The findings of the Hearing Examiner's Report of August 17, 2010, are adopted.
- (3) The Defendant shall comply with the terms of the Stipulation and shall repair or remove the payphone instruments cited in the Rule.
- (4) This matter is dismissed and the papers herein shall be placed in the file for ended causes.

**CASE NO. PUC-2010-00046
MAY 5, 2011**

APPLICATION OF
VERIZON VIRGINIA INC. AND VERIZON SOUTH INC.

For a waiver of Rule 20 VAC 5-428-80 regarding printed directories

ORDER

On August 3, 2010, Verizon Virginia Inc. and Verizon South Inc. (collectively, "Verizon" or "Companies") filed an application ("Application") with the State Corporation Commission ("Commission") for a waiver of the annual telephone directory publication and distribution requirement of the Commission's Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality ("Service Quality Rules"), Rule 20 VAC 5-428-80 A.¹

¹ Rule 20 VAC 5-428-80 A reads as follows:

A LEC shall publish or cause to be published its customers' listing information in printed directories and shall distribute or cause to be distributed to its customers such directories at yearly intervals. The listing information of a LEC's customers shall be updated at least yearly, unless otherwise agreed to by the commission or staff.

Verizon requests a waiver pursuant to 20 VAC 5-428-120 of the Service Quality Rules, which provides that the Commission may, at its discretion, waive or grant exceptions to any provision of this chapter. Specifically, Verizon is requesting a waiver of the requirement to distribute a printed directory of residential listings ("residential white page directory") to all its customers on an annual basis, and instead distribute only to customers upon request. These directories are published and delivered by SuperMedia LLC ("SuperMedia"). The Application asserts that customers are less reliant on printed residential white page directories "in favor of alternative methods of accessing listings such as Internet directories, directories in wireless and wireline devices, and specialized directories provided by employers, schools, places of worship and other organizations."² Further, according to the Application, the annual printing and distribution of such directories imposes environmental costs in terms of tons of paper used and energy consumed in printing, binding, and distributing the directories. Verizon states that if the waiver is granted, printed residential white page directories will be available to customers (including non-Verizon customers) at no charge upon request, and residential white page listings will be available via CD ROM if requested. In addition, the residential white page directories will be available on-line at no charge. Printed directories that contain business and governmental alphabetical listings, and the consumer guide, would continue to be delivered to customers.³ According to Verizon, both Verizon's customers and customers of competing carriers will be able to obtain directories under the same procedures.

The Commission issued an Order for Notice and Inviting Comments and Requests for Hearing on September 29, 2010. Over 400 comments from the public were received. In addition, AT&T Communications of Virginia LLC and TCG Virginia, Inc. (collectively, "AT&T"), Cox Virginia Telcom, L.L.C. ("Cox"), and Local 2201 of the Communications Workers of America, AFL-CIO ("CWA") filed comments reflecting support and concerns. The comments of the Commission's Division of Communications ("Staff") were filed December 17, 2010 ("Staff Comments"), and Verizon's reply comments were filed January 7, 2011 ("Verizon Reply Comments"). On January 28, 2011, Cox filed its Motion for Leave to File Supplemental Comments to Correct the Reply Comments of Verizon. No one requested a hearing on this matter.

As indicated in the Application, AT&T Comments, and Staff Comments, a number of states do not require or have ceased requiring the automatic delivery of residential white pages.⁴ AT&T's Comments note the trend away from the need for physical distribution of residential white page directories as more and more telephone numbers are assigned to wireless telephones and as more and more people use electronic media to procure contact information for other individuals, including telephone numbers.⁵ Cox urges the Commission to retain parity in the treatment of all carriers and customers in those markets where Verizon or its directory publisher, SuperMedia, is responsible for compiling, printing, and distributing customer listing information.⁶

The CWA's Comments express a continuing customer need for the printed residential white page directories for the elderly and for customers in rural areas because the elderly are less likely to search electronic media and customers in rural areas are less likely to have internet access.⁷ The CWA also points out that the availability of a directory would be more important if the Commission were to grant the petition of the Virginia Telecommunications Industry Association to eliminate the monthly allowance of free calls to directory assistance.⁸

Many of the public comments voice opposition to Verizon's proposal. However, as the Staff points out, it appears that many consumers erroneously think Verizon will no longer print directories, or that their only option will be to obtain listings on-line. In addition, some customers are not aware that they would be able to continue to receive the printed residential white page directory free of charge upon request, or that a directory with business and governmental listings (and consumer guide) will still be automatically delivered annually.

The Verizon Reply Comments generally agree with the recommendations set forth in the Staff Comments. However, there are areas where Verizon takes exception to those recommendations. Those exceptions will be discussed further in the following applicable sections.

Customer Notification and On-Line Information

The Staff Comments offer recommendations for improving notification to customers about the changes in the delivery of directories, and the new procedures for obtaining residential white page directories. Verizon has agreed to adopt many of the Staff's recommendations since they have been adopted in other states and it is already planning to implement such procedures in Virginia. Verizon's Reply Comments state that it will notify customers on how to order directories through a news release; bill inserts on a quarterly basis for the first full year of the waiver and annually thereafter; on its web page; and on the cover, the emergency number 911 page, and the plastic wrapping of the delivered printed directories.

The Staff Comments also suggest that Verizon should: (i) provide notice on Verizon's webpage regarding the changes in directory distribution; (ii) have a direct link to the online white page directories displayed on its primary website home page (www.verizon.com); (iii) consider creating an on-line mechanism for customers to request their free residential white page directory from Verizon or SuperMedia; (iv) assure that the webpage of SuperMedia describes the changes in directory distribution and the methods by which customers can request a free residential white page directory; and (v) before implementing the change in directory distribution, have all its Virginia white page directories available on-line.

² Application at 2.

³ It is expected that in most instances these listings will be combined with the yellow pages.

⁴ Application at 3, AT&T Comments at 2-3, Staff Comments at 3.

⁵ AT&T Comments at 1-2.

⁶ Cox Comments at 2-3.

⁷ CWA Comments at 2.

⁸ CWA Comments at 3; *Application of the Virginia Telecommunications Industry Association for Authority to Eliminate the Current Requirement for a Two Free Call Allowance for Directory Assistance Service*, Case No. PUC-2009-00074. Final Order (Jan. 12, 2011). The Final Order allowed the monthly directory assistance allowance to drop from two free calls per month to one, rather than be eliminated.

In its reply, Verizon objects to two of these recommendations. First is the one suggesting that Verizon provide a direct link to the white page directories from its primary website homepage. Verizon states that it has created a dedicated website (www.verizon.com/whitepages) for its customers seeking residential white page directory information. According to the Companies, its main webpage instead acts as an introductory site world-wide for all its services and products — i.e., wireline, wireless, residential, and business. We find that, as discussed in Verizon's Reply Comments, Verizon shall ensure that the white page directory page is highly searchable from any site within the primary website, and shall provide a direct link to its white page directory site from its Virginia Welcome page. Additionally, within three months from the date of this Order, Verizon shall report to the Commission Staff its progress in improving its search feature to access the directory page website to further assist customers seeking on-line information on white page directories.

Second, Verizon argues that the Commission should not require Verizon and SuperMedia to develop an on-line ordering option for residential white page directories. Verizon states that SuperMedia is considering how to implement such a mechanism. At this time, we see no need for requiring Verizon and SuperMedia to implement an on-line ordering option.

Other Carriers and Their Customers

According to Verizon's Application, if the waiver is granted, it will treat non-Verizon customers in the same manner as its own customers. Non-Verizon customers will be able to order a free residential white page directory from SuperMedia and will be able to access the on-line information on both Verizon's and SuperMedia's websites (including the white page directories). According to the Application, SuperMedia "will accept telephone calls from competing carriers where the requesting customer(s) are on the line and will arrange with the carrier and the customer(s) for delivery of the directory."⁹

The Staff Comments recommend the following if a waiver is granted: (i) Verizon should notify, by letter, all Competitive Local Exchange Carriers ("CLECs") and Incumbent Local Exchange Carriers ("ILECs") that rely on Verizon's distribution of directories at least sixty (60) days in advance of the change in residential white page directory distribution with all information necessary for those carriers to advise and assist their customers with the change; (ii) Verizon should notify the appropriate CLECs and ILECs of any future changes in residential white page directory procedures that will affect those carriers' customers; (iii) the Commission should grant a blanket waiver of the Rule to all CLECs and ILECs that rely on Verizon to comply with the Rule, or consider interpreting the waiver granted to Verizon as applying to all CLECs and ILECs relying on Verizon for publishing and distributing directories; and (iv) Verizon should work with Cox, SuperMedia and other interested CLECs to develop a process for transmitting electronic files that identify customers who request residential white page directories.

In the third area of exception with the Staff's recommendations, Verizon takes issue with being required to ". . . work with Cox, SuperMedia, and other CLECs to establish a method for transmission of electronic files identifying customers requesting residential white pages . . ." ¹⁰ It states that Verizon's and Cox's interconnection agreement already addresses the terms and conditions for directories in an "identical manner."¹¹ At this time, we will not require Verizon to develop a process for the transmission of electronic files; however, we require that such procedure be made available to any affected ILEC and all CLECs in Virginia if it is made available elsewhere by Verizon or SuperMedia.¹²

Cox requests that the Commission prohibit Verizon and SuperMedia, from marketing services to its customers.¹³ Verizon's Reply Comments state that Cox's concerns are unfounded as SuperMedia and Verizon are not affiliated companies and SuperMedia is not authorized to sell or market Verizon's telecommunications services.¹⁴ We do not find that such a marketing prohibition is warranted at this time; however, Cox can monitor any Verizon and SuperMedia marketing initiatives to its customers and bring this matter before the Commission if necessary.

Cox and the Staff raise a concern to granting Verizon's request for a waiver; that is, how to consider or apply the waiver to other Local Exchange Carriers ("LECs") (CLECs and ILECs) relying on Verizon to publish and distribute white page directories. Those LECs are subject to the same requirements under 20 VAC 5-428-80 A and, therefore, without recognition of this concern, any waiver granted to Verizon could result in noncompliance by other LECs. The Staff's recommendation to interpret Verizon's waiver broadly to apply to all LECs relying on Verizon for directory distribution has merit. Therefore, we will apply Verizon's waiver to all LECs that rely on Verizon for publishing and distributing directories in Virginia. However, we are concerned with other LECs' customers receiving adequate notice of the directory changes. We recognize that those customers will receive much of the information (*i.e.*, press releases and information with the new delivered directories) that Verizon's customers will receive. In addition, the Staff's recommendation regarding at least a sixty (60) day advance notice by Verizon to these LECs will provide an opportunity for those companies to educate their customers. At this time, we will not require the other LECs to provide additional notice to their customers, but strongly encourage that they do so.

Ordering Directories and Monitoring

The Staff Comments identify that Verizon plans to treat a customer's request for a residential white page directory (either printed or CD ROM per customer choice) as a standing order and will not require the customer to reorder annually. This is an important aspect of Verizon's proposal that we adopt to avoid potential confusion and frustration if customers are forced to reorder every year. We also find that business and governmental entities with multiple telephone lines should be able to order all necessary residential white page directories through a single request. In addition, other managed multi-tenant

⁹ Application at 4.

¹⁰ Verizon Reply Comments at 4.

¹¹ *Id.*

¹² The Staff Comments represent that Verizon agreed to work with another CLEC and SuperMedia on a similar process in New York. *Petition of Verizon New York Inc. for Waiver of New York Code of Rules and Regulations, Title 16, § 602.10 (b) Pertaining to the Distribution of Telephone Directories*, Case 10-C-0215, Order Granting Waiver With Conditions (Oct. 15, 2010).

¹³ Cox Comments at 2-3.

¹⁴ Verizon Reply at 4-5.

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locations (such as retirement communities, nursing homes, and apartment complexes) should be able to order residential white page directories through a single request by the management or by individual request of the tenant.

The Staff suggests that Verizon's directory distribution policy be monitored on an ongoing basis. The Staff Comments recommend that: (i) the Commission grant Verizon an interim waiver; (ii) Verizon should track the number of requests for a printed residential directory and submit the results quarterly to the Division of Communications for the first two years of the waiver; (iii) Verizon should notify the Division of Communications regarding changes to its residential white page directory distribution process; and (iv) Verizon should submit to the Division of Communications for approval a final press release and bill message it intends to use to notify customers.

Verizon does not oppose interim approval of its waiver request; however, it agrees with the Staff's suggestion to make the interim waiver permanent after a specific time period or date, unless the Commission takes action prior to the expiration of that schedule. Verizon urges that such a structured schedule would avoid expending additional resources to conduct another proceeding. We do not adopt this suggested provision. The requirements to establish permanency of any interim waiver granted herein are as set forth below.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that it is consistent with the public interest to grant an interim waiver.

Accordingly, IT IS ORDERED THAT:

(1) A waiver of Rule 20 VAC 5-428-80 A, as it relates to the requirement to distribute a printed copy of the residential white pages on an annual basis, is granted to Verizon and shall apply to any other LEC that relies on Verizon to comply with this rule. The waiver is granted on an interim basis pending receipt of the reports required herein and pending further order of the Commission. Verizon shall notify the Commission of the date it implements the new procedures in Virginia.

(2) Verizon shall notify its customers regarding the process to obtain a free residential white page directory by means of a press release and a quarterly bill message or insert during the period of the interim waiver.

(3) Verizon shall ensure that customers continue to receive automatically a printed directory containing white page business and government listings and consumer guide.

(4) Verizon shall ensure that the instructions for ordering residential white page directories are prominently displayed on the cover of the directories that continue to be distributed, on the table of contents and the emergency number 911 page of the directories, and on the exterior of the protective bag in which those directories will be delivered.

(5) Verizon shall submit a copy of the press release and the initial bill insert or message to the Division of Communications for its approval.

(6) Verizon shall ensure that notice regarding the changes in directory distribution and necessary information for obtaining a free residential white page directory is available on Verizon and SuperMedia's (or its successor) websites.

(7) Verizon shall have all its Virginia white page directories available online prior to implementing and notifying customers of the changes to the directory distribution process.

(8) Verizon shall ensure that the white page directory page is highly searchable from any site within the primary website, and shall provide a direct link to its white page directory site from its Virginia Welcome page.

(9) Verizon shall report to the Commission Staff, within three months from the date of this Order, its progress in improving its search feature to access the directory page website to further assist customers seeking on-line information on white page directories.

(10) At least sixty (60) days before the procedures change, Verizon shall, by letter, notify LECs that rely on Verizon for publishing and distributing directories of the pending changes and furnish all necessary information and directions upon which the LECs need to rely to inform and assist their customers. Verizon shall further inform the LECs of any future changes to residential white page procedures that will affect their customers.

(11) Verizon shall notify the Division of Communications in writing of any proposed further modifications or changes of its residential white pages distribution policy.

(12) Verizon shall treat a customer's initial request for a residential white page directory (either printed or CD ROM) as a standing order that does not require annual renewal.

(13) Verizon shall report quarterly to the Division of Communications the number of customers who have requested delivery of the residential white page directory.

(14) Verizon shall ensure that if it and/or SuperMedia establish a process for transmission of electronic files identifying customers requesting white page directories, such process shall be made available to interested LECs in Virginia.

(15) The Staff shall monitor the changes in Verizon's directory distribution policy, as set forth herein, on an ongoing basis, and file a report thereon with the Commission on or before May 1, 2013.

(16) Verizon shall ensure that business and governmental entities with multiple telephone lines will be able to order all necessary residential white page directories through a single request. Other managed multi-tenant locations (such as retirement communities, nursing homes, and apartment complexes) will be able to order residential white page directories through a single request by the management or by individual request of the tenant.

(17) Cox's Motion for Leave to File Supplemental Comments to Correct the Reply Comments of Verizon is granted.

- (18) Verizon shall respond to Staff requests for information in conformance with Part IV of the Commission's Rules of Practice and Procedure.
- (19) This matter is continued generally pending further order of the Commission.

**CASE NO. PUC-2010-00047
APRIL 21, 2011**

APPLICATION OF
INTELEPEER VIRGINIA, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On December 17, 2010, IntelPeer Virginia, Inc. ("IntelPeer" or "Applicant"), completed an application for certificates of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia ("Application"). The Applicant also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia. In addition, the Applicant filed a Motion for Protective Order ("Motion") in accordance with Rule 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure when an application contains information that the applicant claims to be confidential.

By Order for Notice and Comment dated January 6, 2011 ("January 6 Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Commission Staff ("Staff") to conduct an investigation and file a Staff Report. The Commission also stated that it would hold the Applicant's Motion in abeyance until a party sought access to the information that the Applicant designated as confidential. On February 11, 2011, the Applicant filed proof of publication and proof of service as required by the January 6 Order.

On April 8, 2011, the Commission Staff ("Staff") filed its Staff Report finding that IntelPeer's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.*, and the Rules Governing the Certification of Interexchange Carriers, 20 VAC 5-411-10 *et seq.* Based upon its review of IntelPeer's Application, the Staff determined it would be appropriate to grant the Applicant certificates to provide local exchange and interexchange telecommunications services subject to the following condition: IntelPeer should notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted certificates to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code of Virginia, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively. The Commission also finds that IntelPeer's Motion is no longer necessary; therefore, the Motion should be denied.¹

Accordingly, IT IS ORDERED THAT:

(1) IntelPeer Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. TT- 262A, to provide interexchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) IntelPeer Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. T-709, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code of Virginia, the Applicant may price its interexchange telecommunications services competitively.

(4) The Applicant shall provide tariffs to the Commission's Division of Communications that conform to all applicable Commission rules and regulations.

(5) IntelPeer Virginia, Inc., shall notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(6) The Applicant's Motion for Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(7) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

¹ The Commission has received no request for leave to review the information that the Applicant designated confidential. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

**CASE NO. PUC-2010-00052
JANUARY 12, 2011**

APPLICATION OF
24/7 CABLE COMPANY LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On September 20, 2010, 24/7 Cable Company LLC ("24/7 Cable" or "Applicant") completed an application ("Application") with the State Corporation Commission ("Commission") for certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia. The Applicant also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia and 20 VAC 5-411-30 F. 24/7 Cable also filed (as an exhibit to its Application) a Motion for Protective Order ("Motion") as required by Rule 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure when an application contains information that the applicant claims to be confidential.

By Order for Notice and Comment dated September 29, 2010 ("September 29 Order"), the Commission directed 24/7 Cable to provide notice to the public of its Application and directed the Commission Staff ("Staff") to conduct an investigation and file a Staff Report. The Commission also stated that it would hold 24/7 Cable's Motion in abeyance until a party sought access to the information that 24/7 Cable designated as confidential. The Applicant filed proof of service and proof of publication on November 10, 2010, as required by the September 29 Order.

On November 1, 2010, 24/7 Cable filed a Motion for Extension of Time with the Commission. In the Motion for Extension of Time, 24/7 Cable requested additional time in which to secure a bond as required by the September 29 Order. On November 10, 2010, the Commission entered an Order granting the Applicant's Motion for Extension of Time and revising certain dates in the September 29 Order.

On December 20, 2010, the Staff filed its Report finding that 24/7 Cable's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.*, and the Rules Governing the Certification of Interexchange Carriers, 20 VAC 5-411-10 *et seq.* Based upon its review of 24/7 Cable's Application, the Staff determined it would be appropriate to grant the Applicant certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services, subject to the following condition: 24/7 Cable should notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

On December 27, 2010, 24/7 Cable, by counsel, filed a response to the Staff Report in which the Applicant stated that it concurred with the Staff Report and that it waived any additional time to file a response to the Staff Report and requested that the Commission issue an order as soon as possible.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code of Virginia, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively. The Commission also finds that 24/7 Cable's Motion is no longer necessary; therefore, the Motion should be denied.¹

Accordingly, IT IS ORDERED THAT:

(1) 24/7 Cable Company LLC is hereby granted a certificate of public convenience and necessity, No. TT-258A, to provide interexchange telecommunications services, subject to the restrictions set forth in the Rules Governing the Certification of Interexchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) 24/7 Cable Company LLC is hereby granted a certificate of public convenience and necessity, No. T-704, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code of Virginia, the Applicant may price its interexchange telecommunications services competitively.

(4) The Applicant shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(5) 24/7 Cable Company LLC shall notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(6) The Applicant's Motion for Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(7) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

NOTE: A copy of Exhibit A entitled "Stipulation" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

¹ The Commission has received no request for leave to review the information that 24/7 Cable designated confidential. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

**CASE NO. PUC-2010-00056
FEBRUARY 15, 2011**

APPLICATION OF
AIRESFRING VIRGINIA LLC

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On September 2, 2010, Airespring Virginia LLC ("Airespring" or "Applicant"), filed an application for a certificate of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange telecommunications services throughout the Commonwealth of Virginia ("Application"). Exhibit 2 to the Application was filed under seal pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure ("Rules") in order to obtain confidential treatment of the financial information contained therein. In accordance with 5 VAC 5-20-170 of the Commission's Rules, Airespring's Application was accompanied by a Motion for Protective Order ("Motion") to cover the information that the Applicant asserted should be treated as confidential.

By Order for Notice and Comment dated October 4, 2010 ("Notice Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Staff of the Commission ("Staff") to conduct an investigation and file a Staff Report. The Commission also stated that it would hold the Applicant's Motion in abeyance until a party sought access to the information that the Applicant designated as confidential.

On November 23, 2010, the Commission issued an Order Extending Procedural Schedule ("Extension Order") in which it granted the Applicant's motion to allow it more time to (i) mail copies of notice in conformance with Ordering Paragraph (3) of the Notice Order; (ii) file its proofs of publication and notice in this proceeding; and (iii) procure the bond required by Ordering Paragraph (11) of the Notice Order. The Extension Order further revised the remaining procedural dates and extended the Commission's statutory review period through March 31, 2011. On January 18, 2011, the Applicant filed proof of publication and proof of service as required by the Extension Order.

The Staff Report was filed on January 24, 2011, in which the Staff found that Airespring's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.* Based upon its review of Airespring's Application, the Staff determined it would be appropriate to grant Airespring a certificate to provide local exchange telecommunications service subject to the following condition: Airespring should notify the Division of Economics and Finance no less than 30 days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

The Extension Order provided the Applicant an opportunity to file a Response to the Staff Report by February 9, 2011. To date, no response to the Staff Report has been filed by the Applicant.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted a certificate to provide local exchange telecommunications services. The Commission also finds that Airespring's Motion is no longer necessary and so, being moot, should be denied.¹

Accordingly, IT IS ORDERED THAT:

(1) Airespring Virginia LLC is hereby granted a certificate of public convenience and necessity, No. T-705, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) The Applicant shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(3) Airespring Virginia LLC shall notify the Division of Economics and Finance no less than 30 days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(4) The Applicant's Motion for Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(5) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

¹ The Commission held the Motion in abeyance. The Commission has received no request for leave to review the information that the Applicant designated confidential. Accordingly, while we deny the Motion as moot, we will direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

**CASE NO. PUC-2010-00064
JANUARY 25, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
VERIZON VIRGINIA INC. AND VERIZON SOUTH INC.
and
STATE CORPORATION COMMISSION

Ex Parte: In the Matter of Investigating the Service Quality of Verizon Virginia Inc. and Verizon South Inc.

NOTIFICATION ORDER

On September 30, 2010, the State Corporation Commission ("Commission") issued a Rule to Show Cause and Order Establishing Investigation ("September 30, 2010 Order") regarding Verizon's¹ service quality and Verizon's compliance with the Commission's service quality rules.² The September 30, 2010 Order also scheduled a hearing in this docket.³

The September 30, 2010 Order directed Verizon to file written reports, pursuant to 20 VAC 5-428-30 and 20 VAC 5-428-90 A, identifying its compliance or noncompliance with the standards in 20 VAC 5-428-90 B 1 through B 3. The standards in 20 VAC 5-428-90 B 1 through B 3 state as follows:

B. A [local exchange carrier ('LEC')] shall comply with the following performance standards:

1. A LEC shall restore all out-of-service trouble reports within 24 hours, per calendar month, on a statewide basis, for customers stating a medical necessity when restoration is feasible. As used in this subdivision, 'feasible' means service can be restored unless there exists a condition beyond the control of a LEC.
2. A LEC shall restore no less than 80% of out-of-service trouble reports within 48 hours, and no less than 95% within 96 hours, per calendar month, on a statewide basis, excluding Sundays and LEC-recognized holidays for business customers, and excluding Saturdays, Sundays, and LEC-recognized holidays that do not result in three consecutive excluded days for residential customers. A LEC subject to performance reporting pursuant to subsection A of this section shall calculate its results by dividing the number of out-of-service customer trouble reports restored within 48 hours and 96 hours respectively in the given month by the number of out-of-service customer trouble reports restored in the given month. The quotient is then multiplied by 100 to produce the result as a percentage. A LEC may exclude customer-caused delays, and extended intervals that are explicitly accepted or requested by customers. Upon request by the commission's staff [(Staff)], a LEC shall submit for approval a satisfactory description of (i) the criteria the LEC will apply to determine such explicit acceptance or request by a customer, and (ii) the method the LEC will employ to record such explicit acceptance or request.
3. A LEC shall answer calls to its repair customer call centers with an average [speed of answer interval ('SAI')] of no greater than 60 seconds and shall answer calls to its customer call centers with an average SAI of no greater than 180 seconds, per calendar month, on a statewide basis. A LEC subject to performance reporting pursuant to subsection A of this section shall calculate its results by dividing the cumulative SAI in seconds in the given month by the number of calls answered by a live agent in the given month. A LEC shall exclude from its calculation customer-initiated web transactions and customer-initiated automated transactions.

The September 30, 2010 Order directed Verizon to file a written response, as provided for in 20 VAC 5-428-110 B, regarding whether the Commission should issue an order (pursuant to that Rule) to notify Verizon of its obligation and need to satisfy provisions in Chapter 428. Rule 20 VAC 5-428-110 B states in part as follows:

For purposes of enforcing 20 VAC 5-428-90, other than 20 VAC 5-428-90 B 1, the commission may, upon motion, and after opportunity for written response from the LEC in accordance with 5 VAC 5-20-90, issue such order or orders as it deems necessary to notify a LEC of the LEC's obligation and need to satisfy the provisions of this chapter.

On October 12, 2010, Verizon filed an Answer and asserted that "the Commission should decline to issue a 20 VAC 5-428-110(B) order, and instead dismiss this case and direct its Staff to monitor complaints."⁴

¹ Verizon Virginia Inc. and Verizon South Inc. are referred to herein collectively as "Verizon."

² Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality, 20 VAC 5-428-10 *et seq.* ("Rules" or "Chapter 428").

³ The September 30, 2010 Order scheduled the hearing to commence on November 2, 2010. On October 19, 2010, Verizon filed a Motion to Move Hearing Date for the purpose of, among other things, accommodating its chief witness, Christopher M. Creager, President of the East Region for Verizon's Domestic Telecommunications Group. On October 22, 2010, the Commission issued an Order Rescheduling Hearing, which directed that the hearing would commence on December 14, 2010.

⁴ Verizon's October 12, 2010 Answer at 17 (typeface and case modified).

On December 6, 2010, Verizon filed a Supplemental Answer and stated that "Verizon does not contest being put on notice by the Commission of its obligation to comply with 20 VAC 5-428-90(B)(2-3)."⁵

On December 14, 2010, the Commission convened a hearing in this docket as previously scheduled.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that this Notification Order shall be issued, pursuant to the explicit language in 20 VAC 5-428-110 B, "[f]or purposes of enforcing 20 VAC 5-428-90, other than 20 VAC 5-428-90 B 1, . . . [and] to notify [Verizon] of [Verizon's] obligation and need to satisfy the provisions" of 20 VAC 5-428-90 B 2 and B 3.⁶ This Notification Order is supported by the record developed herein, separate and apart from Verizon's statement that it "does not contest being put on notice by the Commission of its obligation to comply with 20 VAC 5-428-90(B)(2-3)."⁷

Accordingly,

if [Verizon] fails to comply with the directives of [this Notification Order], the commission may, following notice and an opportunity for hearing in accordance with 5 VAC 5-20-90, levy one or more of the penalties and sanctions authorized by §§ 12.1-13, 12.1-33, and 56-483 of the Code of Virginia for violations of such order.⁸

Furthermore,

[f]or purposes of enforcement under [20 VAC 5-428-110 B], the commission may, if it deems necessary, further prospectively order [Verizon] to meet a 20 VAC 5-428-90 standard each day, based on a rolling 30-day average, notwithstanding that the standard is based on a calendar month under 20 VAC 5-428-90 and each day that [Verizon] does not meet such standard may constitute a separate violation of this chapter.⁹

Finally, we note that in accordance with the September 30, 2010 Order, Verizon is continuing to file reports as required therein.

Accordingly, IT IS ORDERED THAT:

(1) This Notification Order is issued for purposes of enforcing 20 VAC 5-428-90, other than 20 VAC 5-428-90 B 1, and to notify Verizon of Verizon's obligation and need to satisfy the provisions of 20 VAC 5-428-90 B 2 and B 3, and Verizon is so directed.

(2) This matter is continued.

⁵ Verizon's December 6, 2010 Supplemental Answer at 10.

⁶ No such Notification Order is necessary to enforce the provisions of 20 VAC 5-428-90 B 1 (quoted above), which address restoration for customers with medical necessities. Specifically, for purposes of 20 VAC 5-428-90 B 1, the Commission may levy penalties and sanctions for violations thereof without previously issuing a Notification Order:

For purposes of enforcing all of the provisions of this chapter, including 20 VAC 5-428-90 B 1 but excluding the remainder of 20 VAC 5-428-90, the commission may, upon motion, and after opportunity for written response from the LEC and an opportunity for hearing, in accordance with 5 VAC 5-20-90 levy one or more of the penalties and sanctions authorized by §§ 12.1-13, 12.1-33, and 56-483 of the Code of Virginia for violations of provisions of this chapter.

20 VAC 5-428-110 A.

⁷ Verizon's December 6, 2010 Supplemental Answer at 10.

⁸ 20 VAC 5-428-110 B.

⁹ *Id.*

**CASE NO. PUC-2010-00064
JANUARY 25, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
VERIZON VIRGINIA INC. AND VERIZON SOUTH INC.
and
STATE CORPORATION COMMISSION

Ex Parte: In the Matter of Investigating the Service Quality of Verizon Virginia Inc. and Verizon South Inc.

ORDER ON JOINT RECOMMENDATION

On September 30, 2010, the State Corporation Commission ("Commission") issued a Rule to Show Cause and Order Establishing Investigation ("September 30th Order") regarding Verizon's¹ service quality and Verizon's compliance with the Commission's service quality rules.² The Commission explained that it was continuing to receive complaints from customers and government officials regarding the adequacy of Verizon's service.³

The September 30th Order referenced, among other things: (a) service restoration requirements in 20 VAC 5-428-90 B 2; (b) customers' ostensible agreements (by explicit acceptance or request pursuant to 20 VAC 5-428-90 B 2) to remain out of service for an extended period of time; and (c) criteria that Verizon will apply in the future to determine such explicit acceptance or request by a customer and the method that Verizon will employ to record such explicit acceptance or request. The September 30th Order also scheduled a hearing in this docket.⁴

Further in this regard, 20 VAC 5-428-90 B 2 provides as follows:

B. A [local exchange carrier ('LEC')] shall comply with the following performance standards:

...

2. A LEC shall restore no less than 80% of out-of-service trouble reports within 48 hours, and no less than 95% within 96 hours, per calendar month, on a statewide basis, excluding Sundays and LEC-recognized holidays for business customers, and excluding Saturdays, Sundays, and LEC-recognized holidays that do not result in three consecutive excluded days for residential customers. A LEC subject to performance reporting pursuant to subsection A of this section shall calculate its results by dividing the number of out-of-service customer trouble reports restored within 48 hours and 96 hours respectively in the given month by the number of out-of-service customer trouble reports restored in the given month. The quotient is then multiplied by 100 to produce the result as a percentage. A LEC may exclude customer-caused delays, and extended intervals that are explicitly accepted or requested by customers. Upon request by the commission's staff [("Staff")], a LEC shall submit for approval a satisfactory description of (i) the criteria the LEC will apply to determine such explicit acceptance or request by a customer, and (ii) the method the LEC will employ to record such explicit acceptance or request.

On October 12, 2010, Verizon filed an Answer as directed by the September 30th Order.⁵

On November 2, 2010, the Commission issued an Order that, among other things: (1) continued the initial show cause portion of this proceeding pending further order of the Commission; and (2) stated that the Commission would receive evidence relevant to 20 VAC 5-428-90 B 2 at the hearing scheduled to commence on December 14, 2010.

On December 6, 2010, Verizon filed a Supplemental Answer, which "describe[d] Verizon's current processes" for "determining and recording explicit customer acceptances of extended intervals for [out-of-service] repairs pursuant to 20 VAC 5-428-90(B)(2)."⁶

On December 13, 2010, Verizon and the Staff filed a Joint Recommendation,⁷ wherein the Staff and Verizon "respectfully request and recommend that the Commission accept [the] negotiated resolution of the issues described herein, and continue this case generally while Staff continues its

¹ Verizon Virginia Inc. and Verizon South Inc. are referred to herein collectively as "Verizon."

² Rules Governing Local Exchange Telecommunications Carrier Retail Service Quality, 20 VAC 5-428-10 *et seq.* ("Rules").

³ These complaints involved, among other things: (i) the length of time that Verizon informs customers, who are without service, that they must wait until telephone service can be restored; (ii) the process by which Verizon attempts to get a customer's alleged agreement to go without service for such extended periods; and (iii) the length of time that customers remain without service while waiting for Verizon to make repairs. September 30th Order at 1.

⁴ The September 30th Order scheduled the hearing to commence on November 2, 2010. On October 19, 2010, Verizon filed a Motion to Move Hearing Date for the purpose of, among other things, accommodating its chief witness, Christopher M. Creager, President of the East Region for Verizon's Domestic Telecommunications Group. On October 22, 2010, the Commission issued an Order Rescheduling Hearing, which directed that the hearing would commence on December 14, 2010.

⁵ In addition, notices of participation were filed by the Communications Workers of America, AFL-CIO, and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel").

⁶ Verizon's December 6, 2010 Supplemental Answer at 10.

⁷ Ex. 6. The Staff and Verizon contemporaneously filed a Joint Motion for Leave to File Joint Recommendation.

investigation."⁸ The Joint Recommendation, among other things, states that the Staff and Verizon "have agreed to the following terms" regarding "Verizon's 20 VAC 5-428-90(B)(2) processes:"

1. Staff will monitor Verizon's performance, and Verizon will make available the raw data and calculations measuring Verizon's performance for Staff audit. Staff will conduct call observations of out-of-service trouble reports by Verizon customers. Verizon will also provide Staff informal monthly reporting with regard to its internal initial appointment objectives and [out-of-service] intervals (or 'clocks').
2. Verizon will maintain the processes described in its Supplemental Answer, subject to the modifications below, and will provide Staff notice of any refinements to those processes.
3. Where a customer accepts with clear affirmative language an extended interval in response to any offer by a live agent as discussed herein, including the initial offer, Verizon will positively record that acceptance with an affirmative notation that can be queried by the Company and audited by the Staff.
4. If the customer's response to that initial offer is less than clear affirmative language accepting an extended interval, Verizon, through the same live agent, will make a second offer for an earlier appointment without inclusion of a statement or process that would require some further negative response to the initial offer prior to the second offer.
5. If the customer's response to that second offer is less than clear affirmative language accepting an extended interval, Verizon's default process will be for the same live agent to offer the customer an interval of no longer than 4 business days, or else the report may not be recorded as a 'customer acceptance' of an extended interval. If the customer declines that third offer, the subsequent agreement on a repair date shall not be considered as a 'customer acceptance' and shall not be recorded as such.⁹

On December 14, 2010, the Commission convened a hearing in this docket as previously scheduled.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Joint Recommendation shall be adopted, and that the measures set forth therein shall remain in effect until further order of the Commission.

We note at the outset, as we have noted before, that regardless of whether basic local exchange telephone services are competitive services, the General Assembly has *not* deregulated service quality, and our duty to regulate service quality remains in full force. We direct the Staff – as reflected in the Joint Recommendation – to monitor Verizon's performance and to continue its investigation.¹⁰ The Rules "prescribe[] the minimum acceptable level of service quality under normal operating conditions."¹¹ As set forth above, that minimum acceptable level of service quality requires, among other things, that a "LEC shall restore no less than 80% of out-of-service trouble reports within 48 hours, and no less than 95% within 96 hours...."¹² This is the standard promulgated in the Rules and the minimum standard that a program should be designed to meet, with what are intended to be very limited exceptions.¹³

Accordingly, IT IS ORDERED THAT:

- (1) The Joint Motion for Leave to File Joint Recommendation is granted.
- (2) The Joint Recommendation is adopted, and Verizon is directed to comply therewith.
- (3) This matter is continued.

⁸ *Id.* at 4.

⁹ *Id.* at 2-3.

¹⁰ We note that the Joint Recommendation does not address restoration for customers with medical necessities, which is governed by a separate standard under the Rules. Specifically, pursuant to 20 VAC 5-428-90B 1, Verizon "shall restore all out-of-service trouble reports within 24 hours ... for customers stating a medical necessity when restoration is feasible," and "'feasible' means service can be restored unless there exists a condition beyond the control of [Verizon]." 20 VAC 5-428-90B 1. This requirement is part of the Staff's continued investigation and audit pursuant to the September 30th Order. In evaluating whether Verizon has complied with this Rule, for each instance where such restoration was allegedly not "feasible," the Staff shall audit Verizon's records establishing the specific "condition beyond the control of [Verizon]," if any. Accordingly, if Verizon is not already doing so, it shall maintain such records for the Staff's investigation and audit.

¹¹ 20 VAC 5-428-10.

¹² 20 VAC 5-428-90 B 2. We have contemporaneously issued an order, under 20 VAC 5-428-110 B, notifying Verizon of its obligation and need to satisfy the provisions of 20 VAC 5-428-90 B 2 and B 3. For example, if Verizon restores only 70% of out-of-service trouble reports within 48 hours, or 90% within 96 hours, we may subsequently "levy one or more of the penalties and sanctions authorized by §§ 12.1-13, 12.1-33, and 56-483 of the Code of Virginia...." 20 VAC 5-428-110 B.

¹³ Moreover, as discussed by Consumer Counsel, we do not conclude that Verizon's apparent regular past practice of offering substantial numbers of customers extended repair dates beyond the metrics set forth in the regulations, with the burden then placed on the customer to negotiate for a shorter waiting period, complies with the Rules. As characterized by Consumer Counsel, such practice results in "the exception ... swallowing the Rule." *See* Tr. 183-184 (Consumer Counsel).

CASE NO. PUC-2010-00067
FEBRUARY 17, 2011

APPLICATION OF
 CLEAR RATE TELECOM, L.L.C.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On November 2, 2010, Clear Rate Telecom, L.L.C. ("Clear Rate" or "Applicant"), completed an application for certificates of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia ("Application"). The Applicant also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia. In addition, the Applicant filed a Motion for Protective Order ("Motion") in accordance with Rule 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure when an application contains information that the applicant claims to be confidential.

By Order for Notice and Comment dated November 23, 2010 ("November 23 Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Commission Staff to conduct an investigation and file a Staff Report. The Commission also stated that it would hold the Applicant's Motion in abeyance until a party sought access to the information that the Applicant designated as confidential. On January 20, 2011, the Applicant filed proof of publication and proof of service as required by the November 23 Order.

On February 9, 2011, the Staff filed its Report finding that Clear Rate's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.*, and the Rules Governing the Certification of Interexchange Carriers, 20 VAC 5-411-10 *et seq.* Based upon its review of Clear Rate's Application, the Staff determined it would be appropriate to grant the Company certificates to provide local exchange and interexchange telecommunications services subject to the following condition: Clear Rate should notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

On February 15, 2011, the Applicant, by counsel, filed a response to the Staff Report in which it stated that it concurred with the Staff Report, that it waived any additional time to file a response to the Staff Report, and requested that the Commission issue an order as soon as possible.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted certificates to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code of Virginia, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively. The Commission also finds that Clear Rate's Motion is no longer necessary; therefore, the Motion should be denied.¹

Accordingly, IT IS ORDERED THAT:

(1) Clear Rate Telecom, L.L.C., is hereby granted a certificate of public convenience and necessity, No. TT-259A, to provide interexchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) Clear Rate Telecom, L.L.C., is hereby granted a certificate of public convenience and necessity, No. T-706, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code of Virginia, the Company may price its interexchange telecommunications services competitively.

(4) The Applicant shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(5) Clear Rate Telecom, L.L.C., shall notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(6) The Applicant's Motion for Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(7) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

¹ The Commission has received no request for leave to review the information that the Applicant designated confidential. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

CASE NO. PUC-2010-00069
APRIL 13, 2011

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In the Matter of Revoking Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10 *et seq.*

ORDER REPEALING RULES

Effective January 1, 2007, Virginia Code §§ 56-484.4 – 484.6 were repealed by operation of 2006 Acts of Assembly, ch. 780. Since that date, the State Corporation Commission ("Commission") has not exercised any authority over the collection or disbursement of funds related to the functioning of the Virginia telecommunications relay service. Those functions, by statute, were transferred to the Department for the Deaf and Hard-of-Hearing, the Virginia Information Technologies Agency, and the Virginia Tax Commissioner.

Because of the repeal of the statutory authority and the successful transition of all telecommunications relay service operations, the Commission issued its Order for Notice and Comment on January 4, 2011, to determine if there was a need to retain the Commission's Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, *et seq.*

Pursuant to that Order, the proposed revocation was published in the Virginia Register of Regulations. Interested persons were directed to file any comments regarding the proposed revocation on or before February 28, 2011. No comments were received, so there was no need for the Commission Staff to file a Response, which was permitted on or before March 18, 2011.

NOW THE COMMISSION, having considered the repeal of statutory authority, the successful transition of all telecommunications relay service funding and operations to other agencies, and the lack of comments herein, finds that there is no need to retain any portion of the Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, *et seq.*

Accordingly, IT IS ORDERED THAT:

- (1) Effective May 1, 2011, the Commission's Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10, *et seq.* are repealed.
- (2) The Commission's Division of Information Resources shall forward a copy of this order to the Registrar of Regulations.
- (3) This case is dismissed from the Commission's docket and the record developed herein shall be forwarded to the file for ended causes.

CASE NO. PUC-2010-00072
JANUARY 12, 2011

APPLICATION OF
CONVERSENT COMMUNICATIONS RESALE L.L.C.

For cancellation of its certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER CANCELING CERTIFICATE

By Order dated September 28, 2009,¹ the State Corporation Commission ("Commission") issued Certificate of Public Convenience and Necessity No. T-692 ("Certificate") permitting the provision of local exchange telecommunications services to Conversent Communications Resale L.L.C. ("Conversent" or "Company").

By letter dated November 17, 2010, the Company requested cancellation of its Certificate, advising that Conversent has no customers in Virginia and has no plans for future operations in Virginia.

NOW THE COMMISSION, being sufficiently advised, will cancel Certificate No. T-692, previously issued to Conversent.

Accordingly, IT IS ORDERED that:

- (1) This matter shall be docketed as Case No. PUC-2010-00072.
- (2) Certificate No. T-692, issued to Conversent Communications Resale L.L.C., is hereby cancelled.
- (3) This matter is dismissed.

¹ *Application of Conversent Communications Resale L.L.C., For a certificate of public convenience and necessity to provide local exchange telecommunications services*, Case No. PUC-2009-00031, Final Order (Sept. 28, 2009).

**CASE NO. PUC-2010-00074
MAY 5, 2011**

APPLICATION OF
TELCO EXPERTS, LLC

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On December 21, 2010, Telco Experts, LLC ("Telco" or "Applicant"), completed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity ("certificate") to provide local exchange telecommunications services throughout the Commonwealth of Virginia ("Application").¹

By Order for Notice and Comment dated January 6, 2011 ("January 6 Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Commission Staff ("Staff") to conduct an investigation and file a Staff Report. The Applicant provided proof that publication and service were completed on or before February 8, 2011, as required by the January 6 Order.

On February 9, 2011, Telco filed a letter ("Motion") with the Commission requesting additional time in which to secure a bond as required by the January 6 Order. On February 16, 2011, the Commission entered an Order granting the Applicant's Motion and revising certain dates in the January 6 Order.

On April 22, 2011, the Staff filed its Staff Report finding that Telco's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.* Based upon its review of Telco's Application, the Staff determined it would be appropriate to grant the Applicant a certificate to provide local exchange telecommunications services subject to the following condition: Telco should notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted a certificate to provide local exchange telecommunications services.

Accordingly, IT IS ORDERED THAT:

(1) Telco Experts, LLC, is hereby granted a certificate of public convenience and necessity, No. T-711, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) The Applicant shall provide tariffs to the Commission's Division of Communications that conform to all applicable Commission rules and regulations.

(3) Telco Experts, LLC, shall notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(4) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

¹ Telco's Application was originally filed on November 18, 2010, but was deemed incomplete at that time. The original application requested certificates for both local exchange and interexchange telecommunications services. By an amendment filed December 21, 2010, Telco's application was revised to request only a certificate to provide local exchange telecommunications services.

**CASE NO. PUC-2010-00075
JUNE 15, 2011**

APPLICATION OF
ALLIED TELECOM GROUP, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On February 4, 2011, Allied Telecom Group, LLC ("Allied" or "Applicant"), completed an application with the State Corporation Commission ("Commission") for certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia. The Applicant also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia.

By Order for Notice and Comment dated February 11, 2011, the Commission directed Allied to provide notice to the public of its application and directed the Commission Staff ("Staff") to conduct an investigation and file a Staff Report. On March 29, 2011, the Commission issued its Order Modifying

Procedural Schedule ("Modified Order").¹ The Applicant filed proof of service and proof of publication on April 20, 2011, as required by the Modified Order.

On May 25, 2011, the Staff filed its Report finding that Allied's application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.*, and the Rules Governing the Certification of Interexchange Carriers, 20 VAC 5-411-10 *et seq.* Based upon its review of Allied's application, the Staff determined it would be appropriate to grant the Applicant certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services, subject to the following condition: Allied should notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

NOW THE COMMISSION, having considered the application and the Staff Report, finds that the Applicant should be granted certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code of Virginia, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) Allied Telecom Group, LLC, is hereby granted a certificate of public convenience and necessity, No. TT- 264A, to provide interexchange telecommunications services, subject to the restrictions set forth in the Rules Governing the Certification of Interexchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) Allied Telecom Group, LLC, is hereby granted a certificate of public convenience and necessity, No. T-713, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code of Virginia, the Applicant may price its interexchange telecommunications services competitively.

(4) Allied Telecom Group, LLC, shall notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(5) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

¹ On March 23, 2011, Allied filed a Motion to Extend the Procedural Schedule, advising that it needed additional time to complete the necessary publication and notice.

**CASE NO. PUC-2010-00078
APRIL 26, 2011**

APPLICATION OF
VOXBEAM TELECOMMUNICATIONS, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On December 22, 2010, Voxbeam Telecommunications, Inc. ("Voxbeam" or "Applicant"), completed an application for certificates of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia ("Application"). The Applicant also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia.

By Order for Notice and Comment dated January 6, 2011 ("January 6 Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Commission Staff ("Staff") to conduct an investigation and file a Staff Report. On February 4, 2011, the Applicant filed proof of publication and proof of service as required by the January 6 Order.

On March 15, 2011, the Staff filed its Staff Report finding that Voxbeam's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.*, and the Rules Governing the Certification of Interexchange Carriers, 20 VAC 5-411-10 *et seq.* Based upon its review of Voxbeam's Application, the Staff determined it would be appropriate to grant the Applicant certificates to provide local exchange and interexchange telecommunications services subject to the following condition:

Voxbeam should notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted certificates to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code of Virginia, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) Voxbeam Telecommunications, Inc., is hereby granted Certificate of Public Convenience and Necessity No. TT-261A to provide interexchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.
- (2) Voxbeam Telecommunications, Inc., is hereby granted Certificate of Public Convenience and Necessity No. T-708 to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.
- (3) Pursuant to § 56-481.1 of the Code of Virginia, the Applicant may price its interexchange telecommunications services competitively.
- (4) The Applicant shall provide tariffs to the Commission's Division of Communications that conform to all applicable Commission rules and regulations.
- (5) Voxbeam shall notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.
- (6) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

**CASE NO. PUC-2010-00079
JANUARY 24, 2011**

APPLICATION OF
SYNIVERSE TECHNOLOGIES OF VIRGINIA, INC.

ORDER CANCELING CERTIFICATES

By Final Order dated August 4, 2005, in Case No. PUC-2005-00089, the State Corporation Commission ("Commission") issued to Syniverse Technologies of Virginia, Inc. ("Syniverse Technologies" or "Company"), Certificate No. T-631a, a certificate of public convenience and necessity to provide local exchange telecommunications services in the Commonwealth of Virginia.¹

By letter filed with the Commission on December 13, 2010, Syniverse Technologies requested that the certificate issued by the Commission be canceled. By letter dated January 7, 2011, the Company stated that it had completed the migration of its only remaining customer served pursuant to its authority granted in Case No. PUC-2005-00089, by transitioning that customer to the underlying carrier who provided the circuit over which Syniverse Technologies had served the customer. Syniverse Technologies, thus, is not currently providing local telecommunications services to any customers in the Commonwealth pursuant to Certificate No. T-631a.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that Certificate No. T-631a previously issued to Syniverse Technologies should be canceled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed as Case No. PUC-2010-00079.
- (2) Certificate No. T-631a authorizing Syniverse Technologies to provide local exchange telecommunications services throughout the Commonwealth of Virginia is hereby canceled.
- (3) Any tariffs on file associated with this certificate are hereby canceled.
- (4) There being nothing further to come before the Commission in this matter, this case shall be removed from the docket of active cases and the papers filed herein placed in the Commission's file for ended causes.

¹ The original certificate, T-631, was granted to Syniverse Networks of Virginia, Inc., in Case No. PUC-2004-00016, on September 16, 2004.

**CASE NO. PUC-2011-00001
JULY 8, 2011**

APPLICATION OF
VERIZON SOUTH INC.

To Expand the Competitive Determination and Deregulation of Retail Services Throughout its Incumbent Territory

FINAL ORDER

On January 7, 2011, Verizon South Inc. ("Verizon") filed an application and exhibits with the State Corporation Commission ("Commission"), pursuant to 5 VAC 5-20-80 A of the Commission's Rules of Practice and Procedure and § 56-235.5 I of the Code of Virginia ("Code"), to expand the competitive determination for retail services to all of its Virginia exchanges and apply the same regulatory treatment adopted in Case No. PUC-2007-00008¹ throughout its incumbent territory ("Application"). The Application lists the exchanges that were determined in the Competitive Pricing Order to be competitive as of December 14, 2007, as well as additional exchanges that were so classified by administrative process on August 14, 2008; August 12, 2009; November 10, 2009; December 28, 2009; March 11, 2010; April 14, 2010; September 20, 2010; September 24, 2010; and November 12, 2010.

The Application sets forth the applicable statute, § 56-235.5 I of the Code, which became effective July 1, 2009. If the Commission, pursuant to subsections E and F of this statute, determines that 75% or more of residential households or businesses in Verizon's incumbent territory lie within areas that have previously been determined by the Commission to have competitive telephone service in accordance with the Competitive Pricing Order, then that competitive determination will be expanded to the remainder of Verizon's incumbent territory. The Application asserts that currently 75.7% of residential households and 77.2% of businesses in Verizon's incumbent territory fall within areas that have been determined to be competitive and that, consequently, such a determination should be expanded to treat all of Verizon's incumbent territory in Virginia as competitive.

On February 11, 2011, the Commission entered an Order for Notice and Inviting Comments ("Order for Notice") associated with Verizon's Application. In the Order for Notice, the Commission required Verizon to publish notice of its Application in newspapers having general circulation throughout the exchanges in which Verizon seeks to extend its competitive determination. The Commission also directed Verizon to provide a copy of its Application to all certificated local exchange and interexchange carriers in Virginia and to certain government officials in the relevant geographical areas. In addition, the Commission provided the opportunity for the filing of public comments regarding the Application, directed the Staff of the Commission ("Staff") to file a report analyzing the Application, and provided Verizon the opportunity to respond to the Staff Report.

Comments were filed by the Tazewell County Board of Supervisors ("Tazewell") on March 15, 2011, and by the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel") on March 28, 2011. Neither Tazewell nor the Consumer Counsel addressed whether Verizon has met the statutory threshold; however, both pointed out that the Commission is required statutorily to extend a determination of competitiveness to all exchanges if the threshold is met. Tazewell stated that there is no competition in Tazewell County, and raised concerns that Verizon might use its monopoly status in that county to subsidize Verizon's operations in truly competitive areas. Tazewell further stated that Verizon has already cut back on its maintenance in the county, causing residents to endure extraordinarily long delays for service repairs. Tazewell requested that if it were deemed to be competitive territory, the Commission should adopt regulatory safeguards for Verizon that would prevent it, in the less or non-competitive areas, from diverting maintenance resources and increasing rates to subsidize Verizon's competitive offerings in other areas.

Consumer Counsel's comments noted that only 38 of Verizon's total of 103 exchanges met the Competitive Pricing Order's competitiveness test for residential households, and only 43 met the competitiveness test for businesses. The Consumer Counsel states that this appears to expose customers in noncompetitive exchanges to the exercise of market power by Verizon. In light of this, the Consumer Counsel states "[i]t is therefore critical that if this application is granted the Commission include safeguards to protect consumers, as required by § 56-235.5 H and I." The annual price cap safeguards imposed by the Competitive Pricing Order were extended to all Verizon Virginia Inc. exchanges in Case No. PUC-2009-00042² and Consumer Counsel urged that they be imposed on all of Verizon South's exchanges in this docket.

Consumer Counsel's comments also noted that the price cap safeguards are due to expire at the end of 2012, and that the Competitive Pricing Order stated the Commission's intent to initiate a proceeding on or before March 1, 2012, to monitor the competitiveness of telephone services as required by § 56-235.5 G of the Code. Consumer Counsel urged the Commission to consider in that future proceeding whether to continue those safeguards or to establish different safeguards as necessary and appropriate to protect consumers from the exercise of market power in exchanges deemed "competitive" but where actual competition or the threat of competition could not be an effective regulator of prices.

The Staff Report was filed on April 15, 2011, and Verizon made no response. The Staff concluded that Verizon had met the statute's 75% minimum threshold for businesses. The Staff Report noted that Verizon's analysis provided geographic locations for all businesses in a given exchange. However, Verizon did not have geographic locations for households and used a methodology to apportion competitive households in census blocks that crossed exchanges as well as boundaries with other incumbent telephone companies. The Staff raised concerns with Verizon's apportionment methodology and was unable to rely fully on Verizon's initial analysis. The Staff's interrogatories requested Verizon to provide an alternative "worst case scenario" analysis that apportioned borderline households to the non-competitive exchange. This method reduced the percentage of households in competitive exchanges to 75.2%. The Staff determined that the "worst case scenario" analysis provides a sufficient margin to determine that Verizon has met the statutory threshold.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Application should be granted subject to the continuing safeguards established by the Competitive Pricing Order. In addition, as the Staff and Consumer Counsel point out, we have stated previously

¹ *Application of Verizon Virginia Inc. and Verizon South Inc., For a Determination that Retail Services are Competitive and Deregulation and Detariffing of the Same*, Case No. PUC-2007-00008, 2007 S.C.C. Ann. Rept. 225, Order on Application (Dec. 14, 2007) ("Competitive Pricing Order").

² *Application of Verizon Virginia Inc., To Expand the Competitive Determination and Deregulation of Retail Services Throughout its Incumbent Territory*, Case No. PUE-2009-00042, 2009 S.C.C. Ann. Rept. 254, Final Order (Dec. 2, 2009).

our intent to initiate a proceeding prior to March 1, 2012 to fulfill our statutory duty under § 56-235.5 G of the Code to "monitor the competitiveness of any telephone service previously found to be competitive . . .", and to consider such other legal or factual issues relevant to that proceeding.

Accordingly, IT IS ORDERED THAT:

- (1) Verizon's Application is granted subject to the continuing safeguards established by the Competitive Pricing Order.
- (2) This matter is dismissed.

**CASE NO. PUC-2011-00002
APRIL 21, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In the Matter of Implementing Virginia Code § 56-235.5:1.B 1 (ii), to determine a schedule for the elimination of the carrier common line charge

ORDER ADOPTING SCHEDULE

On January 31, 2011, the Division of Communications ("Staff") of the State Corporation Commission ("Commission"), by counsel, filed a Staff Motion to Adopt Schedule ("Staff Motion") requesting that comments be invited regarding two proposed schedule options to eliminate the carrier common line charge ("CCLC") element of intrastate access charges of certain incumbent local exchange carriers ("ILECs"). On February 11, 2011, the Commission issued an Order Inviting Comments and Requests for Hearing regarding the Staff's proposed schedules, Option 1 and Option 2, set forth in Appendix A of the Staff Motion. In addition, the order provided an opportunity for the Staff to file, on or before April 15, 2011, a reply to any comments submitted.

On March 8, 2011, AT&T Communications of Virginia, LLC, and its affiliates ("AT&T") that provide long distance service in Virginia, filed comments in support of the Staff Motion. No other comments were filed. On March 21, 2011, the Staff filed its reply, representing that the proposed schedules are uncontested and are ripe for Commission adoption.

NOW THE COMMISSION, having considered the Staff Motion, the comments of AT&T and the Staff Reply, is of the opinion and finds that Appendix A, containing the two schedules (Option 1 and 2), attached hereto should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the provisions of Va. Code § 56-235.5:1.B 1 (ii), Appendix A, attached hereto, containing the schedules, Option 1 and Option 2, is hereby adopted for eliminating the carrier common line charge from the intrastate switched access tariffs of the following Virginia incumbent local exchange carriers:

1. Amelia Telephone Corporation;
2. Buggs Island Telephone Cooperative;
3. Burke's Garden Telephone Company;
4. Citizens Telephone Cooperative;
5. Highland Telephone Cooperative;
6. MGW Telephone Company;
7. New Castle Telephone Company;
8. New Hope Telephone Company;
9. NTELOS Telephone Inc.;
10. Pembroke Telephone Cooperative;
11. Peoples Mutual Telephone Company;
12. Roanoke & Botetourt Telephone Company;
13. Scott County Telephone Cooperative; and
14. Virginia Telephone Company.

(2) This case is dismissed and the record developed herein shall be sent to the file for ended causes.

NOTE: A copy of Appendix A is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. PUC-2011-00004
FEBRUARY 7, 2011**

JOINT APPLICATION OF
CTC COMMUNICATIONS OF VIRGINIA, INC.,
CTC COMMUNICATIONS CORP.,
ONE COMMUNICATIONS CORP.,
and
EARTHLINK, INC.

For approval of the indirect transfer of control of CTC Communications of Virginia, Inc., to EarthLink, Inc., pursuant to Va. Code § 56-88 *et seq.*

ORDER GRANTING APPROVAL

On January 11, 2011, CTC Communications of Virginia, Inc. ("CTC"), CTC Communications Corp. ("CTC Corp"), One Communications Corp. ("ONE"), and EarthLink, Inc. ("EarthLink"), (collectively, the "Joint Applicants"),¹ filed a Joint Application and Request for Streamlined Review ("Joint Application") with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),² for approval of the indirect transfer of control of CTC to EarthLink. The Joint Applicants also filed a Joint Application with the Federal Communications Commission ("FCC") under the FCC's Streamlined Review process, which was accepted as such on January 6, 2011.

The Joint Applicants filed the Joint Application with the Commission under seal, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure ("Commission's Rules") regarding confidential information, in order to obtain confidential treatment of Confidential Exhibit 1 to Exhibit B of the Joint Application (the "Confidential Exhibit"), which contains the confidential financial statements of ONE.³ Rule 5 VAC 5-20-170 states, in part: "When an application (including supporting documents and prefiled testimony) contains information that the applicant claims to be confidential, the filing shall be made under seal and accompanied by a motion for protective order or other confidential treatment." Therefore, on January 11, 2011, concurrently with the Joint Application and pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules, the Joint Applicants filed with the Commission a Motion for Protective Order ("Motion") to obtain confidential treatment of the information contained in the Confidential Exhibit. On January 19, 2011, the Commission Staff filed a Memorandum of Completeness, which deemed the Joint Application complete as of January 11, 2011, and accepted it under the Commission's Streamlined Review process as of January 18, 2011.

CTC is a direct wholly owned subsidiary of CTC Corp, which is a direct wholly owned subsidiary of ONE, a privately-held Delaware corporation. In Virginia, CTC is certificated to provide both local exchange and interexchange telecommunications services pursuant to its certificates of public convenience and necessity ("CPCNs"), Certificate Nos. T-419 and TT-58A, respectively, issued pursuant to the Commission's Final Order entered October 27, 1998, in Case No. PUC-1998-00103. CTC currently provides local and long-distance telecommunications services to approximately 195 business customers in Virginia.

EarthLink, a publicly-traded Delaware corporation, has three subsidiaries that operate in Virginia: New Edge Networks of Virginia, Inc. ("New Edge"),⁴ DeltaCom, Inc. ("DeltaCom"),⁵ and Business Telecom of Virginia, Inc. ("BTI").⁶

The Joint Applicants request Commission approval to consummate a transaction between EarthLink and ONE, through which EarthLink will acquire indirect control of CTC through its acquisition of ultimate control of CTC's ultimate parent company, ONE (the "Proposed Transaction"). Pursuant to an Agreement and Plan of Merger dated December 20, 2010, between EarthLink, Egypt Acquisition Corp. ("MergerCo") (an indirect wholly owned subsidiary of EarthLink created for the purposes of the Proposed Transaction),⁷ ONE, and the Stockholder Representative, MergerCo will merge with and into ONE, with ONE continuing as the surviving corporation. Upon completion of the Proposed Transaction, EarthLink will become the new ultimate parent company of ONE and, therefore, CTC will become an indirect wholly owned subsidiary of EarthLink.

Upon completion of the Proposed Transaction, the Joint Applicants state that CTC will continue to provide telecommunications service to its Virginia customers pursuant to its existing CPCNs, with no change in the rates or terms and conditions of service as currently provided. The Joint Applicants further state that, although EarthLink's acquisition of ONE will result in a change in the ultimate ownership and control of CTC, no transfer of certificates, assets or customers will occur as a result of the Proposed Transaction and, therefore, the Proposed Transaction will be virtually transparent to

¹ In addition to the verifications for EarthLink, ONE and CTC, the Joint Applicants also provided verifications for the following entities and individual that directly or indirectly own more than 25% of ONE: Columbia Ventures Broadband LLC ("CVB"), which directly owns 48.8% of ONE; Columbia Ventures Corporation ("CVC"), which wholly owns CVB; and Kenneth D. Peterson, Jr. (the "Stockholder Representative"), who wholly owns CVC.

² Va. Code § 56-88 *et seq.*

³ The Joint Applicants state that the information contained in the Confidential Exhibit is extremely sensitive financial information that could be used by competitors to gain insight into ONE's internal business operations and other information damaging to ONE and its subsidiaries and, therefore, disclosure of such information would be extremely detrimental and could be used by ONE's competitors to materially affect ONE's ability to compete effectively.

⁴ New Edge is certificated in Virginia to provide both local exchange and interexchange telecommunications services pursuant to its CPCNs, Certificate Nos. T-682 and TT-245A, respectively, issued pursuant to the Commission's Final Order entered January 26, 2009, in Case No. PUC-2008-00062.

⁵ DeltaCom provides resold interexchange telecommunications services as an unregulated intrastate service.

⁶ BTI is certificated in Virginia to provide local exchange and interexchange telecommunications services pursuant to its CPCNs, Certificate No. T-389, issued pursuant to the Commission's Final Order entered October 9, 1997, in Case No. PUC- 1997-00111, and Certificate No. TT- 168A, issued pursuant to the Commission's Final Order entered February 4, 2002, in Case No. PUC-2001-00204, respectively.

⁷ MergerCo is a direct wholly owned subsidiary of EarthLink Business Holding Corp., which, in turn, is a direct wholly owned subsidiary of EarthLink.

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CTC's Virginia customers in terms of the services they currently receive, and any changes that may occur in the future as to CTC's name or services will be made in accordance with the Commission's rules and procedures.

NOW THE COMMISSION, upon consideration of the Joint Application, representations of the Joint Applicants, and having been advised by its Staff, is of the opinion and finds that the Joint Applicants' Motion is no longer necessary and should, therefore, be denied.⁸ The Commission is further of the opinion and finds that the above-described Proposed Transaction, resulting in the indirect transfer of control of CTC to EarthLink, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

(1) The Joint Applicants' Motion for Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(2) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Applicants are hereby granted approval of the indirect transfer of control of CTC Communications of Virginia, Inc., to EarthLink, Inc., as described herein.

(3) The Joint Applicants shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the Proposed Transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the Proposed Transaction took place.

(4) There appearing nothing further to be done in this matter, it hereby is dismissed.

⁸ The Commission held the Joint Applicants' Motion in abeyance. We note that the Commission has received no request for leave to review the confidential information contained in the Confidential Exhibit filed by the Joint Applicants in this proceeding. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

**CASE NO. PUC-2011-00005
FEBRUARY 22, 2011**

APPLICATION OF
DUKENET OPCO, LLC

For amended and reissued Certificates of Public Convenience and Necessity to reflect new name: DukeNet Communications, LLC

ORDER

On January 11, 2011, DukeNet OpCo, LLC ("OpCo" or "Applicant"), filed an application with the State Corporation Commission ("Commission") requesting that the Commission amend and reissue its certificates of public convenience and necessity ("Certificates") to reflect OpCo's new name, DukeNet Communications, LLC ("DukeNet Communications").

In Virginia, OpCo is authorized to provide local exchange and interexchange telecommunications services pursuant to Certificates issued by the Commission on October 29, 2010 in Case No. PUC-2010-00042. OpCo's interexchange Certificate is No. TT-256A and its local exchange Certificate is No. T-702. OpCo filed documents showing that the Commission has approved its name change.

NOW UPON CONSIDERATION of the matter, the Commission finds that the Applicant's Certificates for local exchange and interexchange telecommunications services should be updated to reflect the Applicant's new name.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUC-2011-00005.

(2) Certificate No. TT-256A authorizing OpCo to provide interexchange telecommunications services throughout the Commonwealth is hereby cancelled and shall be reissued as amended Certificate No. TT-256B in the name of DukeNet Communications, LLC.

(3) Certificate No. T-702 authorizing OpCo to provide local exchange telecommunications services throughout the Commonwealth is hereby cancelled and shall be reissued as amended Certificate No. T-702a in the name of DukeNet Communications, LLC.

(4) The Applicant shall provide revised tariffs to the Division of Communications reflecting its new name within forty-five (45) days of the issuance of this Order.

(5) There being nothing further to be done, this matter shall be dismissed from the Commission's docket of active cases and the papers herein filed in the Commission's file for ended causes.

**CASE NO. PUC-2011-00006
FEBRUARY 11, 2011**

APPLICATION OF
DUKENET COMMUNICATIONS, LLC

For cancellation of certificates of public convenience and necessity

ORDER CANCELLING CERTIFICATES

On January 13, 2011, DukeNet Communications, LLC ("DukeNet"), filed a letter application with the State Corporation Commission ("Commission") requesting the cancellation of its certificates of public convenience and necessity to provide local exchange telecommunications services ("Certificate No. T-670") and to provide interexchange telecommunications services ("Certificate No. TT-230A"). The Commission granted Certificate No. TT-230A to DukeNet in Case No. PUC-2006-00157 by Final Order entered on April 19, 2007. The Commission granted Certificate No. T-670 to DukeNet in Case No. PUC-2007-00020 by Final Order entered on July 20, 2007.

In Case No. PUC-2010-00043, DukeNet sought and received Commission approval to merge with DukeNet OpCo, LLC ("DukeNet OpCo"), with DukeNet OpCo being the surviving entity.¹ DukeNet OpCo was granted Certificate Nos. T-702 and TT-256A on October 29, 2010, in Case No. PUC-2010-00042. Accordingly, any former customers of DukeNet are now being served by DukeNet OpCo.

NOW THE COMMISSION, upon consideration of the matter, finds that Certificate Nos. T-670 and TT-230A issued to DukeNet should be cancelled. The Commission further finds that any local exchange or interexchange telecommunications tariffs on file with the Division of Communications should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2011-00006.
- (2) Certificate No. T-670 issued to DukeNet Communications, LLC, to provide local exchange telecommunications services throughout the Commonwealth is hereby cancelled.
- (3) Certificate No. TT-230A issued to DukeNet Communications, LLC, to provide interexchange telecommunications services throughout the Commonwealth is hereby cancelled.
- (4) Any tariffs associated with Certificate Nos. T-670 and TT-230A on file with the Division of Communications are hereby cancelled.
- (5) There being nothing further to be done in this matter, this case shall be removed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's file for ended causes.

¹ Pursuant to Ordering Paragraph (3) of the Order Granting Approval issued by the Commission on October 27, 2010, in Case No. PUC-2010-00043, upon completion of the proposed merger transaction, a letter was to be filed with the Clerk of the Commission requesting that the certificates of DukeNet (T-670 and TT-230A) be cancelled.

**CASE NO. PUC-2011-00008
JANUARY 26, 2011**

APPLICATION OF
PELZER COMMUNICATIONS OF VIRGINIA, INC.

For cancellation of certificates of public convenience and necessity

ORDER CANCELLING CERTIFICATES

On January 19, 2011, Pelzer Communications of Virginia, Inc. ("Pelzer" or "Company"), filed a letter application with the State Corporation Commission ("Commission") requesting the cancellation of its certificates of public convenience and necessity to provide local exchange telecommunications services ("Certificate No. T-663") and to provide interexchange telecommunications services ("Certificate No. TT-228A"). The Commission granted Certificate Nos. T-663 and TT-228A to Pelzer in Case No. PUC-2006-00136 by Final Order entered on March 8, 2007.

In its application, Pelzer states that it is not currently providing telecommunications services to any customers in the Commonwealth, and therefore, no customers will be affected by this cancellation.

NOW UPON CONSIDERATION of the matter, the Commission finds that Certificate Nos. T-663 and TT-228A issued to Pelzer should be cancelled. The Commission further finds that any local exchange or interexchange telecommunications tariffs on file with the Division of Communications should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2011-00008.

(2) Certificate No. T-663 issued to Pelzer Communications of Virginia, Inc., to provide local exchange telecommunications services throughout the Commonwealth is hereby cancelled.

(3) Certificate No. TT-228A issued to Pelzer Communications of Virginia, Inc., to provide interexchange telecommunications services throughout the Commonwealth is hereby cancelled.

(4) Any tariffs associated with Certificate Nos. T-663 and TT-228A on file with the Division of Communications are hereby cancelled.

(5) There being nothing further to be done in this matter, this case shall be removed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. PUC-2011-00014
MARCH 23, 2011**

APPLICATION OF
ZAYO GROUP, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On January 25, 2011, Zayo Group, LLC ("Zayo" or "Applicant"), filed an application for certificates of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia ("Application"). The Applicant also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia.

By Order for Notice and Comment dated February 8, 2011 ("February 8, 2011 Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Commission Staff ("Staff") to conduct an investigation and file a Staff Report. The Applicant filed proof of service on February 24, 2011, and proof of publication on March 4, 2011 as required by the February 8, 2011 Order.

On March 14, 2011, the Staff filed its Staff Report finding that Zayo's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.*, and the Rules Governing the Certification of Interexchange Carriers, 20 VAC 5-411-10 *et seq.* Based upon its review of Zayo's Application, the Staff determined it would be appropriate to grant the Applicant certificates to provide local exchange and interexchange telecommunications services subject to the following condition: Zayo should notify the Commission's Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

On March 17, 2011, the Applicant, by counsel, filed a response to the Staff Report in which it stated that it concurs with Staff's recommendation and has no exceptions to the Staff Report.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted certificates to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code of Virginia, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) Zayo Group, LLC is hereby granted a certificate of public convenience and necessity, No. TT-260A, to provide interexchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) Zayo Group, LLC is hereby granted a certificate of public convenience and necessity, No. T-707, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code of Virginia, the Applicant may price its interexchange telecommunications services competitively.

(4) The Applicant shall provide tariffs to the Commission's Division of Communications that conform to all applicable Commission rules and regulations.

(5) Zayo Group, LLC shall notify the Commission's Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(6) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

**CASE NO. PUC-2011-00017
MAY 13, 2011**

APPLICATION OF
NETWORK BILLING SYSTEMS, L.L.C.

For a certificate of public convenience and necessity to provide local exchange telecommunications services

FINAL ORDER

On February 2, 2011, Network Billing Systems, L.L.C. ("NBS" or "Applicant"), filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity ("certificate") to provide local exchange telecommunications services throughout the Commonwealth of Virginia ("Application"). In addition, the Applicant filed a Motion for Entry of a Protective Order ("Motion") in accordance with Rule 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure when an application contains information that the applicant claims to be confidential.

By Order for Notice and Comment dated February 16, 2011 ("February 16 Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Commission Staff ("Staff") to conduct an investigation and file a Staff Report. The Commission also stated that it would hold the Applicant's Motion in abeyance until a party sought access to the information that the Applicant designated as confidential. On March 31, 2011, the Applicant filed proof of publication and proof of service as required by the February 16 Order.

On April 29, 2011, the Staff filed its Report finding that NBS's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.* Based upon its review of NBS's Application, the Staff determined it would be appropriate to grant the Company a certificate to provide local exchange telecommunications services subject to the following condition: NBS should notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted a certificate to provide local telecommunications services. The Commission also finds that NBS's Motion is no longer necessary; therefore, the Motion should be denied.¹

Accordingly, IT IS ORDERED THAT:

(1) Network Billing Systems, L.L.C., is hereby granted a certificate of public convenience and necessity, No. T-710, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) The Applicant shall provide tariffs to the Division of Communications that conform to all applicable Commission rules and regulations.

(3) Network Billing Systems, L.L.C., shall notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(4) The Applicant's Motion for Entry of a Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(5) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

¹ The Commission has received no request for leave to review the information that the Applicant designated confidential. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

**CASE NO. PUC-2011-00018
MARCH 30, 2011**

JOINT APPLICATION OF
ZAYO BANDWIDTH, LLC,
and
ZAYO GROUP, LLC

For approval of an intra-corporate transaction, pursuant to Va. Code § 56-88 *et seq.*

ORDER GRANTING APPROVAL

On February 10, 2011, Zayo Bandwidth, LLC ("ZB"), and Zayo Group, LLC ("Zayo"), (collectively, the "Joint Applicants"),¹ filed a Joint Application with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia

¹ The Joint Applicants provided a verification for Scott E. Beer who is the Vice President, General Counsel and Secretary of ZB and Zayo, as well as the Vice President and Secretary of Zayo Group Holdings, Inc., the direct parent company of Zayo, and Communications Infrastructure Investments, LLC, the ultimate parent company of Zayo and ZB, and requested that his verification be accepted for all four companies.

("Code"),² for approval of an intra-corporate transaction resulting in the merger of ZB with and into Zayo. On February 16, 2011, Staff filed a Memorandum of Completeness, which deemed the Joint Application complete as of February 10, 2011.

The Joint Applicants request Commission approval of a pro forma intra-corporate transaction resulting in the merger of ZB, which holds certificates of public convenience and necessity ("CPCNs") in Virginia, with and into Zayo, with Zayo as the surviving entity (the "Proposed Transaction"). The Proposed Transaction will result in the transfer of control of ZB to Zayo. The Joint Applicants state that the Proposed Transaction, along with certain other proposed pro forma intra-corporate transactions that will not involve other companies certificated in Virginia, are being proposed as part of Zayo's effort to simplify its existing corporate structure. Zayo was recently granted CPCNs to provide local exchange and interexchange telecommunications services in Virginia in Case No. PUC-2011-00014.³ Upon completion of the Proposed Transaction, Zayo will begin providing telecommunications services to the current customers of ZB.

The Joint Applicants state that the Proposed Transaction will not result in any changes to the services currently received by ZB's customers in Virginia, including the rates, terms and conditions of such services. The only change that will occur as a result of the Proposed Transaction will be the corporate name of the company providing the affected customers' telecommunications services, and since all affected customers are already familiar with the "Zayo" brand, the Joint Applicants state, that this change, will not cause any customer confusion and will, therefore, be virtually transparent to the affected customers. The Joint Applicants represent that, upon completion of the Proposed Transaction, the combined company will be able to more effectively provide competitive telecommunications services to customers in Virginia.

NOW THE COMMISSION, upon consideration of the Joint Application, representations of the Joint Applicants, and having been advised by its Staff, is of the opinion and finds that the above-described Proposed Transaction, resulting in the merger of ZB with and into Zayo, which will result in the transfer of control of ZB to Zayo, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Applicants are hereby granted approval of the Proposed Transaction, as described herein.

(2) The Joint Applicants shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the Proposed Transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the Proposed Transaction took place.

(3) Upon completion of the Proposed Transaction, the Joint Applicants shall file a letter with the Clerk of the Commission, with a copy provided to the Division of Communications, requesting that the current CPCNs issued to ZB, Certificate Nos. T-696 and TT-252A, be canceled.

(4) There appearing nothing further to be done in this matter, it hereby is dismissed.

² Va. Code § 56-88 *et seq.*

³ See *Application of Zayo Group, LLC, For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services*, Case No. PUC-2011-00014, Final Order (Mar. 23, 2011).

CASE NO. PUC-2011-00019
APRIL 13, 2011

APPLICATION OF
PEOPLES MUTUAL TELEPHONE COMPANY

For authority to enter into an intercompany note and intercompany subordinated agreement with an affiliate

ORDER GRANTING AUTHORITY

On February 10, 2011, Peoples Mutual Telephone Company ("Peoples Mutual" or "the Company") filed an application with the State Corporation Commission ("Commission") under Chapter 4 of Title 56 of the Code of Virginia seeking approval of an Intercompany Note and Intercompany Subordinate Agreement with its parent company, FairPoint Communications, Inc. ("FairPoint").

In its application, Peoples Mutual represents that as part of FairPoint's overall financing program following its emergence from bankruptcy, FairPoint entered into a loan facility dated January 24, 2011 ("Credit Agreement"). The Company represents that the inclusion of Peoples Mutual in the Intercompany Note and Intercompany Subordination Agreement is required by the lenders under the Credit Agreement as a condition to advancing funds to FairPoint. Peoples Mutual represents that it is simply requesting permission to be a participant in the Intercompany Note and Intercompany Subordinated Agreement to fulfill an obligation of the lenders participating in the Credit Agreement. Peoples Mutual will not, by becoming a party to the Intercompany Note or the Subordination Agreement, be pledging its own assets or guaranteeing the credit of FairPoint or any of its affiliates. Peoples Mutual does not anticipate borrowing or lending under the Intercompany Note but should it need to borrow or lend in the future, it will seek specific approval from the Commission to do so.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicant and having been advised by its Staff, is of the opinion that allowing Peoples Mutual to become a party to the Intercompany Note and Subordinated Agreement is in the public interest. However, we note that any intercompany loans or borrowings by Peoples Mutual will need approval under Chapters 3 and 4 of Title 56 of the Code of Virginia. Moreover, any guarantee by Peoples Mutual of the debt or obligations of any party, whether such party is affiliated with Peoples Mutual or not, needs

approval by the Commission as well. Peoples Mutual has not sought approval of any guarantees or for authority to borrow or lend funds and the Commission is not granting such approval herein.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, Peoples Mutual is hereby granted approval to enter into the Intercompany Note and Intercompany Subordinated Agreement, under the terms and conditions and for the purposes as stated in its February 10, 2011 application.

(2) The approval granted herein to enter into the Intercompany Note and Intercompany Subordinated Agreement does not convey any authority to undertake any further financing activity pursuant to that entry; separate Commission approval for any such proposed action shall be required.

(3) The approval granted herein shall have no ratemaking implications.

(4) The approval granted herein shall not preclude the Commission from exercising its authority pursuant to the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(5) Commission approval shall be required for any changes in any of the agreements approved herein, including any successors or assigns thereto.

(6) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein whether or not such affiliate is regulated by this Commission.

(7) There being nothing further to be done, this matter is hereby dismissed.

**CASE NO. PUC-2011-00020
AUGUST 22, 2011**

APPLICATION OF
INFOTELECOM, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On April 15, 2011, Infotelecom, LLC ("Infotelecom" or "Applicant"), completed an application with the State Corporation Commission ("Commission") for certificates of public convenience and necessity ("certificates") to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia ("Application"). The Applicant also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia. In addition, the Applicant filed a Motion for Protective Order ("Motion") in accordance with Rule 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure when an application contains information that the applicant claims to be confidential.

By Order for Notice and Comment dated April 27, 2011 ("April 27 Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Commission Staff ("Staff") to conduct an investigation and file a Staff Report. The Commission also stated that it would hold the Applicant's Motion in abeyance until a party sought access to the information that the Applicant designated as confidential.

On May 25, 2011, Infotelecom filed a Motion to Extend Procedural Dates in which it requested additional time in which to secure and file the required bond and an extension of certain other procedural dates in the April 27 Order. On June 7, 2011, the Commission entered an Order granting the Applicant's Motion to Extend Procedural Dates and revising certain dates in the April 27 Order. On July 6, 2011, the Applicant filed proof of publication and proof of service as required by the April 27 Order. The Commission has received no comments or requests for hearing.

On August 5, 2011, the Staff filed its Staff Report finding that Infotelecom's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.*, and the Rules Governing the Certification of Interexchange Carriers, 20 VAC 5-411-10 *et seq.* Based upon its review of Infotelecom's Application, the Staff determined it would be appropriate to grant the Applicant certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services, subject to the following condition: Infotelecom should notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

On August 9, 2011, the Applicant, by counsel, filed a response to the Staff Report in which it stated that it had no objection to the recommendations made in the Staff Report.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted certificates to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code of Virginia, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively. The Commission also finds that Infotelecom's Motion is no longer necessary; therefore, the Motion should be denied.¹

¹ The Commission has received no request for leave to review the information that the Applicant designated confidential. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

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Accordingly, IT IS ORDERED THAT:

(1) Infotelecom, LLC, is hereby granted a certificate of public convenience and necessity, No. TT-266A, to provide interexchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) Infotelecom, LLC, is hereby granted a certificate of public convenience and necessity, No. T-715, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code of Virginia, the Applicant may price its interexchange telecommunications services competitively.

(4) Infotelecom, LLC, shall notify the Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(5) The Applicant's Motion for Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(6) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

**CASE NO. PUC-2011-00023
MARCH 1, 2011**

PETITION OF
AT&T COMMUNICATIONS OF VIRGINIA, LLC

For orders suspending and rejecting proposed revisions to Virginia S.C.C. Tariff No. 2 of Level 3 Communications, LLC

ORDER IMPOSING REFUND OBLIGATION

On February 25, 2011, AT&T Communications of Virginia, LLC ("AT&T"), filed with the State Corporation Commission ("Commission") its Petition for Orders Suspending and Rejecting Proposed Revisions to Virginia S.C.C. Tariff No. 2 of Level 3 Communications, LLC ("AT&T's Petition") and delivered a copy to Level 3 Communications, LLC ("Level 3").

Level 3, under the Commission's Rules of Practice and Procedure, 5 VAC 5-20-100 B, has twenty-one (21) days after service of AT&T's Petition to file an answer or other responsive pleading. AT&T's Petition requested the Commission to "[i]mmediately suspend the effective dates of Level 3 proposed revisions to its Virginia S.C.C. No. 2 Tariff until the completion of a full investigation as to whether the proposed tariff changes are just, reasonable and lawful."

At this time the Commission is unable to evaluate whether the proposed revisions are unjust, unreasonable, or unlawful. At a minimum, we will consider any response from Level 3 and the Commission Staff before we take such action requested by AT&T. Moreover, it is not our intention to restrict customers from purchasing Level 3's services; therefore, we do not find that the tariff revisions should be suspended. However, the tariff revisions will be permitted to remain in effect subject to refund.

NOW THE COMMISSION, having considered AT&T's Petition and the applicable law, is of the opinion and finds that Level 3's proposed tariff revisions may take effect. To save AT&T or other affected carriers from monetary harm pending the Commission's review of this matter, Level 3's rates collected pursuant to the revised tariff shall be subject to refund together with interest to the extent that such rates differ from the rates or terms the Commission ultimately finds to be just and reasonable.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC-2011-00023.

(2) Level 3 may implement the tariff revisions filed on January 28, 2011, and February 3, 2011.

(3) The revenues collected by Level 3 pursuant to the tariff revisions shall be subject to refund together with interest to the extent that those rates differ from the rates the Commission ultimately finds to be just and reasonable.

(4) Level 3 shall retain accounting data for all revenues collected pursuant to the tariff revisions in order to make any refunds the Commission might direct at the conclusion of this case.

(5) On or before March 18, 2011, Level 3 shall file an answer or other responsive pleading to AT&T's Petition.

(6) On or before March 28, 2011, the Commission Staff shall file comments in this matter.

(7) This matter is continued generally.

**CASE NO. PUC-2011-00023
JULY 8, 2011**

PETITION OF
AT&T COMMUNICATIONS OF VIRGINIA, LLC

For orders suspending and rejecting proposed revisions to Virginia S.C.C. Tariff No. 2 of Level 3 Communications, LLC

ORDER DISMISSING PETITION

On February 25, 2011, AT&T Communications of Virginia, LLC ("AT&T") filed a Petition for Orders Suspending and Rejecting Proposed Revisions to Virginia S.C.C. Tariff No. 2 of Level 3 Communications, LLC ("Petition") with the State Corporation Commission ("Commission").¹

On March 1, 2011, the Commission issued an Order Imposing Refund Obligation ("Refund Order") on Level 3 Communications, LLC ("Level 3") in this proceeding. In the Refund Order, the Commission recognized that Rule 100 B of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, authorized Level 3 to file an answer to the Petition or other responsive pleadings within twenty-one (21) days after service. The Commission also noted the Petition sought the immediate suspension of "the effective dates of Level 3's proposed revisions to its Virginia S.C.C. No. 2 Tariff until the completion of a full investigation as to whether the proposed tariff changes are just, reasonable and lawful."² The Commission found that it was appropriate for Level 3's proposed tariff revisions to go into effect subject to refund with interest ". . . to the extent that such rates differ from the rates or terms the Commission ultimately finds to be just and reasonable."³ The Commission also directed Level 3 to file an answer or other responsive pleading on or before March 18, 2011, and instructed the Staff of the Commission ("Staff") to file comments in this matter on or before March 28, 2011.

In accordance with the Refund Order, Level 3 filed its Opposition to Petition of AT&T Communications of Virginia, LLC on March 18, 2011, and Staff filed comments on March 28, 2011.

On April 21, 2011, the Commission entered an Order Appointing Hearing Examiner to conduct all further proceedings in connection with the Petition. Thereafter, the Hearing Examiner entered a Ruling on May 10, 2011, scheduling a procedural conference on June 1, 2011. Before the date for that conference, AT&T, on May 16, 2011, filed a letter requesting ". . . leave to withdraw its [P]etition without prejudice, and with a full reservation of its rights" ("AT&T Withdrawal Motion").

Neither the Staff nor Level 3 opposed the AT&T Withdrawal Motion and the Hearing Examiner issued, on May 23, 2011, the Report of A. Ann Berkebile, Hearing Examiner ("Examiner's Report"). The Examiner's Report found that the AT&T Withdrawal Motion should be granted and that the Commission should dismiss AT&T's Petition without prejudice. The Examiner's Report also cancelled the procedural conference that had been scheduled for June 1, 2011.

NOW THE COMMISSION having considered the AT&T Withdrawal Motion, the Examiner's Report, and the lack of objections, is of the opinion and finds that the Hearing Examiner's recommendations should be adopted and that the Petition should be dismissed without prejudice.

Accordingly, IT IS ORDERED THAT:

(1) The Commission adopts the recommendations of the May 23, 2011 Report of A. Ann Berkebile, Hearing Examiner.

(2) The AT&T Petition is dismissed without prejudice, the Commission's Refund Order is vacated, and the record developed herein shall be placed in the file for ended causes.

¹ On the same date, AT&T delivered a copy of the Petition to Level 3 Communications, LLC ("Level 3").

² Refund Order at 1 (quoting Petition at 5).

³ *Id.* at 2.

**CASE NO. PUC-2011-00025
JULY 26, 2011**

PETITION OF
NTELOS HOLDINGS CORP., NTELOS INC., QUADRANGLE CAPITAL PARTNERS LP,
QUADRANGLE NTELOS HOLDINGS II LP, NTELOS WIRELINE ONE INC.,
NTELOS WIRELINE TWO INC., NTELOS TELEPHONE INC.,
ROANOKE & BOTETOURT TELEPHONE COMPANY, NTELOS NETWORK INC.,
NA COMMUNICATIONS INC., R&B NETWORK, INC.,
and
FIBERNET OF VIRGINIA, INC.

For an Order Authorizing Transfer of Control Pursuant to Va. Code § 56-88 *et seq.*

FINAL ORDER

Procedural History

On March 1, 2011, pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Va. Code"),¹ NTELOS Holdings Corp. ("NTELOS Holdings"), NTELOS Inc. ("NTELOS"), Quadrangle Capital Partners LP, Quadrangle NTELOS Holdings II LP (collectively, "Quadrangle Funds"), NTELOS Wireline One Inc. ("Wireline One"), NTELOS Wireline Two Inc. ("Wireline Two"), NTELOS Telephone Inc. ("NTELOS Telephone"), Roanoke & Botetourt Telephone Company ("R&B Telephone"), NTELOS Network Inc. ("NTELOS Network"), NA Communications Inc. ("NA Communications"), R&B Network, Inc. ("R&B Network"), and FiberNet of Virginia, Inc. ("FiberNet VA") (collectively, "Petitioners"), filed a petition ("Petition") with the State Corporation Commission ("Commission") seeking approval of the transfer of control of the NTELOS ILECs and NTELOS CLECs² that will result from the separation of the subsidiaries of NTELOS Holdings into wireline and wireless operations. ("Proposed Transaction").³

On April 14, 2011, the Commission issued its Order for Notice and Comment ("Notice Order") establishing a procedural schedule for the Petition and extending the time for Commission review for an additional ninety (90) days, pursuant to § 56-88.1 of the Code. The Notice Order docketed the Petition and assigned it Case No. PUC-2011-00025; appointed a hearing examiner to rule on any discovery matters that may arise during the course of this proceeding;⁴ required the Petitioners to publish notice of the Petition on or before April 27, 2011, with proof of such notice to be filed on or before May 23, 2011; required comments, notices of participation, and requests for hearing to be filed on or before May 23, 2011; and required that a Staff Report on the Petition be filed on or before June 23, 2011, with the Petitioners' response to the Staff Report or to comments or requests for hearing submitted by other persons to be filed on or before July 8, 2011. No comments, notices of participation, or requests for hearing were filed in this proceeding.

On April 19, 2011, pursuant to the Notice Order, a Hearing Examiner's Protective Ruling was entered granting the Petitioners' Motion for a Protective Ruling and establishing procedures to facilitate the filing, exchange, and handling of confidential and competitively sensitive information as well as extraordinarily sensitive information and documents, and to permit the development of all issues in this proceeding.

On May 23, 2011, the Petitioners filed an Affidavit of Publication of Notice with the Commission, pursuant to Ordering Paragraphs (5) and (6) of the Commission's Notice Order, providing proof of the notice published in newspapers having general circulation throughout the Petitioners' Virginia wireline service territory.⁵

On June 23, 2011, the Staff Report, a collaborative effort of the Accounting, Communications and Economic and Finance divisions of the Commission, was filed, recommending approval of the Proposed Transaction with certain conditions, including ongoing responsibilities to file a report of action, to file executed copies of the Separation and Distribution Agreement, the Transition Services Agreement, and the Tax Matters Agreement, and to track and have available transaction costs and savings information for the NTELOS ILECs and NTELOS CLECS.

On June 30, 2011, the Petitioners filed their reply to the Staff Report. That reply took no exception to the Staff Report's findings or recommended conditions. It did note, however, that any dividends paid by NTELOS Telephone or R&B Telephone would be paid to Wireline Two rather than Wireline One and recommended that item (i) at p. 16 of the Staff Report regarding thirty (30) days' advance notice of payment of dividends refer to payments to Wireline Two rather than to Wireline One. The Staff has no objection to that correction.

The Proposed Transaction

Currently, NTELOS Holdings furnishes both wireline and wireless telephone service through its various subsidiaries. In this proceeding, the Petitioners seek to separate those two (2) varieties of service into two distinct publicly traded entities, the new one to be exclusively wireline and the old one, NTELOS Holdings, to be exclusively wireless. In order to complete the Separation, NTELOS Holdings formed two new companies, Wireline One and

¹ Va. Code § 56-88 *et seq.*

² The two Virginia NTELOS ILECs are NTELOS Telephone and R&B Telephone, and the four Virginia NTELOS CLECs are NTELOS Network, NA Communications, R&B Network, and FiberNet VA.

³ Hereafter, the separation of the subsidiaries of NTELOS Holdings into wireline and wireless operations will be referred to as the "Separation."

⁴ The hearing examiner was appointed pursuant to Va. Code § 12.1-31 and 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure.

⁵ Publication was completed in the newspapers having general circulation throughout the Petitioners' Virginia wireline service territory between April 26, 2011, and April 27, 2011.

Wireline Two, which are set up to parallel NTELOS Holdings and NTELOS, respectively.⁶ Following the completion of certain intermediate reorganization steps, Wireline Two will become a wholly owned direct subsidiary of Wireline One, and the stock of the NTELOS ILECs, NTELOS CLECs, and non-Virginia wireline entities will be contributed into Wireline Two in preparation of the Separation.⁷

The Separation will be effectuated pursuant to the terms of a Separation and Distribution Agreement between NTELOS Holdings and Wireline One, through which the wireline operations under Wireline One will become an entity independent from NTELOS Holdings, and NTELOS Holdings will essentially become a wireless company. As a result, ultimate ownership of the NTELOS ILECs and NTELOS CLECs will transfer from NTELOS Holdings to Wireline One. Immediately following the completion of the Separation, the Quadrangle Funds, which owned approximately 27% of the equity of NTELOS Holdings will own this same percentage of both NTELOS Holdings and Wireline One.

Upon completion of the Proposed Transaction, the NTELOS ILECs and NTELOS CLECs will continue to operate as certificated carriers under Wireline One and will continue to provide telecommunications services to their respective customers in Virginia under the same rates, terms, and conditions of service as currently provided. The only difference in the structure and operation of the NTELOS ILECs and NTELOS CLECs post-transfer will be the separation of the wireline business from the wireless business. In Virginia, there should be little, if any, effect on customers. Establishing the wireline business separate from the wireless business should have no adverse impact on the provision of service at just and reasonable rates and may, in fact, improve the ability of the NTELOS ILECs and NTELOS CLECs to provide service separate from the wireless business. The wireline and wireless businesses basically operate separately now. Having a structural separation as with the spin-off should enable the wireline companies to focus exclusively on the wireline business and thereby improve service to customers. There is no indication that the Proposed Transaction will adversely affect the provision of adequate service to the public at just and reasonable rates.

NOW THE COMMISSION, having considered the pleadings and the applicable law, is of the opinion and finds that the transfer of control proposed by the Petitioners will neither impair nor jeopardize the furnishing of adequate telephone service to the public at just and reasonable rates and that the Petition should be granted subject to the requirements ordered herein.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Petition is granted subject to the requirements established in this Final Order.
- (2) It is further ordered as follows:
 - (a) A report of action shall be filed within thirty (30) days of the closing of the Proposed Transaction, subject to extension by the Commission's Director of Public Utility Accounting, including the date the Proposed Transaction took place.
 - (b) The Petitioners shall file executed copies of the Separation and Distribution Agreement, Transition Services Agreement, and Tax Matters Agreement within thirty (30) days of the closing of the Proposed Transaction.
 - (c) Transaction costs and savings shall be tracked for the NTELOS ILECs and NTELOS CLECs for a minimum of three (3) years in the event they are involved in a proceeding before the Commission where such information would be needed. The cost and savings information need not be filed with the Commission but should be available upon request in an appropriate proceeding.
 - (d) NTELOS Telephone and R&B Telephone shall submit to the Director of Economics and Finance, at least thirty (30) days in advance, notice of the prospective amount and date of any dividend payment to Wireline One, Wireline Two, or their successors.
 - (e) NTELOS Telephone and R&B Telephone shall not assume responsibility for the liabilities of Wireline One, either directly or indirectly, as guarantor, endorser, surety, or otherwise with respect to the securities of Wireline One.
- (3) The remedies for violation of any of the Commission's orders herein include the penalties set forth in §§ 12.1-13 and 12.1-33 of the Code.
- (4) This matter is dismissed.

⁶ Wireline One is set up to parallel NTELOS Holdings for the wireline companies ("Wireline Companies"). Wireline Companies refers collectively to the NTELOS wireline companies that will ultimately comprise Wireline One. Wireline Two is set up to parallel present day NTELOS, and will, among other things, serve as the cash administrator for the Wireline Companies.

⁷ Wireline One will own 100% of the shares of Wireline Two following the completion of the internal structuring. Through a series of intermediate reorganization steps, NTELOS will transfer ownership of the NTELOS ILECs, combined NTELOS CLECs and non-Virginia wireline entities to Wireline Two, and subsequently contribute Wireline Two and its subsidiaries to Wireline One.

**CASE NO. PUC-2011-00026
JULY 28, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
JACQUI ELECTRIC CO.,
Defendant

FINAL ORDER

On March 29, 2011, the State Corporation Commission ("Commission") issued its Rule to Show Cause ("Rule") against Jacqui Electric Co. ("Defendant"). The Rule appointed a Hearing Examiner to conduct all further proceedings and scheduled a hearing for May 24, 2011, at which the Defendant was required to appear and show cause why penalties should not be imposed for alleged violations of the Pay Telephone Registration Act, § 56-508.15 *et seq.* of the Code of Virginia ("Act"), the Rules for Payphone Service and Instruments, 20 VAC 5-407-10 *et seq.* ("Rules"), promulgated pursuant to the Act, and for failing to comply fully with the Commission's June 18, 2010 Order in Case No. PUC-2009-00070 ("June 18, 2010 Order").

The June 18, 2010 Order directed the Defendant to comply with the terms of the negotiated and executed stipulation of April 21, 2010 ("Stipulation") between the Defendant and the Staff of the Commission. Pursuant to the Stipulation, the Defendant agreed to (i) pay the amount of \$500 to the Commonwealth in settlement of the alleged violations of the Act and the Rules set forth in the January 10, 2010 Rule to Show Cause; (ii) register its payphones instruments as of January 1, 2010 with the Division of Communications ("Division"), account for the difference in the number of instruments registered in 2009 (95 payphones) and the number registered for 2010, pay all related fees, and remove its inactive payphone instruments; and (iii) file a report with the Division on or before June 21, 2010, showing that it had fulfilled the terms of the Stipulation.

The Defendant paid only the \$500 settlement amount and otherwise failed to fulfill the other terms of the Stipulation as well as the June 18, 2010 Order.

The hearing convened as scheduled. Counsel for the Staff presented the testimony of Jim Mullenau, Telecommunications Specialist with the Commission's Division of Communications. He described his efforts to have the Defendant renew the registration for its Virginia payphones for the years 2010 and 2011, pursuant to 20 VAC 5-407-40 of the Rules. He also stated that the Defendant had failed to account for the 2010 payphones as required by the Commission's June 18, 2010 Order. The Defendant, having been furnished proper notice, failed to appear.

The Report of Howard P. Anderson, Jr., Hearing Examiner, issued on June 21, 2011 ("Report" or "Hearing Examiner's Report"). In that Report, the Hearing Examiner found the Defendant to be in default of the Commission's June 18, 2010 Order; should have its authority to participate as a payphone service provider in Virginia revoked; and be fined in the amount of One Thousand Three Hundred Eighty Dollars (\$1,380).

The Hearing Examiner's Report recommends that the findings therein be adopted; that the Defendant be found in violation of the Rule to Show Cause; that the Defendant's authority to provide payphone service in Virginia be revoked; that the Defendant be fined in the amount of Three Hundred Eighty Dollars (\$380) for failure to register its payphones in 2010, and One Thousand Dollars (\$1,000) for violating the Commission's June 18, 2010 Order; and that this case be dismissed from the Commission's docket of active cases and the papers filed herein be passed to the file for ended causes.

The Defendant filed no comments to the Hearing Examiner's Report.

NOW THE COMMISSION, having considered the Hearing Examiner's Report, is of the opinion and finds that the recommendations of the Hearing Examiner should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings of the Hearing Examiner's Report of June 21, 2011, are adopted.
- (2) The Defendant is hereby fined in the amount of Three Hundred Eighty Dollars (\$380) for failure to register its payphones in 2010, and One Thousand Dollars (\$1,000) for violating the Commission's June 18, 2010 Order.
- (3) The Defendant's registration to furnish pay telephone service in Virginia, No. PSP 546, is hereby revoked.
- (4) The Division of Communications shall direct local telephone service providers to terminate service to the Defendant's payphones.
- (5) This matter is dismissed and the papers filed herein shall be passed to the file for ended causes.

CASE NO. PUC-2011-00027
APRIL 27, 2011

JOINT PETITION OF
 CAVALIER BROADBAND LLC,
 ROBERT HAMLIN,
 and
 HELIX COMPUTER SYSTEMS, INC.,

For approval of the transfer of control of Cavalier Broadband LLC to Helix Computer Systems, Inc., pursuant to Va. Code § 56-88 *et seq.*

ORDER GRANTING APPROVAL

On March 24, 2011, Cavalier Broadband LLC ("Cavalier Broadband"), Robert Hamlin ("Hamlin"), and Helix Computer Systems, Inc. ("Helix"), (collectively, the "Joint Petitioners"), filed a Joint Petition with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for approval of the transfer of control of Cavalier Broadband from Hamlin to Helix.

The Joint Petitioners filed the Joint Petition with the Commission under seal, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure ("Commission's Rules") regarding confidential information, in order to obtain confidential treatment of Confidential Exhibits 1, 4, and 5 of the Joint Petition (collectively, the "Confidential Exhibits"), which contain the Joint Petitioners' confidential Membership Interest Purchase Agreement, the confidential financial statements of Helix, and the confidential financial statements of Cavalier Broadband, respectively. Rule 5 VAC 5-20-170 states, in part: "When an application (including supporting documents and prefiled testimony) contains information that the applicant claims to be confidential, the filing shall be made under seal and accompanied by a motion for protective order or other confidential treatment." Therefore, on March 24, 2011, concurrently with the Joint Petition and pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules, the Joint Petitioners filed with the Commission a Motion for Entry of a Protective Order ("Motion") requesting that the Commission enter a protective order establishing the procedures through which the confidential information contained in the Confidential Exhibits will be handled in the current proceeding.² On March 29, 2011, Staff filed a Memorandum of Completeness, which deemed the Joint Petition complete as of March 24, 2011.

The Joint Petitioners request Commission approval of the transfer of direct control of Cavalier Broadband, which holds a certificate of public convenience and necessity ("CPCN") in Virginia, from Hamlin to Helix (the "Proposed Transaction"). Pursuant to a Membership Interest Purchase Agreement ("Purchase Agreement") dated March 16, 2011, between the Joint Petitioners, Hamlin will sell his sole membership interest in Cavalier Broadband to Helix, resulting in Helix becoming the sole member of Cavalier Broadband and, therefore, acquiring direct control of Cavalier Broadband. The Joint Petitioners state that Hamlin will be compensated by Helix for his membership interest in Cavalier Broadband according to the terms of the Purchase Agreement. Upon completion of the Proposed Transaction, Hamlin will remain the President and CEO of Cavalier Broadband; however, Cavalier Broadband will become a wholly owned direct subsidiary of Helix.

The Joint Petitioners state that the Proposed Transaction will not result in any change to Cavalier Broadband except for its ultimate ownership and, therefore, the Proposed Transaction will be virtually transparent to Cavalier Broadband's customers in Virginia. The Joint Petitioners further state that the Proposed Transaction is a straightforward transfer of control that will provide Cavalier Broadband with greater financial resources and access to capital, which will enable it to invest in networks, systems and employees that can reach more customers in Virginia with a broad range of innovative products over an advanced network. Upon completion of the Proposed Transaction, the Joint Petitioners represent that Cavalier Broadband will continue to operate as a certificated carrier in Virginia and will continue to provide service to its customers under the same name, and at the same rates, terms and conditions as immediately prior to the Proposed Transaction.

NOW THE COMMISSION, upon consideration of the Joint Petition, representations of the Joint Petitioners, and having been advised by its Staff, is of the opinion and finds that the Joint Petitioners' Motion is no longer necessary and should, therefore, be denied.³ The Commission is further of the opinion and finds that the above-described Proposed Transaction, resulting in the transfer of direct control of Cavalier Broadband from Hamlin to Helix, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

(1) The Joint Petitioners' Motion for Entry of a Protective Order is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(2) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Petitioners are hereby granted approval of the transfer of control of Cavalier Broadband LLC from Robert Hamlin to Helix Computer Systems, Inc., as described herein.

¹ Va. Code § 56-88 *et seq.*

² The Joint Petitioners state that they anticipate that the disclosure of additional confidential information may be required over the course of this proceeding. Therefore, the Joint Petitioners also included a Proposed Protective Order with the Motion which, in part, recognizes that certain requested information or documents may require a higher level of protection from disclosure and provides that protection for such information and documents should be addressed on a case-by-case basis.

³ The Commission held the Joint Petitioners' Motion in abeyance. We note that the Commission has received no request for leave to review the confidential information contained in the Confidential Exhibits filed by the Joint Petitioners in this proceeding. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(3) The Joint Petitioners shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the Proposed Transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the Proposed Transaction took place.

(4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2011-00029
MAY 16, 2011**

APPLICATION OF
GC PIVOTAL, LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On March 31, 2011, GC Pivotal, LLC ("GC Pivotal" or the "Applicant"), filed an application for certificates of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia ("Application"). The Applicant also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia.

By Order for Notice and Comment dated April 5, 2011 ("Notice Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Staff of the Commission ("Staff") to conduct an investigation and file a Staff Report. On April 25, 2011, the Applicant filed proof of publication and proof of service as required by the Notice Order.

On May 6, 2011, the Staff filed its Report finding that GC Pivotal's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.*, and the Rules Governing the Certification of Interexchange Carriers, 20 VAC 5-411-10 *et seq.* Based upon its review of GC Pivotal's Application, the Staff determined it would be appropriate to grant the Applicant certificates to provide local exchange and interexchange telecommunications services subject to the following condition: GC Pivotal should notify the Commission's Division of Economics and Finance no less than thirty (30) days prior to cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

On May 10, 2011, GC Pivotal, by counsel, filed a letter stating that while the Applicant did not intend to file a response to the Staff Report, GC Pivotal has no objection to the recommendations in the Staff Report. The Applicant also requested that the Commission enter a final order in this proceeding by May 16, 2011.

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted certificates to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code of Virginia, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) GC Pivotal, LLC, is hereby granted a certificate of public convenience and necessity, No. TT-263A, to provide interexchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) GC Pivotal, LLC, is hereby granted a certificate of public convenience and necessity, No. T-712, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code of Virginia, the Applicant may price its interexchange telecommunications services competitively.

(4) The Applicant shall provide tariffs to the Commission's Division of Communications that conform to all applicable Commission rules and regulations.

(5) GC Pivotal, LLC, shall notify the Division of Economics and Finance no less than thirty (30) days prior to cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(6) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

**CASE NO. PUC-2011-00030
APRIL 14, 2011**

APPLICATION OF
SHENANDOAH TELEPHONE COMPANY

For cancellation of certificate of public convenience and necessity for the provision of interexchange telecommunications services and for cancellation of certificate of public convenience and necessity for the provision of local exchange telecommunications services and reissuance in new name

FINAL ORDER

On September 14, 2009, the State Corporation Commission ("Commission") entered its Order Granting Approval,¹ authorizing the transfer of telephone assets of North River Telephone Cooperative ("North River") to Shenandoah Telephone Company ("Shentel"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56, Virginia Code §§ 56-88 *et seq.*

On March 31, 2011, Shentel filed a letter application ("Application") with the Commission, advising that the acquisition of North River was completed on November 1, 2009, and requesting that the Commission reissue the Assigned Facilities Act Certificate T-279a for the Mount Solon Exchange in Shentel's name and cancel the North River IXC certificate TT-71 and its related tariffs, as there are no former North River customers receiving service under this certificate of public convenience and necessity or its tariffs.

NOW THE COMMISSION, upon consideration of the Application and having been advised by its Staff, is of the opinion and finds that Shentel's requests should be granted.

Accordingly, IT IS ORDERED THAT:

(1) Certificate No. TT-71 issued to North River for the provision of interexchange telecommunications services and its related tariffs are hereby cancelled.

(2) Certificate No. T-279a issued to North River for the provision of local exchange telecommunications services in the Mount Solon Exchange shall be cancelled and reissued in the name of Shenandoah Telephone Company as Certificate No. T-279b.

(3) This case is hereby dismissed from the Commission's active docket, and the papers filed herein shall be placed in the Commission's file for ended causes.

¹ *Joint Petition of Shenandoah Telephone Company and North River Telephone Cooperative*, Case No. PUC-2009-00033.

**CASE NO. PUC-2011-00031
AUGUST 3, 2011**

APPLICATION OF
CREXENDO BUSINESS SOLUTIONS OF VIRGINIA, INC.

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

FINAL ORDER

On March 31, 2011, Crexendo Business Solutions of Virginia, Inc. ("Crexendo" or the "Applicant"), filed an application for certificates of public convenience and necessity with the State Corporation Commission ("Commission") to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia ("Application"). The Applicant also requested authority to price its interexchange telecommunications services on a competitive basis pursuant to § 56-481.1 of the Code of Virginia.

By Order for Notice and Comment dated April 26, 2011 ("Notice Order"), the Commission directed the Applicant to provide notice to the public of its Application and directed the Commission Staff ("Staff") to conduct an investigation and file a Staff Report. On June 28, 2011, the Applicant filed proof of publication and proof of service as required by the Notice Order. Crexendo filed a Motion to Extend Procedural Dates on May 25, 2011, and the Commission's June 7, 2011 Order Extending Procedural Schedule granted additional time for the Applicant to secure and file its bond. The Commission has received no comments or requests for hearing.

On July 15, 2011, the Staff filed its Staff Report finding that Crexendo's Application was in compliance with the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, 20 VAC 5-417-10 *et seq.*, and the Rules Governing the Certification of Interexchange Carriers, 20 VAC 5-411-10 *et seq.* Based upon its review of Crexendo's Application, the Staff determined it would be appropriate for the Commission to grant the Applicant certificates to provide local exchange and interexchange telecommunications services subject to the following condition: Crexendo should notify the Commission's Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and should provide a replacement bond at that time. This requirement should be maintained until such time as the Commission determines it is no longer necessary.

On July 28, 2011, the Applicant, by counsel, filed a response to the Staff Report in which it stated it had no opposition to that Report.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOW THE COMMISSION, having considered the Application and the Staff Report, finds that the Applicant should be granted certificates to provide local exchange and interexchange telecommunications services. Having considered § 56-481.1 of the Code of Virginia, the Commission further finds that the Applicant may price its interexchange telecommunications services competitively.

Accordingly, IT IS ORDERED THAT:

(1) Crexendo Business Solutions of Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. TT-265A, to provide interexchange telecommunications services subject to the restrictions set forth in the Commission's Rules Governing the Certification of Interexchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(2) Crexendo Business Solutions of Virginia, Inc., is hereby granted a certificate of public convenience and necessity, No. T-714, to provide local exchange telecommunications services subject to the restrictions set forth in the Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, § 56-265.4:4 of the Code of Virginia, and the provisions of this Order.

(3) Pursuant to § 56-481.1 of the Code of Virginia, the Applicant may price its interexchange telecommunications services competitively.

(4) Crexendo shall notify the Commission's Division of Economics and Finance no less than thirty (30) days prior to the cancellation or lapse of its bond and shall provide a replacement bond at that time. This requirement shall be maintained until such time as the Commission determines it is no longer necessary.

(5) There being nothing further to come before the Commission, this case shall be dismissed and the papers filed herein placed in the file for ended causes.

**CASE NO. PUC-2011-00032
APRIL 27, 2011**

APPLICATION OF
FAIRPOINT COMMUNICATIONS SOLUTIONS CORP. – VIRGINIA

For cancellation of certificates of public convenience and necessity for the provision of local exchange and interexchange telecommunications services

ORDER CANCELLING CERTIFICATES

By previous Orders issued at various times in other dockets, the State Corporation Commission ("Commission") issued Certificates of Public Convenience and Necessity No. T-502a permitting the provision of local exchange telecommunications services and No. TT-107B permitting the provision of interexchange telecommunications services to FairPoint Communications Solutions Corp. - Virginia ("FairPoint")

On April 7, 2011, FairPoint filed a letter application with the Commission requesting cancellation of the Certificates of Public Convenience and Necessity previously issued.

NOW UPON CONSIDERATION of the matter, the Commission finds that Certificate Nos. T-502a and TT-107B issued to FairPoint should be cancelled.¹

Accordingly, IT IS ORDERED THAT:

(1) This matter is hereby docketed and assigned Case No. PUC-2011-00032.

(2) Certificate of Public Convenience and Necessity, No. T-502a issued to FairPoint to provide local exchange telecommunications services throughout Virginia is hereby cancelled.

(3) Certificate of Public Convenience and Necessity, No. TT-107B issued to FairPoint to provide interexchange telecommunications services throughout Virginia is hereby cancelled.

(4) There being nothing further to be done in this matter, this case shall be removed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's file for ended causes.

¹ FairPoint discontinued all local and interexchange services and cancelled its local and interexchange tariffs in *Application of FairPoint Communications Corp. - Virginia, To discontinue retail local and long distance services in Virginia*, Case No. PUC-2001-00248, Final Order (July 18, 2002).

**CASE NO. PUC-2011-00033
MAY 16, 2011**

JOINT PETITION OF
GLOBAL CAPACITY DIRECT, LLC,
GLOBAL CAPACITY GROUP, INC.,
GLOBAL CAPACITY HOLDCO, LLC,
CAPITAL GROWTH SYSTEMS, INC.,
GC PIVOTAL, LLC,
and
FFN INVESTMENTS, LLC,

For approval of the transfer of control of Global Capacity Direct, LLC, to GC Pivotal, LLC, pursuant to Va. Code § 56-88 *et seq.*

ORDER GRANTING APPROVAL

On April 12, 2011, Global Capacity Direct, LLC ("GCD"), Global Capacity Group, Inc. ("GCG"), and GC Pivotal, LLC ("Pivotal"), (collectively, "Petitioners"), filed a Joint Petition with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for approval of the transfer of control of GCD to Pivotal.

On April 22, 2011, the Petitioners filed a letter with the Commission, in which they added Capital Growth Systems, Inc. ("CG Systems"), the ultimate parent company of GCD, and FFN Investments, LLC ("FFN"), the ultimate parent company of Pivotal, as Petitioners in this proceeding. On April 25, 2011, the Petitioners filed a second letter with the Commission, in which they also added Global Capacity Holdco, LLC ("Global Holdco"), the direct parent of GCD, as a Petitioner in this proceeding.² Accordingly, GCD, GCG, Pivotal, CG Systems, FFN, and Global Holdco are referred to herein collectively as the "Joint Petitioners." On April 27, 2011, Staff filed a Memorandum of Completeness, which deemed the Joint Petition complete as of April 25, 2011.

The Joint Petitioners request Commission approval of the transfer of control of GCD, which holds a certificate of public convenience and necessity ("CPCN") in Virginia, from Global Holdco to Pivotal in connection with the reorganization of Global Holdco and its affiliated entities under Chapter 11 of the United States Bankruptcy Code (the "Proposed Transaction"). Pivotal currently has an application pending with the Commission for CPCNs to provide local exchange and interexchange telecommunications services in Virginia in Case No. PUC-2011-00029.³ Upon completion of the Proposed Transaction and the issuance of the requested CPCNs in the pending application, Pivotal will begin providing telecommunications services to the current customers of GCD, and GCD will cease to exist.

The Proposed Transaction is part of, ultimately, a United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court")-approved purchase of GCD (among other assets) by the ultimate corporate parent of Pivotal, FFN. Global Holdco, the direct parent of GCD, will be purchased by FFN in bankruptcy from CG Systems through its direct subsidiary, Pivotal Global Capacity, LLC ("Pivotal Holdco").⁴ As Pivotal Holdco and, ultimately, FFN will be acquiring the assets of Global Holdco, including GCD, and neither holds a CPCN to provide regulated telecommunications services in Virginia, Pivotal was formed as a new operating company and direct subsidiary of Pivotal Holdco to conduct the regulated business, and make use of the assets, of GCD. The Joint Petitioners represent that the Proposed Transaction is being consummated as a part of the bankruptcy sale approved in the Bankruptcy Order and will ultimately result in the transfer of control of GCD to Pivotal through Pivotal's purchase of all of the assets of GCD.

The Joint Petitioners state that, upon completion of the Proposed Transaction and once certificated in Case No. PUC-2011-00029, Pivotal will provide telecommunications services to GCD's Virginia customers at the same rates, terms and conditions of service as immediately prior to the Proposed Transaction. The Joint Petitioners further state that, since the Proposed Transaction will not result in any changes to the underlying assets or corporate operations of GCD except for ownership, the Proposed Transaction will be virtually transparent to GCD's customers.

NOW THE COMMISSION, upon consideration of the Joint Petition, representations of the Joint Petitioners, and having been advised by its Staff, is of the opinion and finds that the above-described Proposed Transaction, resulting in the transfer of control of GCD to Pivotal, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved, subject to Pivotal receiving the requested CPCNs in Case No. PUC-2011-00029.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-88 .1 and 56-90 of the Code, the Joint Petitioners are hereby granted approval of the Proposed Transaction, as described herein, subject to Pivotal receiving the requested CPCNs in Case No. PUC-2011-00029.

¹ Va. Code § 56-88 *et seq.*

² CG Systems and Global Holdco were added as Petitioners because of their disposal of ultimate control and direct control of GCD, respectively, as a result of the proposed transaction; FFN was added as a Petitioner because of its acquisition of ultimate control of GCD as a result of the proposed transaction.

³ See *Application of GC Pivotal, LLC, For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services*, Case No. PUC-2011-00029 (April 5, 2011).

⁴ On January 26, 2011, the Bankruptcy Court issued an order approving the sale of the assets of various debtors related to Global Holdco, including GCD, to Pivotal Holdco and Pivotal Holdco-related entities (the "Bankruptcy Order"). See *In re Global Capacity Holdco, LLC, et al.*, Case No. 10-12302, Re: Docket Nos. 171, 288, 292, 305, 316, 325, 369 and 561 (Bankr. D. Dela.) (Jan. 26, 2011).

(2) The Joint Petitioners shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the Proposed Transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the Proposed Transaction took place.

(3) Once Pivotal has received the requested CPCNs in Case No. PUC-2011-00029 and the Proposed Transaction has taken place, the Joint Petitioners shall file an application with the Commission requesting that the current CPCN issued to GCD, Certificate No. T-651a, be canceled.

(4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2011-00034
AUGUST 8, 2011**

APPLICATION OF
MOSAIC NETWORKX LLC

For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services

ORDER GRANTING WITHDRAWAL

On July 1, 2011, Mosaic Networx LLC ("Mosaic") completed an application with the State Corporation Commission ("Commission") for certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia ("Application").

On July 12, 2011, the Commission issued an Order for Notice and Comment, which, among other things, docketed the Application, directed the Applicant to give notice to the public of the Application, set forth the requirements for the filing of a bond, and directed the Commission's Staff to conduct an investigation into the reasonableness of the Application and present its findings in a Staff Report.

On August 2, 2011, Mosaic filed a letter with the Commission requesting to withdraw its Application.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that Mosaic's request to withdraw its Application should be granted and that this case should be dismissed.

Accordingly, IT IS ORDERED THAT:

(1) Mosaic's request to withdraw its Application for certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services throughout the Commonwealth of Virginia is hereby granted.

(2) There being nothing further to come before the Commission, this case is dismissed and the papers filed herein shall be placed in the file for ended causes.

**CASE NO. PUC-2011-00037
AUGUST 19, 2011**

JOINT PETITION OF
GLOBAL CROSSING TELEMAGEMENT VA, LLC,
GLOBAL CROSSING LIMITED,
and
LEVEL 3 COMMUNICATIONS, INC.,

For approval of the transfer of control of Global Crossing Telemagement VA, LLC, and Related Transactions, pursuant to Va. Code § 56-88 *et seq.*

ORDER GRANTING APPROVAL

On May 3, 2011, Global Crossing Telemagement VA, LLC ("GC Telemagement"), Global Crossing Limited ("Global Crossing"), and Level 3 Communications, Inc. ("Level 3"), (collectively, "Joint Petitioners"), filed a Joint Petition with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for approval of the transfer of control of GC Telemagement and related transactions. Pursuant to 5 VAC 5-20-130 and 5 VAC 5-20-110 of the Commission's Rules of Practice and Procedure, the Joint Petitioners filed a Motion to Supplement the Joint Petition ("Motion") with the Commission on May 6, 2011, and filed a Second Motion to Supplement the Joint Petition ("Second Motion," and collectively with the May 6, 2011 Motion, "Motions") with the Commission on May 17, 2011.

The Joint Petitioners request Commission approval to consummate a transaction whereby Level 3 will acquire indirect control of GC Telemagement and Global Crossing Telecommunications, Inc. ("GC Telecommunications"), (collectively, "GC Companies"),² through its acquisition of

¹ Va. Code § 56-88 *et seq.*

² The GC Companies are both indirect operating subsidiaries of Global Crossing. GC Telemagement, however, is the only GC Company that holds a certificate of public convenience and necessity ("CPCN") in Virginia and, therefore, is the only GC Company for which approval under Chapter 5 of Title 56

ultimate control of Global Crossing, the current parent company of GC Telemanagement ("Proposed Transaction"). In connection with the Proposed Transaction, the Joint Petitioners also request Commission approval of certain other transactions that are related to the ownership of GC Telemanagement and Level 3's Virginia operating subsidiary companies (collectively, the "Level 3 Companies").³ In addition, the Joint Petitioners plan to participate in certain financing arrangements with Level 3's subsidiary, Level 3 Financing, Inc. ("Level 3 Financing").⁴

Pursuant to an Agreement and Plan of Amalgamation ("Agreement") dated April 11, 2011, between Level 3, Apollo Amalgamation Sub, Ltd. ("Apollo Sub"),⁵ and Global Crossing, Apollo Sub and Global Crossing will be amalgamated under Bermuda Law, which is essentially the same type of transaction as a merger under U.S. law. Immediately following the merger, the separate corporate existence of Apollo Sub and Global Crossing will cease, and the combined company, which will be renamed Level 3 GC Limited, will exist as a wholly owned direct subsidiary of Level 3 Financing and, ultimately, become a wholly owned subsidiary of Level 3 LLC. Upon completion of the Proposed Transaction, Level 3 will become the new ultimate corporate parent company of Level 3 GC Limited and, therefore, GC Telemanagement will become an indirect wholly owned subsidiary of Level 3.

As a result of an exchange of shares in connection with the Proposed Transaction, the Joint Petitioners state that STT Crossing Ltd ("STT"), a current direct shareholder in Global Crossing and an indirect shareholder in GC Telemanagement, will acquire a minority interest of approximately 24% in Level 3, and indirectly in the Level 3 Companies, immediately at closing of the Proposed Transaction.⁶ Pursuant to a separate stockholder rights agreement, any future share acquisitions by STT would be subject to a limitation on its interest in Level 3 of 34.5%. In order to accommodate any such acquisitions consistent with the stockholder rights agreement, the Joint Petitioners request approval for STT to hold a stock interest of 25% or more in Level 3, and indirectly in the Level 3 Companies and GC Telemanagement. The Joint Petitioners further assert that STT's interest could be subject to further fluctuations, including possible reductions below 25%. Accordingly, the Joint Petitioners also request approval for any future reductions by STT of its stock interest in Level 3, and its indirect interest in GC Telemanagement and the Level 3 Companies, to a level below 25%, as applicable.⁷

Southeastern Asset Management, Inc. ("Southeastern"), which is currently the largest Level 3 stockholder with an approximate 30% beneficial ownership interest, is expected to beneficially own approximately 19.2% of Level 3 upon completion of the Proposed Transaction. This reduction by Southeastern of its beneficial ownership interest in Level 3, and indirectly in the Level 3 Companies, to a level below 25% constitutes a disposition of control pursuant to § 56-88.1 of the Code. Accordingly, the Joint Petitioners request approval for the reduction of the beneficial ownership interest in Level 3 by Southeastern below 25% as a result of the Proposed Transaction.

The Joint Petitioners state that the Proposed Transaction will be conducted in a manner that will be largely transparent to the customers of the Level 3 Companies and GC Telemanagement in Virginia. The Proposed Transaction will not result in a change of carrier for the affected customers or any assignment of authorizations and will not result in the discontinuance, reduction, loss, or impairment of service to customers. Upon completion of the Proposed Transaction, GC Telemanagement and the Level 3 Companies will remain certificated carriers in Virginia and continue to provide telecommunications services to their customers without interruption and at the same rates, terms and conditions of service as currently provided.

The Proposed Transaction requires the approval of the Federal Communications Commission ("FCC"). In Case No. PUC-2003-00094, the Commission approved a transfer of control of Global Crossing Ltd., the parent company of GC Telemanagement, wherein Singapore Technologies Telemedia Pte Ltd. ("ST Telemedia") was permitted to acquire a 61.5% equity interest in Global Crossing.⁸ However, the Commission conditioned its approval upon the transaction being approved by the FCC and the Committee on Foreign Investment in the U.S. Ultimately, all the necessary approvals were received and the transaction was completed.⁹

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Joint Petitioners' Motions, which requested approval to supplement the Joint Petition in order to add additional information regarding the Proposed Transaction, should be granted.

Furthermore, we find that, consistent with our finding in Case No. PUC-2003-00094, any approval granted herein shall be conditioned upon approval of the Proposed Transaction by the FCC. Pending approval by the FCC, we find that the Proposed Transaction and related transactions, as of the Code is required. Therefore, all references made hereafter to GC Telemanagement are made in place of all references to the GC Companies made in the Joint Petition.

³ The four Level 3 subsidiaries operating as certificated carriers in Virginia are: Level 3 Communications, LLC ("Level 3 LLC"), Level 3 Communications of Virginia, Inc., Broadwing Communications, LLC, and TelCove Operations, LLC.

⁴ The proposed financing arrangements are discussed as a part of the Proposed Transaction. However, Commission approval is not required for the financing arrangements of competitive local exchange carriers under Chapter 3 of Title 56 of the Code.

⁵ Apollo Sub is a Bermuda exempted limited liability company and wholly owned subsidiary of Level 3 that was recently formed for the purpose of accomplishing the Proposed Transaction.

⁶ STT currently holds a 59.9% indirect interest in GC Telemanagement. As a result of the exchange of shares in connection with the Proposed Transaction, STT's indirect interest in GC Telemanagement will be reduced by approximately 35.9%, or to approximately 24%. This reduction of STT's indirect interest in GC Telemanagement by more than 25% constitutes a disposition of control pursuant to § 56-88.1 of the Code and, therefore, requires Commission approval. Accordingly, the Joint Petitioners also request Commission approval for STT to reduce its indirect interest in GC Telemanagement to approximately 24% as a result of the Proposed Transaction.

⁷ Pursuant to § 56-88.1 of the Code, any future fluctuation of STT's interest in Level 3, and indirectly in GC Telemanagement and the Level 3 Companies, to a level above or below 25% would constitute an acquisition or disposition of control and would, therefore, require Commission approval.

⁸ See *Petition of Global Crossing Ltd. (Debtor-in-Possession) and GC Acquisition Limited, For approval of the transfer of control of Global Crossing Ltd.'s Virginia operating subsidiaries to GC Acquisition Limited*, Case No. PUC-2003-00094, 2003 S.C.C. Ann. Rept. 270, Order Granting Approval (Aug. 13, 2003). The equity interest in Global Crossing acquired by ST Telemedia is now held by STT.

⁹ *Id.* at 2003 S.C.C. Ann. Rept. 272, Dismissal Order (Nov. 3, 2003).

described herein, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved, pursuant to § 56-88.1 of the Code.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Petitioners are hereby granted approval, subject to the condition set forth in Ordering Paragraph (2), for the transfers of control associated with the Proposed Transaction described herein, to include the transfer of indirect control of GC Telemanagement from Global Crossing to Level 3; the disposition of indirect control of GC Telemanagement by STT; the disposition of indirect control of the Level 3 Companies by Southeastern; and any future acquisition or disposition of indirect control of GC Telemanagement and the Level 3 Companies by STT as a result from the possible fluctuation of STT's interest in Level 3 rising or falling below the 25% threshold without obtaining prior Commission approval each time such event occurs, as described herein.

(2) The approval granted herein is conditioned upon approval of the Proposed Transaction by the FCC.

(3) The Joint Petitioners shall file with the Commission proof of the approval or denial by the FCC of the Proposed Transaction within ten (10) days of the issuance of the FCC's determination.

(4) Should approval be granted by the FCC, the Joint Petitioners shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the Proposed Transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the Proposed Transaction took place.

(5) This matter shall be continued until the requirements of Ordering Paragraph (3) have been met.

**CASE NO. PUC-2011-00037
OCTOBER 24, 2011**

JOINT PETITION OF
GLOBAL CROSSING TELEMAGEMENT VA, LLC,
GLOBAL CROSSING LIMITED,
and
LEVEL 3 COMMUNICATIONS, INC.,

For approval of the transfer of control of Global Crossing Telemanagement VA, LLC, and Related Transactions, pursuant to Va. Code § 56-88 *et seq.*

DISMISSAL ORDER

On May 3, 2011, Global Crossing Telemanagement VA, LLC ("GC Telemanagement"), Global Crossing Limited, and Level 3 Communications, Inc. (collectively, "Joint Petitioners"), filed a Joint Petition with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for approval of the transfer of control of GC Telemanagement ("Proposed Transaction") and related transactions.²

On August 19, 2011, the Commission issued an Order Granting Approval, in which it found *inter alia* that, conditioned upon receipt of approval by the Federal Communications Commission ("FCC"), the Proposed Transaction should be approved pursuant to § 56-88.1 of the Code.

On October 4, 2011, the Joint Petitioners filed proof of approval of the Proposed Transaction by the FCC.

NOW THE COMMISSION, upon consideration of the filings herein, is of the opinion and finds that, with the condition being met, this proceeding is now concluded.

Accordingly, IT IS ORDERED THAT with nothing further to come before the Commission in this proceeding, this case is hereby dismissed and the papers filed herein shall be placed in the Commission's file for ended causes.

¹ Va. Code § 56-88 *et seq.*

² Additionally, the Joint Petitioners filed a Motion to Supplement the Joint Petition with the Commission on May 6, 2011, and filed a Second Motion to Supplement the Joint Petition (collectively, "Motions") with the Commission on May 17, 2011. Subsequently, these Motions were granted by the Commission.

**CASE NO. PUC-2011-00039
AUGUST 26, 2011**

APPLICATION OF
ROANOKE & BOTETOIRT TELEPHONE COMPANY

For approval of an amendment to an Affiliates Agreement pursuant to the Affiliates Act, Va. Code § 56-76 *et seq.*

ORDER GRANTING APPROVAL

On May 31, 2011, Roanoke & Botetourt Telephone Company ("R&B Telephone" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"),¹ for approval of an amendment to its currently effective services agreement with NTELOS Holdings Corp. ("NTELOS Holdings"), NTELOS Inc. ("NTELOS"), and sixteen (16) other NTELOS affiliates with an effective date of August 4, 2006 ("Affiliates Agreement"), which was most recently approved by the Commission on February 1, 2007, in Case No. PUC-2006-00119 ("2007 Order").² In Ordering Paragraph (6) of its 2007 Order, the Commission ordered that R&B Telephone be required to seek Commission approval "for any changes in the terms and conditions of the [Affiliates Agreement], including successors and assigns."³

Accordingly, R&B Telephone filed the instant Application in compliance with Ordering Paragraph (6) of the Commission's 2007 Order requesting Commission approval, pursuant to the Affiliates Act, to amend its current Affiliates Agreement in order to modify the contracting parties of the agreement to reflect the corporate reorganization that will occur as a result of the NTELOS Separation⁴ (the "Amended Agreement"). In addition, R&B Telephone requests Commission authority to revise the Amended Agreement in advance of execution to reflect the new corporate names of NTELOS Wireline One Inc. ("Wireline One"), NTELOS Wireline Two Inc. ("Wireline Two"), R&B Telephone, and other parties to the Amended Agreement when such names are established.⁵ The Amended Agreement will replace the existing Affiliates Agreement approved by the Commission in its 2007 Order.

As described in the Application, R&B Telephone will continue to provide the same services to its affiliates and receive the same services from its new corporate parent, Wireline Two, after the NTELOS Separation as it does today under the current Affiliates Agreement. The only substantial change made to the Amended Agreement, other than the modification of the parties to the agreement, is that auditing services will no longer be directly charged to R&B Telephone and its affiliates by Wireline Two, but instead will be allocated among the affiliates pursuant to allocation method (#16) as described in Attachment A of the Amended Agreement (Documentation of Affiliates Transactions).⁶ The Amended Agreement also documents the procedures that will be utilized to allocate federal and state income taxes between the members of Wireline One's consolidated tax group upon completion of the NTELOS Separation.⁷ The Application states that no other substantive modifications of the current Affiliates Agreement are proposed in the Amended Agreement at this time.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described Amended Agreement and the Applicant's request for authority to revise the Amended Agreement in advance of execution to reflect the new corporate names of Wireline One, Wireline Two, R&B Telephone, and other parties to the Amended Agreement when such names are established, are in the public interest and should, therefore, be approved subject to the requirements recommended in the Commission Staff's Action Brief filed contemporaneously with this Order and as set forth below. These requirements are intended to clarify the nature and extent of our Affiliates Act approval in this case.

Accordingly, IT IS ORDERED THAT:

¹ Va. Code § 56-76 *et seq.* (the "Affiliates Act")

² See *Application of Roanoke & Botetourt Telephone Company, For approval to enter into an amended affiliates agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUC-2006-00119, 2007 S.C.C. Ann. Rept. 211, Order Granting Approval (Feb. 1, 2007). The Commission has also approved the Affiliates Agreement (with amendments) in four previous cases: (1) *Application of Roanoke & Botetourt Telephone Company, For authority to enter into affiliate transactions*, Case No. PUA-1990-00065, 1990 S.C.C. Ann. Rept. 233, Order Granting Authority (Dec. 20, 1990); (2) *Application of Roanoke and Botetourt Telephone Company, For approval of Amended Affiliates Agreement*, Case No. PUA-1993-00003, 1993 S.C.C. Ann. Rept. 192, Order Granting Authority (Mar. 10, 1993); (3) *Application of Roanoke & Botetourt Telephone Company, For approval to enter into an Amended Affiliates Agreement*, Case No. PUA-1995-00041, 1996 S.C.C. Ann. Rept. 128, Order Granting Approval (July 23, 1996); and (4) *Application of Roanoke & Botetourt Telephone Inc., For approval to enter into an amended affiliates agreement*, Case No. PUC-2003-00106, 2003 S.C.C. Ann. Rept. 282, Order Granting Approval (Sept. 17, 2003).

³ 2007 Order at 7.

⁴ The "NTELOS Separation" refers to the corporate separation of NTELOS' parent, NTELOS Holdings, into separate wireline and wireless operations, which was approved by the Commission on July 26, 2011, in Case No. PUC-2011-00025. See *Petition of NTELOS Holdings Corp., NTELOS Inc., Quadrangle Capital Partners LP, Quadrangle NTELOS Holdings II LP, NTELOS Wireline One Inc., NTELOS Wireline Two Inc., NTELOS Telephone Inc., Roanoke & Botetourt Telephone Company, NTELOS Network Inc., NA Communications Inc., R&B Network, Inc., and FiberNet of Virginia, Inc., For an Order Authorizing the Transfer of Control of the NTELOS ILECs and NTELOS CLECs pursuant to Va. Code § 56-88 et seq.*, Case No. PUC-2011-00025, Doc. Con. Cen. No. 450386, Final Order (July 26, 2011).

⁵ Upon completion of the NTELOS Separation, R&B Telephone and NTELOS' other wireline companies will be direct subsidiaries of Wireline Two, which, in turn, will be a direct subsidiary of Wireline One.

⁶ Allocation method (#16) states that, "Audit Fees will be allocated among the [affiliates] based on the relative amount of assets, liabilities and revenues for each affiliate."

⁷ See Attachment B to the Amended Agreement (Documentation of Affiliates Consolidated Tax Return Procedures) ("Tax Attachment"). The Tax Attachment lists the eleven (11) Wireline One affiliates as members of the consolidated tax group.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(1) Pursuant to § 56-77 of the Code, R&B Telephone is hereby granted approval of its Amended Agreement and its request for authority to revise the Amended Agreement in advance of execution to reflect the new corporate names of Wireline One, Wireline Two, R&B Telephone, and other parties to the Amended Agreement when such names are established, as described herein, provided that the requirements as set forth herein are met.

(2) The approval granted herein for the Amended Agreement is limited to five (5) years from the date of this Order Granting Approval.

(3) Should R&B Telephone wish to continue operating under the Amended Agreement, as approved herein, after the five (5)-year period, subsequent Commission approval shall be required.

(4) Approval of the Amended Agreement shall be limited to services specifically identified in the Amended Agreement. Should R&B Telephone wish to obtain additional services from Wireline Two or another affiliate, or provide additional services to its affiliates, other than those services specifically approved in this case, subsequent Commission approval shall be required.

(5) Separate Commission approval shall be required for any changes in the terms and conditions of the Amended Agreement approved herein, including changes in allocation methodologies affecting R&B Telephone, and successors and assigns.

(6) R&B Telephone shall maintain records to demonstrate that the services provided by R&B Telephone to its affiliates are cost beneficial to Virginia customers and that, for all services provided by R&B Telephone to its affiliates where a market and a market price may exist, and the services were not priced at the tariffed rate, R&B Telephone shall bear the burden of showing that it charged the higher of cost or market for such services. Likewise, where services are provided to R&B Telephone by Wireline Two or another affiliate, R&B Telephone's records must demonstrate that such services are beneficial to Virginia customers and that, where a market and a market price exist, R&B Telephone paid the lower of cost or market for such services. Records of such investigations and comparisons shall be available for Commission Staff review upon request.

(7) The approval granted herein shall supersede the approval granted in Case No. PUC-2006-00119.

(8) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(9) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein, whether or not such affiliate is regulated by this Commission.

(10) The approval granted herein shall have no ratemaking implications. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Amended Agreement.

(11) The Commission reserves the right to reflect ratemaking adjustments to R&B Telephone's income taxes in the course of any Commission review and analysis of R&B Telephone's cost of service in the future.

(12) R&B Telephone shall file an executed copy of the Amended Agreement approved herein within thirty (30) days of the completion of the NTELOS Separation, to include the new corporate names of Wireline One, Wireline Two, R&B Telephone, and the other parties to the Amended Agreement, subject to administrative extension by the Commission's Director of Public Utility Accounting.

(13) All transactions under the Amended Agreement shall be included in R&B Telephone's Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting on or before April 1 of each year, which deadline may be extended administratively by the Commission's Director of Public Utility Accounting. In addition to information currently provided in the ARAT, all transactions under the Amended Agreement shall be reported in the ARAT as follows:

- (a) By Case Number in which the transactions were approved;
- (b) Description of services provided to R&B Telephone by Wireline Two or another affiliate, and services provided by R&B Telephone to its affiliates;
- (c) Transactions by month; and
- (d) Dollar amount paid for each type of service, such as amount paid for Human Resources services, Accounting services, Customer Care services, etc.

(14) R&B Telephone shall also prepare an annual detailed reconciliation schedule of any differences between its allocation of actual federal and state tax liabilities and what such liabilities are on a separate return basis. Beginning April 1, 2012, this reconciliation schedule shall be included with R&B Telephone's ARAT submitted to the Commission's Director of Public Utility Accounting each year. If there are no differences between R&B Telephone's allocated and separate return tax liabilities, then R&B Telephone shall prepare a verified legal representation to that effect to be included as an addendum to its ARAT each year.

(15) In the event that any annual informational and/or general rate case filings are not based on a calendar year, then R&B Telephone shall include the affiliate information contained in the ARAT in such filings.

(16) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2011-00040
AUGUST 26, 2011**

APPLICATION OF
NTELOS TELEPHONE INC.

For approval of an amendment to an Affiliates Agreement pursuant to the Affiliates Act, Va. Code § 56-76 *et seq.*

ORDER GRANTING APPROVAL

On May 31, 2011, NTELOS Telephone Inc. ("NTELOS Telephone" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"),¹ for approval of an amendment to its currently effective services agreement with NTELOS Holdings Corp. ("NTELOS Holdings"), NTELOS Inc. ("NTELOS"), and sixteen (16) other NTELOS affiliates with an effective date of August 4, 2006 ("Affiliates Agreement"), which was most recently approved by the Commission on February 1, 2007, in Case No. PUC-2006-00118 ("2007 Order").² In Ordering Paragraph (6) of its 2007 Order, the Commission ordered that NTELOS Telephone be required to seek Commission approval "for any changes in the terms and conditions of the [Affiliates Agreement], including successors and assigns."³

Accordingly, NTELOS Telephone filed the instant Application in compliance with Ordering Paragraph (6) of the Commission's 2007 Order requesting Commission approval, pursuant to the Affiliates Act, to amend its current Affiliates Agreement in order to modify the contracting parties of the agreement to reflect the corporate reorganization that will occur as a result of the NTELOS Separation⁴ (the "Amended Agreement"). In addition, NTELOS Telephone requests Commission authority to revise the Amended Agreement in advance of execution to reflect the new corporate names of NTELOS Wireline One Inc. ("Wireline One"), NTELOS Wireline Two Inc. ("Wireline Two"), NTELOS Telephone, and other parties to the Amended Agreement when such names are established.⁵ The Amended Agreement will replace the existing Affiliates Agreement approved by the Commission in its 2007 Order.

As described in the Application, NTELOS Telephone will continue to provide the same services to its affiliates and receive the same services from its new corporate parent, Wireline Two, after the NTELOS Separation as it does today under the current Affiliates Agreement. The only substantial change made to the Amended Agreement, other than the modification of the parties to the agreement, is that auditing services will no longer be directly charged to NTELOS Telephone and its affiliates by Wireline Two, but instead will be allocated among the affiliates pursuant to allocation method (#16) as described in Attachment A of the Amended Agreement (Documentation of Affiliates Transactions).⁶ The Amended Agreement also documents the procedures that will be utilized to allocate federal and state income taxes between the members of Wireline One's consolidated tax group upon completion of the NTELOS Separation.⁷ The Application states that no other substantive modifications of the current Affiliates Agreement are proposed in the Amended Agreement at this time.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described Amended Agreement and the Applicant's request for authority to revise the Amended Agreement in advance of execution to reflect the new corporate names of Wireline One, Wireline Two, NTELOS Telephone, and other parties to the Amended Agreement when such names are established, are in the public interest and should, therefore, be approved subject to the requirements recommended in the Commission Staff's Action Brief filed contemporaneously with this Order and as set forth below. These requirements are intended to clarify the nature and extent of our Affiliates Act approval in this case.

Accordingly, IT IS ORDERED THAT:

¹ Va. Code § 56-76 *et seq.* (the "Affiliates Act")

² See *Application of NTELOS Telephone Inc., For approval to enter into an amended affiliates agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUC-2006-00118, 2007 S.C.C. Ann. Rept. 209, Order Granting Approval (Feb. 1, 2007). The Commission has also approved the Affiliates Agreement (with amendments) in four previous cases: (1) *Application of Clifton Forge-Waynesboro Telephone Company, For approval of affiliate agreements*, Case No. PUA-1988-00015, 1988 S.C.C. Ann. Rept. 192, Order Granting Authority (Apr. 18, 1988); (2) *Application of Clifton Forge-Waynesboro Telephone Company, For authority to modify a previously approved affiliates agreement*, Case No. PUA-1990-00016, 1990 S.C.C. Ann. Rept. 202, Order Granting Authority (Apr. 11, 1990); (3) *Application of Clifton Forge-Waynesboro Telephone Company, For approval of an amended Affiliates Agreement*, Case No. PUA-1995-00013, 1995 S.C.C. Ann. Rept. 207, Order Granting Approval (Aug. 4, 1995); and (4) *Application of NTELOS Telephone Inc., For approval to enter into an amended affiliates agreement*, Case No. PUC-2003-00105, 2003 S.C.C. Ann. Rept. 281, Order Granting Approval (Sept. 17, 2003).

³ 2007 Order at 7.

⁴ The "NTELOS Separation" refers to the corporate separation of NTELOS' parent, NTELOS Holdings, into separate wireline and wireless operations, which was approved by the Commission on July 26, 2011, in Case No. PUC-2011-00025. See *Petition of NTELOS Holdings Corp., NTELOS Inc., Quadrangle Capital Partners LP, Quadrangle NTELOS Holdings II LP, NTELOS Wireline One Inc., NTELOS Wireline Two Inc., NTELOS Telephone Inc., Roanoke & Botetourt Telephone Company, NTELOS Network Inc., NA Communications Inc., R&B Network, Inc., and FiberNet of Virginia, Inc., For an Order Authorizing the Transfer of Control of the NTELOS ILECs and NTELOS CLECs pursuant to Va. Code § 56-88 et seq.*, Case No. PUC-2011-00025, Doc. Con. Cen. No. 450386, Final Order (July 26, 2011).

⁵ Upon completion of the NTELOS Separation, NTELOS Telephone and NTELOS' other wireline companies will be direct subsidiaries of Wireline Two, which, in turn, will be a direct subsidiary of Wireline One.

⁶ Allocation method (#16) states that, "Audit Fees will be allocated among the [affiliates] based on the relative amount of assets, liabilities and revenues for each affiliate."

⁷ See Attachment B to the Amended Agreement (Documentation of Affiliates Consolidated Tax Return Procedures) ("Tax Attachment"). The Tax Attachment lists the eleven (11) Wireline One affiliates as members of the consolidated tax group.

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(1) Pursuant to § 56-77 of the Code, NTELOS Telephone is hereby granted approval of its Amended Agreement and its request for authority to revise the Amended Agreement in advance of execution to reflect the new corporate names of Wireline One, Wireline Two, NTELOS Telephone, and other parties to the Amended Agreement when such names are established, as described herein, provided that the requirements as set forth herein are met.

(2) The approval granted herein for the Amended Agreement is limited to five (5) years from the date of this Order Granting Approval.

(3) Should NTELOS Telephone wish to continue operating under the Amended Agreement, as approved herein, after the five (5)-year period, subsequent Commission approval shall be required.

(4) Approval of the Amended Agreement shall be limited to services specifically identified in the Amended Agreement. Should NTELOS Telephone wish to obtain additional services from Wireline Two or another affiliate, or provide additional services to its affiliates, other than those services specifically approved in this case, subsequent Commission approval shall be required.

(5) Separate Commission approval shall be required for any changes in the terms and conditions of the Amended Agreement approved herein, including changes in allocation methodologies affecting NTELOS Telephone, and successors and assigns.

(6) NTELOS Telephone shall maintain records to demonstrate that the services provided by NTELOS Telephone to its affiliates are cost beneficial to Virginia customers and that, for all services provided by NTELOS Telephone to its affiliates where a market and a market price may exist, and the services were not priced at the tariffed rate, NTELOS Telephone shall bear the burden of showing that it charged the higher of cost or market for such services. Likewise, where services are provided to NTELOS Telephone by Wireline Two or another affiliate, NTELOS Telephone's records must demonstrate that such services are beneficial to Virginia customers and that, where a market and a market price exist, NTELOS Telephone paid the lower of cost or market for such services. Records of such investigations and comparisons shall be available for Commission Staff review upon request.

(7) The approval granted herein shall supersede the approval granted in Case No. PUC-2006-00118.

(8) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(9) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein, whether or not such affiliate is regulated by this Commission.

(10) The approval granted herein shall have no ratemaking implications. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Amended Agreement.

(11) The Commission reserves the right to reflect ratemaking adjustments to NTELOS Telephone's income taxes in the course of any Commission review and analysis of NTELOS Telephone's cost of service in the future.

(12) NTELOS Telephone shall file an executed copy of the Amended Agreement approved herein within thirty (30) days of the completion of the NTELOS Separation, to include the new corporate names of Wireline One, Wireline Two, NTELOS Telephone, and the other parties to the Amended Agreement, subject to administrative extension by the Commission's Director of Public Utility Accounting.

(13) All transactions under the Amended Agreement shall be included in NTELOS Telephone's Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting on or before April 1 of each year, which deadline may be extended administratively by the Commission's Director of Public Utility Accounting. In addition to information currently provided in the ARAT, all transactions under the Amended Agreement shall be reported in the ARAT as follows:

- (a) By Case Number in which the transactions were approved;
- (b) Description of services provided to NTELOS Telephone by Wireline Two or another affiliate, and services provided by NTELOS Telephone to its affiliates;
- (c) Transactions by month; and
- (d) Dollar amount paid for each type of service, such as amount paid for Human Resources services, Accounting services, Customer Care services, etc.

(14) NTELOS Telephone shall also prepare an annual detailed reconciliation schedule of any differences between its allocation of actual federal and state tax liabilities and what such liabilities are on a separate return basis. Beginning April 1, 2012, this reconciliation schedule shall be included with NTELOS Telephone's ARAT submitted to the Commission's Director of Public Utility Accounting each year. If there are no differences between NTELOS Telephone's allocated and separate return tax liabilities, then NTELOS Telephone shall prepare a verified legal representation to that effect to be included as an addendum to its ARAT each year.

(15) In the event that any annual informational and/or general rate case filings are not based on a calendar year, then NTELOS Telephone shall include the affiliate information contained in the ARAT in such filings.

(16) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2011-00042
AUGUST 9, 2011**

APPLICATION OF
SHENANDOAH TELEPHONE COMPANY

To extend the deadline to eliminate its carrier common line charge

FINAL ORDER

On June 8, 2011, Shenandoah Telephone Company ("Shentel" or "Company"), filed an application with the State Corporation Commission ("Commission") to extend the deadline to eliminate the carrier common line charge ("CCLC") component of its intrastate carrier switched access charge until July 1, 2014 ("Application"), in accordance with § 56-235.5:1 B 1 (i) (b) of the Code of Virginia ("Code"). In its Application, Shentel asserted that it is in the public interest and will not unreasonably prejudice or disadvantage telephone customers throughout the Commonwealth to allow the Company to extend the deadline to July 1, 2014.

On June 10, 2011, the Commission's Division of Communications ("Staff") filed a Response to Shentel's Application ("Response") that included a proposal for annual reductions in Shentel's CCLC culminating in the elimination of the Company's CCLC on July 1, 2014. The Staff's Response stated that Shentel and the Staff had conferred and developed the proposed schedule filed with the Response.

On June 24, 2011, the Commission issued an Order Inviting Comments and Requests for Hearing. The Commission did not receive any requests for hearing or any comments on Shentel's Application or the Staff's Response.

NOW THE COMMISSION, having considered Shentel's Application, the Staff's Response, and the applicable law, is of the opinion and finds the Company's request to extend its deadline to eliminate its CCLC should be granted. Furthermore, the Staff's proposed schedule for the elimination of Shentel's CCLC by July 1, 2014, should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-235.5:1 B 1 (i) (b) of the Code, Shentel's request to extend the deadline to eliminate its CCLC until July 1, 2014, is granted.
- (2) The procedure set out in Appendix A, attached hereto, is hereby adopted for eliminating the CCLC component from the intrastate carrier switched access charge of Shentel.
- (3) There being nothing further to come before the Commission in the proceeding, the matter is dismissed from the Commission's active docket, and the papers herein placed in the file for ended causes.

**CASE NO. PUC-2011-00045
JUNE 27, 2011**

APPLICATION OF
CLOSECALL AMERICA, INC. OF VIRGINIA

For cancellation of certificates of public convenience and necessity to provide local exchange and interexchange telecommunication services

ORDER CANCELLING CERTIFICATES

By Order dated May 2, 2007, in Case No. PUC-2006-00087, CloseCall America, Inc. of Virginia ("CloseCall") was granted certificates of public convenience and necessity ("CPCNs" or "certificates") to provide local and interexchange telecommunications services throughout the Commonwealth of Virginia.¹ Pursuant to 20 VAC 5-417-20-G 1 b of the Commission's Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers, CloseCall was required to furnish a bond to the Commission.² In granting Certificate No. T-665 to CloseCall, the May 2, 2007 Order specifically provided that CloseCall was to notify the Commission's Division of Economics and Finance ("Division") no less than thirty (30) days prior to the cancellation or lapse of its bond and provide a replacement bond at that time. The May 2, 2007 Order further provided that this requirement shall be maintained until such time as the Commission determines that it is no longer necessary.

On March 1, 2011, the Division received notice from the issuer of CloseCall's bond that the bond had been cancelled by the issuer. A copy of the notice is attached hereto as Attachment A. The Division did not receive any notification from CloseCall regarding the cancellation of its bond and did not receive a replacement bond.

¹ *Application of CloseCall America, Inc. of Virginia, For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services*, Case No. PUC-2006-00087, 2007 S.C.C. Ann. Rept. 206, Final Order (May 2, 2007) ("May 2, 2007 Order"). Certificate No. T-665 was granted to provide local exchange telecommunications services and Certificate No. TT-231A was granted to provide interexchange services.

² *Application of CloseCall America, Inc. of Virginia, For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services*, Case No. PUC-2006-00087, Order for Notice and Comment at 5 (Dec. 27, 2006). As required, CloseCall provided a \$50,000 performance bond to the Division of Economics and Finance.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On October 22, 2010, CloseCall, American Fiber Network of Virginia, Inc. ("AFN"), and Birch Communications of Virginia, Inc. ("Birch") filed a joint petition for approval to transfer the customers and assets of CloseCall and AFN to Birch ("Joint Petition").³ The Joint Petition indicated that:

Upon completion of the transaction and the migration of customers to Birch, [CloseCall and AFN] will no longer offer telecommunications services in Virginia. After [CloseCall and AFN] determine that they no longer need their authorizations for operational or billing purposes, [CloseCall] and AFN will surrender their certifications and cancel their tariffs in a separate filing.⁴

The Commission granted approval of the Joint Petition by Order dated November 30, 2010.⁵ Ordering Paragraph (4) of the Commission's November 30, 2010 Order required the joint petitioners to file a letter with the Clerk of the Commission to cancel CloseCall and AFN's certificates once the transaction was completed and Birch was issued its own certificates.⁶ No filing cancelling CloseCall's certificate was made prior to the cancellation of CloseCall's bond.

On February 1, 2011, a Report of Action was filed, as required by Ordering Paragraph (3) of the November 30, 2010 Order (see Attachment B). The Report of Action stated:

Birch hereby notifies the Commission that the Transaction was consummated on December 17, 2010. In accordance with its approved tariffs, Birch began providing local exchange services to the Virginia customers of [CloseCall] and AFN effective December 31, 2010, and began providing interexchange services to the Virginia customers of [CloseCall] and AFN effective January 19, 2011.

The Staff of the Commission ("Staff") has received confirmation that the transfer of CloseCall's customers to Birch has been completed and that CloseCall has no customers and transacts no telecommunications business in the Commonwealth of Virginia. As mentioned, *supra*, the Staff has been advised that CloseCall's bond has been cancelled by the issuer. Based on the representations made in the Joint Petition and the disclosures discussed above, Staff recommends that both CloseCall's local exchange as well as its interexchange certificates should be cancelled.

NOW THE COMMISSION, having considered the matter, is of the opinion that Certificate No. T-665 and Certificate No. TT-231A issued to CloseCall should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed and assigned Case No. PUC-2011-00045.
- (2) The certificate of public convenience and necessity to provide local telecommunications services (Certificate No. T-665) issued to CloseCall America, Inc. of Virginia on May 2, 2007, is hereby cancelled.
- (3) The certificate of public convenience and necessity to provide interexchange telecommunications services (Certificate No. TT-231A) issued to CloseCall America, Inc. of Virginia on May 2, 2007, is hereby cancelled.
- (4) Any tariffs currently on file for CloseCall America, Inc. of Virginia, are hereby cancelled.
- (5) This matter is dismissed.

NOTE: A copy of Attachments A and B are on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

³ *Birch Communications of Virginia, Inc. d/b/a Birch Communications, and CloseCall America, Inc. of Virginia, American Fiber Network of Virginia, Inc., For approval to transfer the customers and assets of CloseCall America, Inc. of Virginia, and American Fiber Network of Virginia, Inc., to Birch Communications of Virginia, Inc. d/b/a Birch Communications, pursuant to Va. Code §§ 56-88 et seq.*, Case No. PUC-2010-00068, Joint Petition (Oct. 22, 2010)

⁴ *Id.* at 4.

⁵ *Birch Communications of Virginia, Inc. d/b/a Birch Communications, and CloseCall America, Inc. of Virginia, American Fiber Network of Virginia, Inc., For approval to transfer the customers and assets of CloseCall America, Inc. of Virginia, and American Fiber Network of Virginia, Inc., to Birch Communications of Virginia, Inc. d/b/a Birch Communications, pursuant to Va. Code §§ 56-88 et seq.*, Case No. PUC-2010-00068, Order Granting Approval (Nov. 30, 2010) ("November 30, 2010 Order").

⁶ *Id.* at 6.

**CASE NO. PUC-2011-00046
JULY 27, 2011**

APPLICATION OF
KDL OF VIRGINIA, INC.

To amend its certificates of public convenience and necessity to provide local and interexchange telecommunications services to reflect a new corporate name

ORDER

On June 21, 2011, a letter application was filed with the State Corporation Commission ("Commission") asking that the certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services in Virginia that had been issued to KDL of Virginia, Inc. ("KDL" or "Company"), be amended and reissued to Windstream KDL-VA, Inc., to reflect the Company's new corporate name.

The Commission issued to KDL a certificate to provide local exchange telecommunications service (Certificate No. T-615) and a certificate to provide interexchange service (Certificate No. TT-194A) in Case No. PUC-2003-00028. The request notes that the Commission approved the transfer of KDL to Windstream Communications in Case No. PUC-2010-00053. Included with the request is the Certificate of Amendment from the Commission documenting that the Company's articles of incorporation have been amended to reflect the new corporate name.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that the certificates of public convenience and necessity for local exchange and interexchange telecommunications services should be updated to reflect the Company's new name.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUC-2011-00046.
- (2) Certificate No. T-615 authorizing KDL of Virginia, Inc., to provide local exchange telecommunications services throughout the Commonwealth is hereby cancelled and shall be reissued as amended Certificate No. T-615a in the name of Windstream KDL-VA, Inc.
- (3) Certificate No. TT-194A authorizing KDL of Virginia, Inc., to provide interexchange telecommunications services throughout the Commonwealth is hereby cancelled and shall be reissued as amended Certificate No. TT-194B in the name of Windstream KDL-VA, Inc.
- (4) The Company shall revise any tariffs on file with the Commission to reflect the new corporate name within 45 days of the issuance of this Order.
- (5) There being nothing further to be done, this matter shall be dismissed from the Commission's docket of active cases and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. PUC-2011-00047
JULY 21, 2011**

APPLICATION OF
SBC LONG DISTANCE, LLC D/B/A SBC LONG DISTANCE D/B/A AT&T LONG DISTANCE

For cancellation of certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER CANCELLING CERTIFICATES

By previous orders issued at various times in other dockets, the State Corporation Commission ("Commission") issued Certificate of Public Convenience and Necessity No. T-634a ("Certificate") permitting the provision of local exchange telecommunications services to SBC Long Distance, LLC d/b/a SBC Long Distance d/b/a AT&T Long Distance ("SBC" or "Company").

SBC requested cancellation of the Certificate and tariffs for local exchange telecommunications services by letter to the Commission filed June 22, 2011, as SBC currently has no Virginia customers for this Certificate and its associated tariffs.

On June 23, 2011, SBC requested that once the Certificate is cancelled, the Commission return the performance bond in the amount of \$50,000 filed by SBC pursuant to 20 VAC 5-417-20 G I b of the Commission's Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers.

Therefore, the Commission finds that the above-named Certificate should be cancelled, along with the associated tariffs.

NOW THE COMMISSION, being sufficiently advised, will cancel Certificate No. T-634a, previously issued to SBC.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed as Case No. PUC-2011-00047.
- (2) Certificate No. T-634a and its associated tariffs are hereby cancelled.

- (3) The Commission's Division of Economics and Finance shall return the performance bond on file with the Commission to SBC.
- (4) This matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2011-00048
AUGUST 4, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: Amending the rules governing the certification and regulation of competitive local exchange carriers

ORDER FOR NOTICE AND COMMENT

This order initiates a proceeding to consider amending the State Corporation Commission's ("Commission") rules governing the certification and regulation of competitive local exchange carriers, 20 VAC 5-417-10 *et seq.* ("CLEC Rules"). Those rules were last revised on September 27, 2007, by a Final Order issued by the Commission in Case No. PUC-2007-00033. The Commission has concluded that it is appropriate to revisit the CLEC Rules to make modifications necessitated by changes in the law by the Virginia General Assembly enacted in Chapters 738 and 740 of the 2011 Virginia Acts of Assembly, and by competitive and technological changes that have occurred in the telecommunications industry since our last review of the CLEC Rules.

To facilitate this review, the Staff of the Commission ("Staff") has prepared proposed revisions of the CLEC Rules ("Proposed Rules"), which are attached hereto.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the public should be afforded notice and an opportunity to comment on the Proposed Rules, to request a hearing thereon, or to suggest modifications or supplements to the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUC-2011-00048.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment, including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register.
- (3) A downloadable version of this Order and the Proposed Rules shall be available for access by the public on the Commission's website: <http://www.scc.virginia.gov/case>. A copy of this Order and the Proposed Rules shall be available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m., excluding holidays.
- (4) On or before August 29, 2011, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

**NOTICE TO THE PUBLIC OF A PROCEEDING TO
AMEND THE RULES OF THE
STATE CORPORATION COMMISSION
GOVERNING THE CERTIFICATION AND REGULATION
OF COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS CARRIERS**

The State Corporation Commission ("Commission") has initiated a proceeding to consider amending its rules governing the certification and regulation of competitive local exchange telecommunications carriers in accordance with changes in Virginia law enacted by the Virginia General Assembly in Chapters 738 and 740 of the 2011 Virginia Acts of Assembly, and to account for certain competitive and technological changes in the telecommunications industry. The Staff of the Commission has prepared proposed revisions to the rules, which were last revised in 2007 ("Proposed Rules"). The Commission has issued an Order for Notice and Comment that provides that notice be given to the public and that interested persons be given an opportunity to file written comments on, to propose modifications or supplements to, or to request a hearing on these Proposed Rules.

Copies of the Commission's Order and the Proposed Rules are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m., excluding holidays. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

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On or before September 26, 2011, any person may file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing such comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218-2118. Any person desiring to submit comments electronically may do so by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. All correspondence shall refer to Case No. PUC-2011-00048.

STATE CORPORATION COMMISSION

(5) On or before September 26, 2011, any interested person or entity may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons desiring to submit comments electronically may do so by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. All correspondence shall refer to Case No. PUC-2011-00048.

(6) The Staff may file a response with the Clerk of the Commission on or before October 28, 2011, to the comments submitted to the Commission addressing the Proposed Rules.

(7) This matter is continued pending further order of the Commission.

NOTE: A copy of Attachment A entitled "Rules Governing Certification and Regulation of Competitive Local Exchange Carriers" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. PUC-2011-00049
JULY 21, 2011**

APPLICATION OF
GLOBAL CAPACITY DIRECT, LLC

For cancellation of a certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER CANCELLING CERTIFICATE

By previous orders issued at various times in other dockets, the State Corporation Commission ("Commission") issued Certificate of Public Convenience and Necessity No. T-651a ("Certificate") permitting the provision of local exchange telecommunications services to Global Capacity Direct, LLC ("Global" or "Company").

Global requested cancellation of the Certificate for local exchange telecommunications services by letter to the Commission filed July 11, 2011, as there are no customers whose service would be impacted by the cancellation.

Therefore, the Commission finds that the above-named Certificate should be cancelled.

NOW THE COMMISSION, being sufficiently advised, will cancel Certificate No. T-651a, previously issued to Global.

Accordingly, IT IS ORDERED THAT:

- (1) This matter shall be docketed as Case No. PUC-2011-00049.
- (2) Certificate No. T-651a is hereby cancelled.
- (3) This matter is hereby dismissed from the Commission's docket of active cases.

**CASE NO. PUC-2011-00050
OCTOBER 3, 2011**

APPLICATION OF
LTS OF ROCKY MOUNT, LLC,
MID-STATE VENTURES, LLC,
WILLIAM KLOSS,
and
THOMAS ARMSTRONG

For approval of the acquisition of control of LTS of Rocky Mount, LLC, by William Kloss and Thomas Armstrong, pursuant to Va. Code § 56-88 *et seq.*

ORDER GRANTING APPROVAL AND DIRECTING RESPONSE

On July 12, 2011, LTS of Rocky Mount, LLC ("LTS"), filed an Application with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for approval of the acquisition of control of LTS by William Kloss and Thomas Armstrong, in their individual capacity.

LTS filed the Application with the Commission under seal, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure ("Commission's Rules") regarding confidential information, in order to obtain confidential treatment of Exhibits A through D of the Application ("Confidential Exhibits"). Rule 5 VAC 5-20-170 states, in part: "When an application (including supporting documents and prefiled testimony) contains information that the applicant claims to be confidential, the filing shall be made under seal and accompanied by a motion for protective order or other confidential treatment." Therefore, on July 12, 2011, concurrently with the Application and pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules, LTS filed with the Commission a Motion for Protective Order ("Motion") requesting that the Commission issue a protective order to withhold from public disclosure the confidential information contained in the Confidential Exhibits.

On August 5, 2011, LTS filed a Supplement to the Application with the Commission, in which it provided the verified signatures for the following parties as Applicants in this proceeding: Mid-State Ventures, LLC ("Mid-State"), William Kloss, and Thomas Armstrong. Accordingly, LTS, Mid-State, William Kloss, and Thomas Armstrong are referred to herein collectively as the "Applicants." On August 15, 2011, Staff filed a Memorandum of Completeness, which deemed the Application complete as of August 5, 2011.

The Applicants request Commission approval of the transfer of control of LTS, which holds a certificate of public convenience and necessity ("CPCN") in Virginia, from its current direct parent, Mid-State, to William Kloss and Thomas Armstrong ("Proposed Transaction"). Pursuant to a Purchase and Sale Contract dated June 27, 2011, William Kloss and Thomas Armstrong will, in their individual capacity, purchase all of the stock of LTS from Mid-State and, therefore, acquire ultimate control of LTS. William Kloss and Thomas Armstrong will be the sole owners of LTS and will hold the offices of Vice President and President, respectively.

The Applicants represent that, since LTS does not currently provide regulated telecommunications services to any customers in Virginia, the Proposed Transaction should have no impact on the provision of such services to Virginia consumers. However, upon completion of the Proposed Transaction, the Applicants state that LTS will be owned by two individuals with experience in the telecommunications industry and who have the financial resources to invest in LTS so that it can offer competitive telecommunications services to Virginia customers in the future. In addition, LTS will remain certificated in Virginia to provide local exchange services and, once its operations have commenced in Virginia, it will provide such services pursuant to its CPCN issued by the Commission in Case No. PUC-2006-00116.

The Applicants have advised the Commission's Staff ("Staff"), however, that the Proposed Transaction was completed on July 1, 2011, prior to receiving Commission approval, and in fact, prior to the filing of this Application. In response to discovery submitted by Staff, the Applicants cited certain business concerns for consummating the Proposed Transaction on July 1, 2011, and asked that the Commission consider those concerns and approve the Proposed Transaction pursuant to § 56-88.1 of the Code.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Applicants' Motion is no longer necessary and should, therefore, be denied.² The Commission is further of the opinion and finds that the above-described Proposed Transaction will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved effective as of the date of this Order. However, the Commission is concerned with the Applicants' failure to obtain the necessary prior approval required under the Utility Transfers Act as evidenced by their actions in connection with the instant Application.

Section 56-88.1 of the Code provides, in part:

- A. No person, whether acting alone or in concert with others, shall, directly or indirectly, acquire or dispose of control of:
 1. A public utility within the meaning of this chapter, or all the assets thereof, without the prior approval of the Commission. Any person proposing an acquisition or disposition for which Commission approval is required by this section shall seek such approval pursuant to the procedure of § 56-90; or
 2. A telephone company, or all of the assets thereof, without the prior approval of the Commission....

¹ Va. Code § 56-88 *et seq.*

² The Commission held the Applicants' Motion in abeyance. We note that the Commission has received no request for leave to review the confidential information contained in the Confidential Exhibits filed by the Applicants in this proceeding. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

B. Any such acquisition or disposition of control without prior approval shall be voidable by the Commission. In addition, the Commission is authorized to revoke any certificate of public convenience and necessity it has issued, order compliance with this chapter, or take such other action as may be appropriate within the authority of the Commission.

Section 12.1-13 of the Code provides, in part:

Whenever no fine or other penalty is specifically imposed by statute³ for the failure of any such individual or business conducted by any entity other than an individual to comply with any provision of law or with any valid rule, regulation, or order of the Commission, the Commission may impose and collect from such individual or business conducted by an entity other than an individual a fine in an amount not to exceed \$5,000 in the case of an individual, and in the case of a business conducted by an entity other than an individual not to exceed \$10,000.

Therefore, the Applicants are directed to file a response within ten (10) days of the date of the issuance of this Order stating why they should not be found in violation of § 56-88.1 of the Code and fined pursuant to § 12.1-13 of the Code (or any applicable law) for failing to obtain prior approval of the Commission before acquiring and disposing of control of LTS.

Accordingly, IT IS ORDERED THAT:

(1) The Applicants' Motion is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(2) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Applicants are hereby granted approval, effective as of the date of this Order, of the Proposed Transaction that occurred on July 1, 2011, as described herein.

(3) The Applicants shall, either individually or jointly, file a response within ten (10) days of the date of issuance of this Order stating why they should not be found in violation of § 56-88.1 of the Code and fined pursuant to § 12.1-13 of the Code.

(4) This matter is continued pending further Order of the Commission.

³ For example, § 56-91 of the Code provides for a fine of not more than \$1,000 for any company violating any provision of § 56-89 of the Code.

**CASE NO. PUC-2011-00050
NOVEMBER 18, 2011**

APPLICATION OF
LTS OF ROCKY MOUNT, LLC,
MID-STATE VENTURES, LLC,
WILLIAM KLOSS,
and
THOMAS ARMSTRONG

For approval of the acquisition of control of LTS of Rocky Mount, LLC, by William Kloss and Thomas Armstrong, pursuant to Va. Code § 56-88 *et seq.*

FINAL ORDER

On August 5, 2011, LTS of Rocky Mount, LLC ("LTS"), Mid-State Ventures, LLC ("Mid-State"), William Kloss, and Thomas Armstrong (collectively, "Applicants") completed an application with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for approval of the acquisition of control of LTS by William Kloss and Thomas Armstrong, in their individual capacity ("Application").

The Applicants requested Commission approval of the transfer of control of LTS, which holds a certificate of public convenience and necessity in Virginia, from its current direct parent, Mid-State, to William Kloss and Thomas Armstrong ("Proposed Transaction"). Pursuant to a Purchase and Sale Contract dated June 27, 2011, William Kloss and Thomas Armstrong were to, in their individual capacity, purchase all of the stock of LTS from Mid-State and, therefore, acquire ultimate control of LTS.

On October 3, 2011, the Commission issued an Order Granting Approval and Directing Response ("October 3 Order"), which (1) granted approval of the acquisition of control of LTS by William Kloss and Thomas Armstrong, and (2) directed the Applicants to file a response stating why they should not be fined for proceeding with the transfer prior to receipt of Commission approval. The October 3 Order documented that the Applicants had informed the Commission Staff that the Proposed Transaction was completed on July 1, 2011, prior to being approved by the Commission.

¹ Va. Code § 56-88 *et seq.*

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Section 56-88.1 of the Code provides, in part:

No person, whether acting alone or in concert with others, shall, directly or indirectly, acquire or dispose of control of . . . (ii) a telephone company, or all of the assets thereof, without the prior approval of the Commission. Any person proposing an acquisition or disposition for which Commission approval is required by this section shall seek such approval pursuant to the procedure of § 56-90

Any such acquisition or disposition of control without prior approval shall be voidable by the Commission. In addition, the Commission is authorized to revoke any certificate of public convenience and necessity it has issued, order compliance with this chapter, or take such other action as may be appropriate within the authority of the Commission.

Section 12.1-13 of the Code provides, in part:

Whenever no fine or other penalty is specifically imposed by statute² for the failure of any such individual or business conducted by any entity other than an individual to comply with any provision of law or with any valid rule, regulation, or order of the Commission, the Commission may impose and collect from such individual or business conducted by an entity other than an individual a fine in an amount not to exceed \$5,000 in the case of an individual, and in the case of a business conducted by an entity other than an individual not to exceed \$10,000.

Accordingly, the Commission directed the Applicants to file a response within ten (10) days of the date of the receipt of the October 3 Order stating why they should not be found in violation of § 56-88.1 of the Code and fined pursuant to § 12.1-13 of the Code (or any applicable law) for failing to obtain prior approval of the Commission before acquiring and disposing of control of LTS.

On October 13, 2011, a Response to Order Granting Approval and Directing Response ("Response") was filed on behalf of the Applicants. The Response reiterated the Applicants' business concerns for consummating the Proposed Transaction on July 1, 2011, and asserted that since filing for approval, the Applicants have provided all information necessary and responded to all requests about the Proposed Transaction so as to allow the Commission to determine in the October 3 Order that approval of the Proposed Transaction would not impair nor jeopardize the provision of adequate service to the public at just and reasonable rates. The Response asserted that none of the Applicants have been cited by the Commission previously for a failure to comply with any applicable statute, rule, or regulations in place in the Commonwealth. Finally, the Response stated that LTS, Thomas Armstrong, and William Kloss assert that they understand and commit to comply with all applicable telecommunications statutes, regulations, and rules.

NOW THE COMMISSION, having considered the filings herein and the applicable law, is of the opinion and finds that LTS, William Kloss, and Thomas Armstrong should be and hereby are found in violation of § 56-88.1 of the Code and fined \$5,000 pursuant to § 12.1-13 of the Code. The Commission further finds that the fine, assessed jointly and severally upon LTS, William Kloss, and Thomas Armstrong, should be and hereby is suspended on the condition that they, either individually or collectively, do not violate § 56-88.1 of the Code in the future.

Accordingly, IT IS ORDERED THAT:

(1) LTS, William Kloss, and Thomas Armstrong, are hereby assessed a fine of \$5,000 pursuant to § 12.1-13 of the Code for violation of § 56-88.1 of the Code.

(2) This fine shall be suspended on the condition that LTS, William Kloss, and Thomas Armstrong, either individually or collectively, do not violate § 56-88.1 of the Code in the future.

(3) There being nothing further to come before the Commission, this matter is dismissed from the Commission's active docket and the papers filed herein placed in the Commission's file for ended causes.

² For example, § 56-91 of the Code provides for a fine of not more than \$1,000 for any company violating any provision of § 56-89 of the Code.

**CASE NO. PUC-2011-00051
SEPTEMBER 9, 2011**

JOINT PETITION OF
BIRCH COMMUNICATIONS OF VIRGINIA, INC. d/b/a BIRCH COMMUNICATIONS,
BIRCH COMMUNICATIONS, INC.,
BIRCH COMMUNICATIONS HOLDINGS, INC.,
CORDIA COMMUNICATIONS CORP. OF VIRGINIA,
CORDIA COMMUNICATIONS CORP.,
and
CORDIA CORPORATION

For approval of the transfer of the customers and assets of Cordia Communications Corp. of Virginia to Birch Communications of Virginia, Inc. d/b/a Birch Communications, pursuant to Va. Code § 56-88 et seq.

ORDER GRANTING APPROVAL

On July 19, 2011, Birch Communications of Virginia, Inc. d/b/a Birch Communications ("Birch"), and Cordia Communications Corp. of Virginia ("Cordia") (collectively, the "Petitioners") filed a Joint Petition with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for approval of the transfer of the customers and assets of Cordia to Birch.²

The Petitioners filed the Joint Petition with the Commission under seal, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure ("Commission's Rules") regarding confidential information, in order to obtain confidential treatment of the Joint Petition. Rule 5 VAC 5-20-170 states, in part: "When an application (including supporting documents and prefiled testimony) contains information that the applicant claims to be confidential, the filing shall be made under seal and accompanied by a motion for protective order or other confidential treatment." Therefore, on July 19, 2011, concurrently with the Joint Petition and pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules, the Petitioners filed with the Commission a Motion for Protective Order ("Motion") requesting that the Commission issue a protective order allowing the Joint Petition to be treated as confidential.

On July 21, 2011, the Petitioners filed a Supplement to the Joint Petition with the Commission, in which they provided the verified signatures for the following entities as Petitioners in this proceeding: Birch Communications, Inc. ("BCI"), Birch Communications Holdings, Inc. ("BCH"), Cordia Communications Corp. ("CCC"), and Cordia Corporation. Accordingly, Birch, BCI, BCH, Cordia, CCC, and Cordia Corporation are referred to herein collectively as the "Joint Petitioners." On July 27, 2011, Staff filed a Memorandum of Completeness, which deemed the Joint Petition complete as of July 21, 2011.

The Joint Petitioners request Commission approval of the transfer of substantially all of Cordia's telecommunications assets (excluding its CPCNs) and Virginia customers to Birch ("Proposed Transaction"). Pursuant to an Asset Purchase Agreement ("Agreement") dated June 17, 2011, Birch's direct parent, BCI, will purchase certain assets and customers of Cordia (as well as CCC and its affiliates My Tel Co, Inc., and Northstar Telecom, Inc., which do not provide services in Virginia). Specifically, BCI will purchase the following assets from Cordia: customer accounts, customer agreements and contracts, certain vendor agreements and contracts, and certain intellectual property (the "Assets"). BCI, however, will not assume any of Cordia's pre-closing liabilities. Upon completion of the Proposed Transaction, BCI's Virginia operating subsidiary, Birch, will begin providing telecommunications services to all of Cordia's current Virginia customers, and Cordia will no longer offer telecommunications services in Virginia.³

Cordia, CCC and its affiliates filed for voluntary relief under Chapter 11I of the United States Bankruptcy Code with the United States Bankruptcy Court for the Middle District of Florida ("Bankruptcy Court") on May 1, 2011, and are currently operating under its protection. Pursuant to Article 7, Section 7.1(a) of the Agreement, the execution of the Agreement and the sale of the Assets is subject to Bankruptcy Court approval. The Bankruptcy Court issued an order approving the Agreement and the sale of the Assets on July 14, 2011, in Case Nos. 6:11-bk-06493-KSJ through 6:11-bk-06497-KSJ.

The Joint Petitioners state that, following completion of the Proposed Transaction, Birch will adopt Cordia's tariffs or file any necessary revisions to its tariffs and published service offerings to incorporate Cordia's current services and rates so that the affected customers will continue to receive the same services from Birch that they currently receive from Cordia without any immediate changes to their service offerings, rates, terms or conditions of service. The Joint Petitioners further state that, since there will be no interruption or disruption of service, the Proposed Transaction will be virtually transparent to Cordia's Virginia customers.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Joint Petitioners' Motion is no longer necessary and should, therefore, be denied.⁴ The Commission is further of the opinion and finds that the above-described Proposed Transaction, resulting in the transfer of Cordia's Assets and Virginia customers to Birch, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

¹ Va. Code § 56-88 et seq.

² Birch and Cordia each hold certificates of public convenience and necessity ("CPCNs"), issued in Case Nos. PUC-2010-00060 and PUC-2006-00017, respectively, to provide local exchange and interexchange telecommunications services in Virginia.

³ The Joint Petitioners represent that, after Cordia determines that it no longer needs its authorization for operational or billing purposes, Cordia will surrender its CPCNs and cancel its tariffs in a separate filing.

⁴ The Commission held the Joint Petitioners' Motion in abeyance. We note that the Commission has received no request for leave to review the confidential information contained in the Joint Petition in this proceeding. Accordingly, we deny the Motion as moot but direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

Accordingly, IT IS ORDERED THAT:

- (1) The Joint Petitioners' Motion is hereby denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.
- (2) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Petitioners are hereby granted approval of the Proposed Transaction, as described herein.
- (3) The Joint Petitioners shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the Proposed Transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the Proposed Transaction took place.
- (4) Once the Proposed Transaction has taken place, Cordia shall file an application with the Commission requesting that its tariffs, bond, and CPCNs, Certificate Nos. T-655 and TT-223A, be canceled.
- (5) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2011-00053
AUGUST 3, 2011**

APPLICATION OF
ZAYO BANDWIDTH, LLC

For cancellation of certificates of public convenience and necessity for the provision of local exchange and interexchange telecommunications services

ORDER CANCELLING CERTIFICATES

By previous Orders issued at various times in other dockets, the State Corporation Commission ("Commission") issued certificates of public convenience and necessity No. T-696 permitting the provision of local exchange telecommunications services, and No. TT-252A permitting the provision of interexchange telecommunications services to Zayo Bandwidth, LLC ("ZB").

On July 29, 2011, ZB filed a letter application with the Commission requesting cancellation of the certificates of public convenience and necessity previously issued. ZB advised that because of a merger, ZB no longer exists as a company.¹

NOW UPON CONSIDERATION of the matter, the Commission finds that Certificate Nos. T-696 and TT-252A issued to ZB should be cancelled.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2011-00053.
- (2) Certificate of public convenience and necessity, No. T-696, issued to Zayo Bandwidth, LLC, to provide local exchange telecommunications services throughout the Commonwealth, is hereby cancelled.
- (3) Certificate of public convenience and necessity, No. TT-252A, issued to Zayo Bandwidth, LLC, to provide interexchange telecommunications services throughout the Commonwealth, is hereby cancelled.
- (4) Any tariffs on file associated with certificate Nos. T-696 and TT-252A are hereby cancelled.
- (5) There being nothing further to be done in this matter, this case shall be removed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's file for ended causes.

¹ *Joint Application of Zayo Bandwidth, LLC, and Zayo Group, LLC, For approval of an intra-corporate transaction, pursuant to Va. Code § 56-88 et seq., Case No. PUC-2011-00018, Order Granting Approval (March 30, 2011).*

**CASE NO. PUC-2011-00055
SEPTEMBER 12, 2011**

APPLICATION OF
LIBERTY BELL TELECOM, LLC

For a certificate of public convenience and necessity to provide local exchange telecommunications services

ORDER GRANTING WITHDRAWAL

On August 10, 2011, Liberty Bell Telecom, LLC ("Liberty Bell" or "Applicant"), filed an application with the State Corporation Commission ("Commission") for a certificate of public convenience and necessity ("certificate") to provide local exchange telecommunications services throughout the Commonwealth of Virginia ("Application").

On August 24, 2011, the Commission issued an Order for Notice and Comment that, among other things, docketed the Application, directed the Applicant to give notice to the public of the Application, set forth the requirements for the filing of a bond, and directed the Commission's Staff to conduct an investigation into the reasonableness of the Application and present its findings in a Staff Report.

On August 31, 2011, Liberty Bell filed a letter with the Commission requesting to withdraw its Application.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that Liberty Bell's request to withdraw its Application should be granted and this case should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) Liberty Bell's request to withdraw its Application for a certificate of public convenience and necessity to provide local exchange telecommunications services throughout the Commonwealth of Virginia is hereby granted.
- (2) There being nothing further to come before the Commission, this case is dismissed and the papers filed herein shall be placed in the file for ended causes.

**CASE NO. PUC-2011-00057
OCTOBER 4, 2011**

JOINT APPLICATION OF
PAETEC HOLDING CORP.,
PAETEC COMMUNICATIONS OF VIRGINIA, INC.,
US LEC OF VIRGINIA L.L.C.,
TALK AMERICA OF VIRGINIA, INC.,
CAVALIER TELEPHONE, LLC,
INTELLIFIBER NETWORKS, INC.,
and
WINDSTREAM CORPORATION

For approval of the indirect transfer of control of the PAETEC Regulated Entities to Windstream Corporation, pursuant to Va. Code § 56-88 *et seq.*

ORDER GRANTING APPROVAL

On August 17, 2011, PAETEC Holding Corp. ("PAETEC"), PaeTec Communications of Virginia, Inc. ("PaeTec-VA"), US LEC of Virginia L.L.C. ("USLEC-VA"), Talk America of Virginia, Inc. ("TA-VA"), Cavalier Telephone, LLC ("CavTel"), Intellifiber Networks, Inc. ("Intellifiber") (PaeTec-VA, USLEC-VA, TA-VA, CavTel, and Intellifiber collectively, the "PAETEC Regulated Entities"), and Windstream Corporation ("Windstream") (collectively with PAETEC and the PAETEC Regulated Entities, "Joint Applicants") filed a Joint Application with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for approval of the indirect transfer of control of the PAETEC Regulated Entities to Windstream. On August 19, 2011, Staff filed a Memorandum of Completeness, which deemed the Joint Application complete as of August 17, 2011.

The Joint Applicants request Commission approval to consummate a transaction between PAETEC and Windstream through which Windstream will acquire indirect control of the PAETEC Regulated Entities, each of which holds certificates of public convenience and necessity ("CPCNs") in Virginia ("Proposed Transaction").² Pursuant an Agreement and Plan of Merger dated July 31, 2011, between Windstream, Peach Merger Sub, Inc. ("MergerCo"),³ and PAETEC, MergerCo will merge with and into PAETEC, with PAETEC continuing as the surviving entity. Upon completion of the Proposed Transaction, PAETEC will become a direct wholly owned subsidiary of Windstream and, therefore, Windstream will become the new ultimate parent

¹ Va. Code § 56-88 *et seq.*

² PAETEC is currently the ultimate parent company of the PAETEC Regulated Entities. PAETEC has another subsidiary that operates in Virginia, McLeodUSA Telecommunications Services, LLC ("McLeodUSA"), but it only operates in Virginia as a reseller of interexchange telecommunications services on a deregulated basis. Therefore, Commission approval under Chapter 5 of the Code is only required for the PAETEC Regulated Entities.

³ MergerCo is a direct wholly owned subsidiary of Windstream that was created for the purposes of the Proposed Transaction.

company of PAETEC and the PAETEC Regulated Entities. The PAETEC Regulated Entities, however, will continue to be wholly owned by their existing intermediate parent companies following the completion of the Proposed Transaction.

The Joint Applicants state that the Proposed Transaction will be consummated at the ultimate parent company level and will not involve a transfer of the operating authority, assets or customers of the PAETEC Regulated Entities, nor will it affect the operations of Windstream's Virginia operating subsidiaries.⁴ The Joint Applicants further state that the Proposed Transaction will not result in a change of carrier for the affected customers or any assignment of authorizations, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to the customers of the PAETEC Regulated Entities. Therefore, the Proposed Transaction is expected to be virtually transparent to the customers in Virginia.

The only change that will occur as a result of the Proposed Transaction will be the transfer of ultimate control of the PAETEC Regulated Entities to Windstream, resulting in a change in ultimate ownership but not direct ownership. No other changes will take place.⁵ The Joint Applicants represent that, immediately following the completion of the Proposed Transaction, the PAETEC Regulated Entities will remain certificated to provide telecommunications services in Virginia and will continue to offer the same services to their customers under the same names and at the same rates, terms and conditions of service as currently provided, pursuant to their respective CPCNs.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described Proposed Transaction, resulting in the indirect transfer of control of the PAETEC Regulated Entities to Windstream, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Applicants are hereby granted approval of the Proposed Transaction as described herein.

(2) The Joint Applicants shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the Proposed Transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the Proposed Transaction took place.

(3) There appearing nothing further to be done in this matter, it hereby is dismissed.

⁴ Windstream's Virginia operating subsidiaries are Windstream Communications, Inc., and Windstream KDL-VA, Inc. f/k/a KDL of Virginia, Inc.

⁵ The Joint Applicants note, however, that, since the PAETEC Regulated Entities will be ultimately owned by Windstream upon completion of the Proposed Transaction, the PAETEC Regulated Entities may change their names to reflect the "Windstream" brand name in the future.

**CASE NO. PUC-2011-00059
NOVEMBER 17, 2011**

JOINT APPLICATION OF
SHENANDOAH TELEPHONE COMPANY,
SHENANDOAH TELECOMMUNICATIONS COMPANY,
SHENANDOAH CABLE TELEVISION COMPANY,
SHENTEL CABLE COMPANY,
SHENTEL SERVICE COMPANY,
SHENANDOAH VALLEY LEASING COMPANY,
SHENANDOAH MOBILE COMPANY,
SHENANDOAH LONG DISTANCE COMPANY,
SHENANDOAH NETWORK COMPANY,
SHENTEL FOUNDATION,
SHENANDOAH PERSONAL COMMUNICATIONS COMPANY,
SHENTEL COMMUNICATIONS COMPANY,
SHENTEL MANAGEMENT COMPANY,
SHENTEL CONVERGED SERVICES, INC., AND
SHENTEL CONVERGED SERVICES OF WEST VIRGINIA, INC .

For approval of an amendment to an Affiliates Agreement pursuant to the Affiliates Act, Va. Code § 56-76 *et seq.*

ORDER GRANTING APPROVAL

On August 22, 2011, Shenandoah Telephone Company ("Shenandoah"), along with its affiliates listed above (collectively, the "Joint Applicants"), filed a joint application ("Joint Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"),¹ for approval of an amendment ("Amendment No. 5") to their currently effective services agreement with an effective date of January 1, 2005 ("Affiliates Agreement"), which was approved by the Commission on December 29, 2004, in Case No. PUC-2004-00125 ("2004 Order").²

¹ Va. Code § 56-76 *et seq.* ("Affiliates Act")

² *Application of Shenandoah Telephone Company, et al., For approval of transactions pursuant to the Affiliates Act*, Case No. PUC-2004-00125, 2004 S.C.C. Ann. Rept. 277, Order Granting Approval (Dec. 29, 2004). The Affiliates Agreement has since been amended four (4) times, in Case Nos. PUC-2005-00102, PUC-2005-00127, PUC-2007-00088, and PUC-2008-00109. See (1) *Application of Shenandoah Telephone Company, et al., For*

In Ordering Paragraph (3) of its 2004 Order, the Commission ordered that Shenandoah be required to seek Commission approval for any changes in the terms and conditions of the Affiliates Agreement including, among other things, any changes in allocation processes.³

Accordingly, the Joint Applicants filed the instant Joint Application in compliance with Ordering Paragraph (3) of the Commission's 2004 Order requesting Commission approval, pursuant to the Affiliates Act, of Amendment No. 5 to the Affiliates Agreement, which reflects a change to the allocation methodology for direct labor hours attributable to capital projects.⁴ Currently, employees of Shenandoah Telecommunications Company ("ShenParent")⁵ report their time worked in quarter (1/4)-hour increments to particular work orders and the different ShenParent subsidiaries' transaction codes, specifically in order to separate the time they have spent on capital projects from operating expense activities. As proposed in Amendment No. 5, departmental labor will be allocated for capital projects pursuant to baseline allocation percentages, which will be determined based on historical allocations for each department over a set period, evaluated after a six (6)-month trial period, and updated annually. Specifically, Amendment No. 5 will amend and replace Section 4.13 (Allocation Methods) and Section 5 (Timesheets) of the Affiliates Agreement. In addition, Amendment No. 5 will amend and replace Exhibit 1 to the Affiliates Agreement in order to update the schedule of allocations.

Through Amendment No. 5, the Joint Applicants propose to end the employees' routine reporting of time at the work order and subsidiary transaction code level, and instead, using the baseline allocation percentages, allocate each department's dollars each pay period to capital projects in the aggregate and to the various subsidiary operating expense categories. A separate process will be run to allocate total dollars charged to capital projects to the specific capital projects active for each department for that month. The Joint Applicants represent that, towards the end of every year, in conjunction with ShenParent's budgeting process for the following year, each department's baseline allocation percentage will be reviewed based on changes in activity levels, priorities, headcount, and other factors, as appropriate. In addition, the Joint Applicants state that several departments will be asked to track their time charges periodically during the year for one to two months so that a comparison to their baseline allocation percentages can be performed and any needed adjustments can be made.⁶

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described Amendment No. 5 to the Affiliates Agreement is in the public interest and should, therefore, be approved subject to the requirements recommended in the Commission Staff's Action Brief filed contemporaneously with this Order and as set forth below. These requirements are intended to clarify the nature and extent of our Affiliates Act approval of the Affiliates Agreement, as amended herein through Amendment No. 5 (hereafter, the "Amended Affiliates Agreement"), and to ensure that the Amended Affiliates Agreement as a whole continues to be in the public interest.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, the Joint Applicants are hereby granted approval of Amendment No. 5 to the Affiliates Agreement as described herein, provided that the requirements as set forth herein are met.

(2) The approval granted herein for the Amended Affiliates Agreement is limited to five (5) years from the date of this Order Granting Approval.

(3) Should Shenandoah wish to continue operating under the Amended Affiliates Agreement, as approved herein, after the five (5)-year period, subsequent Commission approval shall be required.

(4) Approval of the Amended Affiliates Agreement shall be limited to services specifically identified in the Amended Affiliates Agreement. Should Shenandoah desire to obtain additional services from or provide additional services to its affiliates, other than those services specifically listed in the Amended Affiliates Agreement, subsequent Commission approval shall be required.

(5) Separate Commission approval shall be required for any changes in the terms and conditions of the Amended Affiliates Agreement, as amended by Amendment No. 5 approved herein, including changes in allocation methodologies, new affiliates added to the Amended Affiliates Agreement, and successors and assigns.

(6) Shenandoah shall maintain records of the annual review and evaluation of each department's baseline allocation percentages in conjunction with ShenParent's annual operating budget and capital project approval process for the upcoming year, and provide details supporting any adjustments made to a department's allocation percentage. Records must also provide details supporting any adjustments made to a department's allocation percentage that occur throughout the year. Records of such reviews and evaluations shall be available for Commission Staff review upon request.

approval of transactions pursuant to the Affiliates Act, Va. Code § 56-76 et seq., Case No. PUC-2005-00102, 2005 S.C.C. Ann. Rept. 284, Order Granting Approval (Dec. 20, 2005); (2) *Application of Shenandoah Telephone Company, et al., For approval of transactions pursuant to the Affiliates Act, Va. Code § 56-76 et seq.*, Case No. PUC-2005-00127, Doc. Con. Cen. No. 364186, Order Granting Approval (Dec. 12, 2005); (3) *Joint Application of Shenandoah Telephone Company, et al., For approval to amend affiliates agreement to modify cost allocation factors as to certain cost centers*, Case No. PUC-2007-00088, 2008 S.C.C. Ann. Rept. 262, Order Granting Approval (Jan. 22, 2008); and (4) *Application of Shenandoah Telephone Company, et al., For approval of Affiliates Arrangement pursuant to the Affiliates Act, Va. Code § 56-76 et seq.*, Case No. PUC-2008-00109, 2009 S.C.C. Ann. Rept. 230, Order Granting Approval (Feb. 26, 2009).

³ 2004 Order at 6.

⁴ The Joint Application refers to the current amendment to the Affiliates Agreement as "Amendment No. 4." In response to a Commission Staff data request, however, the Joint Applicants advised that the amendment for which Commission approval is currently being sought is in fact Amendment No. 5 to the Affiliates Agreement, and provided an updated version of the amendment showing this correction.

⁵ ShenParent is the ultimate parent company of Shenandoah and its affiliates.

⁶ The Joint Applicants represent that this review and comparison will be limited to those departments where changes from the annual budget or approved capital projects plan have been identified as significant enough to merit review, which is expected to be approximately five departments in any given year. In addition, should a department's priorities change during the year, an adjustment of their baseline allocation percentages can be made upon request.

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(7) Shenandoah shall maintain records to demonstrate that the services provided by Shenandoah to its affiliates are cost beneficial to Virginia customers and that, for all services provided to its affiliates where a market and a market price may exist, Shenandoah shall bear the burden of showing that it charged the higher of cost or market for such services. Likewise, where services are provided to Shenandoah by its affiliates, Shenandoah's records must demonstrate that such services are beneficial to Virginia customers and that, where a market and a market price exist, Shenandoah paid the lower of cost or market for such services. Records of such investigations and comparisons shall be available for Commission Staff review upon request.

(8) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(9) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein, whether or not such affiliate is regulated by this Commission.

(10) The approval granted herein shall have no ratemaking implications. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Amended Affiliates Agreement.

(11) The approval granted herein shall supplement the approvals granted in Case Nos. PUC-2004-00125, PUC-2005-00102, PUC-2005-00127, PUC-2007-00088, and PUC-2008-00109.

(12) Shenandoah shall file an executed copy of the Amended Affiliates Agreement reflecting all amendments thereto, including Amendment No. 5 approved herein, within thirty (30) days of the date of this Order Granting Approval, subject to administrative extension by the Commission's Director of Public Utility Accounting ("PUA Director").

(13) All transactions under the Amended Affiliates Agreement shall be included in Shenandoah's Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's PUA Director on or before April 1 of each year, which deadline may be extended administratively by the Commission's PUA Director. In addition to information currently provided in the ARAT, all transactions shall be reported in the ARAT as follows:

- (a) By Case Number in which the transactions were approved;
- (b) Description of the goods and services Shenandoah provides to or receives from its affiliates;
- (c) Transactions by month; and
- (d) Dollar amount paid for each type of good or service.

(14) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUC-2011-00064
NOVEMBER 18, 2011**

APPLICATION OF
CORDIA COMMUNICATIONS CORP. OF VIRGINIA

For cancellation of certificates of public convenience and necessity for the provision of local exchange and interexchange telecommunications services and of the associated bond and tariffs

**ORDER CANCELLING CERTIFICATES
AND ASSOCIATED BOND AND TARIFFS**

By previous Orders issued at various times in other dockets, the State Corporation Commission ("Commission") issued Certificates of Public Convenience and Necessity No. T-655, permitting the provision of local exchange telecommunications services, and No. TT-223A, permitting the provision of interexchange telecommunications services to Cordia Communications Corp. of Virginia ("Cordia").¹

On September 16, 2011, Cordia filed a letter application with the Commission requesting cancellation of the certificates of public convenience and necessity previously issued and the associated bond and tariffs, pursuant to the Commission's Order Granting Approval in Case No. PUC-2011-00051.²

NOW UPON CONSIDERATION of the matter, the Commission finds that Certificate Nos. T-655 and TT-223A issued to Cordia should be cancelled, as well as the associated bond and tariffs.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is hereby docketed and assigned Case No. PUC-2011-00064.

¹ *Application of Cordia Communications Corp. of Virginia, For certificates of public convenience and necessity to provide local exchange and interexchange telecommunications services*, Case No. PUC-2006-00017, Final Order (May 25, 2006).

² Joint Petition of Birch Communications of Virginia, Inc. d/b/a Birch Communications, Birch Communications, Inc., Birch Communications Holdings, Inc., Cordia Communications Corp. of Virginia, Cordia, Communications Corp., and Cordia Corporation, For approval of the transfer of customers and assets of Cordia Communications Corp. of Virginia to Birch Communications of Virginia, Inc. d/b/a Birch Communications, pursuant to Va. Code § 56-88 et seq., Case No. PUC-2011-00051, Order Granting Approval (Sept. 9, 2011).

(2) Certificate of Public Convenience and Necessity No. T-655, issued to Cordia Communications Corp. of Virginia to provide local exchange telecommunications services throughout the Commonwealth, is hereby cancelled.

(3) Certificate of Public Convenience and Necessity No. TT-223A, issued to Cordia Communications Corp. of Virginia to provide interexchange telecommunications services throughout the Commonwealth, is hereby cancelled.

(4) Any tariffs on file associated with Certificate of Public Convenience and Necessity Nos. T-655 and TT-223A are hereby cancelled.

(5) The bond associated with the foregoing certificates shall be returned to Mike Chestaro, Cafarelli Agency Ltd, 1030 Jericho Turnpike, Smithtown, New York 11787.

(6) There being nothing further to be done in this matter, this case shall be removed from the Commission's docket of active proceedings and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. PUC-2011-00070
OCTOBER 19, 2011**

JOINT PETITION OF
DSLNET COMMUNICATIONS VA, INC.,
and
DIECA COMMUNICATIONS, INC.,

For authority to complete certain intra-corporate transactions, pursuant to §§ 56-88.1 and 56-90 of the Code of Virginia

ORDER GRANTING AUTHORITY

On September 26, 2011, DSLnet Communications VA, Inc. ("DSLnet-VA"), and DIECA Communications, Inc. ("DIECA") (collectively, the "Joint Petitioners"), filed a Joint Petition with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"), for authority to complete certain intra-corporate transactions. More specifically, the Joint Petitioners request authority to transfer control of DSLnet-VA to DIECA.

DSLnet-VA is a Virginia corporation with its principal business headquarters in Wallingford, Connecticut. DSLnet-VA is an affiliate of DSLnet Communications, LLC ("DSLnet"), which is authorized to provide intrastate telecommunications services in forty-seven (47) states and the District of Columbia. In Virginia, DSLnet-VA is certificated as a competitive local exchange carrier ("CLEC") to provide both local exchange and interexchange telecommunications services pursuant to its certificates of public convenience and necessity ("CPCNs"), Certificate Nos. T-450 and TT-71 A, respectively, issued pursuant to the Commission's Final Order entered July 28, 1999, in Case No. PUC-1999-00028. DSLnet-VA has approximately 362 lines in service in Virginia. Currently, DSLnet-VA only provides high-speed Internet access.

MegaPath, a Delaware corporation with its principal business headquarters located in Costa Mesa, California, is the parent company of DSLnet-VA and DSLnet. MegaPath does not currently offer any regulated telecommunications services and, therefore, does not hold any telecommunications authorizations from the FCC or any state regulatory authority.

CCGI Holding Corporation ("CCGI") is a Delaware corporation with its principal business headquarters in Beverly Hills, California. CCGI is the parent company of Covad Communications Group, Inc., ("Covad"), a Delaware corporation that owns Covad Communications Company, a California corporation, and DIECA d/b/a Covad Communications Company, a Virginia public service corporation. Covad provides a variety of integrated voice and data communications services and is authorized by the FCC to provide international and domestic interstate telecommunications services as a non-dominant carrier. In Virginia, DIECA is certificated as a CLEC to provide both local exchange and interexchange telecommunications services pursuant to its CPCNs, Certificate Nos. T-410 and TT-50A, respectively, issued pursuant to the Commission's Final Order entered May 5, 1998, in Case No. PUC-1997-00177.¹

CCGI is ultimately controlled by Platinum, a privately held Delaware limited liability company with its principal business headquarters located in Beverly Hills, California. Platinum is a global firm specializing in the merger, acquisition, and operation of companies that provide services and solutions to customers in a broad range of business markets, including information technology, telecommunications, logistics, manufacturing, and entertainment distribution. Neither CCGI nor Platinum offer any regulated telecommunications services.

The Joint Petitioners request Commission authority to consummate a transaction whereby DSLnet-VA, will merge into DIECA with DIECA as the surviving entity. Alternatively, the transaction may be accomplished through a sale of assets rather than through merger, or a combination of both. The Joint Petitioners request authority, to the extent necessary, to undertake the transfer of control of DSLnet-VA in either manner. The Joint Petitioners further request that, upon notification from Joint Petitioners that the proposed transaction has been consummated, the Commission cancel DSLnet-VA's CPCN. DIECA will replace DSLnet-VA as the service provider in Virginia.

NOW THE COMMISSION, upon consideration of the Joint Petition and representations of the Joint Petitioners and having been advised by its Staff, is of the opinion and finds that the proposed transaction as described herein, resulting in the direct transfer of ownership and control of DSLnet-VA, will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved. However, the request that DSLnet-VA's CPCN be cancelled should be dealt with in a separate application.

¹ Although DIECA Communications, Inc., is the entity certificated to provide telecommunications services in Virginia, it currently provides service to its customers in Virginia under the name of Covad Communications Company.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Petitioners are hereby granted authority to consummate the proposed transaction to allow for the direct transfer of ownership and control of DSLnet Communications VA, Inc., as described herein.
- (2) The Joint Petitioners' request to cancel the CPCN of DSLnet-VA will be handled in a separate application.
- (3) The Joint Petitioners shall file a report of the action taken pursuant to the authority granted herein within thirty (30) days of the proposed transaction taking place, subject to administrative extension by the Commission's Director of Public Utility Accounting. Such report shall include the date the proposed transaction took place.
- (4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUC-2011-00071
DECEMBER 9, 2011**

JOINT APPLICATION OF
INTELEPEER VIRGINIA, INC.,
and
INTELEPEER, INC.

For authority to complete certain *pro forma* intra-corporate transactions

ORDER GRANTING APPROVAL

On October 12, 2011, IntelPeer Virginia, Inc., ("IntelPeer") and IntelPeer, Inc., (collectively, "Joint Applicants") filed an Application with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for authority to complete certain *pro forma* intra-corporate transactions. On October 17, 2011, Staff filed a Memorandum of Completeness which deemed the Joint Application complete as of October 12, 2011.

The Joint Applicants request Commission authorization to undertake one or more *pro-forma* intra-corporate transactions whereby the Joint Applicants intend to: (1) insert one or more holding companies above IntelPeer and its current shareholders; (2) move IntelPeer under the new holding company, making IntelPeer an affiliate of its current corporate parent, IntelPeer, Inc., rather than a subsidiary; and (3) assign certain assets into one or more affiliates of IntelPeer. The transactions are being undertaken in order to allow the Joint Applicants to more expeditiously and efficiently undertake future debt and equity financing transactions and to separate various core operations into component parts for better operational management.

IntelPeer is authorized to provide local exchange and interexchange services pursuant to authority granted by the Commission in Case No. PUC-2010-00047 on April 21, 2011. Joint Applicants state that at present IntelPeer does not serve customers in Virginia. Further, it is asserted that the ultimate owners will remain the same following the insertion of the holding company(ies) and that any transfer of assets will not result in a transfer of customers or IntelPeer's authority to provide telecommunications services in Virginia.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described proposed *pro forma* transactions will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Applicants are hereby granted approval of the proposed *pro forma* transactions as described herein.
- (2) The Joint Applicants shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the proposed transaction taking place, subject to administrative extension by the Commission's Director of Utility Accounting and Finance. Such report shall include the date the proposed *pro forma* transactions took place, as well as providing the specifics of the ultimate transactions that are undertaken, including an organizational chart reflecting the resulting entities and their association.
- (3) There appearing nothing further to be done in this matter, it hereby is dismissed.

¹ Va. Code § 56-88 *et seq.*

**CASE NO. PUC-2011-00074
DECEMBER 12, 2011**

JOINT PETITION OF
FIRST COMMUNICATIONS, LLC,
FIRST COMMUNICATIONS, INC.,
GOES FC HOLDINGS, LLC,
THE GOES GROUP, LLC,
and
ALEC E. GOES

For approval of the indirect transfer of control of First Communications, LLC, pursuant to Va. Code § 56-88 *et seq.*

ORDER GRANTING APPROVAL

On October 17, 2011, First Communications, LLC ("FCL"), First Communications, Inc. ("FCI"), and Gores AC Holdings, LLC ("Gores AC"), (collectively, "Petitioners") filed a Joint Petition and Request for Streamlined Review ("Joint Petition") with the State Corporation Commission ("Commission"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ for approval of the indirect transfer of control of FCL. The Petitioners also filed an Application with the Federal Communications Commission ("FCC") under the FCC's Streamlined Review process ("FCC Application").

The Petitioners filed the Joint Petition with the Commission under seal, pursuant to 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure ("Commission's Rules") regarding confidential information, in order to obtain confidential treatment of Exhibits C and G of the Joint Petition ("Confidential Exhibits"). Rule 5 VAC 5-20-170 states, in part: "When an application (including supporting documents and prefiled testimony) contains information that the applicant claims to be confidential, the filing shall be made under seal and accompanied by a motion for protective order or other confidential treatment." Therefore, on October 17, 2011, concurrently with the Joint Petition and pursuant to 5 VAC 5-20-110 and 5 VAC 5-20-170 of the Commission's Rules, the Petitioners filed with the Commission a Motion for Confidential Treatment ("Motion") requesting that the Commission grant confidential treatment and issue a protective order covering the confidential information contained in the Confidential Exhibits.

On November 4, 2011, the Petitioners filed a Supplement to the Joint Petition ("Supplement") with the Commission, in which they: (1) provided the verified signatures for Alec E. Gores ("Mr. Gores"), Gores FC Holdings, LLC ("Gores FC"), and The Gores Group, LLC ("Gores Group"), as Petitioners in this proceeding; (2) advised that the FCC Application had been accepted under the FCC's Streamlined Review procedures as of November 1, 2011; and (3) advised that Gores FC, not Gores AC, will be the entity acquiring indirect control of FCL.² On November 14, 2011, Staff filed a Memorandum of Completeness, which deemed the Joint Petition complete as of November 4, 2011,³ and accepted the Joint Petition under the Commission's Streamlined Review procedures as of November 10, 2011.

The Joint Petitioners request Commission approval to consummate a transaction whereby Gores FC, and ultimately Gores Group and Mr. Gores,⁴ will acquire indirect control of FCL, which holds a certificate of public convenience and necessity ("CPCN") in Virginia, through its acquisition of ultimate control of FCL's direct parent company, FCI ("Proposed Transaction"). Pursuant to the terms of the Proposed Transaction, Gores FC will acquire control of FCI and, indirectly, FCL by a combination of the exercise of the right to appoint a majority of the Board of Directors of FCI and the purchase/acquisition of voting securities of FCI. As a result, Gores FC will directly, and Gores Group and Mr. Gores will indirectly, hold more than 50% of the voting securities of FCI.

The only change that will occur as a result of the Proposed Transaction will be the acquisition of ultimate control of FCL by Gores Group and Mr. Gores, resulting in a change in ultimate ownership but not direct ownership. No other changes will take place. The Joint Petitioners represent that, immediately following the completion of the Proposed Transaction, FCL will remain certificated to provide telecommunications services in Virginia and will continue to offer the same services to its customers under the same name and at the same rates, terms and conditions of service as currently provided, pursuant to its CPCN. Therefore, the Proposed Transaction is expected to be virtually transparent to FCL's Virginia customers.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described Proposed Transaction will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the Joint Petitioners are hereby granted approval of the Proposed Transaction as described herein.

¹ Va. Code § 56-88 *et seq.*

² Gores AC was included as a Petitioner in this proceeding because it was the entity that was originally going to acquire indirect control of FCL. As described in the Supplement, however, Gores AC will not be inserted into the ownership chain above Gores FC as initially intended and, therefore, it will not be acquiring indirect control of FCL. As such, Gores AC has been removed as a Petitioner in this proceeding. Hereafter, FCL, FCI, Gores FC, Gores Group, and Mr. Gores will be referred to collectively as the "Joint Petitioners."

³ The Joint Petition was originally deemed complete as of October 17, 2011. However, Staff determined that the additional information contained in the Supplement constituted an amendment to the Joint Petition, which reset the sixty (60)-day statutory review period effective November 4, 2011, for consideration of the Joint Petition.

⁴ Gores FC is ultimately managed by Gores Group and its manager, Mr. Gores. Gores Group currently acts as manager of the general partner of certain investment funds that together hold non-controlling ownership of 13.1% of the voting stock of FCI through Gores FC.

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(2) The Joint Petitioners shall file a report of the action taken pursuant to the approval granted herein within thirty (30) days of the Proposed Transaction taking place, subject to administrative extension by the Commission's Director of Utility Accounting and Finance. Such report shall include the date the Proposed Transaction took place.

(3) The Joint Petitioners' Motion is moot; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.

(4) There appearing nothing further to be done in this matter, it hereby is dismissed.

DIVISION OF ENERGY REGULATION**CASE NO. PUE-1991-00043
FEBRUARY 28, 2011**APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

To amend its certificates of public convenience and necessity authorizing operation of transmission lines and facilities in the Counties of Appomattox, Buckingham, Campbell, Caroline, Cumberland, Fluvanna, Goochland, Louisa, and Spotsylvania: Joshua Falls-Elmont and Dooms-Ladysmith 500 kV transmission lines

ORDER CLOSING CASE

In 1991, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") filed an application in the above captioned docket, seeking authorization to construct the Joshua Fall – Elmont and Dooms – Ladysmith transmission lines. The case was assigned to a hearing examiner, who issued his report on January 24, 1994. Due to a variety of circumstances, this case was continued into 2001, at which time the Commission ordered Dominion Virginia Power to update its application to supplement information previously provided, to address the expected impact of the proposed transmission lines on the development of competitive markets, and to address whether the Alliance Regional Transmission Organization impacts the Company's willingness to construct the proposed transmission lines.¹

On April 2, 2002, Dominion Virginia Power filed updated testimony, and on April 30, 2002, the Commission Staff ("Staff") filed a Motion for Continued Reporting on Available Transfer Capability and Deferral of Further Action ("Motion"). Among other things, the Staff stated its agreement with the Company "that there is no immediate need for the additional transfer capacity offered by the proposed transmission lines."² The Staff urged the Commission to order Dominion Virginia Power to report periodically on available transfer capability and also recommended deferral of any further action.³ Though the Staff's Motion was never granted, it appears that no further action has been taken in this case. The last document the Company filed was in May 2003, wherein the Company notified the Commission of a name change of the Company's counsel.

NOW THE COMMISSION, upon consideration, finds that there is nothing further to be done in this case and that it should be dismissed.

Accordingly, IT IS ORDERED THAT Case No. PUE-1991-00043 is hereby dismissed and the papers filed therein shall be placed in the Commission's file for ended causes.

¹ Order Directing Updating of Application, Doc. Con. Cen. No. 240486, at 5 (Aug. 3, 2001).

² Motion, Doc. Con. Cen. No. 272103, at 3.

³ *Id.* at 4.

**CASE NO. PUE-1998-00368
JULY 27, 2011**APPLICATION OF
C & P ISLE OF WIGHT WATER COMPANY

For certificate pursuant to §§ 56-265.2 and 56-265.3 D

DISMISSAL ORDER

By Final Order entered May 5, 1999 ("Order"), the State Corporation Commission ("Commission") determined that C & P Isle of Wight Water Company ("C & P") should be authorized to furnish water service in the Queen Anne's Court subdivision, and replace the previous water supplier, DLG Utility Corporation ("DLG").¹ Accordingly, that Order cancelled C & P's water certificate number W-283a and reissued it as amended water certificate number W-283b, to include DLG's service territory of Queen Anne's Court subdivision.² The Order also authorized C & P to use its existing water rates for metered service in Isle of Wight County for Rushmere Shores/Poplar Harbor No. 1 and Poplar Harbor No. 2 for Queen Anne's Court subdivision. C & P was directed to collect usage information separately for each system, submitting that usage data to the Commission's Division of Energy Regulation and to maintain system costs separately for each system, submitting such cost information to the Commission's Division of Public Utility Accounting. The Order was not closed while such information was collected and submitted. That information is no longer needed annually and in that form.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this case should be dismissed.

Accordingly, IT IS ORDERED THAT this case is dismissed, and the record developed herein shall be placed in the file for ended causes.

¹ 1999 S.C.C. Ann. Rept. 427.

² The Order also cancelled DLG's water certificate number W-286. *Id.*

**CASE NO. PUE-2000-00086
JANUARY 25, 2011**

APPLICATION OF
DELMARVA POWER & LIGHT COMPANY

For approval of a plan for functional separation of generation pursuant to the Virginia Electric Utility Restructuring Act

DISMISSAL ORDER

On June 29, 2000, the State Corporation Commission ("Commission") issued its Final Order on an application by Delmarva Power & Light Company ("Delmarva" or "Company") for approval of a plan for the functional separation of the Company's generation activities from its transmission and distribution activities.¹ Ordering Paragraph (1) of the June 29, 2000 Order approved Delmarva's plan for functional separation of the Company's generation from transmission and distribution through divestiture of the Company's generation assets, as modified by the June 12, 2000 Memorandum of Agreement between Delmarva and the Commission Staff.²

On December 21, 2010, the Staff of the Commission filed a "Motion to Dismiss" ("Motion") in the captioned proceeding. In support of its request for dismissal, the Motion cites inactivity in this docket and the transfer of Delmarva's Virginia distribution system assets located in Accomack and Northampton Counties to A&N Electric Cooperative and the purchase and operation by Old Dominion Electric Cooperative of certain of Delmarva's transmission facilities located on the Eastern Shore.³ According to Staff's Motion, Delmarva has effectively withdrawn from the Virginia market as a certificated provider of retail electric service.⁴

No responses to the Motion were filed with the Clerk of the Commission.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the Staff's Motion should be granted and the captioned matter dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT the Staff Motion is hereby granted. The captioned proceeding is dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

¹ See *Application of Delmarva Power & Light Company, For approval of a plan for functional separation of generation pursuant to the Virginia Electric Utility Restructuring Act and Application of Delmarva Power & Light Company, Conectiv Delmarva Generation, Inc., and Conectiv Energy Supply, Inc., For approval of transactions under Chapters 4 and 5 of Title 56 of the Code of Virginia*, Case Nos. PUE-2000-00086 and PUA-2000-00032, respectively, 2000 S.C.C. Ann. Rept. 499, Final Order (June 29, 2000) (hereinafter "June 29, 2000 Order").

² *Id.*, 2000 S.C.C. Ann. Rept. at 503.

³ Motion at 1.

⁴ *Id.*

**CASE NO. PUE-2001-00298
JULY 27, 2011**

AT THE RELATION OF THE
STATE CORPORATION COMMISSION

Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for competitive metering services

DISMISSAL ORDER

Pursuant to the provisions of the Virginia Electric Utility Restructuring Act, § 56-576 *et seq.* of the Code of Virginia,¹ specifically, § 56-581.1, the State Corporation Commission ("Commission") adopted Section 120 of its Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 *et seq.* ("Rules"), regarding competitive electricity metering.² This case remained open for the submission of a Staff Report which was filed on April 28, 2004.

By Order of July 16, 2004, the Commission adopted the recommendations of the Staff Report and: (i) directed the Staff and the work group on competitive metering services to continue to monitor regulated and competitive market developments in metering; and (ii) directed the Staff to timely report

¹ The Virginia Electric Utility Restructuring Act was renamed as the Virginia Electric Utility Regulation Act. 2008 Va. Acts ch. 883.

² 2003 S.C.C. Ann. Rept. 319, Order Adopting Rules (July 11, 2003).

any notable developments in competitive metering activity and to make appropriate corresponding recommendations for the implementation of additional elements of competitive metering.³ The case was continued generally.

Thereafter, the Virginia General Assembly repealed § 56-581.1 of the Code of Virginia.⁴ Section 120 of the Rules was repealed effective January 1, 2009.⁵

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this case should be dismissed.

Accordingly, IT IS ORDERED THAT this case is dismissed, and the record developed herein shall be placed in the file for ended causes.

³ Doc. Con. Cen. No. 343158, Order (July 16, 2004). The work group on competitive metering services was formed pursuant to an earlier Commission directive. See 2001 S.C.C. Ann. Rept. 559, Order Establishing Proceedings (May 15, 2001).

⁴ 2007 Va. Acts, chs. 888, 933.

⁵ *Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter of revising the rules of the State Corporation Commission governing Retail Access to Competitive Energy Services*, Case No. PUE-2008-00061, 2008 S.C.C. Ann. Rept. 576, Order Revising Regulations (Nov. 26, 2008).

**CASE NO. PUE-2002-00375
JULY 27, 2011**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY

For a general increase in rates

DISMISSAL ORDER

The water rates that Virginia-American Water Company ("Virginia-American" or "the Company") was authorized to charge for the period beginning November 22, 2002, were determined by the State Corporation Commission's ("Commission") Final Order of November 14, 2003.¹ Such rates remained in effect until superseded by the rates authorized by the Commission on September 17, 2004.²

The one matter not concluded by the November 14, 2003, Order was the Company's depreciation study that was to be filed on or before December 31, 2004.³ On December 21, 2004, the Commission suspended the depreciation study's filing deadline pending an additional Commission order and invited comments from participants regarding the delay in filing that study.⁴

No comments were filed and the depreciation study was subsequently filed without controversy. Depreciation rates have subsequently been considered in Virginia-American's two most recent rate cases.⁵

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this case should be dismissed.

Accordingly, IT IS ORDERED THAT this case is dismissed and the record developed herein shall be placed in the file for ended causes.

¹ 2003 S.C.C. Ann. Rept. 399.

² *Application of Virginia-American Water Company, For a general increase in rates*, Case No. PUE-2003-00539, 2004 S.C.C. Ann. Rept. 395, Final Order (Sept. 7, 2004).

³ 2003 S.C.C. Ann. Rept 393, Order on Hearing Examiner's Report (Sept. 3, 2003) at Ordering ¶ 3.

⁴ Doc. Con. Cen. No. 350557, Order Inviting Comments (Dec. 21, 2004).

⁵ *Application of Virginia-American Water Company, For a general increase in rates*, Case No. PUE-2008-00009; *Application of Virginia-American Water Company, For a general increase in rates*, Case No. PUE-2010-00001.

**CASE NO. PUE-2003-00404
JULY 28, 2011**

JOINT APPLICATION OF
M&J DEVELOPERS, L.L.C.
and
MARINERS LANDING WATER & SEWER COMPANY, INC.

For authority to acquire and dispose of utility assets pursuant to the Utility Transfers Act and for the issuance of a Certificate of Public Convenience and Necessity pursuant to Va. Code §§ 56-265.2 and 56-265.3

DISMISSAL ORDER

The State Corporation Commission's ("Commission") Final Order of March 2, 2004 ("Final Order") continued this matter generally to allow the acquiring company, Mariners Landing Water & Sewer Company, Inc. ("Mariners Landing"), to file a report of action and twelve months of financial data for Commission review.¹

Mariners Landing has furnished the designated information, and the Commission Staff has advised that this case may be closed.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this case should be dismissed.

Accordingly, IT IS ORDERED THAT this case is dismissed from the Commission's docket, and the record developed herein shall be placed in the file for ended causes.

¹ 2004 S.C.C. Ann. Rept. 370, 371 at Ordering para. 3.6.

**CASE NO. PUE-2004-00068
JUNE 27, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for exemptions to minimum stay requirements and wires charges

ORDER CLOSING PROCEEDING

On January 4, 2006, the State Corporation Commission ("Commission") entered an Order adopting Rules Governing Exemptions to Minimum Stay Requirements and Wires Charges ("Exemption Rules") in Case No. PUE-2004-00068,¹ which, among other things, allowed retail customers of investor-owned electric utilities to avoid paying wires charges or being subjected to minimum stay provisions if they agreed to pay market-based prices for their electricity. The Commission further directed that this docket remain open to determine the market-based prices for electricity should a customer elect to participate in one of the exemption programs.²

On November 26, 2008, the Commission entered an Order Revising Regulations in Case No. PUE-2008-00061,³ which, among other things, revised the Commission's Exemption Rules to reflect statutory changes to the Virginia Electric Utility Restructuring Act⁴ adopted by the Virginia General Assembly.⁵ The revisions adopted by the Commission included, among other things, (i) eliminating all references to the wires charges exemption program, since wires charges were terminated effective July 1, 2007, and (ii) adding 20 VAC 5-313-20 F to the Exemption Rules, which requires investor-owned electric utilities to submit a tariff prior to implementing market-based prices for eligible customers requesting an exemption from the minimum stay provisions found in 20 VAC 5-312-80 Q of the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules").

¹ *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: In the matter of establishing rules and regulations pursuant to the Virginia Electric Utility Restructuring Act for exemptions to minimum stay requirements and wires charges*, Case No. PUE-2004-00068, 2006 S.C.C. Ann. Rept. 303, Order on Motion and Adopting Rules and Regulations (Jan. 4, 2006).

² The two contested issues that remained open in this proceeding concerned what margins and administrative costs should be used by investor-owned electric utilities when developing market-based prices for those customers electing to participate in the wires charges and minimum stay exemption programs. The Commission left these issues open and allowed any interested participant to file a motion to reactivate the case if market conditions changed and a more active competitive market emerged, thereby allowing customers to take advantage of the exemption programs.

³ *Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte: In the matter of revising the rules of the State Corporation Commission governing Retail Access to Competitive Energy Services*, PUE-2008-00061, 2008 S.C.C. Ann. Rept. 576, Order Revising Regulations (Nov. 26, 2008).

⁴ The title of the Virginia Electric Utility Restructuring Act (§ 56-576 *et seq.* of the Code of Virginia) was changed to the Virginia Electric Utility Regulation Act pursuant to Chapter 883 of the 2008 Virginia Acts of Assembly.

⁵ See Chapters 888 and 933 of the 2007 Virginia Acts of Assembly.

NOW THE COMMISSION, having considered the foregoing, is of the opinion and finds that this proceeding should be closed. Under the revisions to the Exemption Rules adopted by the Commission in Case No. PUE-2008-00061, investor-owned electric utilities are required by 20 VAC 5-313-20 F to file a proposed tariff prior to implementing market-based prices for eligible customers requesting an exemption from the Commission's minimum stay provisions found in 20 VAC 5-312-80 Q of the Retail Access Rules. Accordingly, we find that investor-owned electric utilities filing tariffs of proposed market-based prices for those eligible customers seeking to participate in the minimum stay exemption program should be addressed in the context of regulatory proceedings under 5 VAC 5-20-80 of the Commission's Rules of Practice and Procedure, rather than addressed in the context of this rulemaking proceeding. Additionally, we find that all of the components of market-based prices, including appropriate margins and administrative costs left unresolved in this proceeding, will be developed and approved by the Commission when, and if, an investor-owned electric utility files a proposed tariff pursuant to 20 VAC 5-313-20 F of the Exemption Rules.

Accordingly, IT IS ORDERED THAT this proceeding be closed and the papers herein passed to the file for ended causes.

Commissioner Shannon participated in this matter.

Commissioners Dimitri and Jagdmann did not participate in this matter.

**CASE NO. PUE-2005-00016
AUGUST 3, 2011**

IN THE MATTER OF
B&J ENTERPRISES, L.C.

Appointment of a Receiver

ORDER DISMISSING WITHOUT PREJUDICE

On March 14, 2005, the Blacksburg Country Club Homeowners' Association ("HOA" or "Petitioners") comprised of customers receiving sewer service from B&J Enterprises, L.C. ("B&J" or "Company"), by counsel, filed with the State Corporation Commission ("Commission") a Petition for Appointment of Receiver ("Petition"), pursuant to § 56-265.13:6.1 of the Code of Virginia ("Code"). The Petition asserts that the Company is grossly mismanaged and has failed to comply with an Order of the Commission to provide adequate service to its customers and requests that a receiver be appointed.¹

The Commission entered its Initial Order on May 11, 2005,² docketing this matter, inviting B&J to file an answer, and inviting the Commissioner of Health, the Director of the Department of Environmental Quality, and other interested persons to file notices of participation.

On June 17, 2005, notices of participation were filed on behalf of the Department of Environmental Quality ("DEQ") and Blacksburg Country Club Estates Services, LLC. On that same date, B&J filed its Motion to Dismiss, Answer, and Affirmative Defenses ("Motion to Dismiss"). The Petitioners filed their Response to B&J's Motion to Dismiss on July 1, 2005. On July 18, 2005, B&J filed its Reply to Petitioners' Response. The Commission thereafter denied B&J's Motion to Dismiss and assigned a Hearing Examiner to conduct all further proceedings. However, none of the foregoing parties in this matter filed any further pleadings until the Commission Staff ("Staff"), on May 17, 2011, filed its Motion to Dismiss Without Prejudice Due to Inactivity ("Staff Motion").³ On June 3, 2011, B&J filed a response stating that it had no objection to the Commission granting the Staff Motion and requesting the Hearing Examiner to issue a report consistent therewith.

On June 8, 2011, the Report of Alexander F. Skirpan, Jr., Senior Hearing Examiner ("Examiner's Report") was filed. The Examiner's Report recommended that the Staff Motion be granted and that this case be dismissed. That same day, the HOA filed its Response and Objection to Motion to Dismiss due to Inactivity ("HOA's Response and Objection").⁴ On June 10, 2011, the HOA filed its Motion to Deem Timely and/or Accept Out of Time, requesting that the HOA Response and Objection be deemed timely, and/or that it be accepted though untimely.

On June 21, 2011, the Staff filed its Reply to Blacksburg Country Club Estates Homeowners' Association's Response and Objection ("Staff Reply"). The Staff Reply argued that the allegations in the HOA's Response and Objection, even if deemed to have been established by evidence, would not warrant the appointment of a receiver under the criteria of § 56-265.13:6.1 A of the Code and urged the granting of the Staff Motion to dismiss this proceeding without prejudice to refile in the future.

On June 24, 2011, B&J filed its comments to the Examiner's Report of June 8, 2011, urging the Commission to adopt the Hearing Examiner's recommendations and dismiss this matter. On June 28, 2011, the HOA filed its comments responding to the B&J Comments and reiterating its objection to the Motion to Dismiss.

¹ Petition at 1.

² Doc. Con. Cen. No. 357059.

³ During this time period, the Commission conducted several other proceedings involving B&J: *Application of B&J Enterprises, L.C., For a change in rates, rules and regulation*, Case No. PUE-2004-00033, and *Commonwealth of Virginia, ex rel., State Corporation Commission v. B&J Enterprises, L.C.*, Case No. PUE-2004-00098, 2005 S.C.C. Ann. Rept. 339, Final Order (Aug. 18, 2005); *Commonwealth of Virginia, ex rel., State Corporation Commission v. B&J Enterprises, L.C., and Edsel H. Lester, Individually, and as member of B&J Enterprises, L.C., and of Ellett Valley Development Company, LLC*, Case No. PUE-2005-00026, 2006 S.C.C. Ann. Rept. 325, Order (Jan. 18, 2006).

⁴ The Examiner's Report was issued without the Hearing Examiner having an opportunity to consider the HOA's Response and Objection.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the HOA's Response and Objection, though filed out of time,⁵ will be accepted. We further find that the HOA failed to pursue its claims against B&J. Therefore, we will grant the Staff's Motion.

Accordingly, IT IS ORDERED THAT:

- (1) The HOA's Motion to Deem Timely and/or Accept Out of Time hereby is granted.
- (2) The Staff Motion to Dismiss without Prejudice is hereby granted.
- (3) This case is dismissed from the Commission's docket of active cases and the papers filed herein shall be placed in the file for ended causes.

⁵ The HOA's Response and Objection to the Staff Motion was electronically filed at 6:36 p.m. on June 7, 2011. Because the Clerk's Office was closed at that hour, the pleading is deemed to have been filed the next day, June 8, 2011. See 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* (stating that electronic filings received when the Clerk's Office is not open for public business are deemed filed on the next regular business day).

**CASE NO. PUE-2005-00047
MAY 26, 2011**

APPLICATION OF
MASSANUTTEN PUBLIC SERVICE CORPORATION

Annual Informational Filing For Calendar Year 2004

DISMISSAL ORDER

On June 7, 2005, the State Corporation Commission ("Commission") entered an Order on Motion, granting the request of Massanutten Public Service Corporation ("Massanutten" or "Company") to extend to August 15, 2005, the date for the Company to file its Annual Informational Filing ("AIF") for calendar year 2004.

On August 15, 2005, the Commission granted the Company's request to extend the due date to September 6, 2005.

On September 6, 2005, Massanutten filed its AIF, but it was incomplete due to some missing schedules. Those schedules were filed December 12, 2005, and the Commission Staff ("Staff") determined the Company's AIF to be complete. The Staff began its analysis and filed its Staff Report September 18, 2006.

The Staff Report recommended that the Company calculate cash working capital based on one-ninth of operation and maintenance expenses or based upon a lead/lag study and a balance sheet analysis. After including the Staff's adjustments, Massanutten's 2004 return on rate base was found to be 8.36% and its return on equity to be 2.74%. The Company filed no response to the Staff Report.

NOW THE COMMISSION, having considered the Staff Report, is of the opinion and finds that this matter should be dismissed.

Accordingly, IT IS ORDERED THAT this matter is dismissed, and the record developed herein shall be placed in the file for ended causes.

**CASE NO. PUE-2005-00115
FEBRUARY 7, 2011**

APPLICATION OF
CAROLINE WATER COMPANY, INC. D/B/A LADYSMITH WATER COMPANY

For changes in rates, rules and regulations

ORDER

By Order of March 13, 2008 ("March 13, 2008 Order"), the State Corporation Commission ("Commission") found that Caroline Water Company, Inc. d/b/a Ladysmith Water Company ("Company" or "Caroline Water") should increase its rates for service. The Commission also found that the Company should undertake major capital projects, and we approved interim surcharges to provide funds for improving the treatment plant and installing meters. Application of the surcharges was, however, conditioned upon Caroline Water securing a loan from the Drinking Water Supply Revolving Fund administered by the Virginia Department of Health ("VDH Revolving Fund") for improvements to its treatment plant. In addition, the authorized surcharges were to be deposited with a lock box escrow agent who would administer the funding of the VDH Revolving Fund loan and the installation of meters.¹

On March 12, 2009, in response to motions filed by various participants in the matter, the Commission entered an Order in which it reassigned the case to a hearing examiner ("Hearing Examiner") to take additional evidence. Specifically, the Hearing Examiner was directed to:

¹ The Company did not obtain a VDH Revolving Fund loan. The surcharges were never put into effect.

. . . conduct further proceedings to determine the Company's current financial condition, including the need for additional borrowing, and to review options for bringing the Company's system into compliance with applicable waterworks regulations and to file a report on the hearing examiner's findings and recommendations on modification, to the extent permitted by law, of the Commission's Order of March 13, 2008.²

By Hearing Examiner's Ruling entered on March 24, 2009 ("March 24, 2009 Ruling"), a pre-hearing conference was scheduled to address the need for discovery and to establish a procedural schedule. Additionally, the March 24, 2009 Ruling identified the four issues to be addressed in this case:

- (1) Determine the Company's current financial condition;
- (2) Determine the Company's need for additional borrowing;
- (3) Determine the availability of water from Caroline County ("County"), as an alternative to improving the Company's treatment facility; and
- (4) Determine the reasonableness of purchasing water from the County.

The pre-hearing conference was conducted as scheduled on April 22, 2009, and the parties subsequently submitted a proposed procedural schedule. By Hearing Examiner's Ruling entered on June 16, 2009, an evidentiary hearing was scheduled for October 22, 2009, and a procedural schedule was established for the parties to conduct discovery and prefile their direct and rebuttal testimony.

Prior to the scheduled hearing, a number of pleadings were filed. These included the July 10, 2009 Motion to Strike ("Motion to Strike"), filed by the Commission's Staff ("Staff"), seeking to strike the last sentence of the direct testimony of Mr. William Seltzer, president of Caroline Water, which read, "[The] Company requests that the Commission approve rates designed to support financing of construction of the new facilities detailed in the Company's PER [Preliminary Engineering Report]".³ The Staff argued that the discussion of new rates exceeded the scope of the four issues identified for resolution in this case. The Company and the Lake Caroline Property Owners Association ("Association") responded to the Motion to Strike, and the Staff replied. By Hearing Examiner's Ruling entered on July 27, 2009, the Staff's Motion to Strike was granted.

Additionally, on July 29, 2009, the Association moved for partial summary judgment or, in the alternative, to dismiss the issue related to Caroline Water's need for additional borrowing ("July 29, 2009 Motion"). The Association noted that, during the pre-hearing conference conducted on April 22, 2009, the Company did not seek to change the scope of the four issues identified for resolution and claimed that the Company's prefiled testimony did not address the need for additional borrowing.⁴ The Company responded to the July 29, 2009 Motion, and the Association replied to the Company's response. By Hearing Examiner's Ruling dated August 31, 2009, the Association's Motion for Partial Summary Judgment was taken under advisement. The Hearing Examiner emphasized that, while this case is procedurally out of the Commission norm, the burden of proving that all expenses are reasonable and necessary remains with the Company and that expenses that do not meet this standard or that are inadequately documented must be disallowed.⁵

The evidentiary hearing was convened by Hearing Examiner Michael D. Thomas as scheduled. Kenworth E. Lion, Jr., Esquire, appeared on behalf of the Company. Brian R. Greene, Esquire, appeared on behalf of the Association. M. Ann Neil Cosby, Esquire, appeared on behalf of the County. Wayne N. Smith, Esquire, appeared on behalf of the Staff. After the completion of the Company's direct case, the Association renewed its July 29, 2009 Motion, arguing that the Company submitted no evidence that it needed additional borrowing authority.⁶ The Company relied on its previously filed response. The Hearing Examiner took the Association's renewed motion under advisement.

On January 14, 2010, the Hearing Examiner entered a report ("Hearing Examiner's January 14, 2010 Report") that explained the procedural history of this case, summarized the record, analyzed the evidence and issues in this proceeding, and made certain findings and recommendations. Specifically, the Hearing Examiner made the following findings:

- (1) The Company is in good condition financially;
- (2) The Company did not support its need for any additional borrowing to support daily operations;
- (3) The Association's Motion for Partial Summary Judgment addressing the Company's need for additional borrowing should be denied;
- (4) The County has sufficient water supplies to meet the Company's near long-term water needs;
- (5) The wholesale water purchase option is significantly less costly for the Company's ratepayers in the long-term than rebuilding the Company's water treatment plant;
- (6) The Company's regulatory taking argument based on inadequate rates lacks merit;

² Order at 7.

³ Motion to Strike at 1 (quoting the prefiled direct testimony of Mr. William Seltzer).

⁴ Lake Caroline Property Owners Association, Inc.'s Motion for Partial Summary Judgment or, in the Alternative, to Dismiss from this Proceeding Issues Related to the Company's Alleged Need for Additional Borrowing Authority at 3.

⁵ Hearing Examiner's Ruling at 4 (Aug. 31, 2009).

⁶ Tr. at 40.

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- (7) The Company's regulatory taking argument based on overly burdensome regulation lacks merit;
- (8) If the Commission orders the Company to make the emergency water connection with the County permanent, a lock box arrangement should be placed in effect to ensure the County's water bill is paid;
- (9) The Staff's accounting recommendations are reasonable and the Commission should order the Company to implement those recommendations; and
- (10) If the Commission orders the Company to make the emergency water connection with the County permanent, the Company should be directed to file a rate case reflecting its new cost of service and the decommissioning costs of its water treatment plant.⁷

The Hearing Examiner recommended that the Commission: adopt his findings; order the Company to make permanent its emergency water connection with the County and to establish a lock box to ensure prompt payment to the County; order the Company to put into practice the Staff's accounting recommendations; and order the Company to file, within ninety (90) days of the Commission's order, a rate case reflecting the Company's new cost of service as well as the cost for decommissioning the Company's water treatment plant.⁸ On February 11, 2010, the Company, the Association, and the County filed comments on the Hearing Examiner's Report.

On February 26, 2010, the Staff filed a Motion for Rule to Show Cause ("Rule to Show Cause") asking that the Commission require Caroline Water to show cause why a receiver should not be appointed to operate the Company due to the Company's gross mismanagement of its business and in order to prevent imminent hazard to the health of its customers. The Commission held a hearing on the Rule to Show Cause on March 1, 2010. Thereafter, the Commission issued an Order on March 2, 2010, requiring the Company to pay the County \$75,000 and provide proof of such payment by March 3, 2010. The Company met these requirements.

The Commission issued a subsequent Order on March 16, 2010, which, among other things: (1) required the Company to make an additional payment of \$19,949.80 to the County and to provide proof of such payment by April 15, 2010; (2) directed the Company to provide verified monthly financial reports to the Commission's Division of Public Utility Accounting; (3) directed the Staff to file a Petition on or before April 20, 2010, detailing its reasons for seeking a receivership; (4) directed the Company to respond to the Staff's Petition on or before April 27, 2010; and (5) scheduled another hearing in connection with this matter on May 4, 2010. The Company made timely payment to the County, and by Order entered April 29, 2010, the Commission continued the hearing scheduled for May 4, 2010, indefinitely.

On July 19, 2010, the Company filed a Motion to Reopen the Record and to Schedule an Evidentiary Hearing ("July 19, 2010 Motion"), wherein the Company argued that recent developments indicate that the County has insufficient capacity to serve the Company's customers. The Company also supplied a copy of a report prepared by Waste Water Management, Inc., which suggests the County has insufficient pumping capacity to serve the Company's customers. On August 6, 2010, both the County and the Association responded to the July 19, 2010 Motion, requesting that the Commission deny it and enter an order adopting the recommendations of the Hearing Examiner's January 14, 2010 Report. By Order entered September 3, 2010, the Commission denied the July 19, 2010 Motion.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that we shall adopt, with two exceptions as noted herein, the findings and recommendations of the Hearing Examiner's January 14, 2010 Report. The public convenience and necessity requires that Caroline Water's emergency water connection with the County be made permanent, and the Company should file a rate case reflecting its new cost of service and the decommissioning costs of its water treatment plant.

We note that the Hearing Examiner found that the Company is in good financial condition and that the Company did not provide support for the need for additional borrowing to support daily operations. Further, we note that the Hearing Examiner found that the cost to the Company's ratepayers of wholesale water purchase would be significantly less than the cost associated with rebuilding the Company's treatment facilities. The Hearing Examiner explained in pertinent part:

The average net annual investment costs over the next five years to rebuild the treatment plant ranges from \$215,000 to \$295,000, depending on the loan terms. In contrast, the average net investment costs for the same period for the wholesale water purchase option is approximately \$134,000. In the fifth year, the net investment cost for the wholesale purchase option decreases to \$86,000 to reflect payment of the County's availability fee, while the least costly option for rebuilding the plant would continue to be \$215,000. While the Company's actual operating costs and resulting rates remain uncertain, Mr. Ellis believes the wholesale water purchase option would produce monthly rates approximately \$10.50 less per month than the rates to rebuild the water treatment plant.⁹

We agree with the Hearing Examiner. Based on the evidence produced in this proceeding, we find that purchasing water from the County would be a less costly alternative. The Company does not dispute that the costs to its ratepayers would be reduced by making the emergency water connection to the County permanent, but rather argues that "transitioning the Company's customers to County water merely to avoid the costs of compliance with water quality standards would be arbitrary and capricious."¹⁰ Contrary to the Company's claims, requiring the Company to purchase water at wholesale rather than rebuilding its treatment plant at considerably higher ratepayer expense is not an "end run around the very regulations VDH is supposed to be enforcing

⁷ Hearing Examiner's January 14, 2010 Report at 46.

⁸ *Id.* at 47.

⁹ Hearing Examiner's January 14, 2010 Report at 39-40.

¹⁰ Caroline Water's Exceptions to Report of Hearing Examiner at 3 (Feb. 11, 2010).

against the Company"¹¹ since the water quality regulations are equally applicable to the County. Rather, as the Hearing Examiner found, purchasing water from the County imposes fewer costs on the ratepayers and is therefore in the public interest.

The Hearing Examiner recommended that if the Commission orders the Company to make the emergency water connection with the County permanent, a lock box arrangement should be placed in effect to ensure the County's water bill is paid. The Hearing Examiner's recommendation is supported by the record, given that the Commission has ordered the Company to pay past due balances to the County under threat of disconnection on more than one occasion. However, because the Company has remained current with the County following the Commission's March 16, 2010 Order and has provided timely reports to Staff regarding its financial condition, we find that a lock box arrangement is not necessary at this time. Should the Company fail to provide monthly reports or if Staff recommends, based on the contents of such reports, that a lock box is necessary, the Commission may require such an arrangement in the future.

While Staff's analysis showed the cost of the wholesale purchase option is expected to be less than if the Company rebuilt its treatment facilities, it is unclear precisely what the Company's rates would be.¹² Accordingly, we agree with the Hearing Examiner that the Company should file a rate case reflecting its new cost of service and the decommissioning costs of its water treatment plant. In making this filing, we expect that the Company will follow the Staff's accounting recommendations. The Hearing Examiner recommended that Caroline Water file its rate case within ninety (90) days of our Order. We find, however, that a longer time period will allow the Company to make, and the Commission to rule upon, the necessary affiliate filings concerning the Company and Mr. William Seltzer that were included as part of Staff's accounting recommendations as detailed on page 45 of the Hearing Examiner's January 14, 2010 Report.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the Hearing Examiner's January 14, 2010 Report are adopted with the exceptions noted herein.
- (2) The Company is directed to make its emergency water supply connection with the County permanent and to execute any contracts necessary to effectuate this directive. Within thirty (30) days of the execution of such contracts, the Company shall file a report of this action with the Commission's Division of Energy Regulation.
- (3) Within sixty (60) days of the date of this Order, the Company shall file for approval of an affiliates agreement concerning the employment of Mr. William Seltzer, loans provided to Mr. William Seltzer from the Company, and any other affiliate arrangements that may be entered into by the Company.
- (4) The Company shall file a rate case no later than July 29, 2011, reflecting its new cost of service and the decommissioning costs of its water treatment plant and reflecting the Staff's accounting recommendations.
- (5) This matter is continued pending further order of the Commission.

¹¹ *Id.* The Company followed its "end run" comment with the following: "It simply puts them [the VDH regulations] aside, as the Staff's cross-examination of Mr. Tufaro revealed. 10-22-09 Hearing Tr. at 117-21." We note that this portion of the transcript contains a dialogue between Staff counsel and Mr. Eggborn, the Engineering Field Director of the Virginia Department of Health, Office of Drinking Water, in the Culpeper Field Office (Tr. at 114), not Staff witness Tufaro. We further note that, when Staff counsel specifically asked Mr. Eggborn what would happen to the VDH's Special Order against Caroline Water, Mr. Eggborn responded that, if Caroline Water received its water from the County and not from its current source, then the need for such Order would become moot. Tr. at 120.

¹² Staff did not conduct a full analysis of the Company's cost of service.

**CASE NOS. PUE-2005-00115 AND PUE-2011-00054
JULY 29, 2011**

APPLICATION OF
CAROLINE WATER COMPANY, INC. D/B/A LADYSMITH WATER COMPANY
For changes in rates, rules and regulations

JOINT APPLICATION OF
CAROLINE WATER COMPANY D/B/A LADYSMITH WATER COMPANY
and
WILLIAM SELTZER
For approval of affiliate agreement

ORDER

On February 7, 2011, in Case No. PUE-2005-00115, the State Corporation Commission ("Commission") issued an Order ("February 7 Order") that, among other things, directed Caroline Water Company, Inc. d/b/a Ladysmith Water Company ("Caroline Water" or "Company"): (i) to make permanent its emergency water connection to the Caroline County ("County") system and to execute any contracts necessary to effectuate that directive; (ii) to file for approval of an affiliates agreement concerning the employment of Mr. William Seltzer ("Mr. Seltzer"), loans provided to Mr. Seltzer from the Company, and any other affiliate arrangements that may be entered into by the Company; and (iii) to file a rate case no later than July 29, 2011, reflecting the Company's new cost of service and decommissioning costs of its water treatment plant and reflecting the Commission Staff's ("Staff") accounting recommendations.¹

¹ Doc. Con. Cen. No. 443141, Order (Feb. 7, 2011) at 9.

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Caroline Water and Mr. Seltzer completed their joint application for affiliates approval on June 10, 2011,² seeking approval of an agreement to provide Mr. Seltzer with a compensation package including a \$75,000 per year salary, \$250 per month towards health care, and reimbursement of out-of-pocket expenses ("Affiliates Application"). The Affiliates Application was assigned Case No. PUE-2011-00054.

On July 20, 2011, the Lake Caroline Property Owners Association ("Association") filed comments and a conditional request for hearing on the Affiliates Application. The Association urges the Commission to reject the Affiliates Application and to find that the affiliates agreement proposed therein is inconsistent with the public interest. The Association further requests, in the event the Commission is inclined to approve the Affiliates Application, that the Commission hold an evidentiary hearing on the narrow issue of Mr. Seltzer's compensation package and on whether it is in the public interest for Mr. Seltzer to fill the position of Company manager.³

On July 21, 2011, Caroline Water filed, in Case No. PUE-2005-00115, a Motion for Extension of Time ("Motion") to file the rate case as required by the February 7 Order. According to the Company, its

accounting firm experienced computer problems which hampered its operations and took several months to identify and remedy. In addition, [Company accounting witness] Mr. Katz will be unavailable next week because of other commitments and he will be unavailable in August because of planned vacation and attendance at accounting and tax seminars.⁴

The Company has asked for an extension of time until September 30, 2011, to file its rate case.

On July 25, 2011, the Association and the County each filed responses to the Motion. The Association states that the Company has had more than five months to prepare its rate case and expresses concern about what it describes as "the Company's apparent inability and desire to implement the Commission's directives in the February 7, 2011 Order."⁵ The Association requests that Caroline Water's Motion be denied and that the Commission consider imposing monetary penalties upon the Company for each day that its rate case filing is late.⁶ The County, in its response, also refers to "the Company's continued refusal and/or inability to timely undertake its obligations" of the February 7 Order.⁷ The County suggests that Caroline Water's rates may decrease as a result of a permanent connection to the County's facilities, which the County notes Caroline Water has not yet accomplished.⁸ The County requests that the Motion be denied and that this case should be resolved in a way that assures Caroline Water customers are paying "rates that reflect the proper cost of service and not a cost of service based on the withdrawal of water from Lake Caroline which no longer occurs."⁹

NOW THE COMMISSION, upon consideration of these matters, is of the opinion and finds as follows. We grant the Company's Motion and will require that the Company file its rate case on or before September 30, 2011, in accordance with the specific instructions below and in accordance with the applicable provisions of our Rules Implementing the Small Water or Sewer Public Utility Act, 20 VAC 5-200-40.¹⁰ We trust that this additional time will be spent in compiling a complete and accurate rate application and that no further delays will occur.

We are troubled by the apparent lack of progress that has been made with the specific directive of our February 7 Order concerning the water supply connection with the County. Therefore, we will require Caroline Water to file, on or before September 30, 2011, proof that its emergency water supply connection with the County has been made permanent and proof that any contracts necessary to effectuate this directive have been executed. We find that over seven months (from February 7 to September 30, 2011) should be more than an adequate amount of time to accomplish this directive.

Concerning the Affiliates Application, the Company filed the same pursuant to our February 7 Order. As discussed above, the Company also must file a rate case on or before September 30, 2011. We find that issues related to the appropriateness of a potential affiliates agreement are necessarily related to issues that will be addressed as part of Caroline Water's upcoming rate case. Accordingly, at this time, we deny the Company's Affiliates Application in Case No. PUE-2011-00054 without prejudice. If it is subsequently determined that an affiliates agreement is necessary, we will direct the filing thereof at such time.

Accordingly, IT IS ORDERED THAT:

(1) No later than September 30, 2011, Caroline Water shall file a rate case reflecting its new cost of service and the decommissioning costs of its water treatment plant and reflecting the Staff's accounting recommendations. This rate case filing shall be in accordance with the applicable provisions of

² According to the February 7 Order, this filing was due on or before April 8, 2011. Caroline Water sought and the Commission granted an extension of time, until May 9, 2011, for the Company to make its affiliates filing. See Doc. Con. Cen. No. 446095, Order (Apr. 8, 2011). The Company's May 9, 2011 filing was found by the Staff to be incomplete and was subsequently made complete by the Company's filing of additional information on June 10, 2011.

³ Comments and Conditional Request for Hearing of the Lake Caroline Property Owners Association, Inc. at 2, 6.

⁴ Motion at 2-3.

⁵ Lake Caroline Property Owners Association, Inc.'s Response to the Company's Motion for Extension of Time to File Rate Case at 2.

⁶ *Id.* at 4.

⁷ Caroline County's Reply to Caroline Water Company's Motion for Extension of Time to File Rate Case at 3.

⁸ *Id.* at 1-3.

⁹ *Id.* at 3-4.

¹⁰ An unofficial copy of these rules may be found by clicking the appropriate link at the following website address for the Commission's Division of Public Utility Accounting: <http://www.scc.virginia.gov/pua/fileguide.aspx>.

the Rules Implementing the Small Water or Sewer Public Utility Act, 20 VAC 5-200-40, and shall also include (in addition to any other requirements) the following documentation, based on a historic test year of no older than calendar year 2010 where applicable: (i) balance sheet, (ii) income statement, (iii) cash flow statement, (iv) rate of return statement, (v) one or more schedules detailing all accounting adjustments proposed by the Company to reflect a going forward level of revenues, expenses and rate base, (vi) support for all rate adjustments, (vii) the Company's most recent federal tax return, (viii) tariffs and terms and conditions of service reflecting any changes the Company proposes to make, and (ix) prepared direct testimony explaining and supporting the rate case filing, including all proposed adjustments. The Company' notice to customers, required by the Rules Implementing the Small Water or Sewer Public Utility Act, 20 VAC 5-200-40, shall state that the Commission, pursuant to § 56-265.13:6 of the Code, will schedule a hearing to be held after at least 30 days' notice to Caroline Water and to its customers.

(2) On or before September 30, 2011, Caroline Water shall file proof that its emergency water supply connection with the County has been made permanent and proof that any contracts necessary to effectuate this directive have been executed.

(3) The Company is directed to continue providing adequate service to its customers.

(4) The Association's conditional request for hearing filed in Case No. PUE-2011-00054 is denied.

(5) Caroline Water's and Mr. Seltzer's Affiliates Application filed in Case No. PUE-2011-00054 is denied without prejudice.

(6) Case No. PUE-2011-00054 is dismissed.

(7) Case No. PUE-2005-00115 is continued.

CASE NO. PUE-2008-00018 MARCH 22, 2011

APPLICATION OF PRESIDENTIAL SERVICE COMPANY TIER II, INC.

For certificates of public convenience and necessity to provide water and sewerage service

FINAL ORDER

On September 30, 2010, the State Corporation Commission ("Commission") entered an Order Granting Certificates in this proceeding pursuant to the Utility Facilities Act, § 56-265.1 *et seq.* of the Code of Virginia ("Code") and the Small Water or Sewer Public Utility Act, § 56-265.13:1 *et seq.* of the Code, granting to Presidential Service Company Tier II, Inc. ("Presidential" or "Company"), certificates of public convenience and necessity for water service (certificate no. W-335) and sewerage service (certificate no. S-95) for Presidential Lakes Subdivision, Section 14, in King George County, Virginia.¹ The Commission also found that the proceeding should be left open for completion of an audit of the Company's financial records by the Staff of the Commission ("Staff") to determine whether the rates, charges, and fees of the Company are just and reasonable. The Commission found that the Company's rates should be deemed to be interim and subject to refund pending further order of the Commission.²

The Staff issued its second report in this proceeding on November 15, 2010 ("Staff Report").³ In accordance with the Order Granting Certificates, the Staff examined the books and records of Presidential to determine if the Company's rates are just and reasonable. In conducting its audit, the Commission's Division of Public Utility Accounting documented that Presidential is currently owned equally by two individuals, Jules Elliott and John Hall.⁴ The audit also revealed that while the Company keeps a record of customer invoices, there is no separation between water and sewer revenues.⁵ The Staff found that the Company purchases management and consulting services from Elliott & Associates, an engineering firm owned by Jules Elliott, for a fixed monthly fee without a formal contract or invoices for specific services.⁶ The audit confirmed that the two owners have made loans to the Company that remain outstanding.⁷

¹ Presidential is incorporated as a public service corporation in the Commonwealth of Virginia. The certificates granted to Presidential authorize the Company to provide service to customers in Presidential Lakes Subdivision, Section 14, which as of July 13, 2010, consisted of 293 customers with a total of 333 customers when fully built-out along with three "off-site" water-only customers. As noted in its application, Presidential had constructed the water and sewer systems with the expectation that King George County ("County") would be purchasing the systems from Presidential, and as it has developed, that expectation did not come to fruition. *See King George County Serv. Auth. v. Presidential Serv. Co. Tier II, Inc.*, 267 Va. 448, 593 S.E.2d 241 (2004).

² The Commission adopted a bifurcated approach in this case as a result of the Motion for Leave to Amend Application and for Expedited Treatment that was filed by Presidential on July 16, 2010. Presidential completed its application in this proceeding by filing on August 24, 2010, a copy of a resolution adopted by the King George County Board of Supervisors authorizing the application, as amended, and documenting that the King George County Service Authority does not plan to extend service to the area served by Presidential.

³ The first Staff Report was issued on September 16, 2010, in accordance with the two-step approach adopted in this proceeding for review of Presidential's application.

⁴ November 15, 2010 Staff Report at 2.

⁵ *Id.* at 3.

⁶ *Id.* at 2, 6.

⁷ *Id.* at 2, 12.

The Staff also found that Presidential contracts with Judy Moore to provide administrative services for the Company, including keeping accounts in proper format, processing billings, recording collections, managing customer accounts, and maintaining bank records. The Company did not have invoices for administrative expenses paid to Judy Moore during the test period under review.⁸ The Staff Report also reflects various reclassification adjustments made by the Staff to correct the presentation of the Company's books going forward.⁹

In accordance with its findings, the Commission's Division of Public Utility Accounting made the following recommendations:

- 1) The Company should maintain its water utilities books and records in accordance with the USOA [Uniform System of Accounts] for Class C Water Utilities and its sewer books and records in accordance with the USOA for Class C Wastewater Utilities.
- 2) The Company should maintain separate records for its water and sewer service.
- 3) The Company should maintain records and supporting documentation including, but not limited to, outstanding loans, CIAC [Contributions in Aid of Construction] invoices, invoices for management and consulting fees paid to Jules Elliot [sic], and administrative expenses paid to Judy Moore.

With respect to Presidential's connection fees, the Commission's Division of Energy Regulation recommended that the fees of \$6,500 for water service and \$7,500 for sewer service not be approved by the Commission. Instead, a combined connection fee of \$850 for water and sewer service was recommended by the Staff.¹⁰ In support of this recommendation, the Staff reiterated that it had stated in its September 16, 2010 Staff Report that "the Commission has consistently approved connection fees that are set at the actual cost of completing a connection."¹¹ Since Presidential's connection fees are significantly higher than those approved by the Commission in other proceedings, the Staff originally recommended that they be made interim and subject to refund. The Staff subsequently determined through its audit that the Company only incurs costs, primarily associated with setting a meter, of \$850 to connect a new customer.¹²

While the Company did not file a response when this issue was raised initially, the November 15, 2010 Staff Report reflects that Presidential informally advised the Staff of the Company's opinion that it would be inequitable to the customers already connected to the water and sewer system, about 90% of the development, to reduce the connection fees for the remaining lots to Presidential's average cost of connecting a customer to the Company's distribution or collection mains.¹³ The Staff Report states that while the Staff is aware of Presidential's position in this matter, the Staff has consistently recommended, and the Commission has approved, connection fees reflecting the average costs of connecting a customer to the Company's distribution or collection mains.¹⁴

As an alternative, the Staff recommended that if the Commission approves the Company's connections fees, then the Commission should direct Presidential to use connection fee income only to pay down outstanding loans from the construction of the system or for capital improvements.¹⁵ The Staff recommended the Commission not allow Presidential to use connection fee income for its day-to-day operations.¹⁶

On December 3, 2010, Presidential filed its response ("Response") to the November 15, 2010 Staff Report. The Response addressed only the Staff's recommendation concerning the Company's connection fees. In the Response, Presidential listed four (4) reasons that the Commission should reject the Staff's recommended reduction to the connection fees.

First, Presidential noted the unusual circumstances in which it came to own and operate the system and charge the current connection fees. Presidential explained that the system was designed to be part of the County public system. As such, Presidential's connection fees were designed for each lot to pay its *pro rata* share of system costs and to mirror the fees charged by the County. Though this plan did not become a reality, it nevertheless provided the basis for the Company's current connection fee structure.¹⁷

Second, Presidential asserted that adopting the Staff's recommendation would create inequity between current users of the system, approximately 90% of whom already have paid the current connections fees, and those who would join the system in the future.¹⁸ Third, the Company claimed that if it is

⁸ *Id.* at 7.

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 13.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 14.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Response at 3-4.

¹⁸ *Id.* at 5. Presidential states that, of the 325 lots that could potentially purchase sewer service and the 332 lots that could potentially purchase water service, 295 already are connected to the system and have paid their fees.

not able to continue the existing connection fees, its cash flow would be undermined, possibly imperiling the Company's ability to repay the loans to the two current owners, in contravention of § 56-265.13:4 of the Code.¹⁹ Finally, Presidential discussed Case No. PUE-1999-00616 as precedent in which the Commission recognized the need for flexibility and permitted capital contributions through connection fees where the circumstances were warranted.²⁰

NOW THE COMMISSION, having considered the filings herein and the applicable law, is of the opinion and finds that the accounting recommendations in the Staff Report should be adopted. Moreover, upon consideration of the unique circumstances of this case, we find that the Staff's recommendation to reduce the connection fees for water and sewer service should not be adopted. Accordingly, the Commission finds that the rates, charges, and fees made interim and subject to refund are just and reasonable and should be made permanent. The Commission finds, as alternatively recommended by the Staff, that Presidential should be directed to use connection fee income only to pay down outstanding loans from the construction of the system or for capital improvements.

Accordingly, IT IS ORDERED THAT:

- (1) The rates made interim and subject to refund by the Commission on September 30, 2010, shall be made permanent. No refunds are required.
- (2) The connection fees made interim and subject to refund by the Commission on September 30, 2010, shall now be made permanent. However, as recommended by the Staff, Presidential shall use any connection fees collected only to pay down outstanding loans from the construction of the system or for capital improvements. Such funds shall not be used to pay for the day-to-day operations of the utility.
- (3) The Company shall maintain its water utilities books and records in accordance with the USOA for Class C Water Utilities and its sewer books and records in accordance with the USOA for Class C Wastewater Utilities.
- (4) The Company shall maintain separate records for its water and sewer service.
- (5) The Company shall maintain records and supporting documentation including, but not limited to, outstanding loans, CIAC invoices, invoices for management, and consulting fees paid to Jules Elliott and administrative expenses paid to Judy Moore.
- (6) As there is nothing further to come before the Commission, this matter is dismissed and the papers filed herein shall be placed in the file for ended causes.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 6-7 (citing *Application of B&J Enterprises, L.C., For a certificate of public convenience and necessity to operate a sewerage utility*, Case No. PUE-1999-00616, 2001 S.C.C. Ann. Rept. 390, Order (May 14, 2001); *Application of Land'Or Utility Company, For a general increase in rates*, Case No. PUE-2006-00128, 2008 S.C.C. Ann. Rept. 350, Final Order (Aug. 5, 2008)).

**CASE NO. PUE-2009-00027
MARCH 30, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For authority to establish an inter-company credit agreement

ORDER EXTENDING AUTHORITY

On April 29, 2009, Virginia Electric and Power Company ("Virginia Power" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapters 3 and 4 of Title 56 of the Code of Virginia wherein it requested authority to establish a \$1 billion inter-company credit agreement ("Credit Agreement") with its parent, Dominion Resources, Inc. ("Dominion" or "DRI"). By Order Granting Authority dated May 21, 2009, Virginia Power was authorized to establish the \$1 billion inter-company credit agreement with a termination date of May 30, 2011.

The Order Granting Authority required Applicant to report its use of the Credit Agreement annually. On February 4, 2011, Virginia Power filed a report, as ordered, and requested authorization to extend the Credit Agreement through May 30, 2013.

Under the Credit Agreement, Virginia Power borrows from Dominion but the Credit Agreement does not allow Dominion to borrow from Virginia Power. Loans under the Credit Agreement are in the form of short-term demand notes with maturities of less than 365 days.

Virginia Power stated in its April 29, 2009 application that on occasions, Dominion has cash available for use by its subsidiaries. On a DRI-consolidated basis, the best use of this available cash may be to reduce outstanding debt at Virginia Power. Approval of the Credit Agreement provided a means to execute such a transaction.

The interest rate or cost to Virginia Power is equal to or less than its displaced borrowing cost. Interest accrues daily at a rate no greater than the average rate of Virginia Power's outstanding commercial paper as determined on the business day immediately preceding the borrowing. If there is no outstanding commercial paper on that day, the interest rate will be no greater than that as determined by adding (1) the spread over one-month London Inter-Bank Offering Rate ("LIBOR") of the average rate on outstanding commercial paper as of the most recent business day wherein commercial paper was outstanding; and (2) the one-month LIBOR rate effective on the business day immediately preceding the borrowing.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that Virginia Power's continued participation in the Credit Agreement will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Applicant is hereby authorized to continue to participate in the \$1 billion Credit Agreement with its parent, Dominion, under the terms and conditions and for the purposes set forth in Virginia Power's April 29, 2009 application.
- (2) Should Virginia Power wish to continue to participate in the Credit Agreement beyond May 30, 2013, Applicant shall file an application seeking such authority on or before April 30, 2013.
- (3) On or before June 30 of 2011, 2012 and 2013, Applicant shall file a report with the Commission detailing use of the Credit Agreement to include the date, amount, applicable interest rate of any loans under the Credit Agreement, the basis for the interest rate, and the use of the proceeds.
- (4) The authority granted herein shall not preclude the Commission from applying the provisions of § 56-78 and § 56-80 of the Code of Virginia hereafter.
- (5) The Commission reserves the right, pursuant to § 56-79 of the Code of Virginia, to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- (6) The authority granted herein shall have no implications for ratemaking purposes.
- (7) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2009-00039
DECEMBER 20, 2011**

APPLICATION OF
APPALACHIAN POWER COMPANY

For recovery of environmental and reliability costs

ORDER

On May 2, 2011, Appalachian Power Company ("APCo" or "Company") filed with the State Corporation Commission ("Commission") an application ("Application") to recover certain environmental and reliability ("E&R") costs that the Company indicates the Commission has previously authorized for recovery but that have not yet been recovered by the Company. The Company's Application states that approximately \$353 million in Virginia jurisdictional E&R costs incurred during the period July 2004 through December 2008 have been recovered through base rate revenues and surcharges approved by the Commission pursuant to §§ 56-582 B (vi) and 56-585.1 A 5 of the Code of Virginia ("Code"), but approximately \$357.6 million of such costs are eligible for recovery. The Application seeks the recovery of the approximately \$4.6 million under-recovery balance, as calculated by the Company, through a proposed one-year surcharge effective for service rendered on and after February 1, 2012.

On May 24, 2011, the Commission entered an Order for Notice and Hearing that, among other things: established a procedural schedule for review of the Application; directed APCo to provide public notice of its Application; and assigned, pursuant to § 12.1-31 of the Code, a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission.

The following parties filed notices of participation in this proceeding: the VML/VACo APCo Steering Committee ("Steering Committee"); the Old Dominion Committee for Fair Utility Rates; Steel Dynamics, Inc.; and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel").¹

On September 7, 2011, the Staff of the Commission ("Staff") filed testimony and exhibits which, among other things, supported the Company's under-recovery balance calculations.² The Company subsequently filed its rebuttal testimony.

The Chief Hearing Examiner convened the public evidentiary hearing for this phase of the case on September 27, 2011. No public witnesses offered testimony. However, the Commission received more than thirty written or electronic comments on the Application from members of the public.

APCo, Consumer Counsel, the Steering Committee and the Staff participated in the evidentiary hearing at which testimony and exhibits were received into the record. Among the exhibits received into the record was a Stipulation between the Company and the Staff proposed to resolve all issues in this case.³ Among other things, the Stipulation recommends that the uncontested revenue requirement of approximately \$4.6 million be recovered over the period February 1, 2012, through January 31, 2013. No party opposed the Stipulation.

On November 29, 2011, the Chief Hearing Examiner issued a report ("Chief Hearing Examiner's Report") that explained the procedural history of this case, summarized the record, and analyzed the evidence and issues in this proceeding. Based on the evidence received in this case, the Chief Hearing Examiner made the following findings:

¹ The May 24, 2011 Order for Notice and Hearing did not require any additional notice of participation from parties that previously filed such notice pursuant to the Commission's original Order for Notice and Hearing issued in this docket on June 3, 2009, Doc. Con. Cen. No. 412685.

² Ex. 26 (Carr) at 1.

³ Ex. 27.

- (1) The Stipulation is fair and reasonable.
- (2) The Company's cumulative under-recovery balance from previously authorized E&R surcharges is \$4,596,148;
- (3) The cumulative under-recovery should be recovered over the period February 1, 2012, through January 31, 2013, by implementation of the tariff sheets in Company witness Bosta's rebuttal Schedule 2, attached to the Stipulation and to this Report;
- (4) The Company should track recovery of the E&R under-recovery amount and file reports to the Commission on or before November 1, 2012, December 1, 2012, January 1, 2013, and March 1, 2013, addressing the then-current level of such recovery; and
- (5) The comment period to this Report should be waived, as the participants have agreed to the disposition of this case, or did not object to such recommended disposition.⁴

Accordingly, the Chief Hearing Examiner recommended that the Commission enter an order that adopts the Stipulation and continues this matter generally for the purpose of receiving reports necessary to confirm whether the authorized amounts have been recovered by the Company.⁵

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the findings and recommendations of the Chief Hearing Examiner's Report are reasonable. The Stipulation, which provides for APCo's recovery of incremental costs incurred during the capped rate period, which costs were previously authorized for recovery pursuant to § 56-582 B (vi) of the Code, shall be approved.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the Chief Hearing Examiner's Report are hereby adopted, and the **Stipulation is hereby adopted** and approved.
- (2) The Company shall forthwith file revised Schedules E.R.C.R.S. and O.A.D. E.R.C.R.S. with the Clerk of the Commission and with the Commission's Division of Energy Regulation, in accordance with this Order, effective for service rendered on and after February 1, 2012. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.
- (3) This matter is continued generally.

⁴ Chief Hearing Examiner's Report at 4-5.

⁵ *Id.* at 5.

**CASE NO. PUE-2009-00041
APRIL 21, 2010**

APPLICATION OF
MASSANUTTEN PUBLIC SERVICE CORPORATION

For an increase in water and sewer rates

**ORDER ACCEPTING FILING OF STAFF REPORT
AND DISMISSING PROCEEDING**

On October 18, 2010, the State Corporation Commission ("Commission") entered its Final Order in this proceeding ("October 18, 2010 Order") adopting, with modifications, the findings and recommendations of the Hearing Examiner's Report and the Stipulation between Massanutten Public Service Corporation ("Company") and the Commission Staff ("Staff") as modified by the Hearing Examiner's Report. Ordering Paragraph (5) of the October 18, 2010 Order directed the Company to file with the Commission's Division of Energy Regulation, within thirty (30) days of the date of the October 18, 2010 Order, revised tariffs and terms and conditions of service and a revised customer complaint procedure. Ordering Paragraph (6) directed the Division of Energy Regulation to review and report on the adequacy of the customer complaint procedure within sixty (60) days from the date of the October 18, 2010 Order.¹

On November 16, 2010, the Company filed its revised customer complaint procedure.² On March 17, 2011, the Staff filed its report ("Staff Report") on the Company's customer complaint procedure, advising that the procedure is adequate and should be made a part of the Company's terms and conditions of service.³ The Staff concomitantly filed its Motion to Accept Filing of Staff Report ("Motion") explaining that, due to an oversight, the Staff

¹ Ordering Paragraph (4) of the October 18, 2010 Order also required the Company, within ninety (90) days, to file with the Division of Energy Regulation a detailed report of the resolution and actions taken on customer service complaints filed as part of this proceeding. The Company complied with this requirement.

² Staff Report at 2. The Company also filed its revised tariffs and terms and conditions of service at this time.

³ *Id.* at 3.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Report was unavailable for filing until the week of March 17, 2011. The Staff further advised that its counsel communicated with counsel to the parties in this proceeding and that they had no objection to the late filing of the Staff Report.⁴

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Motion should be granted, that the Staff Report should be accepted, that all reports required by the October 18, 2010 Order have been received, and that this matter should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) The Staff's March 17, 2011 Motion is granted, and the Staff Report is accepted.
- (2) There being nothing further to be done herein, this case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

⁴ Motion at 1.

**CASE NO. PUE-2009-00059
APRIL 21, 2011**

APPLICATION OF

ALPHA WATER CORPORATION; AQUA VIRGINIA, INC. (LAKE MONTICELLO); AQUA S/L, INC. (SHAWNEE LAND); AQUA UTILITY-VIRGINIA, INC. (LAKE SHAWNEE); BLUE RIDGE UTILITY COMPANY; CAROLINE UTILITIES, INC.; EARLYSVILLE FOREST WATER COMPANY; HERITAGE HOMES OF VIRGINIA, INC.; INDIAN RIVER WATER COMPANY; JAMES RIVER SERVICE CORPORATION; AQUA LAKE HOLIDAY UTILITIES, INC.; LAND'OR UTILITY COMPANY, INC.; MOUNTAINVIEW WATER COMPANY, INC.; POWHATAN WATER WORKS, INC.; RAINBOW FOREST WATER CORPORATION; SYDNOR WATER CORPORATION; AND WATER DISTRIBUTORS, INC.

For an increase in water and sewer rates

FINAL ORDER

On July 15, 2009, Alpha Water Corporation; Aqua Virginia, Inc. (Lake Monticello); Aqua S/L, Inc. (Shawnee Land); Aqua Utility-Virginia, Inc. (Lake Shawnee); Blue Ridge Utility Company; Caroline Utilities, Inc.; Earlysville Forest Water Company; Heritage Homes of Virginia, Inc.; Indian River Water Company; James River Service Corporation; Aqua Lake Holiday Utilities, Inc.; Land'Or Utility Company, Inc.; Mountainview Water Company, Inc.; Powhatan Water Works, Inc.; Rainbow Forest Water Corporation; Sydnor Water Corporation; and Water Distributors, Inc. (hereafter collectively "Aqua Virginia" or "Company"), filed a completed application with the State Corporation Commission ("Commission") for an increase in water and sewer rates.

On October 29, 2010, the Commission entered an Order ("October 29, 2010 Order") in this case which, in part, directed Aqua Virginia to file its customer complaint procedure and its revised tariffs and terms and conditions of service with the Commission within thirty (30) days from the date of the Order and directed the Commission's Division of Energy Regulation ("Staff") to review and report to the Commission on the adequacy of the Company's customer complaint procedure within sixty (60) days from the date of the October 29, 2010 Order.¹

On November 29, 2010, Aqua Virginia filed with the Staff revised terms and conditions for service and incorporated in these terms and conditions Rule 24, entitled "Customer Complaint Procedure."² On January 27, 2011, the Staff filed a Motion to Accept Late Filing of Staff Report ("Motion"). In this Motion, the Staff stated that, due to a scheduling oversight at the end of the year, it did not file its report on the adequacy of the Company's customer complaint procedure within sixty (60) days from the date of the October 29, 2010 Order. The Staff asked that the Commission accept the filing of its report out of time. The Staff concomitantly filed its Staff Report on the adequacy of the Company's customer complaint procedure, advising that the procedure is adequate and should be made a part of the Company's terms and conditions.³

In its Motion, the Staff stated that it had been advised that the Company; the Board of Supervisors of Frederick County, Virginia; the Lake Land'Or Property Owners Association, Inc.; Caroline County, Virginia; and the Office of the Attorney General's Division of Consumer Counsel had no objection to the late filing of the report. No other party has filed any response to the Staff's Motion.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that Staff's Motion should be granted and the Staff Report should be accepted, that all reports required by the October 29, 2010 Order have been received, and that this matter should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) Staff's January 27, 2011 Motion to Accept Late Filing of Staff Report is granted, and the Staff Report is accepted.

¹ The October 29, 2010 Order also required Aqua Virginia, within sixty (60) days of the date of the Order, to file a detailed report of actions taken with regard to customer complaints. The Company has complied with this requirement.

² Staff Report at 2.

³ *Id.* at 3.

(2) There being nothing further to come before the Commission, this matter is dismissed from the Commission's active docket and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. PUE-2009-00079
MARCH 24, 2011**

APPLICATION OF
THE CITY OF CHESAPEAKE

For an order on public utility lines crossing a railroad and for certification of public necessity or essential public convenience in the exercise of authority of eminent domain with regard to certain interests in real property owned by the Norfolk and Portsmouth Belt Line Railroad Company

ORDER GRANTING MOTION TO WITHDRAW APPLICATION

On July 24, 2009, the City of Chesapeake, Virginia ("City") filed an application ("Application") with the State Corporation Commission ("Commission") pursuant to §§ 56-16.2 and 25.1-102 of the Code of the Virginia and Rule 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* The City requested that the Commission issue an order: (1) requiring the Norfolk and Portsmouth Belt Line Railroad Company ("Railroad") to grant a license to the City "associated with the City's established plan to have utility lines cross under" the Railroad's tracks; and (2) certifying that the "public necessity or an essential public convenience" support "the City's proposal to take by condemnation an easement for a right-of-way across real property owned by [the Railroad] for the purpose of constructing a public right-of-way and roadway crossing . . ." ¹

After several procedural steps, on August 6, 2010, the Commission entered an Order for Notice and Hearing in which, among other things, the Commission assigned the case to a Hearing Examiner and scheduled a public hearing on the Application for December 8, 2010. Thereafter, the Hearing Examiner granted two motions requesting amendment to the procedural schedule in this case. ²

On February 14, 2011, the City filed a Motion to Withdraw Application Without Prejudice ("Withdrawal Motion") wherein it stated that it has chosen to withdraw the Application because of "recent changes in the plans for developing the property that is the subject of this proceeding." ³ The City requested that the Withdrawal Motion be granted without prejudice "in the event further changes in the development process make it necessary for the City to file a comparable new petition or application." ⁴ Additionally, the City represented that neither the Commission Staff nor the Railroad opposes the Withdrawal Motion. The City requested expedited treatment of the Withdrawal Motion because of pending filing deadlines in this case. ⁵

On February 15, 2011, the Hearing Examiner issued her Report. She found that the Withdrawal Motion should be granted and directed that the procedural schedule be suspended and that the upcoming hearing be cancelled. She recommended that the Commission enter an order granting the Withdrawal Motion and dismissing the Application without prejudice. The Hearing Examiner advised that comments on her Report were due within five (5) business days; no such comments were filed.

NOW THE COMMISSION, upon consideration of this matter, finds that we should adopt the Hearing Examiner's findings and recommendations.

Accordingly, IT IS ORDERED THAT:

- (1) We hereby adopt the findings and recommendations of the February 15, 2011, Hearing Examiner's Report.
- (2) The City's Application is dismissed without prejudice.
- (3) The papers filed herein shall be passed to the file for ended causes.

¹ Application at 1.

² See Hearing Examiner's Ruling dated September 13, 2010, Doc. Con. Cen. No. 436841 and Hearing Examiner's Ruling dated October 18, 2010, Doc. Con. Cen. No. 438497, filed in this case.

³ Withdrawal Motion at 2.

⁴ *Id.*

⁵ *Id.*

**CASE NO. PUE-2009-00125
OCTOBER 12, 2011**

PETITION OF
APPALACHIAN NATURAL GAS DISTRIBUTION COMPANY

For a Determination of the Price for the Acquisition of Natural Gas Facilities Pursuant to Va. Code § 56-265.4:5 B

FINAL ORDER

On November 9, 2009, Appalachian Natural Gas Distribution Company ("ANGD" or "Company") filed a petition ("Petition") with the State Corporation Commission ("Commission") pursuant to § 56-265.4:5 B of the Code of Virginia ("Code") requesting that the Commission determine a price for ANG'D's acquisition of facilities used to provide natural gas service to the University of Virginia's College at Wise ("College") that are presently owned and operated by Paramount Energy, LC ("Paramont"). In support of its Petition, ANG'D maintains that Evan Energy Company, LC ("Evan Energy"), notified the Commission of its intent to provide non-utility natural gas service to the College located in Wise County, Virginia, on June 20, 2001, pursuant to § 56-265.4:5 of the Code.¹ According to ANG'D, Evan Energy sold these facilities ("Evan Facilities") to Paramont in May 2006 and assigned to Paramont the gas purchase and transportation agreements that are associated with the service to the College. ANG'D states that Paramont paid Evan Energy \$300,000 for the Evan Facilities including all the agreements related thereto.²

Additionally, ANG'D advises that in Case No. PUE-2007-00077 the Commission authorized the Company to provide natural gas service in Wise County, Virginia.³ ANG'D maintains that for approximately twelve (12) months, it diligently and in good faith attempted to reach a mutually agreeable price for the acquisition of the facilities owned and operated by Paramont. ANG'D alleges that the Company and Paramont are unable to arrive at a mutually agreeable price and, therefore, ANG'D requests that the Commission determine a price for these facilities as authorized by § 56-265.4:5 B of the Code.⁴

On December 3, 2009, Paramont filed an Answer, Motion to Dismiss and Request for Hearing ("Answer"). Paramont admits and denies various allegations in the Petition, sets forth several affirmative defenses, and seeks to dismiss ANG'D's Petition. Paramont asserts, among other things, that: (i) ANG'D has not met the statutory criteria for relief under § 56-265.4:5 B of the Code, ANG'D has no right to acquire the Evan Line⁵ portion of Paramont's gathering system, and the Commission is without jurisdiction to grant the relief requested by the Petition;⁶ (ii) the relief sought by ANG'D would unlawfully impair the obligation of Paramont's existing contractual relationship with the College in violation of Article I, Section 11 of the Virginia Constitution; and (iii) granting the relief sought by ANG'D would constitute an unconstitutional taking of Paramont's property without just compensation under the Fifth Amendment to the U.S. Constitution and Article I, Section 11 of the Virginia Constitution.⁷

Paramont's Answer also includes a Motion to Dismiss on the grounds that ANG'D has not met the statutory prerequisites for relief under § 56-265.4:5 B of the Code and, as a result, the Commission is without jurisdiction to grant the relief required. Paramont requested that, if its Motion to Dismiss is denied, the Commission set this matter for an evidentiary hearing.⁸

On December 23, 2009, ANG'D filed the Response of Appalachian Natural Gas to Answer, Motion to Deny, and Joint Request for Hearing. On January 8, 2010, Paramont filed its Reply.

On January 28, 2010, the Commission entered an Order Directing Prefiling of Testimony and Scheduling Hearing ("Scheduling Order") that, among other things: scheduled a public hearing in this matter for June 10, 2010; directed the prefiling of testimony and other relevant information by ANG'D and Paramont, including requiring ANG'D to file an appraisal and supporting expert testimony related to the price of the Evan Facilities; directed that ANG'D serve a copy of the Petition and the Scheduling Order on other parties who may be affected by ANG'D's Petition or the relief sought therein; allowed persons affected by the Company's Petition to participate as respondents in this proceeding; provided the Commission Staff ("Staff") the opportunity to prefile testimony; and assigned this case to a Hearing Examiner to conduct further proceedings. The Commission took Paramont's Motion to Dismiss under advisement until all evidence was received and a Hearing Examiner's report was entered.

On March 5, 2010, Wal-Mart Stores East, LP ("Wal-Mart"), filed the only Notice of Participation in this proceeding.

By Hearing Examiner's Ruling of April 27, 2010, a Motion to Suspend Procedural Schedule and Continue Hearing filed by ANG'D, with the concurrence of the Staff and Wal-Mart, was granted. The remaining procedural schedule was suspended, and the hearing was rescheduled for July 13, 2010, to permit discussions between the parties in hopes of resolving the issues raised by the Petition.

¹ Petition at 1.

² *Id.* at 2.

³ *Application of Appalachian Natural Gas Distribution Company, For approval of a certificate of public convenience and necessity to provide natural gas service pursuant to Va. Code § 56-265.3*, Case No. PUE-2007-00077, 2008 S.C.C. Ann. Rept. 418, Final Order (Apr. 18, 2008). As noted in that Final Order, no party filed written comments in the case, and no requests for hearing were received by the Commission.

⁴ Petition at 2-3.

⁵ According to Paramont's Answer at 1-2, the "Evan Line" consists of the natural gas pipeline facilities that are the subject of the Petition and are part of the assets acquired by Paramont pursuant to an Asset Purchase Agreement and an Assignment and Assumption Agreement, both dated May 6, 2005.

⁶ *Id.* at 13.

⁷ *Id.* at 16.

⁸ *Id.* at 17.

On June 8, 2010, the Staff filed a Motion to Compel Compliance with the Commission's Order asserting that ANGD had failed to comply with the Commission's directive to file an appraisal and supporting expert testimony related to the price of the Evan Facilities.

By Hearing Examiner's Ruling dated June 21, 2010, the hearing was rescheduled for October 6, 2010, and a revised procedural schedule was established. On July 2, 2010, pursuant to that revised schedule, ANGD filed the testimonies of T. Dale Honn, Jack E. Sudderth, and John W. Ebert.

By Hearing Examiner's Ruling dated July 30, 2010, the procedural schedule was again suspended; ANGD was directed to prepare additional supplemental testimony clarifying its position as to the rates, charges, terms and conditions by which Paramont may transport gas on the Evan Facilities if it is purchased by ANGD; and the Staff was directed to report either an agreed upon procedural schedule or the availability of counsel for a pre-hearing conference to establish a procedural schedule. By Hearing Examiner's Ruling dated August 4, 2010, the hearing was rescheduled for December 6-7, 2010, and a new procedural schedule was established.

On November 3, 2010, Paramont filed a Motion *In Limine* for Ruling on Authorization to Continue Non-Utility Gas Service Under the Utilities Facilities Act ("Motion *in Limine*") requesting a finding that Paramont will continue to be authorized, pursuant to the Utilities Facilities Act,⁹ to provide exempt non-utility gas service to the College following any proposed acquisition by ANGD of the Evan Facilities.

By Hearing Examiner's Ruling dated November 9, 2010, Paramont's Motion *In Limine* was denied based on a finding that the issue was one of several raised in this proceeding and should be fully litigated.

The hearing commenced on December 6, 2010. Pursuant to the Hearing Examiner's instructions, ANGD, Paramont, and the Staff filed post-hearing briefs on January 28, 2011.¹⁰

On June 3, 2011, the report of Howard P. Anderson, Jr., Hearing Examiner ("Hearing Examiner's Report" or "Report") was entered. The Hearing Examiner made the following findings:

1. The parties hereto have negotiated but have been unable to mutually agree upon a price for the Evan Facilities;
2. Use of the [Replacement Cost New Less Depreciation ("RCNLD")] pricing methodology is appropriate for this proceeding;
3. A fair market value for the Evan Facilities is \$383,800, independent of the impact on existing contracts, and should be used only as a basis for establishing a cost-based transportation tariff;
4. For ANGD to meet the requirement set forth in § 56-265.4 B that any acquisition of facilities be "subject to existing contracts regarding gas service to such customers and to the gas utility's effective transportation tariff. . .," it must have an effective transportation tariff;
5. The Commission should direct ANGD to file an application for a transportation tariff within three months of the issuance of a Commission Order in this proceeding based on a fair market value of \$383,800 for the Evan Facilities;
6. This case should be continued generally pending approval by the Commission of an effective transportation rate for use of the Evan Facilities;
7. ANGD's request that the Commission set a schedule for the execution of an agreement and retain jurisdiction over this matter in the event that contract negotiations fail should be denied; and
8. Paramont's request that the price determined by the Commission for the Evan Facilities should be effective for and limited to ninety (90) days should be denied.¹¹

The Hearing Examiner recommended that the Commission enter an order adopting the findings contained in the Report, directing ANGD to file forthwith an application with the Commission to establish an effective and cost-based transportation tariff, and continuing this case generally pending the establishment by ANGD of an effective transportation tariff.¹²

On June 24, 2011, ANGD, Paramont, and the Staff filed comments on the Hearing Examiner's Report.

ANGD "requests that the Commission follow depreciated original cost methodology to determine price; or, in the alternative, that the Commission adjust the depreciation and right-of-way components ... of the Hearing Examiner's recommendation as set out [by the Company]."¹³ Further,

⁹ Va. Code § 56-265.1 *et seq.*

¹⁰ On January 18, 2011, Wal-Mart filed a letter stating that it would not be filing a post-hearing brief in this proceeding.

¹¹ Hearing Examiner's Report at 25-26.

¹² *Id.* at 26.

¹³ ANGD's June 24, 2011 Comments at 10-11.

the Company "recommends that the Commission find that the effective date of this acquisition be July 1, 2012."¹⁴ In addition, "ANGD reasserts its request that the Commission retain jurisdiction over this matter in the event that the terms and conditions of the sale of the Evan Energy Facilities at the price determined by the Commission cannot be settled expeditiously and in advance of the expiration of the Evan-College Contract between UVA-Wise and Paramont."¹⁵

Paramont states that the "Petition should be denied for want of jurisdiction due to ANGD's failure to meet the statutory requirements for the relief requested."¹⁶ Paramont also asserts that "the specific replacement value recommended by the Report incorrectly assumes that replacement facilities can be built in their current location ... but they cannot," and that "[t]he Commission should instead adopt the value that best reflects the cost ... that Paramont is likely to actually incur in order to maintain continued access to its existing customers for sales and purchases of gas."¹⁷

In addition, Paramont "urges the Commission to confirm that Virginia law permits Paramont, after a taking of the Evan Line Facilities, to continue to sell and deliver non-utility gas service to the College as Paramont proposes."¹⁸ Paramont further states that

[f]inally, if any price can be determined lawfully in this proceeding, it should be effective for a limited period of time – Paramont suggests no more than ninety (90) days – in order to remove the uncertainty caused by this litigation that has prevented Paramont from investing in new wells and to reduce the risk that the College or Paramont would be disadvantaged by swings in the gas markets.¹⁹

The Staff summarizes as follows:

Simply put, depreciated original cost is a valid method for determining the fair market value of personal property owned by public service companies in Virginia. However, since there was no reliable direct evidence on the original cost of the Evan Facilities, the Staff relied on the RCNLD method to determine the fair market value of the Evan Facilities.²⁰

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

In this proceeding, the Commission must implement § 56-265.4:5 B of the Code:

B. In the event a gas utility is issued a certificate to serve the area where customers to whom service is being provided pursuant to this section are located, the gas utility shall have the right, subject to existing contracts regarding gas service to such customers and to the gas utility's effective transportation tariff, to acquire any facilities installed to serve such customers, at a price to be mutually agreed upon, or if not so agreed, at a price to be determined by the Commission.

As this is a case of first impression, we will address each of the provisions of this statute.

I. *"In the event a gas utility is issued a certificate to serve the area where customers to whom service is being provided pursuant to this section are located . . ."*

ANGD has been issued a certificate by the Commission to serve an area where customers to whom service is being provided by Paramont are located.

II. *"[T]he gas utility shall have the right ... to acquire any facilities installed to serve such customers . . ."*

ANGD has the right, subject to the conditions in § 56-265.4:5 B of the Code as discussed below, to acquire any facilities installed to serve customers to whom service is being provided by Paramont in ANGD's service area. Based on the record in this case and the plain language of the statute, we

¹⁴ *Id.* at 11.

¹⁵ *Id.*

¹⁶ Paramont's June 24, 2011 Comments at 2.

¹⁷ *Id.* at 2-3.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ Staff's June 24, 2011 Comments at 3.

agree with the Hearing Examiner that all of the facilities described in this case as the Evan Facilities were "installed to serve such customers."²¹ Thus, under this statute ANGD has the right to acquire the Evan Facilities.²²

III. "[S]ubject to existing contracts regarding gas service to such customers . . ."

ANGD's statutory right to acquire Paramont's facilities is "subject to existing contracts regarding gas service to such customers."²³ Contrary to ANGD's proffered testimony, the plain language thereof does not give ANGD the right to assume Paramont's contracts. Rather, this "subject to" condition requires ANGD to permit Paramont to fulfill its existing contracts regarding gas service to such customers.

IV. "[S]ubject to ... the gas utility's effective transportation tariff . . ."

ANGD's statutory right to acquire Paramont's facilities is also "subject to ... the gas utility's effective transportation tariff."²⁴ Contrary to Paramont's assertion, the plain language thereof does not require ANGD to have an effective transportation tariff approved by the Commission prior to filing the instant Petition. Rather, this "subject to" condition requires ANGD to have an effective transportation tariff prior to acquiring Paramont's facilities – not prior to asking the Commission to exercise its authority under § 56-265.4:5 B of the Code. ANGD, however, does not currently have an effective transportation tariff. Accordingly, while we determine herein a price for the facilities (as required by statute and discussed below), the statute does not permit ANGD to acquire the facilities until it has an effective transportation tariff on file with, and approved by, the Commission.

V. "[A]t a price to be mutually agreed upon, or if not so agreed, at a price to be determined by the Commission."

ANGD is permitted to acquire Paramont's facilities, as identified herein, "at a price to be mutually agreed upon, or if not so agreed, at a price to be determined by the Commission."²⁵ Contrary to Paramont's assertion, the record is clear that under the plain language of the statute, ANGD and Paramont have failed to "mutually agree[] upon ... a price" for such facilities.²⁶ Thus, the statute directs that the Commission shall determine a price therefor. Indeed, as noted by Staff, "[§] 56-265.4:5 B of the Code gives the Commission authority to determine a price for the acquisition of the Evan . . . [F]acilities, and nothing more."²⁷

In this regard, the Hearing Examiner noted that "[§] 56-265.4:5 B of the Code does not set forth the means or methodology by which the Commission is to determine a price for the facilities in question . . ."²⁸ We agree with the Staff that depreciated original cost is a valid method for determining the fair market value of personal property owned by public service companies in Virginia. We also find, as did the Staff and the Hearing Examiner, that there is no reliable direct evidence on the original cost of the Evan Facilities. For purposes of this proceeding, we find that the RCNLD methodology results in a reasonable determination of the price for the Evan Facilities, which produces a value of \$383,800.²⁹ In addition, we do not address whether the price determination under the above statute should be increased to reflect transportation charges that Paramont may incur to fulfill the existing Evan-College Contract; ANGD has stated that it "is willing to postpone the effective date of its acquisition of the [Evan Facilities] until after the expiration

²¹ See, e.g., Hearing Examiner's Report at 18-19.

²² Specifically, as described in the Hearing Examiner's Report, ANGD has the right to acquire the following facilities:

Beginning at Evan Energy Company, LC's meter site located approximately 3,000 feet north of the Gilliam Cemetery and 4,750 feet east of the City Limits of the town of Wise, Virginia, thence proceeding in a southerly direction approximately 200 feet to an old mining bench, thence following the old bench in a westerly direction approximately 250 feet to a point north of the Forks of Bear Creek, thence turning south a distance of 450 feet and crossing Bear Creek to the Right-of-Way ["ROW"] of the Virginia Department of Transportation's ["VDOT"] Route 801, thence following the ROW of VDOT Route 801 in a southerly direction approximately 1,525 feet to a point approximately 650 feet north of the intersection of VDOT Route 801 and VDOT Route 646, thence turning westward and proceeding approximately 1,500 feet to the meter site located at the University of Virginia's College at Wise.

Hearing Examiner's Report at 19 (citing ANGD Petition at 15, Exhibit B).

²³ Va. Code § 56-265.4:5 B.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* See also Hearing Examiner's Report at 20.

²⁷ Staff's January 28, 2011 Post-Hearing Brief at 15.

²⁸ Hearing Examiner's Report at 21.

²⁹ The Hearing Examiner also noted that "RCNLD is a generally accepted cost methodology for determining the fair market value of property," and that the Staff's RCNLD "approach to determining fair market value, which utilizes the *Marshall Valuation Service Manual*, is appropriate and verifiable . . ." *Id.* at 23.

of the existing term of the Evan-College Contract on June 30, 2012.³⁰ Finally, other potential transportation costs that may be incurred by Paramount, such as costs to access back-up supplies, fall outside the scope of the price of the actual facilities to be acquired by ANGD as determined herein.³¹

Accordingly, IT IS SO ORDERED and THIS CASE IS DISMISSED.

³⁰ ANGD's June 24, 2011 Comments at 3.

³¹ Accordingly, Paramount's Motion to Dismiss is denied. In addition, we do not address other requests raised by the parties, which are outside the scope of the Commission's obligation under § 56-265.4:5 B of the Code to determine a price for the Evan line and associated facilities as requested in the Petition giving rise to this matter. Moreover, the Commission's action herein – which is statutorily limited to determining the price for the Evan Facilities – does not result in an unconstitutional taking or an impairment of existing contracts.

**CASE NO. PUE-2009-00129
MARCH 30, 2011**

APPLICATION OF
RESTON LAKE ANNE AIR CONDITIONING CORPORATION

For an increase in rates

**ORDER ACCEPTING FILING OF STAFF REPORT,
ACCEPTING COMMENTS AND DISMISSING PROCEEDING**

On October 29, 2010, the State Corporation Commission ("Commission") entered its Order in this proceeding ("October 29, 2010 Order"), adopting the Stipulation of the case participants and adopting with modifications the findings and recommendations of the Senior Hearing Examiner's Report. Ordering Paragraph (7) of the October 29, 2010 Order directed the Commission Staff ("Staff") to review and report to the Commission within sixty (60) days on the adequacy of Reston Lake Anne Air Conditioning Corporation's ("RELAC" or "Company") customer complaint procedures. On January 10, 2011, the Staff filed its report ("Staff Report") on RELAC's customer complaint procedures. The Staff also filed, by counsel, its Motion to Accept Filing of Staff Report ("January 10, 2011 Motion"). In its January 10, 2011 Motion, Staff advised that, due to a scheduling oversight at the end of the year, the Staff Report was not available for filing until the week of January 10, 2011. Staff further advised that counsel to the Staff communicated with counsel to the Company and the Fairfax County Board of Supervisors ("Fairfax County" or "County") the previous week regarding the progress of the Staff Report, who advised that they had no objection to the late filing of the Staff Report.

On January 31, 2011, Fairfax County filed its Motion for Leave to File Comments on the Staff Report on Customer Complaint Procedure ("January 31, 2011 Motion"), and included its proposed Comments ("Comments") with the January 31, 2011 Motion. In its Comments, Fairfax County states that it disagrees with Staff that RELAC's Customer Complaint Procedure included in Rule 13 of RELAC's revised Rules, Regulations and Rates ("Tariff") is adequate. Fairfax County asserts that Rule 13 of RELAC's revised Tariff does not comply with the Commission's October 29, 2010 Order and requests that the Commission order RELAC to amend its Customer Complaint Procedure in Rule 13 of its Tariff as follows:¹

13. Customer Complaint Procedure

- A. Customer service representatives are available to answer questions weekdays between 7:30 a.m. and 5 p.m. at 877.WTR.AQUA or 877.997.2787. For emergencies, after hours and holidays customers can reach the company using the same number.
- B. *The Company will maintain records of supply temperatures and pressures, and outside temperatures on each occasion when the Company makes inspections/repairs to its lines or answers service complaint calls at customer premises.*
- C. *The Company will document all customer complaint calls, including the nature of each complaint, a brief description of its resolution and the length of time to resolve, and whether, if applicable, the cooling issues customers reported resulted from problems in the system or inadequate maintenance/operation of internal units or other factors in the home.*
- D. [Currently B] The Company will maintain a record of the [*delete: types of*] complaints received in its Customer Information System (CIS). When an inquiry, service request, or complaint is received in *written or verbal* form the Company shall record the contact, *including the information required above*, in its CIS. [*delete: and*] *The Company shall retain all information for a minimum of two years.*
- E. [Currently C] If the Customer is not satisfied and wishes to pursue the complaint further, they shall be advised that they may contact the State Corporation Commission via telephone (1-800-552-7945).
- F. *The Company will make the records and documentation available in one report to the Commission Staff by December 1 of each year.*

On February 16, 2011, RELAC filed its Response to Fairfax County's January 31, 2011 Motion and proposed Comments. In its Response, RELAC notes, among other things, that Fairfax County's proposed additions of the requirements contained in proposed Items B, C, and F, as noted above, are already included in the directives in Ordering Paragraphs (3), (4), and (5) of the Commission's October 29, 2010 Order. The Company states that Fairfax County's proposal would require the Company to write into its tariffs provisions of the October 29, 2010 Order that are "unrelated to the procedure for a customer to make a complaint, including provisions regarding maintenance of general records (Comments at 3, Item D), maintenance of records of outside

¹ Comments at 3-4. Fairfax's County's proposed changes are italicized.

temperatures/supply pressures/supply temperatures (Comments at 3, Item B) and availability/submission of records to the Commission (Comments at 4, Item F).² RELAC further advises that it "does not agree with the additional revisions requested by the County to the extent that more rigid tariff language might be interpreted in some unforeseen manner to undermine the Company's flexibility to deal with all customer concerns."³ The Company specifically objected to the customer complaint procedure including "unrelated matters of recordkeeping and reporting like items B, D, and F" listed in Fairfax County's comments.⁴

NOW THE COMMISSION, after consideration of the foregoing, is of the opinion and finds that the Staff's January 10, 2011 Motion should be granted and that the Staff Report should be accepted; that Fairfax County's January 31, 2011 Motion should be granted; and that some of Fairfax County's proposed amendments to Rule 13 of RELAC's Tariff should be adopted, while others should not, as provided herein.

Ordering Paragraph (5) of the October 29, 2010 Order directs RELAC to "document all customer complaint calls, including the nature of each complaint, a brief description of its resolution and the length of time to resolve, and whether, if applicable, the cooling issues customers reported resulted from problems in the system or inadequate maintenance/operation of internal units or other factors in the home."⁵ The October 29, 2010 Order further directs the Company to include these requirements in the customer complaint procedures that the Company must refile. The language in proposed Item C is identical to the language of Ordering Paragraph (5), and this requirement should be included as part of RELAC's Customer Complaint Procedure contained in the Company's Tariff.

Ordering Paragraph (4) of the October 29, 2010 Order directs RELAC to "record supply temperatures and pressures, and outside temperatures on each occasion when the Company makes inspections/repairs to its lines or answers service complaint calls at customer premises, and train personnel to do so." It further directs the Company to make this information available to the Staff on an annual basis by December 1 of each year.⁶ Fairfax County's proposed Item B essentially repeats Ordering Paragraph (4), except that it directs the Company to "maintain records of" the information, rather than just "record" the information. We find that the requirement in the Commission's October 29, 2010 Order is sufficient and that it is unnecessary to restate or include the requirement in the Company's Tariff. Therefore, we do not adopt Fairfax County's recommendation regarding its proposed Item B, and we expect that the Company will maintain those records for Staff's review pursuant to the October 29, 2010 Order.

Fairfax County's proposed Item D amendments addressing information to be maintained in RELAC's Customer Information System are appropriate under the circumstances and will help ensure that RELAC's records are complete, and we adopt that recommendation. We find that the proposed Item D amendments should be included as part of RELAC's Customer Complaint Procedure contained in the Company's Tariff.

Fairfax County's proposed Item F, directing the Company to make records and documentation available in one report to the Staff by December 1 of each year, is not an appropriate requirement to be included in the Company's Tariff, and we do not adopt Fairfax County's recommendation in this regard. Such requirements are sufficiently addressed in Ordering Paragraphs (3), (4), and (5) of the Commission's October 29, 2010 Order.

Accordingly, IT IS ORDERED THAT:

- (1) The Staff's January 10, 2011 Motion is granted and the Staff Report is accepted.
- (2) Fairfax County's January 31, 2011 Motion is granted.
- (3) The language contained in Items C and D of Fairfax County's proposed amendments to Rule 13 of RELAC's Tariff shall be adopted and included in the Tariff, consistent with our findings herein, and Fairfax County's other proposed amendments shall not be included.
- (4) RELAC shall, within thirty (30) days from the date of this Order, file its revised Tariff consistent with directives herein with the Commission's Division of Energy Regulation.
- (5) There being nothing further to be done herein, this case is dismissed.

² RELAC Response at 2.

³ *Id.*

⁴ *Id.*

⁵ October 29, 2010 Order at 8.

⁶ The reporting requirements to Staff are addressed in the discussion of proposed Item F below.

**CASE NO. PUE-2009-00134
JANUARY 24, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For approval and certificates of public convenience and necessity for facilities in Loudoun and Prince William Counties: Loudoun-New Road Double-Circuit 230 kV Transmission Line and New Road Substation

FINAL ORDER

On December 28, 2009, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") an application for certificates of public convenience and necessity to construct and operate a double-circuit, 230 kilovolt ("kV") transmission line and substation in Loudoun and Prince William Counties, Virginia ("Application"). Prepared testimony, exhibits, copies of correspondence, and other material were attached to the Application.¹

Dominion Virginia Power proposes to replace a portion of its existing 115 kV Line #49 with two 230 kV transmission lines on double-circuit, single-shaft steel structures ("Proposed Line"). The Proposed Line, which would be located entirely within the certificated service territory of Northern Virginia Electric Cooperative ("NOVEC"), would run approximately 3.85 miles in the existing right-of-way now occupied by Line #49. The new line would extend from the Loudoun Substation in Loudoun County through a portion of Prince William County to the proposed New Road Substation ("Proposed Substation"), which would be constructed in Loudoun County adjacent to the existing right-of-way. The Company estimates the cost of the Proposed Line and the Proposed Substation (collectively, the "Project") to be \$27 million.

On February 2, 2010, the Commission issued an Order for Notice and Hearing that docketed the Application as Case No. PUE-2009-00134; established a procedural schedule; scheduled a public hearing for May 26, 2010; and assigned a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission and to file a final report.

Dominion Virginia Power was directed to provide notice of the Commission's Order for Notice and Hearing to the Counties of Loudoun and Prince William, where all construction for the Project would occur, and to NOVEC. Additionally, the Company was directed to provide public notice of the Application in newspapers that serve the affected area and to owners of property within the route of the Project.² Respondents were instructed to file direct testimony and exhibits by April 26, 2010. The Commission Staff ("Staff") was instructed to review the Application and file a Staff Report summarizing the results of its investigation by May 10, 2010. The Company was allowed to respond to Staff's Report and testimony from any respondents by May 19, 2010. The public was invited to provide written comments by May 19, 2010.

Section 56-46.1 of the Code of Virginia ("Code") requires the Commission to receive and to consider reports from state environmental agencies on the proposed facilities. On March 12, 2010, the Department of Environmental Quality ("DEQ") filed its Coordinated Environmental Review, containing the following recommendations with regard to the Project:

- Follow the [DEQ]'s recommendations to avoid wetlands and streams, and minimize indirect and temporary impacts to wetlands (Environmental Impacts and Mitigation, item 1(d), pages 9-10).
- Reduce solid waste at the source, re-use it and recycle it to the maximum extent practicable (Environmental Impacts and Mitigation, item 6(d), page 25).
- Coordinate with the Department of Conservation and Recreation for updates to its Biotics database if a significant amount of time passes before the project is implemented (Environmental Impacts and Mitigation, item 7(e), page 17).
- Coordinate with the Department of Conservation and Recreation with respect to the recommendation to conduct a survey for rare diabase plants, if the proposed transmission line is within the existing transmission corridor (Environmental Impacts and Mitigation, item 7(e), page 17).
- Coordinate with the Department of Game and Inland Fisheries, pertaining to their recommendations to protect wildlife resources (Environmental Impacts and Mitigation, item 8(c), pages 17-18).
- Coordinate with the Department of Historic Resources regarding recommendations to conduct archeological and architectural surveys; to evaluate identified resources for listing in the Virginia Landmarks Register; and to avoid, minimize, or mitigate for adverse impacts to VLR-eligible resources (Environmental Impacts and Mitigation, item 12(c), page 20).
- Follow the principles and practices of pollution prevention to the maximum extent practicable (Environmental Impacts and Mitigation, item 15(a), pages 21-22).
- Limit the use of pesticides and herbicides to the extent practicable (Environmental Impacts and Mitigation, item 16, page 22).³

¹ Corrections to the Application and accompanying materials were filed by the Company on January 12, 2010, and April 26, 2010. See Exh. 3, 4.

² In compliance with the Order for Notice and Hearing, the Company filed proof of notice to the counties and NOVEC on February 16, 2010, and filed proof of publication and notice to landowners on March 22, 2010. Exh. 1.

³ Exh. 12 at 6-7.

The DEQ, acting on behalf of the State Water Control Board, filed a letter dated January 6, 2010, which states that the impacts to surface waters are proposed to be minimal because the Project is located within an existing cleared right-of-way with no new clearing proposed.⁴ In addition, DEQ's letter states that should impacts occur to wetlands, these impacts should be minimal.

On April 2, 2010, RP Greenfields, L.L.C. ("Greenfields" or "Respondent") filed a notice of participation in this proceeding and, on April 26, 2010, submitted pre-filed testimony on the Company's Application.⁵ Greenfields' testimony states that it does not oppose the Company's general proposal but raises issues regarding the Company's representation that no additional rights-of-way or easements are necessary to construct the Proposed Line.⁶ This testimony indicates, among other things, that Greenfields' "desire is to clear up whatever confusion or inconsistency exists over Dominion's right to cross our property, either through a separate legal proceeding outside of the State Corporation Commission hearing process for the Application, or through the grant of a new easement as part of this proceeding."⁷

On May 19, 2010, Loudoun County filed comments on the Application. Loudoun County stated that, overall, its policies support aspects of the Project.⁸ Additionally, Loudoun County recommended, among other things, that: (1) indigenous trees and large shrubs should be placed around the Proposed Substation to minimize its visual impact; (2) archaeological surveys should be performed for any project-related areas that involve ground-disturbing activities; (3) the Company should coordinate with the Virginia Department of Historic Resources regarding certain visual impacts; (4) the right-of-way should be managed, in coordination with Loudoun County and the Commonwealth, as habitat with actions to promote the growth of indigenous vegetation; (5) wetland and stream impacts should be avoided and minimized; and (6) the Project should avoid disturbance of steep and moderately steep slopes.⁹

On May 10, 2010, a Staff Report was filed summarizing the results of its investigation of the Application. The Staff Report found that the Company has reasonably demonstrated the need for the Project and that the Proposed Line routing is optimal.¹⁰ With respect to the Company's proposed choice of construction materials for the Proposed Line, Staff indicates that the use of dulled galvanized steel, rather than weathering steel, structures would better blend with existing facilities for a portion of the Proposed Line and that the use of de-glared aluminum phase conductors may also provide aesthetic benefits.¹¹ Staff estimates that the additional cost of these materials would be approximately \$434,284 and \$10,913, respectively.¹²

Finally, the Staff Report addresses the pilot program established by House Bill 1319, which was enacted during the 2008 Session of the Virginia General Assembly for the placement of qualifying electric transmission lines of 230 kV or less, in whole or in part, underground.¹³

Staff indicates that the Project does not qualify for inclusion in the pilot program because: (1) on a total project cost basis, the cost of placing the line underground exceeds 2.5 times the estimated cost of placing it overhead; and (2) the governing bodies of Loudoun and Prince William Counties have not filed a resolution indicating support for the line to be placed underground.¹⁴

On May 19, 2010, Dominion Virginia Power filed rebuttal testimony, which responds to the DEQ Coordinated Environmental Review and the Staff Report. The Company agrees with all but two of the recommendations contained in the DEQ Coordinated Environmental Review. Namely, the Company's rebuttal testimony opposes recommendations made by the Department of Game and Inland Fisheries ("DGIF") for: (1) maintaining undisturbed wooded buffers of at least 100 feet around all on-site wetlands and on both sides of perennial streams; and (2) adhering to time-of-year restrictions on tree removal and ground clearing from March 15 through August 15 annually.¹⁵ With respect to the Staff Report, although Dominion Virginia Power agrees with Staff's conclusion that the Project does not meet the criteria for inclusion in the pilot program established by House Bill 1319, the Company disagrees with

⁴ *Id.* at 8-9, Attachment.

⁵ On May 17, 2010, Greenfields moved for a stay of these proceedings, pending the outcome of a circuit court proceeding involving the validity and enforceability of the easement disputed by Greenfields. This request for a stay, made only nine days before the evidentiary hearing, was denied by Ruling of the Chief Hearing Examiner issued May 21, 2010.

⁶ *See, e.g.*, Exh. 10 at 5.

⁷ *Id.*

⁸ Exh. 13 at 2.

⁹ *Id.* at 2-5.

¹⁰ Exh. 14 at 14-15.

¹¹ *Id.* at 7-9. As Staff witness Neil Joshipura testified, "Staff's intention is not to recommend one option over another, but merely state that the options not stated in the Company's application are worthy of consideration for a low-cost and effective means to improve aesthetics." Tr. at 51.

¹² Exh. 14 at 8-9.

¹³ 2008 Va. Acts ch. 799.

¹⁴ Exh. 14 at 6-7.

¹⁵ Exh. 20 at 3-8.

Staff's calculations in support of its conclusion.¹⁶ Additionally, the Company reiterates its support for constructing the Proposed Line with weathering steel structures and aluminum conductors that would not be de-glared.¹⁷

An evidentiary hearing was held on May 26, 2010, before Chief Hearing Examiner Deborah V. Ellenberg ("Chief Hearing Examiner"). The prefiled testimony of the Staff, the Respondent, and the Company was offered for admission, subject to cross-examination, and the Chief Hearing Examiner admitted documents into the record.

On July 27, 2010, the Company filed a letter from DGIF, dated July 15, 2010, which states that DGIF supports removal of its two recommendations that were specifically opposed by Dominion Virginia Power in this proceeding while asking that the Company consider those recommendations where practicable.¹⁸

On October 22, 2010, the Chief Hearing Examiner issued her Report ("Chief Hearing Examiner's Report") setting forth the procedural history of the case, summarizing the record, and analyzing the evidence and issues in this proceeding. The Chief Hearing Examiner recommends that the Commission grant the requested certificates of public convenience and necessity to construct and operate the Proposed Line and Proposed Substation based on the following findings:

1. The public convenience and necessity require construction of the Project;
2. The Company has demonstrated a need for the proposed facilities;
3. The Project will enhance the reliability of the Company's service;
4. The Project utilizes existing right-of-way;
5. The DEQ recommendations are necessary to minimize any adverse environmental impact of the proposed Project with the exception of the DGIF recommendations to maintain a one-hundred-foot wooded buffer and to adhere to time-of-year restrictions for clearing and tree removal;
6. The Company's proposal will reasonably minimize any adverse impact on the scenic assets, historic districts, and environment of the area in which the Project will be located; and
7. The proposed Project will have a positive impact on economic development in the area it will serve.¹⁹

On November 12, 2010, the Company filed comments on the Chief Hearing Examiner's Report. The Company's comments support many of the findings and conclusions of the Chief Hearing Examiner's Report while noting objections and seeking clarification of others.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the public convenience and necessity require that the double-circuit transmission line and substation be built as proposed in the Company's Application and that certificates of public convenience and necessity should be issued authorizing the Project.

Approval

The statutory scheme governing the Company's application is found in several chapters of Title 56 of the Code. Section 56-265.2 A of the Code provides that "[i]t shall be unlawful for any public utility to construct . . . facilities for use in public utility service . . . without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege."

Section 56-46.1 of the Code further directs the Commission to consider several factors when reviewing the Company's Application. Subsection A of the statute provides that:

Whenever the Commission is required to approve the construction of any electrical 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. . . . In every proceeding under this subsection, the Commission 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

Additionally, the Commission (i) shall 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.

¹⁶ Exh. 18 at 2-3.

¹⁷ *Id.* at 4.

¹⁸ Exh. 22. As discussed in the Chief Hearing Examiner's Report, no party or Staff opposed this request and the document was accepted into the record for the Commission's consideration.

¹⁹ Chief Hearing Examiner's Report at 39-40.

Section 56-46.1 B of the Code further provides that: "[a]s 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."

The Code further requires the Commission to consider existing right-of-way easements when siting transmission lines. Section 56-46.1 C of the Code provides that "[i]n any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company." Additionally, § 56-259 C of the Code provides that "[p]rior to acquiring any easement of right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements of rights-of-way."

Finally, for inclusion of a project in the pilot program established by House Bill 1319, the project must satisfy the following three criteria:

1. An engineering analysis demonstrates that it is technically feasible to place the proposed line, in whole or in part, underground;
2. The estimated additional cost of placing the proposed line, in whole or in part, underground does not exceed 2.5 times the cost of placing the same line overhead, assuming accepted industry standards for undergrounding to ensure safety and reliability. If the public utility, the affected localities, and the State Corporation Commission agree, a proposed underground line whose cost exceeds 2.5 times the cost of placing the line overhead may also be accepted into the pilot program; and
3. The governing body of each locality in which a portion of the proposed line will be placed underground indicates, by resolution, general community support for the line to be placed underground.²⁰

Need

We agree with the Chief Hearing Examiner that the Company has demonstrated a need to build the Project, as proposed in the Application, for operation by May 2013.²¹ For example, studies conducted by the Company and NOVEC indicate that approximately 5,000 customers would be without service if an outage of Line #49 was experienced.²² No party or Staff has challenged the Company's evidence of excessive demand currently on Line #49 or of projected thermal overload of the same line. To the contrary, Staff reviewed the Company's load projections and power flows and concluded that the reliability needs presented by the Company to justify the Project are reasonable.²³ We also agree with the Chief Hearing Examiner that the Company properly considered and rejected four alternatives for addressing the demonstrated need.²⁴ Accordingly, the evidence in this case is undisputed that there is a need to construct the Project, as proposed, to maintain system reliability.

Economic Development and Service Reliability

Based on the record, we agree with the Chief Hearing Examiner that construction of the Project will benefit economic development in the areas of western Loudoun, Fauquier, and Prince William Counties by assuring continued reliable bulk electric power delivery.²⁵ As discussed above, it is undisputed that the Project is necessary to maintain system reliability. Additionally, the Project will improve service reliability by increasing flexibility in system operations.²⁶

Scenic Assets, Historic Districts, and Existing Rights-of-Way

The Company's Application included assessments of the environmental, architectural, and historical resources that could be potentially impacted by the proposed Project. We agree with the Chief Hearing Examiner that the transmission line and substation, as proposed, will minimize any adverse impact on historic districts and the scenic assets of the Project area.²⁷ The evidence shows, among other things, that the Company submitted a report concluding that the proposed route would not pass through, nor was it immediately adjacent to, any sites listed on the National Register of Historic Places.²⁸

²⁰ 2008 Va. Acts ch. 799, Enactment Clause 1, § 4.

²¹ Chief Hearing Examiner's Report at 29. *See also* Company's November 12, 2010 Comments at 2 (emphasizing a May 2013 in-service date for the Project).

²² Chief Hearing Examiner's Report at 3-4 (citing Exh. 5 at 4-7).

²³ Exh. 14 at 9-11.

²⁴ Chief Hearing Examiner's Report at 29-30. We note that, although the Respondent has asserted that the cost of the project may differ from the Company's estimate, no evidence was presented suggesting that any such difference would support approval of either a different alternative or an alternate route for meeting the undisputed need demonstrated in this proceeding. Compare Exh. 10, 11 with Greenfields' May 21, 2010 Reply.

²⁵ Chief Hearing Examiner's Report at 36.

²⁶ *See, e.g.*, Exh. 5 at 8.

²⁷ Chief Hearing Examiner's Report at 31.

²⁸ *Id.* (citing Exh. 9 at 6).

Additionally, the proposed use of existing right-of-way on which a transmission line is currently located and the use of single-shaft weathering steel poles, rather than towers or galvanized steel, reasonably minimize any adverse impact on scenic assets.²⁹

The entire proposed route is on right-of-way that has been occupied by a Dominion Virginia Power transmission line (*i.e.*, Line #49) for over fifty years.³⁰ Therefore, the Company has satisfied the statutory requirement for it to consider the feasibility of locating facilities on existing rights-of-way. That the Respondent has recently challenged, in a different forum, the Company's ownership of right-of-way for a portion of the proposed route does not result in a different conclusion under the law governing our decision in this case.³¹

Environmental Impact

Sections 56-46.1 A and B of the Code require the Commission to consider the proposed Project's impact on the environment and to establish such conditions as may be desirable or necessary to minimize adverse environmental impact. The statute further provides that the Commission shall receive, and give consideration to, all reports that relate to the proposed facilities by state agencies concerned with environmental protection.

The record, which includes the Coordinated Environmental Review filed by DEQ and the DEQ Supplement prepared by the Company as part of the Application, supports findings that the Company's proposed route reasonably minimizes adverse environmental impact, provided that the Company complies with the DEQ recommendations found by the Chief Hearing Examiner to be necessary to minimize such impact. Specifically, we find that, as a condition to our approval herein, the Company must comply with all of DEQ's recommendations except for the two recommendations of DGIF opposed by the Company and that the record indicates DGIF no longer supports in this proceeding.³² We also agree with the Chief Hearing Examiner that the record in this case indicates that Dominion Virginia Power properly coordinates with the Commonwealth of Virginia regarding management of the right-of-way.³³

In accordance with § 62.1-44.15:21 D 2 of the Code and the Department of Environmental Quality-State Corporation Commission Memorandum of Agreement Regarding Wetland Impacts Consultation, dated July 2003, the Staff requested that DEQ perform a Wetland Impacts Consultation for the project. As discussed above, the DEQ concluded that the impacts to surface waters are proposed to be minimal because the project is located within an existing cleared right-of-way with no new clearing proposed.³⁴

Further, we find that the evidence demonstrates that the Project fails to meet the criteria set forth in House Bill 1319 for inclusion as a pilot program.

Accordingly, IT IS ORDERED THAT:

(1) The Company is authorized to construct and operate the Loudoun-New Road 230 kV double-circuit transmission line on the route proposed in the Company's Application. The Company is also authorized to construct and operate the proposed New Road Substation to be located in Loudoun County.

(2) Pursuant to §§ 56-46.1, 56-265.2, and related provisions of Title 56 of the Code, the Company's Application for a certificate of public convenience and necessity to construct the proposed double-circuit transmission line is granted, as provided for herein, and subject to the requirements set forth in this Final Order.

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 *et seq.*) of Title 56 of the Code, the Company is issued the following certificates of public convenience and necessity:

Certificate No. ET-91s authorizes Virginia Electric and Power Company under the Utility Facilities Act to construct and operate the proposed Loudoun-New Road 230 kV transmission line and associated facilities as authorized in Case No. PUE-2009-00134; and to operate previously certificated transmission lines and facilities in Loudoun County, all as shown on the map attached to the certificate. Certificate No. ET-91s cancels Certificate No. ET-91r issued to Virginia Electric and Power Company on May 29, 2009, in Case No. PUE-2008-00063.

Certificate No. ET-105 z authorizes Virginia Electric and Power Company under the Utility Facilities Act to construct and operate the proposed Loudoun-New Road 230 kV transmission line and associated facilities as authorized in Case No. PUE-2009-00134; and to operate previously certificated transmission lines and facilities in Prince William County, all as shown on the map attached to the certificate. Certificate No. ET-105 z cancels Certificate No. ET-105 y issued to Virginia Electric and Power Company on March 10, 2010 in Case No. PUE-2009-00050.

²⁹ Accordingly, we do not adopt the recommendation for the Company to use de-glaed conductors and wires, which we find are not necessary to minimize the impact of this particular project. *See* Chief Hearing Examiner's Report at 32.

³⁰ *See, e.g., id.*, at 30 (citing Exh. 9 at 3; Exh. 2, Appendix to Application, at 47); Exh. 14 at 5-6.

³¹ Our jurisdiction extends only to granting the requested certificates of public convenience and necessity for the Project. Any dispute between the Company and the Respondent over their respective real property interests identified on the record in this proceeding must be resolved outside the Commission.

³² Exh. 22.

³³ Chief Hearing Examiner's Report at 36 (addressing recommendation for additional coordination regarding right-of-way management).

³⁴ *See* Exh. 12 at 8-9, Attachment.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Company a copy of the certificates issued in Ordering Paragraph (3) above with the detailed maps attached.

(5) The transmission line and associated substation approved herein must be constructed and in service by May 2013; however, the Company is granted leave to apply for an extension for good cause shown.

(6) As there is nothing further to come before the Commission, this matter is dismissed and the pages herein placed in the file for ended causes.

**CASE NO. PUE-2009-00136
APRIL 4, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

In re: Po River Water and Sewer Company's proposed revised rates, rules, and regulations

FINAL ORDER

On March 25, 2010, the State Corporation Commission ("Commission"), pursuant to the Small Water or Sewer Public Utility Act, § 56-265.13:1 *et seq.* of the Code of Virginia ("Code"), entered an Order for Notice and Hearing which, among other things, found that a hearing should be scheduled on the revisions to rates, rules, and regulations that Po River Water and Sewer Company ("Po River" or "Company") proposed to implement for water and sewer service customers effective May 1, 2010.¹ The Order for Notice and Hearing also set forth a procedural schedule providing opportunities for interested persons to participate in the proceeding; allowed the Company to implement its proposed rates, fees, charges, and revisions to its rules and regulations for services rendered on and after May 1, 2010; and directed Po River to hold in escrow the funds resulting from the increase in rates, fees, and charges until the Commission has rendered its decision in this proceeding.²

Po River is certificated by the Commission to provide water and sewer services to the Indian Acres campground ("Indian Acres") in Spotsylvania, Virginia. Po River's customers are the owners of individual lots at the campground who elect to take water and/or sewer service and the campground's property owners' association, Indian Acres Club of Thornburg, Inc. ("IACT"). Po River is owned by The Carlyle Group, Inc. ("Carlyle"), a California corporation.

In accordance with the Order for Notice and Hearing, Po River filed on April 9, 2010, its direct testimony and exhibits in support of its proposed increase in water and sewer rates. In its prefiled testimony, Po River stated that it has been fifteen (15) years since the Company's last rate increase, and its present revenues are insufficient to cover the costs of providing water and sewer service, resulting in a net loss of \$282,597 in the 2008 test year.³ The Company asserted that the proposed increase in rates is needed because of increasing costs, including rising electricity costs; the cost of complying with state and federal requirements for drinking water and treatment of wastewater; and the cost of maintaining and upgrading the aging facilities.⁴

According to Po River, Indian Acres is a recreational vehicle campground located on approximately 800 acres, consisting of over 6,000 individually owned lots.⁵ Po River stated that most of the active use of Indian Acres occurs in the spring through fall because the covenants associated with the lots restrict their use to camping and prohibit the lots being used as permanent residences.⁶ Po River also stated that IACT owns the common area facilities and amenities of the campground, which include three swimming pools, a clubhouse and restaurant, recreation and administrative center, a laundry facility, carwash, golf course, thirty-nine (39) comfort stations and sewer "dump stations" at each comfort station.⁷ Po River asserted that not every lot owner is required to purchase water or sewer service from Po River. Instead, Po River's individual customers are only those lot owners that choose to have water service (or, in the case of 89 customers, water and sewer services), which was approximately 2,100 of the more than 6,000 lots as of June 2009.⁸

Po River asked the Commission to approve a total increase in rates of \$426,025, consisting of an increase in sewer rates of \$144,865 and an increase in water rates of \$281,160, to produce a total annual revenue requirement of \$799,634.⁹ The proposed increase in revenue would be produced by

¹ On December 15, 2009, Po River notified its customers and the Commission of its intent to increase rates and revise portions of the Company's rules and regulations on file with the Commission, effective for services rendered on or after February 1, 2010. On January 29, 2010, Po River sent a second notice to customers advising of its intent to implement the rate increase, effective for services rendered on and after May 1, 2010.

² The Commission's Division of Energy Regulation received over 250 comments and requests for hearing on the Company's proposed rate increase and revised rules and regulations. Pursuant to § 56-265.13:6 of the Code, the Commission is to hold a hearing if requested "by at least 25 percent of all customers affected by a rate change or by 250 affected customers, whichever number is lesser"

³ Ex. 8 (Vogel direct) at 4, 6-10.

⁴ Id. at -10.

⁵ Ex. 7 (Raynor direct) at 2.

⁶ Id.

⁷ Id. at 3.

⁸ Id. at 2-4.

⁹ Ex. 5 (Dooley direct) at 2-3.

increasing the quarterly rate for water service for individual lot owners from \$22.69 to \$37.98. The Company also established a new quarterly rate of \$70.96 for those individual lot owners taking both water and sewer services. Previously, these customers had paid the same quarterly rate of \$22.69 paid by all other lot owners. Finally, the Company proposed to increase the quarterly rate for water and sewer services to IACT from \$45,345 to \$117,003.¹⁰

On June 3, 2010, IACT, the only respondent in this proceeding, filed the testimony of Wanda Cushman and Elaine Farmer ("Farmer"). IACT's witnesses focused on concerns about Company documents Po River presented in support of its proposed increases; such concerns included questions regarding certain general ledger entries and expense allocations to Po River from its parent company, Carlyle.¹¹

On June 25, 2010, the Staff of the Commission ("Staff") filed its testimony and exhibits in which it made several adjustments resulting in a lower revenue requirement than that proposed by Po River.¹² The Staff recommended that the Commission allow Po River to increase rates by \$332,171, to produce a total revenue requirement of \$705,781.¹³ The Staff did not recommend a specific rate for individual lot owners but rather provided a range of calculations using different billing determinants to reflect the falling number of customers that the Company has experienced over approximately the past fifteen (15) years.¹⁴ The Staff recommended that the quarterly rate for IACT for combined water and sewer services be set at \$103,270 since this rate is not dependent on the customer count.¹⁵

On September 3, 2010, the Company and Staff filed a Joint Motion to Accept Stipulation in which they represented that an agreement had been reached between them on all of the issues arising in this case with the exception of the number of billing determinants to be used to establish the water rates for individual lot owners.¹⁶ Among other things, the Stipulation sets forth the Staff adjustments to which Po River and Staff agree; a revised revenue requirement; the agreement of Po River to file for approval of any affiliate arrangements under § 56-76 *et seq.* of the Code within thirty (30) days of a final order in this proceeding; and a range for use in determining the billing determinants to be used to establish water service rates.¹⁷ Specifically, the Stipulation provided that the Staff and Company would recommend that Po River's annual revenue requirement be set at \$711,293. This would result in a quarterly rate for IACT for water and sewer services of \$101,527 based on an annual revenue requirement of \$406,106, a quarterly rate for sewer service of \$29.34 for individual lot owners based on an annual revenue requirement of \$8,802, and a quarterly water service rate for individual lot owners based on an annual revenue requirement of \$296,385 and based on a number of lots between 2,049 and 2,550, to be determined by the Commission.¹⁸

The hearing on Po River's proposed rate increase was reconvened on September 16, 2010.¹⁹ Hearing Examiner A. Ann Berkebile presided over the two-day hearing and, on November 3, 2010, she issued her Hearing Examiner's Report ("Hearing Examiner's Report" or "Report") summarizing the testimony and exhibits of the Company, IACT, the Staff, and the public witnesses.²⁰

The Hearing Examiner found that while IACT was not a signatory to the Stipulation, neither did it take issue with, or present evidence in opposition to, most aspects of the Stipulation. Instead, the Hearing Examiner noted that IACT focused its evidence almost exclusively on its assessment of an appropriate annual revenue requirement for Po River.²¹ At the hearing, IACT witness Farmer recommended that Po River's operating expenses be reduced by \$92,750, asserting that certain functions performed by Carlyle personnel for Po River are unnecessary for the small water and sewer company. IACT also asserted that rent allocation and computer expenses be reduced by \$16,996. With these adjustments, IACT recommended that the Commission set Po River's annual revenue requirement at \$609,865, as opposed to the \$799,634 initially sought by the Company and the \$711,293 recommended in the Stipulation. The Hearing Examiner noted that in response to certain recommendations in Farmer's testimony, Po River agreed to an additional reduction during the hearing, resulting in a lower revenue requirement of \$709,611.²²

Upon consideration of the evidence received and the Stipulation, the Hearing Examiner made the following findings:

1. The Stipulation, as modified herein, offers a fair and reasonable disposition of this case;
2. A customer count of 2,300 should be used in setting the Company's individual rates for water service;

¹⁰ Id. at 8.

¹¹ Ex. 9 (Cushman direct) and Ex. 13 (Farmer direct).

¹² Ex. 22 (Handley direct).

¹³ Id. at 32.

¹⁴ Id. at 11-13; Ex. 23 (Tufaro direct) at 8 and Statement MAT-1.

¹⁵ Ex. 23 (Tufaro direct) at 8.

¹⁶ IACT did not join in the Stipulation.

¹⁷ Ex. 3, Stipulation.

¹⁸ Id. at 1-2.

¹⁹ The evidentiary hearing originally scheduled for July 28, 2010, was rescheduled twice at the request of counsel for IACT. However, the July 28, 2010, hearing date was retained solely for receipt of public witness testimony as noticed in the Commission's Order for Notice and Hearing.

²⁰ Hearing Examiner's Report at 4-21.

²¹ Id. at 21.

²² Id. at 22-23.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

3. The stipulated 10.9% return on rate base is reasonable;
4. Staff's ratemaking adjustments, as modified by the Stipulation and as further modified by agreed upon adjustments during the hearing are reasonable;
5. The total annual revenue requirement of \$709,611 recommended in this Report, resulting in an increase of \$336,001 in the Company's gross annual revenues, is reasonable and should be considered by the Commission;
6. Allowing for a margin above operating expenses, based on a 10.9% return on rate base, the test year as properly adjusted would provide net income to the Company in the amount of \$20,390, based upon a recommended revenue requirement of \$709,611, as determined in accordance with the attached Statement 1;
7. The Company's class cost of service study provides for a reasonable allocation of the cost of service among the classes of customers and should be used to establish rates in this case;
8. A quarterly rate of \$32.15 for the individual lots that receive water service, based upon a customer count of 2,300 and designed to recover an annual revenue requirement of \$295,669 associated with water service, is just and reasonable;
9. A combined quarterly rate of \$101,286 for water and sewer service received by IACT, designed to recover an annual revenue requirement of \$405,146, is just and reasonable;
10. A quarterly sewer rate component of \$29.27 for the individual lots that receive sewer service, designed to recover an annual revenue requirement of \$8,781 and resulting in a total quarterly rate of \$61.42 for individual lots receiving both water and sewer service from the Company, is just and reasonable;
11. As agreed in the Stipulation, the Company should cease depreciating pre-1977 vintages on its books as recommended by Staff;
12. As agreed in the Stipulation, the Company should make a ratemaking adjustment to decrease plant in service by \$46,717 and a corresponding adjustment to decrease accumulated depreciation by an equivalent amount as recommended by Staff;
13. As agreed in the Stipulation, the Company should include accumulated depreciation on the test year software implementation that Staff recommended to be capitalized, and should adjust the December 2009 balance of accumulated depreciation to \$1,387,238;
14. As agreed in the Stipulation, the Company should retire all [Contributions in Aid of Construction] CIAC and the accumulated amortization of CIAC from its books as recommended by Staff;
15. The Company's proposed changes to its rules and regulations are reasonable and should be approved by the Commission;
16. Upon reaching \$500,000 in annual revenues, the Company shall become subject to the requirements of § 56-265.13:3 of the Code and, in accordance with the Stipulation, shall file for approval of any affiliate arrangements within thirty (30) days of the Commission's issuance of a final order in this proceeding; and
17. The Company should be required to promptly refund, with interest, all revenues collected under its interim rates in excess of the amount found reasonable herein.²³

The Hearing Examiner recommended that the Commission adopt her Report, approve Po River's water and sewer rates as set forth in the Report, and order the Company to make appropriate refunds for excessive rates collected during the period the interim rates were in effect.²⁴

Both IACT and Po River filed comments on the Hearing Examiner's Report. IACT urged the Commission to reduce, by \$110,538, the amount of the rate increase that the Hearing Examiner recommended that Po River be authorized to make permanent.²⁵ Po River asked the Commission to adopt the Hearing Examiner's Report in all matters except the issue related to billing determinants used to set quarterly water rates for individual lot owners.²⁶ Concerning billing determinants, Po River asked that the Commission use the actual number of customers presently with Po River (2,116) to establish the authorized quarterly water rates for the Company. Po River asserted that using this lower number, instead of 2,300 as the Hearing Examiner recommended, would allow the Company an opportunity to realize the revenue requirement established in this case.²⁷ Po River also agreed to the Hearing Examiner's recommendation that it begin tracking the time Carlyle personnel spend on Po River activities and noted that time tracking would begin as of January 1, 2011.²⁸

NOW THE COMMISSION, upon consideration of this matter and the applicable law, is of the opinion and finds that the findings and recommendations of the Hearing Examiner should be adopted. We find that the Stipulation as revised represents a fair and reasonable resolution of the

²³ Id. at 25-27.

²⁴ Id. at 27.

²⁵ IACT Comments at 2.

²⁶ Po River Comments at 5-6.

²⁷ Id. at 2-4.

²⁸ Id. at 4-5.

issues addressed therein. Since Po River placed its proposed rates into effect on an interim basis effective May 1, 2010, and since we are approving rates that are less than those interim rates, a refund will be ordered.

In regard to IACT's concerns about the level of expenses attributed to Po River by Carlyle, we note that in response to the Hearing Examiner's Report, Po River has agreed, as of January 1, 2011, to commence tracking the time spent by Carlyle employees on Po River activities. Our Order will require the continuation of such time tracking and the maintenance of time tracking records for use in future proceedings before this Commission.

We also note the Company's acknowledgement in the Stipulation that, upon reaching \$500,000 in annual revenues, Po River becomes subject to the requirements of the Affiliates Act, § 56-76 *et seq.* of the Code. The Stipulation contains a statement that, within thirty (30) days of the date of this Order, Po River will file for approval of any affiliate arrangements, such as the arrangement between Po River and Carlyle. Our Order will require this filing to be made. Such affiliate arrangements will be subject to and reviewed in accordance with the Commission's pricing standards for all affiliate contracts or arrangements, including the standard that goods and services provided by an unregulated affiliate to a regulated utility should be provided at the lower of cost (which may include a return component) or fair market value, or market price.²⁹

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the November 3, 2010 Hearing Examiner's Report are hereby adopted.
- (2) The Stipulation between Po River and Staff, as modified in the Hearing Examiner's Report, is hereby adopted and made a part of this Order.
- (3) If Po River has not already done so, within thirty (30) days of the date of this Order, the Company shall commence tracking of actual time spent by Carlyle off-site personnel, including its utility director, in performing specific functions on behalf of Po River. These records shall be made available to Staff upon request.
- (4) Within thirty (30) days of the date of this Order, Po River shall make filings for approval of all affiliate arrangements or contracts pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code.
- (5) Po River shall forthwith file revised tariffs and terms and conditions of service with the Commission's Division of Energy Regulation, in accordance with the findings made herein.
- (6) Po River shall recalculate, using the rates and charges approved herein, each bill it rendered that used, in whole or in part, the rates and charges that took effect on an interim basis on and after May 1, 2010, and refund the difference with interest as set out below within ninety (90) days of the issuance of this Final Order.
- (7) Interest upon the ordered refunds shall be computed from the date payments of monthly bills were due to the date each refund is made at the average prime rate for each calendar quarter, compounded quarterly. The average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the *Federal Reserve Bulletin* or in the Federal Reserve's Selected Interest Rates (Statistical Release H. 15) for the three months of the preceding calendar quarter.
- (8) The refunds ordered herein may be credited to the current customers' accounts (each refund category shall be shown separately on each customer's bill). Refunds to former customers shall be made by check mailed to the last known address of such customers when the refund amount is \$1 or more. Po River may offset the credit or refund to the extent of any undisputed outstanding balance for the current or former customer. No offset shall be permitted against any disputed portion of an outstanding balance. Po River may retain refunds to former customers when such refund is less than \$1. Po River shall maintain a record of former customers for which the refund is less than \$1, and such refunds shall be promptly made upon request. All unclaimed refunds shall be subject to § 55-210.6:2 of the Code.
- (9) Po River shall bear all costs incurred in effecting the refund ordered herein.
- (10) In accordance with § 56-265.13:6 of the Code, Po River may remove from escrow the funds resulting from the interim increase in rates to effect the refunds ordered above with the balance to be retained by the Company.
- (11) There being nothing further to come before the Commission, this matter is dismissed from the Commission's active docket, and the papers filed herein shall be placed in the Commission's file for ended causes.

²⁹ The lower of cost or market standard has been cited in numerous Commission decisions. See, e.g., Application of Virginia Electric and Power Company and Dominion Resources Services, Inc., For approval of a revised services agreement under Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2010-00144, Doc. Con. Cen. No. 444722, Order Granting Approval (Mar. 9, 2011). See also the Division of Public Utility Accounting's Guidelines for Filing Applications under Title 56, Chapter 4 of the Code of Virginia (Affiliates Act), available at <http://www.scc.virginia.gov/pua/ch4ch5.aspx>.

**CASE NO. PUE-2010-00001
JULY 29, 2011**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY

For an increase in rates

ORDER

On March 16, 2010, Virginia-American Water Company ("VAWC" or "Company") completed an application ("Application") with the State Corporation Commission ("Commission") for a general increase in rates in accordance with Chapter 10, Article 2¹ of Title 56 of the Code of Virginia ("Code") and the provisions for rate increases set forth in the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings.² The Company seeks a rate increase that would produce additional annual jurisdictional revenues of \$6,875,954, representing an overall revenue increase of approximately 22.4% on test year revenues. The increase in metered rates is divided among the Alexandria District - \$2,017,023; the Hopewell District - \$3,048,350; and the Prince William District - \$1,810,581. The rate schedules furnished by the Company in Filing Schedule 41 of its Application reflect an effective date of April 8, 2010, but the Application anticipated that the Commission would suspend the rates for 150 days from the date of filing. Since the Application was not deemed complete until March 16, 2010, the suspension of such rates ran until August 13, 2010.

On April 5, 2010, the Commission entered an Order for Notice and Hearing ("Order for Notice and Hearing") in which it, among other things, scheduled a public hearing for September 21, 2010;³ directed the Company to provide notice of its Application to the public and local government officials; authorized the Company to implement its proposed rates on an interim basis on August 13, 2010, subject to investigation and refund; and assigned the case to a Hearing Examiner ("Hearing Examiner" or "Examiner") to conduct all further proceedings on behalf of the Commission and to file a final report.

Timely notices of participation were filed by the City of Hopewell ("Hopewell"), Prince George County, the Hopewell Committee for Fair Water Rates ("Hopewell Committee"), and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel").

On August 9, 2010, VAWC requested authorization to implement rates in the Prince William District that were lower than the level requested in its Application. The Company adjusted its revenue requirement downward for the Prince William District by \$120,961 based on revised allocation calculations. The resulting revenue requirement for the Prince William District is an overall increase of \$1,689,620. By Hearing Examiner's Ruling entered on August 12, 2010, the Company's request was granted, and the Company was permitted to place its modified interim rates for the Prince William District into effect, subject to refund, for service rendered on and after August 13, 2010. In addition, the Company's originally proposed rates were placed into effect as of August 13, 2010, for its Hopewell and Alexandria Districts.

The evidentiary hearing was held on October 20, 2010, with Richard D. Gary, Esquire, and Charlotte P. McAfee, Esquire, appearing on behalf of the Company; Robert M. Gillespie, Esquire, and Kerry R. Wortzel, Esquire, appearing on behalf of the Commission Staff ("Staff"); Kiva Bland Pierce, Esquire, appearing on behalf of Consumer Counsel; Cliona M. Robb, Esquire, appearing on behalf of the Hopewell Committee; Thomas E. Lacheney, Esquire, appearing on behalf of Hopewell; and Steven L. Micas, Esquire, appearing on behalf of Prince George County.

At the beginning of the hearing, a stipulation (Exhibit 2, attached hereto) was presented to the Hearing Examiner, which resolved the outstanding accounting issues; the major issues remaining to be resolved to determine VAWC's revenue requirement are related to capital structure and return on common equity ("ROE"). Other ratemaking issues involving possible excess capacity at the Hopewell Treatment Plant, revenue allocations, class cost of service studies, and non-revenue water were also not addressed by the stipulation.

On December 15, 2010, simultaneous post-hearing briefs were filed by the Company, the Staff, the Hopewell Committee, Consumer Counsel, and Hopewell. On December 20, 2010, VAWC filed its Motion for Modification of Service of Notice ("VAWC Motion"), which informed the participants that due to an internal oversight the prescribed bill insert notice had not been mailed to customers, and the prescribed direct mail notice to industrial customers who purchase non-potable water in the Hopewell District had not been sent.⁴ The Staff responded to the VAWC Motion on December 27, 2010, and Consumer Counsel, the Hopewell Committee, and Hopewell responded on January 5, 2011.

By Hearing Examiner's Ruling entered January 24, 2011, the Examiner directed the Company to furnish written notice to its customers, reopened the evidentiary record to receive additional written comments, and scheduled a public hearing for February 24, 2011, to hear additional comments from public witnesses. As support for this ruling, the Examiner explained:

The Company sent no written notice to its customers as required by Va. Code § 56-237.1 B. The Commission could have waived the statutory written notice requirement [under subsection c], but it did not. The statute clearly requires that if a utility proposes a change [to] its rates, its customers are to receive written notice of the proposed change with their bill.⁵

¹ Va. Code § 56-234 *et seq.*

² 20 VAC 5-201-10 *et seq.*

³ By Ruling entered August 12, 2010, the Hearing Examiner modified the procedural schedule. The originally scheduled hearing date was retained for the purpose of hearing from public witnesses, and the evidentiary hearing was continued to October 20, 2010. No public witnesses appeared at the September 21, 2010 hearing.

⁴ See Ordering Paragraph (20) of the Order for Notice and Hearing.

⁵ January 24, 2011 Hearing Examiner's Ruling at 4.

The Hearing Examiner also found that "[t]he Company should have put its [interim] rates into effect only after it complied with the statutory notice requirements" and advised that he would determine the effective date of interim rates and address the calculation of refunds in his report.⁶

VAWC filed its proof of mailing of its corrected notice on February 11, 2011. The additional hearing was convened as scheduled February 24, 2011, and three public witnesses appeared and testified in opposition to the Company's proposed rate increase.

On March 14, 2011, the Report of Michael D. Thomas, Hearing Examiner ("Hearing Examiner's Report" or "Report") was filed. VAWC, the Staff, Consumer Counsel, and the Hopewell Committee filed comments upon the Hearing Examiner's Report on April 4, 2011. On April 8, 2011, the Hopewell Committee filed its Motion to Strike certain portions of VAWC's comments; *i.e.*, the section titled "Non-Revenue Water Monitoring." VAWC replied to the Motion to Strike on April 13, 2011. As part of that reply, VAWC stated that it would not oppose granting the Motion to Strike if such non-opposition would expedite a final order for this case.

The Examiner, in his Report, made the following findings:

- (1) The Stipulation is fair, just, and reasonable;
- (2) The Company's updated rate year capital structure ratios of 3.554% short-term debt; 47.465% long-term debt; 0.272% preferred stock; 47.498% common stock; and 1.211% job tax credits are reasonable and representative of the capital structure that will be in place during the rate year to support the Company's rate base;
- (3) The composition of Dr. Vander Weide's gas company proxy group is reasonable;
- (4) A DCF growth rate that is weighted 50% analysts' forecasts and 50% historic earnings, dividends, and book value per share is reasonable for determining VAWC's return on equity;
- (5) The use of the quarterly DCF equation is reasonable;
- (6) The record supports a flotation cost adjustment of 12 basis points;
- (7) The issue of gradualism is inapplicable in this case;
- (8) A return on equity in the range of 9.30% to 10.57% is reasonable;
- (9) The Company's return on equity should be set at 10.1%, slightly above the 9.94% midpoint of the range to recognize VAWC's slightly higher investment risk;
- (10) The Hopewell District cost of service study reasonably allocates the Company's costs among its various customer classes;
- (11) The Company's decision to increase the Hopewell Treatment Plant's rated capacity to 18 [million gallons per day ("mgd")] is supported by a preponderance of the evidence;
- (12) The evidence failed to establish that a demand-side management plan would enable the Company to meet its potable demand;
- (13) The Company should develop a demand-side management plan with input from its various customer classes and submit the plan as part of its next rate case;
- (14) The Company should be required to monitor its percentage of potable non-revenue water and file a report in its Annual Informational Filing detailing the monthly amounts of non-revenue water by gallons, as a percentage of total potable water produced, and the efforts undertaken by the Company to reduce its percentage of potable non-revenue water;
- (15) The scope of future cost of service studies should be expanded to include an allocation of the Company's costs among the residential, commercial, and industrial potable customers in the Company's Hopewell District, and address whether the Company's potable industrial customers should be on a separate rate schedule from its residential and commercial potable customers. The study should take into account the difference in costs incurred by the Company to produce potable water compared to industrial non-potable water; and
- (16) Pursuant to Va. Code § 56-237.1 B, the Company's proposed rates could take effect on an interim basis subject to refund on March 6, 2011;

⁶ *Id.* at 5.

(17) The Company's customers are entitled to a refund with interest of the difference between their old rates and the Company's proposed rates that were in effect on an interim basis from August 13, 2010, to March 5, 2011; and

(18) A total revenue increase of \$4,691,115 is reasonable.⁷

The Hearing Examiner recommended that the Commission enter an order adopting his findings; adopting the stipulation; approving VAWC's rate increase as provided for in the Report; directing the Company to make refunds with interest or customer credits for the excessive rates collected from August 13, 2010, to March 5, 2011; directing VAWC to make further refunds with interest or customer credits for the interim rates collected after March 6, 2011, and the date of the Commission's approval of final rates; and closing the case.⁸

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows:

Stipulation

With regard to the stipulation, we note that it resolves approximately 25 disputed issues related to revenue growth, operation and maintenance expenses, and taxes for all participants in this case. We find that the stipulation should be adopted.

Capital Structure

Concerning capital structure, we find that § 56-235.2 of the Code provides the applicable statutory standard. According to this Code provision, a public utility's rates may be considered just and reasonable only if two conditions are met: (i) if the public utility has shown that the rates provide revenues not in excess of the public utility's aggregate actual costs incurred to serve customers within the Commission's jurisdiction, "including such normalization for nonrecurring costs and annualized adjustments for future costs as the Commission finds reasonably can be predicted to occur during the rate year," as well as a fair rate of return in the utility's rate base used to serve jurisdictional customers; and (ii) if the public utility has shown that the rates contain reasonable classifications of customers.

In this case VAWC has proposed to set rates using a VAWC forecasted thirteen (13)-month average capital structure for the rate year ended July 2011 "to capture the components of the capital structure . . . that are reasonably forecasted to occur in the rate year."⁹ VAWC witness Miller later updated the forecasted capital structure, showing its evolution from March 2010 through August 2010; he stated that "the Company's average rate year capital structure would be in line with the current capital structure, once the committed long-term debt financing in November 2010 is completed."¹⁰ As noted in the Staff's comments upon the Hearing Examiner's Report, the November 2010 issuance of debt had not occurred as of April 1, 2011.¹¹

The Staff supports the use of the end of March 2010 capital structure of VAWC's parent holding company, American Water Works Corp. ("AWWC") for several reasons, principal among them the fact that AWWC, through its financing subsidiary American Water Capital Corporation ("AWCC"), issues debt on behalf of VAWC and that few if any investors would be able to examine the operations and creditworthiness of AWWC's individual operating subsidiaries.¹² Further, the majority of debt issued by VAWC has been replaced with debt issued by AWCC.¹³

We find that VAWC's forecasted capital structure does not contain projections that "reasonably can be predicted to occur during the rate year"; in fact, these projections have not materialized. Further, though the use of a VAWC capital structure may have been preferable in the past when a major portion of the outstanding debt was issued by VAWC, most of that debt has been replaced with debt issued by AWCC. Accordingly, we will not adopt the Hearing Examiner's recommendation. Instead, we adopt the March 31, 2010, actual capital structure of VAWC's parent corporation, AWWC, as proposed by Staff witness Maddox.

Return on Equity

For different reasons, both Consumer Counsel and the Staff recommended an ROE range of 9.3% - 10.3%, with the ROE set at the midpoint of 9.8%. The Company proposes an ROE range of 9.8% - 11.7%, with the ROE set at 10.75%. The Hearing Examiner recommends an ROE range of 9.3% - 10.57%, with the ROE set at 10.1%. What ROE is set depends on several factors.

We note that the Company, after the hearing, acknowledged that an authorized ROE of 10.2% "is consistent with the need to attract capital."¹⁴ Accordingly, we will set the ROE at 10.2%, within a range of 9.7% - 10.7%.

⁷ Hearing Examiner's Report at 85-86.

⁸ *Id.* at 86-87.

⁹ *Id.* at 16.

¹⁰ *Id.* at 18 (citing Ex. 39 (Miller Rebuttal) at 15-17).

¹¹ Response of the Staff of the Virginia State Corporation Commission to the March 14, 2011 Report of Michael D. Thomas, Hearing Examiner ("Staff Response") at 4.

¹² *Id.* at 6-8; Ex. 27 (Maddox Direct) at 14-15.

¹³ Staff Post-Hearing Brief at 5-6.

¹⁴ VAWC Post-Hearing Brief at 6. The Hearing Examiner found that concerns about gradualism as related to the ROE are inapplicable to this case. *See id.* We agree and will not further address this issue herein.

Hopewell Treatment Plant Expansion

The Hopewell Treatment Plant was a matter of much controversy among the participants. Hopewell and the Hopewell Committee argue VAWC justified only a 25% increase in potable capacity, from 12 mgd to 15 mgd, and that costs associated with increasing capacity beyond 15 mgd should be excluded from rate base.¹⁵ The Hopewell Committee also argues that a demand-side management ("DSM") plan, in conjunction with an expansion of the Hopewell Treatment Plant to 15 mgd, would allow VAWC to meet forecasted demand for 2015 and beyond.¹⁶

The Hearing Examiner decided, by a preponderance of the evidence, that VAWC "had sound reasons, reliability and quality concerns, for increasing the Hopewell Treatment Plant's reliable capacity to 15 mgd and its rated capacity to 18 mgd."¹⁷ In making this recommendation, the Hearing Examiner noted that the plant expansion decision was made in the 2007-2008 time frame when peak-day demands were exceeding 13 mgd. He explained, "Based on studies undertaken at the time, the Company's projections indicated that in 2015 average-day demand would be approximately 11.7 mgd and peak-day demand would reach 14 mgd. The decision was made to increase the potable plant's capacity by 6 mgd."¹⁸ The Hearing Examiner further noted that there was no evidence that a DSM plan would allow the Company to meet potable demand. He found that, regardless of the capacity at the Hopewell Treatment Plant, VAWC may not be able to meet customer demand under certain contingencies. He recommended that the Company develop a DSM plan with input from various customer classes and submit the DSM plan as part of its next rate case.¹⁹

We agree with the Hearing Examiner that the record supports a finding that VAWC acted reasonably at the time it made the decision to expand the Hopewell Treatment Plant to 18 mgd. We further find that it is reasonable for the Company to develop and file a DSM plan as part of its next rate case.

Water Use Issues

The Examiner found that VAWC's level of potable non-revenue water has increased in recent years to an "unacceptable" level of 16%. He found that VAWC should continue monitoring its percentage of potable non-revenue water and report in its annual informational filings the monthly amounts of non-revenue water, by gallons, as a percentage of total potable water produced, and the efforts VAWC is making to reduce this percentage.²⁰ We find that this monitoring approach is appropriate based on the record in this case.

Other issues surrounding water use that have arisen in this case include the question of how the Company's cost of service study allocates costs among VAWC's jurisdictional and non-jurisdictional customers and, within the jurisdictional class, how costs are allocated among the Company's potable and non-potable customer classes. The Hopewell Committee also argues that the cost of service study fails to account for the difference in costs VAWC incurs to produce potable versus industrial non-potable water. The Hearing Examiner found that the scope of future cost of service studies should be expanded: (i) to include an allocation of costs among the residential, commercial, and industrial potable customers in the Hopewell District; (ii) to address whether potable industrial customers should be on a separate rate schedule from residential and commercial potable customers; and (iii) to take into account the difference in costs incurred to produce potable versus industrial non-potable water. We find that this is a reasonable requirement.

Customer Complaints

In discussing public comments received on the Company's Application, the Examiner cited concerns raised by a certain customer concerning meter readings and Company billing practices. He recommended that the Staff investigate this complaint and address its findings in its comments to the Hearing Examiner's Report. We will direct the Staff to investigate all customer service complaints that have been raised through comments on the Application, and file a report on the status of the resolution of these issues.

Notice

Because of the Company's failure to mail the prescribed bill insert notice to customers as required by Ordering Paragraph (20) of the Order for Notice and Hearing, the Hearing Examiner recommended that the Company be required to make refunds with interest or customer credits with interest for the increased revenues that were collected during the period August 13, 2010, to March 5, 2011. He also recommended that the Company be required to make additional refunds with interest or customer credits with interest for the interim rates billed in excess of the final approved rates after March 6, 2011, and the date of the Commission's Order in this case.²¹

In comments upon the Hearing Examiner's Report, VAWC argues that the Commission already waived the thirty (30)-day notice requirement by omitting a specific deadline by which VAWC was to provide customers with direct notice. In the alternative, the Company argues that the Commission should now waive the thirty (30)-day notice period pursuant to § 56-237.1 C of the Code; the Company claims that it took steps to remedy the situation and that customers have suffered no actual monetary or due process harm. Finally, the Company argues that its industrial customers in the Hopewell district received actual notice of the proposed rate increase and that interim rates for those customers should be effective as of August 13, 2010.²²

¹⁵ Hearing Examiner's Report at 79.

¹⁶ *Id.* at 81-82.

¹⁷ *Id.* at 81.

¹⁸ *Id.*

¹⁹ *Id.* at 82.

²⁰ *Id.* at 83.

²¹ *Id.* at 87.

²² Comments of Virginia American Water Company to Report of Hearing Examiner at 5-9.

On April 5, 2010, in the Order for Notice and Hearing, the Commission ordered the Company to mail written notice of its requested rate increase to its customers "as soon as practicable."²³ Contrary to the Company's assertion, this directive did not implicitly waive the statutory requirement to mail such notice "no less than 30 days prior to the time any such changed rate ... shall take effect."²⁴ Moreover, even if the Commission could be deemed to have waived the specific thirty (30)-day notice requirement: (i) any such waiver was strictly limited to and conditioned on providing such notice "as soon as practicable"; and (ii) the Commission's directive constituted "additional requirements for notification" as prescribed in Va. Code § 56-237.1 C. VAWC, however, admittedly did not mail direct notice as soon as practicable and, thus, did not comply with the Commission's Order for Notice and Hearing or the Code. Rather, the Company "mailed written notice of its proposed rate increase to its customers on January 29, February 1, and February 3, 2011," almost ten months after the Commission's directive.²⁵ Accordingly, VAWC violated the prescriptive statutory requirements and the Commission's Order for Notice and Hearing. Consistent with the statutory mandate, and finding insufficient basis to do otherwise in the context of this case, we require the Company to refund, with interest, "the difference between their old rates and the Company's proposed rates that were in effect from August 13, 2010, to March 5, 2011."²⁶

Accordingly, IT IS ORDERED THAT:

(1) The findings and recommendations in the March 14, 2011 Hearing Examiner's Report are adopted in part, and rejected in part, as set forth herein.

(2) VAWC shall be granted \$4,336,598 in additional annual gross revenues, apportioned among its districts as follows: Alexandria District – \$1,227,112; Hopewell District – \$2,236,820; and Prince William District – \$872,666.

(3) The Company shall refund, with interest: (i) the difference between the interim rates that became effective August 13, 2010, and the rates that were in effect prior to August 13, 2010, for the period August 13, 2010, through March 5, 2011; and (ii) the difference between the interim rates that should have gone into effect on March 6, 2011, and those final rates approved herein. On or before October 31, 2011, the Company shall complete refunds by check or through credits to customer bills, to the extent that such revenues produced by interim rates exceed revenues produced by the rates approved herein.

(4) Refunds, with interest, for current customers may be made by a credit to the customers' accounts and shown on bills. If refunds, with interest, for current customers are made by a credit to the customers' accounts and shown on bills, the bills shall show the refund as a separate item or items.

(5) For former customers, refunds with interest that exceed \$1 shall be made by check mailed to the last known address of such customers.

(6) VAWC may retain refunds owed to former customers when such refund amount is less than \$1; however, if refunds owed to former customers in an amount less than \$1 are retained by the Company, the Company will prepare and maintain a list detailing each of the former accounts for which refunds are less than \$1, and in the event such former customers contact the Company and request refunds, such refunds shall be made promptly. All unclaimed refunds shall be handled in accordance with § 55-210.6:2 of the Code.

(7) VAWC may offset the credit or refund to the extent no dispute exists regarding the outstanding balances of its current customers or customers who are no longer on its system. To the extent the outstanding balances of such customers are disputed, no offset shall be permitted for the disputed portion.

(8) Interest upon the ordered refunds shall be computed from the date payments of monthly bills were due as shown on the bills to the date each refund is made at the average prime rate for each calendar quarter, compounded quarterly. The average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the "Bank prime loan" values published in the Federal Reserve Bulletin or in the Federal Reserve's Selected Interest Rates (Statistical Release H.15) for the three (3) months of the preceding calendar quarter.

(9) On or before December 15, 2011, VAWC shall submit to the Divisions of Public Utility Accounting and Energy Regulation a report showing that all refunds have been made pursuant to this Order and itemizing the cost of the refund and accounts charged. The Company shall not recover the interest paid or the expenses incurred in making such refunds from water rates and charges subject to the Commission's jurisdiction.

(10) The Staff, within sixty (60) days of the date of this Order, shall file a report of the status of the resolution of the customer complaints received as part of this case.

(11) A rate of return on common equity of 10.2%, and a cost of equity range of 9.7% to 10.7%, are hereby adopted.

(12) The Motion of the Hopewell Committee for Fair Water Rates to Strike Portions of Virginia American Comments is hereby granted.

(13) This case shall remain open for the purpose of receiving the report described in Ordering Paragraph (10).

²³ Ordering Paragraph (20) of the Order for Notice and Hearing. The Commission directed VAWC to provide such notice as bill inserts for customers in the Alexandria, Hopewell, and Prince William Districts and as direct mail to its industrial customers in the Hopewell District that purchase non-potable water.

²⁴ Va. Code § 56-237.1 B. Specifically, "[t]he Commission may dispense with ... requirements contained in [Va. Code § 56-237.1 B]" and "may prescribe additional requirements for notification to a public utility's customers of its intention to change its rates, tolls, charges, rules and regulations." Va. Code § 56-237.1 C.

²⁵ Hearing Examiner's Report at 85.

²⁶ *Id.*

**CASE NO. PUE-2010-00001
NOVEMBER 29, 2011**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY

For an increase in rates

ORDER

On July 29, 2011, the State Corporation Commission ("Commission") issued an Order ("July Order") that, among other things, granted Virginia-American Water Company ("VAWC") \$4,336,598 in additional annual gross revenues. The July Order required VAWC to refund, with interest, no later than October 31, 2011: (i) the difference between the interim rates that became effective August 13, 2010, and the rates that were in effect prior to August 13, 2010, for the period August 13, 2010, through March 5, 2011; and (ii) the difference between the interim rates that should have gone into effect on March 6, 2011, and the final rates approved in the July Order. The July Order also directed the Commission Staff ("Staff") to file a report of the status of the resolution of the customer complaints received as part of the case. The Staff filed its report on September 27, 2011.

On September 14, 2011, VAWC filed a Motion for Additional Time to Complete Refund ("Motion"), requesting an extension until January 31, 2012, to complete the refund directed in the July Order. According to VAWC, this is a complicated refund since it requires two separate calculations of refunds for the two applicable periods. VAWC states that its billing software is unable to calculate the refund automatically, and the refunded amounts must be entered manually. No party objected to VAWC's request.

NOW THE COMMISSION, upon consideration of VAWC's Motion, finds that the Motion should be granted and that VAWC should complete the refunds directed in the July Order no later than January 31, 2012. We also find that, the Staff Report directed in the July Order having been filed, this matter should be closed.

Accordingly, IT IS ORDERED THAT:

- (1) VAWC shall complete the refunds to customers directed in the Commission's July Order no later than January 31, 2012.
- (2) On or before March 16, 2012, VAWC shall submit to the Divisions of Energy Regulation and Utility Accounting and Finance a report showing that all refunds have been made pursuant to this Order and itemizing the cost of the refund and accounts charged. VAWC shall not recover the interest paid or the expenses incurred in making such refunds from water rates and charges subject to the Commission's jurisdiction.
- (3) All other provisions of the Commission's July Order shall remain in full force and effect.
- (4) There being nothing further to be done herein, this matter shall be dismissed from the Commission's docket of active cases.

**CASE NO. PUE-2010-00003
MARCH 18, 2011**

APPLICATION OF
ATMOS ENERGY CORPORATION

For an Annual Informational Filing for 2009

**ORDER ACCEPTING STAFF RECOMMENDATIONS
AND DISMISSING PROCEEDING**

On January 26, 2010, Atmos Energy Corporation ("Atmos" or "Company") filed a Request for Extension of Time ("Request") with the State Corporation Commission ("Commission") to file its Annual Informational Filing ("AIF") for the twelve months ended September 30, 2009, from January 28, 2010, to February 4, 2010. By Order dated January 28, 2010, the Commission granted the requested extension of time to file its AIF. Atmos filed its AIF for the test year ending September 30, 2009, on February 1, 2010, and the Commission Staff ("Staff") deemed the AIF complete.

On January 21, 2011, the Staff filed its Report in this case. That Report consisted of a review of Atmos's financial results, an accounting analysis, and an earnings analysis. In Exhibit 3 of its Report, the Staff noted that the Company's capital structure consisted of 47.795% of Long-Term Debt; 03.113% of Short-Term Debt; 49.081% of Common Equity; and 0.012% of Investment Tax Credits. Atmos's authorized range of return on equity of 9.50% - 10.50% was established in Case No. PUE-2003-00507.¹ With respect to debt issuances, the Staff reported that on March 29, 2009, Atmos issued \$450 million of 8.5% coupon rate, ten-year senior notes. The Staff advised that the proceeds were used to redeem, prior to maturity, \$400 million of 4.00% coupon senior notes that were set to mature in October of 2009. Staff noted that a call premium of \$6.568 million was also incurred related to the financing transaction, and that Atmos proposed to amortize the call premium and a \$777,355 hedging gain over the maturity of the new note, ten years.

The Staff reported that it discussed the early note redemption with senior Atmos treasury officials, who advised the Staff that the Company made a strategic decision to redeem the notes as a result of the liquidity crisis that existed in the capital markets at the time. The Company was concerned that if the \$400 million maturing note was not able to be refunded at maturity, and if it had to be paid off with short-term funds under existing revolving lines of credit, the remaining short-term liquidity might have been insufficient to provide for upcoming gas purchases during the heating season. Atmos decided to

¹ *Application of Atmos Energy Corporation, For an increase in rates*, Case No. PUE-2003-00507, 2005 S.C.C. Ann. Rept. 322, Final Order (Jan. 7, 2005) ("2003 Rate Case").

issue the new notes and redeem the existing notes to avoid this risk. Staff reports that the impact of the newly issued higher cost notes increased the overall cost of long-term debt when compared to what Atmos had been paying over the past several years, from 6.505% in September of 2007, to 7.382% this year.

In its accounting analysis, Staff reported that it made a number of revisions to Atmos's accounting adjustments. For the test year ended September 30, 2009, Staff's adjustments showed Atmos with a 6.74% per books jurisdictional return on common equity and a 10.15% fully adjusted return on equity. With regard to customer growth, the Company learned that one of its industrial customers ceased operations after the Company filed its AIF. Staff took this lost customer into account and reduced pro forma revenues by the total amount of test year non-gas revenues generated by the customer. Staff's adjustment to revenues resulting from the lost customer and other customer growth and migration was \$238,754 less than the Company's corresponding adjustment.

Staff summarized other accounting adjustments in its Report. With regard to uncollectible expenses, Staff's adjustment was \$2,063 higher than the Company's corresponding adjustment. With respect to the OPEB (other post-retirement benefits expense) transition obligation, Staff reported that the Company included the effects of changes in the prior service cost and discount rate twice in its cost of service. Staff therefore eliminated the effect of those changes, resulting in an adjustment that was \$2,560 less than the Company's corresponding adjustment.

With respect to unrealized losses, Staff reported that the Company experienced a decline in value in an investment that the Company maintains to provide pension and death benefits for its officers. The Company charged the effect of the decline in value in the investment as an unrealized loss to operation and maintenance expenses. However, unrealized losses are not included in the utility's cost of service. Staff reported that unrealized losses should be booked below the line in Account 426.5, and adjusted jurisdictional losses in the amount of \$41,242 from the cost of service.

With respect to interest expense, Staff reported that the Company inadvertently used the five-quarter average of the weighted cost of debt (intended for use in the Earnings Test) to calculate its pro forma interest expense. Staff used the correct end of period capital structure to calculate pro forma interest expense, resulting in a revision that reflected interest expense that was \$41,510 greater than the Company's adjustment.

With respect to storage gas, Staff reported that the Company reduced its balance of storage gas in the amount of \$709,091 to reflect the pro forma level of storage gas based on a simple average of the test year monthly imbedded cost of storage gas. Staff advised that it did not make this adjustment for two reasons. First, Staff explained that the proper average cost of storage gas is the weighted average cost rather than a cost based upon a simple average of monthly costs. Second, Staff advised that it is not appropriate to adjust one element of rate base while leaving other elements in rate base at the test year end amounts.

With respect to accumulated deferred income taxes ("ADIT"), Staff excluded two adjustments, resulting in Staff's balance of ADIT being \$22,681 higher than the Company's. The first adjustment that Staff excluded was the Company's adjustment to reflect the tax effect of the regulatory asset for the costs associated with the Blacksburg and Wytheville incidents. This regulatory asset was established as part of the Stipulation accepted by the Commission in its Final Order in Case No. PUE-2009-00004.² Staff reported that it excluded the Company's adjustment because regulatory assets are not permitted in rate base, and therefore the related ADIT should also be excluded. The second adjustment excluded by the Staff was Atmos's adjustment for deferred taxes related to the Company's operations, which should not have been adjusted when other rate base items were left at the end of the test period level.

In its earnings analysis, Staff reported that Atmos has two regulatory assets on its books. The first is a retired pipeline that previously served industrial customers in Dublin, Virginia.³ The second is the regulatory asset associated with legal charges in the Blacksburg and Wytheville incidents. Staff revised Atmos's earnings test to reflect the per books results on a regulatory basis and to recognize an average rate base and capital structure, as is required of Earnings Tests.

Staff made two earnings adjustments not made by the Company. The first reflected the 40-year amortization of the OPEB transition obligation approved for regulatory purposes in accordance with the Commission's Order in Case No. PUE-1992-00003.⁴ The transition obligation is amortized over twenty years on the Company's books. Staff's second adjustment eliminated \$41,242 in unrealized investment losses charged by the Company to operating expense in the test year because unrealized losses should be booked below the line to Account 426.5.

With respect to the Company's adjustment to reflect the amortization of the Blacksburg/Wytheville regulatory asset, Staff revised the Company's adjustment by limiting it to an appropriate test year amount rather than a full year of amortization. Staff reported that since the rate year in Case No. PUE-2009-00004 began on May 1, 2009, Staff included five months of amortization expense in the test year in this AIF. Therefore, Staff's \$27,340 adjustment to amortization expense was \$38,277 less than the Company's corresponding adjustment.

Staff also determined that two of the Company's adjustments to rate base related to the Blacksburg/Wytheville regulatory asset were not appropriate, and did not make them. Staff determined that the \$379,113 increase in plant in service and the \$72,835 credit to ADIT were not appropriate because companies are not permitted to earn a return on regulatory assets.

After all adjustments, the Staff's earnings test analysis indicated that Atmos earned a return on equity of 6.61%, which is below the mid-point of the authorized range of return on equity of 10.00%. The Staff reported therefore, no acceleration of amortization of regulatory assets was necessary.

² *Application of Atmos Energy Corporation, For an Expedited Increase in Rates and to Revise Tariffs*, Case No. PUE-2009-00004, 2009 S.C.C. Ann. Rept. 378, Final Order (Nov. 23, 2009) at 8; Stipulation at 3. The Blacksburg incident involved four Virginia Tech students. The Wytheville incident involved a fire and explosion at a compressor station where Atmos's facilities intersected with those of two pipeline companies. *Id.*

³ *See Application of Atmos Energy Corporation, For an Annual Informational Filing*, Case No. PUE-2005-00006, 2006 S.C.C. Ann. Rept. 324, Final Order (Mar. 29, 2006), Stipulation at 2.

⁴ *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte, In Re: Consideration of a rule governing Accounting for Postretirement Benefits other than Pensions*, Case No. PUE-1992-00003, 1992 S.C.C. Ann. Rept. 315, Final Order (Dec. 30, 1993).

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Staff's accounting analysis further reported that Atmos was earning a fully adjusted test year return on equity of 10.15%, which falls within the Company's authorized range of return on common equity of 9.50% to 10.50%, established by the Commission in Atmos's 2003 Rate Case. Staff recommended that no action be taken in relation to the Company's base rates at this time.

NOW THE COMMISSION, upon consideration of the Company's AIF, the Staff's January 21, 2011 Report, and the applicable statutes, is of the opinion and finds that the accounting adjustments, capital structure, and recommendations set out in the Staff Report should be adopted as supported by the record; that no further action should be taken on the Company's rates at this time; and that this case should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT:

(1) In accordance with the findings made herein, the accounting adjustments, capital structure, and recommendations set forth in the Staff's January 21, 2011 Report are hereby adopted.

(2) No action shall be taken on the Company's rates at this time.

(3) There being nothing further to be done herein, this case shall be dismissed from the Commission's docket of active proceedings and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2010-00017
JANUARY 7, 2011**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For authority to increase rates and charges and to revise the terms and conditions applicable to gas service

ORDER ON RECONSIDERATION

On May 3, 2010, Columbia Gas of Virginia, Inc. ("Columbia" or "Company"), filed with the State Corporation Commission ("Commission") an application pursuant to Chapter 10 of Title 56 (§ 56-232 *et seq.*) of the Code of Virginia requesting authority to increase its rates and charges effective January 1, 2011, and to revise other terms and conditions applicable to its gas services.

On December 17, 2010, the Commission entered its Final Order in this matter, wherein, among other things, it adopted a Proposed Stipulation and Recommendation ("Stipulation") supported by the case participants in the proceeding and incorporated the terms of the Stipulation into the Final Order¹ by its attachment thereto. Paragraph (20) of the Stipulation adopted by the Commission provided, among other things, that:

[t]he Company's proposed modifications to its tariff language and General Terms and Conditions shall be adopted as reflected in the Company's original filing, except as modified by Staff witness Abbott's recommendations (including, but not limited to, the elimination of the increase in the Company's late payment charge in Section 7.4 of its General Terms and Conditions and modifications to the WNA [weather normalization adjustment] and RNA [revenue normalization adjustment]) . . .²

On January 5, 2011, Columbia filed a petition requesting reconsideration of the Commission's December 17, 2010 Final Order ("Petition for Reconsideration"), wherein it proposed to revise certain language recommended by Commission Staff witness Gregory L. Abbott ("Abbott") to read as follows:

(c) WAMBR Calculation - For each rate schedule subject to the RNA pursuant to 12.3(a), the WAMBR will be equal to the applicable billing month's non-gas revenue recorded on the books of the Company ***which includes*** the sum of the WNA revenues calculated for each applicable customer pursuant to Section 12.2(c)(iv).³

Columbia's Petition for Reconsideration further stated that Abbott recommended the following language to implement the WNA in conjunction with the Company's RNA on page 56 of his direct testimony:

(c) WAMBR Calculation - For each rate schedule subject to the RNA pursuant to 12.3(a), the WAMBR will be equal to the applicable billing month's non-gas revenue recorded on the books of the Company ***plus*** the sum of the WNA revenues calculated for each applicable customer pursuant to Section 12.2(c)(iv). (Emphasis added).

Columbia explained that, in finalizing the tariff in compliance with the Final Order, the Company determined that revenues from its billing system used for its books already include applicable WNA revenues and, therefore, it would not be appropriate to add the WNA revenues a second time. To address this concern, the Company proposed to change the word "plus" to "which includes." Columbia advised that all of the case participants signing the Stipulation,

¹ *Application of Columbia Gas of Virginia, Inc., For authority to increase rates and charges and to revise the terms and conditions applicable to gas service*, Case No. PUE-2010-00017, Doc. Con. Cen. No. 441045, Slip op. at 6-7, Final Order (Dec. 17, 2010) (hereinafter referred to as the "Final Order").

² Final Order, Attachment A at 5.

³ The revisions to Abbott's language are indicated in bold type and italicized.

including the Commission Staff, do not object to Columbia's proposed revisions to Abbott's recommended language and do not oppose the Petition for Reconsideration.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that Columbia's Petition for Reconsideration should be granted and that Columbia's proposed revision to the language concerning the implementation of the WNA and RNA portion of its General Terms and Conditions set forth above should be accepted.

Accordingly, IT IS ORDERED THAT Columbia's Petition for Reconsideration is hereby granted; that Columbia's proposed revision to the language relating to the RNA set forth above is hereby accepted; and that in all other respects, the findings and directives set forth in the Final Order shall remain in effect.

**CASE NO. PUE-2010-00027
JUNE 10, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*

FRANCES R. LILES

v.

VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

ORDER GRANTING DISMISSAL

On March 30, 2010, Frances R. Liles ("Petitioner") initiated this proceeding by filing with the State Corporation Commission ("Commission") a formal complaint ("Petition") against Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company"). The Petitioner initiated this formal proceeding following attempts by the Staff of the Commission ("Staff") to informally resolve complaints made by the Petitioner about her electric service from the Company. As provided by Rule 70 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-70, when an informal complaint concerning matters within the Commission's jurisdiction cannot be satisfactorily resolved, an unsatisfied participant to the informal process facilitated by Staff can file a formal complaint, as the Petitioner ultimately elected to do.¹

Attempts to informally resolve complaints of the Petitioner – efforts that the record indicates reach back to at least early 2008 – produced several reliability improvements to the Company's distribution system serving the Petitioner. As documented by the filings submitted in this case, Dominion Virginia Power developed a detailed plan of action to improve the electric service provided to the Petitioner, which Staff endorsed as reasonable.² During 2008 and 2009, most elements of this plan in addition to other actions were implemented by the Company, including the following:

- Placement of a recording volt meter on Petitioner's home to monitor power quality, resulting in the subsequent replacement of substation equipment;
- Installation of line fuses to reduce outages that impact the Petitioner;
- Infrared scan of River Road;
- Installation of a capacitor bank on River Road;
- Reworking of connections on mainline device; and
- Installation of a new tie point between radial feeds on the Petitioner's street and a neighboring street, which included replacing both stepdown transformers and reclosers and installing 400 feet of underground conductor to complete the loop.³

The informal Commission process also prompted an offer by the Company to underground a portion of its distribution system serving the Petitioner and her neighbors – an offer the Petitioner rejected.⁴

¹ See 5 VAC 5-20-70, Informal complaints

All correspondence and informal complaints shall be referred to the appropriate division or bureau of the commission. The head of the division or bureau receiving this correspondence or complaint shall attempt to resolve the matter presented. Matters not resolved to the satisfaction of all participating parties by the informal process may be reviewed by the full commission upon the proper filing of a formal proceeding in accordance with the rules by any party to the informal process.

² See, e.g., June 1, 2010 Response of Staff at Attachments 2, 3. We note that Attachment 2 to Staff's Response is also included as Exhibit 4 to the Petition.

³ See, e.g., *id.* (identifying and endorsing components of the Company's plan of action in addition to completed substation work); June 1, 2010 Response of Dominion Virginia Power at 16 (identifying completed projects from plan of action in addition to other service improvements).

⁴ See, e.g., June 1, 2010 Response of Dominion Virginia Power at 2, "And the Company has made other suggestions – including placing the power lines underground at its own cost – which have been rejected by the residents."; March 8, 2011 Comments of the Petitioner at 3, "The power company, however, wanted an easement almost up to our front doors, which my neighbors were not willing to give; neither was I, because the company didn't need it."

Despite the above achievements, which the Petitioner's filings do not refute, complaints by the Petitioner about her electric service persisted. Given the Petitioner's continuing dissatisfaction with the efforts of the Company and Staff, the informal Commission process reached its practical, if not legal, limit in 2009. Counsel to the Commission memorialized this reality in a February 2009 letter sent to the Petitioner, which stated, among other things, that:

Given the evidence of Dominion's multiple efforts undertaken in apparent good faith to resolve your concerns – and Dominion's expressed willingness to continue trying to resolve them – there appears to be no additional efforts that the SCC staff could take on this matter different from those that the staff has continued to pursue.

If you believe, however, that Dominion's ongoing efforts to resolve your service concern, including their latest offer described below, are unsatisfactory, then you have the right to file a formal complaint against Dominion here at the SCC. If you wish to file a formal complaint, you may do so by following the Commission's Rules of Practice and Procedure . . .⁵

One year later, the Petitioner filed her formal complaint against the Company. Her Petition raised issues regarding the quality of her electric service, tree-trimming, and clearing activities conducted on the Petitioner's property and the response she received from Staff during efforts to resolve her issues with the Company informally.

On April 13, 2010, the Commission issued an Order Docketing Case, which directed the Petitioner to file an amended petition ("Amended Petition") in order to pursue her formal complaint in accordance with Rule 100 B of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-100 B. The Order Docketing Case also, among other things, directed Dominion Virginia Power and Staff to file responses to the Amended Petition and assigned a Hearing Examiner to conduct further proceedings in this matter.

On May 10, 2010, the Petitioner filed her Amended Petition. Among other things, the Amended Petition: (1) identified as parties to this case a number of individuals who the Petitioner indicated are employees or agents of the Company or Staff; (2) sought a wide range of remedies including, but not limited to, penalties, damages, apologies, explanations, assurances, removal of debris, replacement of property line stakes, improvements in reliability of electric service, residential repairs, and installation of a generator; and (3) provided the legal basis that the Petitioner asserted in support of her requested remedies. Additionally, the Amended Petition requested that the Commission provide the Petitioner with legal representation, claiming that she has a disability and lacks legal experience.⁶

On June 1, 2010, Dominion Virginia Power and Staff filed separate responses to the Amended Petition. Those responses addressed the Petitioner's claims and moved to dismiss certain claims. The Petitioner was subsequently provided the opportunity to file a response to the Company's and Staff's filings, which she filed on June 29, 2010.⁷

By Hearing Examiner's Ruling issued July 7, 2010 ("July 7, 2010 Ruling"), the Hearing Examiner found that all but three complaints were to be dismissed with prejudice from this proceeding. As identified by the July 7, 2010 Ruling:

Those claims [not to be dismissed] include: (1) whether the Company complied with its Terms and Conditions of service in providing electric service to the Petitioner; (2) whether the Company complied with its tree-trimming guidelines; and (3) whether the Company responded reasonably to the Petitioner's customer service complaints.⁸

The July 7, 2010 Ruling directed that an evidentiary hearing be scheduled to hear these three (3) remaining claims. In addition, the Petitioner's request that the Commission provide her with legal counsel was denied.

By Ruling issued August 25, 2010 ("August 25, 2010 Ruling"), the Hearing Examiner scheduled an evidentiary hearing for November 4, 2010 – a date when the Petitioner, Company, and Staff had previously indicated they were all available to participate in the hearing. Additionally, the August 25, 2010 Ruling: (1) stated that, as the petitioning party, the Petitioner has the burden of presenting credible evidence regarding her allegations and that she also bears the burden of proving her case by a preponderance of the evidence; and (2) advised the Petitioner that, since she was appearing *pro se*, she was responsible for familiarizing herself with the Commission's Rules of Practice and Procedure, the Rules of the Supreme Court of Virginia, and the rules of evidence in Virginia.

By Ruling issued November 1, 2010, the Hearing Examiner continued the evidentiary hearing generally but maintained the November 4, 2010, date for a prehearing conference in this matter.

By correspondence dated November 2, 2010, and addressed to the Commissioners, the Petitioner asked that her formal complaint be "chang[ed] . . . to a 'normal complaint' about the matters described in my filings to you." This correspondence, which was forwarded to the case file by the Commission's Office of General Counsel ("Office of General Counsel"), indicated that a disability would prevent the Petitioner's participation in the evidentiary hearing previously scheduled for November 4, 2010.

⁵ November 3, 2010 correspondence from Bryan Stogdale, Office of General Counsel, to Petitioner at Enclosure (February 4, 2009 correspondence from John F. Dudley, Counsel to the Commission, to the Petitioner).

⁶ See, e.g., Amended Petition at 11, "[S]houldn't it provide me with full legal advice and service (even if it had to provide me with an outside attorney . . .)"

⁷ In addition to responding to the Company's and Staff's pleadings, this filing raised, for the first time, an issue regarding customer billing. On July 20, 2010, Dominion Virginia Power filed a Motion for Leave, accompanied by a response to the Petitioner's assertions regarding her billing. The Company's response included an explanation of the Petitioner's bill calculations and asked that the Commission dismiss this matter from the pending formal complaint proceeding. By Hearing Examiner's Ruling dated July 21, 2010, the Company's Motion for Leave was granted.

⁸ Hearing Examiner's Ruling at 8 (July 7, 2010).

On November 3, 2010, the Office of General Counsel filed correspondence from it to the Petitioner seeking clarification of her November 2, 2010 request for a "normal complaint." The November 3, 2010, correspondence from the Office of General Counsel to the Petitioner states, among other things, that an election by the Petitioner not to continue pursuing matters raised in this formal proceeding could result in denial of the Petitioner's complaint with prejudice to any future complaints regarding the same matters. The Office of General Counsel cited the unsuccessful efforts already undertaken to resolve informally certain issues raised by the Petitioner.

On November 4, 2010, the prehearing conference was convened. The Company and Staff appeared at the prehearing conference while the Petitioner did not attend.

Also occurring on November 4, 2010, after the conclusion of the prehearing conference, the Petitioner sent another correspondence addressed to the Commissioners. In this correspondence, which also was forwarded to the case file, the Petitioner stated, among other things, that she did "not wish to withdraw *anything* if you are going to do nothing."

By Hearing Examiner's Ruling issued November 9, 2010, the Hearing Examiner found that the evidentiary hearing should be rescheduled based on the Petitioner's November 4, 2010, correspondence. To facilitate the rescheduling of the evidentiary hearing in a manner consistent with the process used to select the original hearing date, the Hearing Examiner directed the parties to provide all dates when they were available to participate in a rescheduled evidentiary hearing in the month of December 2010. The Company and Staff filed their available dates. No dates were provided by the Petitioner.

By Ruling issued November 17, 2010, the Hearing Examiner rescheduled the evidentiary hearing in this matter for December 6, 2010. By letter dated November 20, 2010, but filed December 1, 2010, the Petitioner indicated that she had been out of town and objected to the establishment of a hearing date without her agreement.

By Ruling issued December 3, 2010, the Hearing Examiner continued the evidentiary hearing generally and permitted the parties and Staff the opportunity to provide input on a mutually acceptable hearing date for a second rescheduling of the evidentiary hearing. By Ruling issued January 3, 2011, the evidentiary hearing was again rescheduled, this time for February 11, 2011 – a date all participants, including the Petitioner, indicated they were available.

On February 11, 2011, the evidentiary hearing was convened. The Petitioner, the Company, and the Staff appeared at the evidentiary hearing. The Petitioner declined opportunities presented by the Hearing Examiner to provide sworn testimony in support of her allegations regarding electric service, tree-trimming, or customer service.⁹ During a recess called after opening statements, the Petitioner left the Commission building while the hearing remained convened and without providing any evidence.¹⁰

Following the Petitioner's departure, the Company orally moved for summary judgment based on the Petitioner's failure to submit any evidence.¹¹ The Hearing Examiner then adjourned the hearing, closed the record, and indicated that he would take the Company's motion for summary judgment under advisement.¹²

On March 8, 2011, the Commission received a letter from the Petitioner in which she, among other things, restated the nature of her disability and included her version of the events on the date of the evidentiary hearing.

On March 16, 2011, the Hearing Examiner issued his Report on this matter. The Hearing Examiner found that: (1) the Petitioner was provided with notice, an opportunity for a hearing, and an opportunity to present evidence in support of her Petition; (2) the Petitioner failed to submit any evidence in support of her Petition; and (3) summary judgment is appropriate under these circumstances. Accordingly, the Hearing Examiner recommended that the Commission dismiss the Petition with prejudice.¹³

On April 6, 2011, the Petitioner filed comments on the Hearing Examiner's Report, and the Company filed a letter advising that it would not file comments on the Hearing Examiner's Report.

NOW THE COMMISSION, having considered this matter, finds as follows.¹⁴ Based on our review of this matter, this case should be dismissed.¹⁵ A formal complaint before the Commission – whether initiated *pro se* or through counsel – can only be adjudicated based on evidence for which the petitioning party carries the burden of proof.¹⁶ The Petitioner was advised of this legal requirement well in advance of the original evidentiary

⁹ Tr. 5, 14-15.

¹⁰ Tr. 17-18.

¹¹ Tr. 18-19.

¹² Tr. 19.

¹³ Hearing Examiner's Report at 5-6 (Mar. 16, 2011) ("Hearing Examiner's Report").

¹⁴ This Order is issued upon consideration of all filings made in this case including, but not limited to, the filings specifically identified herein.

¹⁵ This finding includes all claims dismissed by the Hearing Examiner in this proceeding.

¹⁶ See, e.g., Va. Code § 56-6 (identifying that the Commission sits "as a court of record" in formal complaint proceedings); Va. Code § 12.1-30 (requiring the Commission, in formal complaint proceedings and other proceedings where it sits as a court of record, "to observe and administer the common and statute law rules of evidence as observed and administered by the courts of the Commonwealth"); 5 VAC 5-20-190 (incorporating the requirements of Va. Code § 12.1-30 into the Commission's Rules of Practice and Procedure).

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hearing date, which was established specifically for the purpose of presenting evidence and was so advised again during the hearing.¹⁷ The Petitioner voluntarily elected: (1) to file a formal complaint with the Commission; (2) to initiate and further participate in this proceeding *pro se*; and (3) to decline several opportunities to present any evidence in this matter. The Petitioner's position that the Commission can dispense a variety of legal remedies, including penalties, based solely on allegations that were not provided under oath or subjected to cross-examination fails to comport with the requirements of Virginia law and Commission practice, if not the dictates of due process.¹⁸

Although we find that this case should be dismissed due to the Petitioner's failure to submit evidence, we also address other matters raised by the Petitioner.

First, we find no merit to the Petitioner's claims that she was forced to file a formal complaint or to participate at any stage of the proceeding. The record is clear that the Petitioner was unsatisfied with Staff's attempts to resolve her complaints informally and that she was advised that she had a right – but was not required – to further pursue her complaints through a formal Commission process.¹⁹

Second, the Petitioner's continuing assertions that the Commission has been unresponsive to her claims of a disability are contradicted by the pleadings. Indeed, the Petitioner's own comments confirm that she was not only made aware of the Commission personnel in charge of accommodations for disabilities, but she spoke with that person and declined to request any accommodations.²⁰

Third, the Petitioner has not claimed that she was unaware of her right to obtain legal counsel to participate in this proceeding.²¹ Rather, the Petitioner has requested that the Commission pay for, or otherwise supply her with, legal services.²² The Hearing Examiner appropriately denied this request. Like most courts of record, the Commission allows participants to participate *pro se* in formal proceedings to eliminate potential barriers for persons seeking legal relief. This inclusive process, however, does not obligate the Commission to provide legal services for a participant or eliminate applicable legal requirements for obtaining relief.

Finally, the pleadings filed in this case indicate that both the Staff and the Company took reasonable steps to address the Petitioner's stated concerns, and Dominion Virginia Power has provided the Petitioner with adequate service according to the Company's tariff requirements and applicable statutes and regulations.²³

Accordingly, IT IS ORDERED THAT:

- (1) This case is dismissed.
- (2) The papers filed herein shall be placed in the Commission's file for ended causes.

¹⁷ See, e.g., Hearing Examiner's Ruling at 2 (Aug. 25, 2010); Tr. 5, 14-15.

¹⁸ See, e.g., April 6, 2011 Response of Petitioner to the Hearing Examiner's Report at 2, "In fact, no other activities should be required of the Petitioner, because sufficient evidence was presented to the Commission and Staff in 2009, previously and in early 2010 . . ."

¹⁹ Compare March 8, 2011 Comments of Petitioner at 1, "Mr. Dudley advised that I *must file a formal complaint*" (emphasis added), with November 3, 2010 correspondence from Bryan Stogdale, Office of General Counsel, to the Petitioner at Enclosure (February 4, 2009 correspondence from John F. Dudley, Counsel to the Commission, to the Petitioner),

If you believe, however, that Dominion's ongoing efforts to resolve your service concern, including their latest offer described below, are unsatisfactory, then you have the right to file a formal complaint against Dominion here at the SCC. *If you wish to file a formal complaint, you may do so* by following the Commission's Rules of Practice and Procedure . . ." (emphasis added).

²⁰ See March 8, 2011 Comments of Petitioner at 1, "I only heard from Mr. Richard Whitt and responded to him that I did not know what to request."

²¹ We note that the Petitioner's filings indicate that she has previously retained legal counsel. See June 29, 2010 Response of the Petitioner at 2.

²² See, e.g., Amended Petition at 11, "[S]houldn't it provide me with full legal advice and service (even if it had to provide me with an outside attorney). . ."

²³ See also Hearing Examiner's Report at 1-2.

**CASE NO. PUE-2010-00029
JUNE 8, 2011**

RAYMOND R. TAYLOR
v.
SOUTHSIDE ELECTRIC COOPERATIVE

FINAL ORDER

On April 5, 2010, Raymond R. Taylor ("Petitioner") filed a complaint with the State Corporation Commission ("Commission") concerning various issues related to the electrical service being provided to him by Southside Electric Cooperative ("SEC" or "Cooperative").

On May 7, 2010, the Commission issued an Order Appointing Hearing Examiner in which, among other things, it directed the parties to file amended pleadings and appointed a Hearing Examiner to conduct all future proceedings in this matter.

On June 1, 2010, the Petitioner filed an amended petition ("Amended Petition") in which he alleged that SEC has overcharged him for electricity and that SEC has failed to maintain or repair a known problem or problems on its electrical system.¹ The Petitioner further stated that as a result of SEC's actions, or inaction, the Petitioner suffers from low voltage, which causes high energy bills.² In his Amended Petition, the Petitioner requested that the Commission direct SEC to pay him \$20,000 for overcharges and damages and demanded that the Commission investigate and audit all power lines owned by SEC.³

On June 14, 2010, the Cooperative filed its response ("Response") in which it objected to the Amended Petition as lacking clear language to comply with Rule 5 VAC 5-20-100 B, *Petitions in other matters*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* In its Response, SEC maintained that it has upgraded the transformer serving Petitioner's residence and performed numerous tests on Petitioner's meter, all of which indicate that the meter is operating properly.⁴

On June 28, 2010, SEC filed a Motion for Allowance of Amended Pleadings ("Motion") requesting the inclusion of two letters into the record. By ruling dated July 30, 2010, the Motion was granted, and the matter was scheduled for hearing.

On September 23, 2010, the hearing was convened as scheduled. At the conclusion of the hearing, Hearing Examiner Howard P. Anderson, Jr., with the Petitioner's concurrence, directed Commission Staff to select an independent energy auditor to perform an energy audit on the Petitioner's residence.⁵ An exhibit number was reserved for the audit report.⁶

On February 16, 2011, the Report of Howard P. Anderson, Jr., Hearing Examiner ("Report" or "Hearing Examiner's Report") was issued. In his Report, the Hearing Examiner summarized the record and found that the Petitioner's Amended Petition should be denied. The Hearing Examiner recommended that the Commission enter an order adopting the finding in his Report and dismissing the Amended Petition from the Commission's docket of active cases.

On March 8, 2011, the Petitioner filed comments on the Hearing Examiner's Report in which he demanded to cross-examine Neil Sullivan of Building Science, Inc., who performed the energy audit and reported the results of his findings, which is Exhibit 10 in this proceeding.⁷ The Petitioner acknowledged that the vents under the house leak and that his house is old, but he stated that because he does not use his electric heating system, these factors should not be considered.⁸ The Cooperative did not file comments on the Hearing Examiner's Report.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Amended Petition is denied. The record in this matter demonstrates that the Cooperative replaced and upgraded the transformer that serves only the Petitioner's residence;⁹ it tested the meter on four separate occasions, including one occasion in which Commission Staff witnessed the reading, and each time the meter was found to be accurate;¹⁰ and it tested the voltage and current traveling through the meter, the results of which indicated proper levels were being provided to the Petitioner's residence.¹¹ Furthermore, the Petitioner did not establish that the electric service being provided to him is inadequate or that the voltage to his residence is low.

Finally, we have not considered the energy audit, which was conducted subsequent to the evidentiary hearing.¹² Rather, as listed above, our finding is based on the record developed and the hearing on September 23, 2010.

Accordingly, IT IS ORDERED THAT:

- (1) The Petitioner's complaint is hereby denied.
- (2) This case is hereby dismissed, and the papers herein are placed in the file for ended causes.

¹ Exhibit 2.

² *Id.*

³ *Id.*

⁴ Exhibit 5. Additionally, the Response of SEC contained, among other things, several instances of inappropriate and unnecessary commentary that the Commission does not find germane or helpful to our decision-making process.

⁵ Tr. 140-147.

⁶ Tr. 151.

⁷ Comments of Raymond R. Taylor on the Hearing Examiner's Report at 1.

⁸ *Id.*

⁹ Exhibit 7, Tr. 117.

¹⁰ Exhibit 5 (including Attachment A) and Exhibit 6, Tr. 95.

¹¹ Exhibit 5 (Attachment B), Tr. 87-89.

¹² Exhibit 10.

**CASE NO. PUE-2010-00031
JUNE 16, 2011**

APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY

2009 Annual Informational Filing

FINAL ORDER

The State Corporation Commission's ("Commission") Rules Governing Utility Rate Increase Applications and Annual Informational Filings provide that Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP" or the "Company") is to submit an Annual Informational Filing ("AIF") for the test period ending December 31, 2009. On April 26, 2010, the Commission issued an Order ("April 26, 2010 Order") granting KU/ODP's request for additional time to submit its AIF that otherwise would have been due on April 30, 2010. In accordance with the April 26, 2010 Order, the Company submitted its AIF on September 30, 2010.

On March 11, 2011, the Staff of the Commission ("Staff") filed a Staff Report containing financial review and accounting analysis of the Company's AIF for 2009. The Staff reported that KU/ODP's fully adjusted rate of return statement reflects a 5.28% return on rate base and a 5.79% return on equity. Accordingly, the Company's jurisdictional returns were below the authorized rate of return on equity range of 10.00%-11.00% approved by the Commission in Case No. PUE-2009-00029.

The Staff Report further documented that KU/ODP has an existing regulatory asset relating to Midwest Independent Transmission System Operator, Inc., exit fees for which a five-year amortization period was approved beginning November 1, 2009.

Finally, the Staff Report reviewed KU/ODP's request for regulatory asset treatment of the expenses arising from a major snow storm ("Mountain Snow Storm") in December 2009. KU/ODP booked storm damage costs of \$5.9 million in Virginia during the test year that were incurred as a result of restoring power to customers.¹ The Company requested regulatory asset treatment for the Mountain Snow Storm costs in the current AIF. The Staff concluded that the storm damage should be treated as extraordinary, non-recurring, and a material cost to the Company. Accordingly, the Staff recommended regulatory asset treatment subject to annual earnings tests for the Mountain Snow Storm costs. The Staff recommended that the Company begin amortizing these costs over a five-year period with the effective date of the rates in KU/ODP's rate case.²

On April 27, 2011, the Company filed a letter that stated it did not take exception with the Staff Report and that recommended the Commission issue an order closing the proceeding.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Staff's regulatory asset booking recommendation should be approved for ratemaking purposes and, there being found no over-earnings by the Company for the test period, this case should be closed.

Accordingly, IT IS ORDERED THAT:

(1) The Company shall book the Mountain Snow Storm costs as a regulatory asset subject to annual earnings tests and begin amortizing the Mountain Snow Storm regulatory asset by the effective dates of the rates approved in KU/ODP's current rate case presently before the Commission in Case No. PUE-2011-00013.

(2) This matter is dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended cases.

¹ The costs of the Mountain Snow Storm repairs are reported as \$6.5 million in Virginia, with \$5.9 million booked in 2009 and the remaining expenses booked in 2010.

² On January 31, 2011, KU/ODP filed with the Commission notice of the Company's intent to file a general rate case. KU/ODP's application for an increase in rates was filed on April 1, 2011, and it is presently docketed as Case No. PUE-2011-00013.

**CASE NO. PUE-2010-00044
JULY 27, 2011**

APPLICATION OF
NORTHERN VIRGINIA ELECTRIC COOPERATIVE

For general rate relief

FINAL ORDER

On August 10, 2010, Northern Virginia Electric Cooperative ("NOVEC," "Applicant," or "Cooperative") completed an Application and Request for Waiver ("Application") with the State Corporation Commission ("Commission") for approval of its proposed rates, which would result in a general

decrease in the rates charged to NOVEC's customers. NOVEC filed this Application pursuant to §§ 56-231.33, 56-231.34, 56-235, and 56-585.3 of the Code of Virginia ("Code") and in accordance with the Commission's Orders in Case No. PUE-2008-00083.¹

On August 20, 2010, the Commission issued an Order for Notice and Hearing in this proceeding, which, among other things, directed that notice of the Application be given to the public, gave interested persons an opportunity to participate in the proceeding, directed the Staff of the Commission ("Staff") to investigate the Application and file testimony and exhibits, and scheduled a hearing to be conducted in this case on March 1, 2011. As modified by the Commission's September 1, 2010 Order ("Modification Order"), the Order for Notice and Hearing also directed the Cooperative to make its then-current rates interim, subject to refund with interest, for bills rendered on or after October 1, 2010, and further directed that NOVEC's proposed rates, once implemented, be made interim, subject to refund with interest.² NOVEC was authorized to implement its proposed rates on January 3, 2011.³

The Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel") and the Fairfax County Board of Supervisors ("Fairfax County") both filed notices of participation in this matter. On February 17, 2011, the Cooperative, the Staff, and Fairfax County filed a Motion to Accept Stipulation and a Stipulation ("Stipulation") that represented a resolution of all of the issues before the Commission in this case except for the treatment of NOVEC's power cost recovery variances totaling \$19.2 million.⁴ On March 1, 2011, a hearing was held in which the parties presented the Stipulation and presented evidence regarding the power cost recovery variances.⁵ The Staff, Consumer Counsel, Fairfax County, and the Cooperative filed post-hearing briefs on April 14, 2011.⁶

On May 11, 2011, the Report of A. Ann Berkebile, Hearing Examiner ("Report" or "Hearing Examiner's Report") was filed. In the Report, the Hearing Examiner summarized the record, analyzed the evidence and issues in this proceeding, and made certain findings and recommendations. The Hearing Examiner recommended that the Commission enter an order that adopts the findings of the Report and dismisses this case from the Commission's docket of active cases.

The Hearing Examiner stated as follows:

In my assessment, the Stipulation is reasonable and should be approved by the Commission. The Stipulation adopts virtually all of Staff's accounting adjustments and, if approved, will reduce NOVEC's annual revenues by more than \$17.5 million, based on a [Times Interest Earned Ratio ("TIER")] of 4.00, and result in a [rate of return on rate base ("ROR")] of approximately 4.2%. The approval of such a reduction should bring meaningful rate relief to NOVEC's residential and business customers and result in more appropriate equity levels for NOVEC.⁷

The Hearing Examiner's Report also recommended that, based on the general prohibition on retroactive ratemaking in Virginia and upon the Schedule PCA that was approved by the Commission in Case No. PUE-2008-00083, the request of the Staff and Fairfax County for a refund or rate credits associated with NOVEC's power cost variances for 2009 and 2010 be denied.⁸

In conclusion, the Hearing Examiner made the following findings:

- (1) The request for a refund or rate credits associated with NOVEC's combined purchased power cost variances for 2009 and 2010 should be denied;
- (2) The Applicant should advise the Commission in comments to this Report if NOVEC's Board will commit to the return of the remainder of the \$19.2 million power cost variance to its customers by way of the Special Cashbacks process;

¹ *Application of Northern Virginia Electric Cooperative, For a modification to its Tariff*, 2008 S.C.C. Ann. Rept. 594, Order Approving Tariff Modification (Dec. 10, 2008), *modified*, 2009 S.C.C. Ann. Rept. 343, Order on Reconsideration (Feb. 17, 2009).

² The Commission found that NOVEC would only be obligated to make a single refund, with interest, at the conclusion of this proceeding.

³ Hearing Examiner's Ruling at 2 (Nov. 30, 2010).

⁴ See Motion to Accept Stipulation, filed Feb. 17, 2011. Consumer Counsel did not sign the Stipulation, but represented that it did not oppose the Commission's acceptance of the Stipulation.

⁵ This issue was initially raised in the testimony of Staff Witness David A. Roberts and concerned NOVEC's recoveries under its Schedule PCA, which NOVEC applied for in Case No. PUE-2008-00083. In 2009 and 2010, NOVEC's purchased power revenues exceeded its purchased power costs by \$19.2 million. The primary issue in contention was the proper treatment of these recoveries under the terms of Schedule PCA and the governing statutes. See Ex. 12 (Roberts Direct) at 4-10.

⁶ The Staff and Fairfax County generally argued that the power cost recovery variances represented an over-recovery that NOVEC is required to return to its members on a dollar-for-dollar basis. The Staff maintained that this return of the variances should be accomplished through a rate credit to NOVEC's members. NOVEC argued that it complied with the terms of its Schedule PCA, the variances were collected under the terms of this tariff, the power cost recovery variances do not represent an over-recovery, and that the Cooperative should not be required to return the \$19.2 million to members on a dollar-for-dollar basis. Consumer Counsel discussed the reasons that could justify the Commission taking "unique remedial measures" in this case. Post-Hearing Brief of the Office of the Attorney General Division of Consumer Counsel at 9, filed Apr. 14, 2011.

⁷ Hearing Examiner's Report at 35.

⁸ *Id.* at 33-34.

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- (3) The Stipulation offers a fair and reasonable disposition of this case;
- (4) Staff's ratemaking adjustments, as modified by the Stipulation and as determined in accordance with the attached Statement 1, are reasonable;
- (5) As agreed in the Stipulation, NOVEC should work with Staff to revise its calculation and booking of unbilled revenue, work with [National Rural Electric Cooperative Association ("NRECA")] and Staff to revise its accounting for [Financial Accounting Standards Board ("FASB")] 158/106, and should capitalize property taxes related to construction work in progress on a going-forward basis;
- (6) The total annual revenue reduction of \$17,521,603 recommended in this Report, as based on a TIER of 4.00 and resulting in a return on rate base of approximately 4.2%, is reasonable and should be considered by the Commission;
- (7) The revised Schedule PCA-1, attached to the direct testimony of Staff witness Roberts and the terms of which were agreed to by NOVEC, is reasonable and should be considered by the Commission;⁹
- (8) NOVEC's [cost of service ("COS")] studies provide for a reasonable allocation of the cost of service among the classes of customers and should be used to establish rates in this case;
- (9) The rate design proposed by NOVEC is reasonable provided that, as agreed in the Stipulation, the Energy Supply and Distribution components are rebalanced to reflect Staff's adjustment to remove unbilled revenue;
- (10) As agreed in the Stipulation, the additional revenue reduction recommended herein should first be used to minimize or eliminate increases to large high load factor Schedule LP-1 customers and the remainder of the additional reduction should be allocated to the rate classes proportional to the revenue reduction allocation as proposed in the Application;
- (11) NOVEC's Schedule EF should be adjusted to reflect changes in NOVEC's costs and cost of capital in accordance with the Stipulation and NOVEC should file tariffs, prepared in conformance with the Stipulation, for Commission review and approval;
- (12) NOVEC's proposed changes to its Terms and Conditions, as modified by the Stipulation, are reasonable and should be approved by the Commission; and
- (13) Consistent with the Modification Order and the Hearing Examiner's Ruling dated November 30, 2010, NOVEC should be required to promptly refund, with interest, all excess revenues collected under its interim rates based upon the reduced revenue requirement approved herein.¹⁰

On June 1, 2011, the parties and Staff each filed comments on the Hearing Examiner's Report.¹¹ In addition, in response to the Hearing Examiner's request, NOVEC advised as follows:

NOVEC's senior management has . . . recommended that the Board re-commence the return of the remainder of the 2009 power supply costs variances and also [] approve a Special CashBack return of the 2010 power supply cost variances, which totaled \$9.7 million (for a combined total return of \$13.6 million), as quickly as possible, consistent with the Board's obligations in the bylaws to take no action that impairs NOVEC's financial condition, as well as with the Board's statutory obligations to act with sound economy and prudent management of the business of the Cooperative.¹²

On June 6, 2011, and June 7, 2011, NOVEC filed copies of certifications showing that on June 2, 2011, NOVEC's Board of Directors resolved to issue such a Special Cashback as quickly as possible.

NOW THE COMMISSION, having considered the matter, adopts the recommendations in the Hearing Examiner's Report as set forth herein.

⁹ The Hearing Examiner, consistent with the Staff's recommendation that the Commission specifically direct NOVEC to apply its Schedule PCA-1 in a manner that conforms to § 56-249.6 of the Code, recommended that the Commission clarify the intended operation of the Schedule PCA-1 on a going-forward basis. *Id.* at 36 n. 126. In response thereto, we clarify as such and note, as described by the Hearing Examiner, that "[u]nlike the 2008 Schedule PCA, NOVEC's new Schedule PCA-1 is designed to provide a dollar-for-dollar recovery of all excess fuel and purchased power costs and to provide for an annual true-up of such costs." *Id.* at 35.

¹⁰ Hearing Examiner's Report at 35-36.

¹¹ The Staff and Fairfax County each discussed the reasons that they disagreed with the Hearing Examiner's findings related to the return of NOVEC's power cost recovery variances through a rate credit. NOVEC generally supported the findings and recommendations of the Hearing Examiner's Report; however, it stated that it cannot support the Hearing Examiner's discussion leading to the conclusion that the Commission may be amenable to the consideration of unique remedial measures. Consumer Counsel generally supported the findings and recommendations of the Hearing Examiner.

¹² Comments of Northern Virginia Electric Cooperative on the Report of the Hearing Examiner at 4.

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We adopt the Hearing Examiner's finding that "[t]he Stipulation offers a fair and reasonable disposition of this case." Specifically, we find that:

1. NOVEC shall return to its customers, by way of the Special Cashback process, the 2010 power supply cost variances and the remainder of the 2009 power supply costs variances as agreed to in the June 2, 2011 resolution passed by NOVEC's Board of Directors;
2. The total annual revenue reduction of \$17,521,603, as based on a TIER of 4.00 and resulting in a ROR of approximately 4.2%, is reasonable;
3. The Staff's ratemaking adjustments, as modified by the Stipulation and as determined in accordance with the Statement 1 attached to the Hearing Examiner's Report, are reasonable;
4. As agreed in the Stipulation, NOVEC shall work with the Staff to revise its calculation and booking of unbilled revenue, work with NRECA and the Staff to revise its accounting for FASB 158/106, and shall capitalize property taxes related to construction work in progress on a going-forward basis;
5. NOVEC's COS studies provide for a reasonable allocation of the cost of service among the classes of customers and shall be used to establish rates in this case;
6. The rate design proposed by NOVEC is reasonable provided that, as agreed in the Stipulation, the Energy Supply and Distribution components are rebalanced to reflect the Staff's adjustment to remove unbilled revenue;
7. As agreed in the Stipulation, the additional revenue reduction approved herein shall first be used to minimize or eliminate increases to large high load factor Schedule LP-1 customers and the remainder of the additional reduction shall be allocated to the rate classes proportional to the revenue reduction allocation as proposed in the Application;
8. NOVEC's Schedule EF shall be adjusted to reflect changes in NOVEC's costs and cost of capital in accordance with the Stipulation and NOVEC shall file tariffs, prepared in conformance with the Stipulation, for Commission review and approval;
9. NOVEC's proposed changes to its Terms and Conditions, as modified by the Stipulation, are reasonable;
10. The revised Schedule PCA-1 is reasonable; and
11. Consistent with the Modification Order and the Hearing Examiner's Ruling dated November 30, 2010, NOVEC shall be required to promptly refund, with interest, all excess revenues collected under its interim rates based upon the reduced revenue requirement approved herein.

Accordingly, IT IS ORDERED THAT:

(1) NOVEC's Application is approved subject to the requirements in the Stipulation and subject to the additional requirements set forth in this Final Order.

(2) NOVEC shall forthwith file revised tariffs and terms and conditions of service with the Commission's Division of Energy Regulation, in accordance with the Stipulation and as discussed herein, within thirty (30) days from the date of this Final Order. The rates, terms and conditions so established shall be effective for bills rendered on and after October 1, 2010.

(3) Within ninety (90) days of the date of this Final Order, NOVEC shall use the rates and charges approved in Ordering Paragraph (2) to recalculate each bill it rendered that used, in whole or in part, the rates and charges that were made interim for bills rendered on or after October 1, 2010, and the rates and charges that took effect on an interim basis subject to refund for bills rendered on and after January 3, 2011. Where application of the rates prescribed in Ordering Paragraph (2) results in a reduced bill, NOVEC shall refund the difference with interest as set out below.

(4) The refunds with interest directed in Ordering Paragraph (3) for current customers may be made by a credit to the customers' accounts and shown on bills. The bill shall show the refund as a separate item or items. For former customers, the refunds with interest that exceed \$1.00 shall be made by check mailed to the last known address of such customers. NOVEC may apply the credit or refund against any undisputed outstanding balance for the current or former customer. No credit or refund shall be applied against any disputed portion of an outstanding balance. NOVEC may retain refunds to former customers when such refund is less than \$1.00. NOVEC shall maintain a record of former customers for which the refund is less than \$1.00, and such refunds shall be promptly made upon request. All unclaimed refunds shall be subject to § 55-210.6:2 of the Code of Virginia.

(5) The refund amounts calculated as directed in Ordering Paragraph (3) shall bear interest at a rate for each calendar quarter that shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the "Bank prime loan" values published in the weekly Federal Reserve Statistical Release H.15 (519), *Selected Interest Rates*, for the three months of the preceding calendar quarter. The interest shall be computed from the date bills were due to the date of the bill showing the credit to current customers or the date of the refund check mailed to former customers.

(6) Within thirty (30) days of completing the refunds pursuant to this Final Order, NOVEC shall provide to the Commission's Divisions of Public Utility Accounting and Energy Regulation a report showing that all refunds have been made pursuant to this Final Order, detailing the costs of the refunds and the accounts charged.

(7) Within thirty (30) days of completing the return of the remaining 2009, and 2010, power supply cost variances as Special Cashback payments, pursuant to the June 2, 2011 resolution passed by NOVEC's Board of Directors and this Final Order, NOVEC shall provide to the Commission's Divisions of Public Utility Accounting and Energy Regulation a report showing that all payments have been made.

(8) There being nothing further to come before the Commission, this matter is dismissed from the Commission's active docket, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2010-00046
JANUARY 4, 2011**

APPLICATION OF
RAPPAHANNOCK ELECTRIC COOPERATIVE

For approval of a demand-side management program including promotional allowances

ORDER GRANTING PETITION

On December 27, 2010, Rappahannock Electric Cooperative ("REC" or the "Cooperative") filed a Petition for Approval of Modified Promotional Allowance ("Petition") with the State Corporation Commission ("Commission") seeking permission to change the form of promotional allowance provided to participants in the Cooperative's air conditioner switch demand-side management program (the "Program"), as approved by Order of the Commission on June 15, 2010, in this docket ("June 15, 2010 Order"). The Cooperative filed its application for approval of the Program on May 14, 2010 ("May 14, 2010 Application"), and therein sought approval of a demand-side management program using load-cycling switch devices to reduce demand created by central air conditioning systems in the homes of eligible participating residential member-consumers. As an incentive to participate in the Program, REC stated in its May 14, 2010 Application that participants would receive a one-time \$25 retail gift card if the switch remained in operation through the end of the summer season, *i.e.*, through September 30th of the year in which the switch was initially installed.¹ The June 15, 2010 Order approved the Program subject to certain conditions.

In its Petition, REC states that "the Cooperative has found that the cumulative costs of acquiring gift cards, of preparing the cards for mailing, and of the postage to mail the gift cards is nearly equal to the cost of the card itself."² REC further states that "without using extremely costly certified mail or some other means of delivery confirmation, the Cooperative is unable to track or verify the delivery and receipt of the gift cards."³ Accordingly, REC requests "to change the promotional allowance from a 'one-time \$25 retail gift card' to a one-time \$25 credit applied to a participating member-consumer's October billing statement for electric service."⁴ REC further states in its Petition that it has been authorized to represent that the Staff of the Commission ("Staff") has no objection to the Program changes proposed by the Cooperative.⁵ We note that REC and the Staff are the sole participants in this docket.

NOW THE COMMISSION, having considered the matter, is of the opinion that REC's Petition should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) REC's Petition is hereby granted.
- (2) The Cooperative may change the Program's promotional allowance from a one-time \$25 retail gift card to a one-time \$25 credit applied to a participating member-consumer's October billing statement for electric service.
- (3) The June 15, 2010 Order shall remain in full force and effect, unless modified by the Commission.
- (4) This matter is continued generally.

¹ Application at 6.

² Petition at 2.

³ *Id.* at 2-3.

⁴ *Id.* at 3.

⁵ *Id.* at 4.

**CASE NO. PUE-2010-00054
MARCH 22, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval of the annual filing as required by Final Order of the State Corporation Commission in Case No. PUE-2007-00066 granting approval of a rate adjustment clause, Rider S, with respect to the Virginia City Hybrid Energy Center generation and transmission facilities located in Wise County, Virginia

ORDER APPROVING RATE ADJUSTMENT CLAUSE

On June 25, 2010, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission"), pursuant to § 56-585.1 A 6 of the Code of Virginia ("Code") and the Rules Governing Utility Rate Applications and Annual Informational Filings ("Rate Case Rules"), an annual update with respect to the Company's rate adjustment clause ("RAC"), Rider S ("Application"). In its Application, the Company seeks to recover costs associated with the development of the Virginia City Hybrid Energy Center ("VCHC Project" or the "Project"), a 585 MW nominal coal-fueled generating plant and associated interconnection facilities under construction in Wise County, Virginia.

In Case No. PUE-2007-00066,¹ the Commission approved the development of the VCHEC Project and approved a RAC designated Rider S. The RAC allows the Company to recover its costs associated with the development of the VCHEC Project, including projected construction work in progress and any associated allowance for funds used during construction.² The Company is required to file a Rider S application with the Commission each year: (1) to inform the Commission of the status of the VCHEC Project and update its projected costs of construction; and (2) to provide the Company's annual revenue requirement associated with the VCHEC Project, including the Company's proposed cost allocation, rate design, and accounting treatment for those costs related to the project.

According to the Application, the VCHEC Project is proceeding on schedule and on budget, with the total construction cost forecast remaining at the \$1.8 billion level, excluding financing costs, approved in the Commission's Final Order in Case No. PUE-2007-00066.³ The total revenue requirement proposed to be recovered by the Application is \$200,457,000, which is proposed to go into effect on April 1, 2011.⁴ The revenue requirement requested by the Company is for service rendered during the proposed rate year, which commences on April 1, 2011, and extends through March 31, 2012. For the calculation of the projected annual revenue requirement for Rider S in the 2011 rate year, the Company utilized an enhanced rate of return on common equity ("ROE") of 12.30%. This reflects a proposed base ROE of 11.30% and a 100 basis point enhanced return.⁵

On July 13, 2010, the Commission entered an Order for Notice and Hearing in which it docketed the Application; scheduled a hearing on the Application; directed the Company to provide notice to the public of its Application; provided the public an opportunity to participate in this proceeding; and assigned this matter to a Hearing Examiner. Additionally, the Commission established an 11.30% ROE as a placeholder and directed that the ROE issue be litigated in the Company's 2011 biennial review. Finally, the Commission granted the Company a partial waiver of the requirement in Rule 20 VAC 5-201-60 and Rule 20 VAC 5-201-90 of the Rate Case Rules to file portions of Schedule 46.

Notices of participation were filed by the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"); the Virginia Committee for Fair Utility Rates ("Committee"); and Chaparral (Virginia) Inc. ("Chaparral"). On November 17, 2010, a public hearing was convened before Michael D. Thomas, Hearing Examiner, to receive evidence on the Application. The following participated at the hearing: Dominion Virginia Power; the Committee; Consumer Counsel; Chaparral; and the Commission's Staff ("Staff"). Post-hearing briefs were filed by the Company, Staff, Consumer Counsel, the Committee, and Chaparral.

On February 11, 2011, the Hearing Examiner issued a report ("Hearing Examiner's Report") that explained the procedural history of this case, summarized the record, analyzed the evidence and issues in this proceeding, and made certain findings and recommendations. On March 11, 2011, the following participants filed comments on the Hearing Examiner's Report: Dominion Virginia Power; Consumer Counsel; the Committee; and Staff.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that Rider S is approved as set forth herein.

We find as follows: (1) the Company's actual end-of-period capital structure and cost of capital shall be used for determining the revenue requirement for Rider S; (2) the Company's proposed cost allocation method and modified proposal for rate design, incorporating Chaparral's alternative rate design for the Contract Class, shall be used for Rider S; (3) the Company's request for a continuous and ongoing partial waiver of the filing requirements of certificate of public convenience and necessity-related information in Schedule 46 shall be granted;⁶ and (4) an ROE of 11.3%, plus a 100 basis point adder required by statute, shall be used as a placeholder for Rider S until the Commission determines the appropriate ROE in the Company's 2011 biennial review proceeding.

In addition, we grant the Company's request: (1) to recover carrying costs associated with unrecovered and under-recovered financing costs for the construction costs incurred during the year;⁷ and (2) to accrue, for future recovery, carrying costs on pre-operational operations and maintenance costs that statutorily cannot be collected from ratepayers prior to commercial operation of the Project.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Rider S is approved as requested by the Company, modified as set forth herein.

(2) The Company shall forthwith file with the Commission's Divisions of Energy Regulation and Public Utility Accounting a revised Rider S with workpapers supporting the total revenue requirement and rates, all of which shall reflect the findings and requirements set forth herein.

(3) Rider S as approved herein shall become effective for service rendered on and after April 1, 2011.

¹ *Application of Virginia Electric and Power Company, For a certificate of public convenience and necessity to construct and operate an electric generation facility in Wise County, Virginia, and for approval of a rate adjustment clause under §§ 56-585.1, 56-580 D, and 56-46.1 of the Code of Virginia*, Case No. PUE-2007-00066, 2008 S.C.C. Ann. Rep. 385, aff'd, *Appalachian Voices v. State Corp. Commission*, 277 Va. 509, 675 S.E.2d 458 (2009).

² Application at 3.

³ *Id.* at 5-6.

⁴ *Id.* at 10.

⁵ *Id.* at 4-5.

⁶ However, approval of this limited waiver on an ongoing basis does not prohibit this issue from being revisited, if warranted.

⁷ We also note that such application of the statute does not inure only to the Company's benefit. That is, ratepayers will be entitled to a return of financing costs if there is an over-recovery of Rider S costs.

- (4) The Company shall file its annual Rider S application on or before June 30 of each year.
- (5) This matter is continued.

**CASE NO. PUE-2010-00055
MARCH 22, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For revision of rate adjustment clause: Rider R, Bear Garden Generating Station for 2011-2012

ORDER APPROVING RATE ADJUSTMENT CLAUSE

On June 25, 2010, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") its application for approval of the annual filing as required by Order Approving Rate Adjustment Clause of the State Corporation Commission in Case No. PUE-2009-00017¹ granting approval of a rate adjustment clause, Rider R, with respect to the Bear Garden Generating Station and Bear Garden-Bremo 230 kV Transmission Interconnection Line ("Application"). Direct testimony, exhibits, and schedules required by the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.* ("Rate Application Rules"), were also filed.²

In 2009, the Commission approved construction and operation and issued a certificate of public convenience and necessity for the Bear Garden Generating Station, a gas-fired combined cycle generation facility now under construction in Buckingham County, Virginia.³ In accordance with § 56-585.1 A 6 of the Code of Virginia ("Code"), we approved the Company's current Rider R, which allowed the Company to recover its costs associated with the development of the Bear Garden facility, including projected construction work in progress and any associated allowance for funds used during construction. Rider R took effect for service provided on and after January 1, 2010, and it is scheduled to remain in effect through March 31, 2011.⁴

The Company's Application proposed a total revenue requirement of \$85.87 million.⁵ The Company subsequently reduced its proposed revenue requirement to \$78.252 million, which represents an annual increase of approximately \$13,898,000 above the annual revenue requirement in the currently effective Rider R.⁶ Additionally, in calculating its revised Rider R, the Company used a return on common equity ("ROE") of 12.3%. This return reflects a proposed ROE of 11.3%, to which Dominion Virginia Power added 100 basis points for the enhanced return authorized by § 56-585.1 A 6 of the Code for combined-cycle generating stations such as the Bear Garden facility. The Company proposed to revise its Rider R effective for customer service on and after April 1, 2011.

On July 13, 2010, the Commission issued an Order for Notice and Hearing that, among other things, docketed the matter; scheduled a public hearing for December 1, 2010; required the Company's publication of notice; established a procedural schedule for the filing of comments, notices of participation, and prepared testimony and exhibits; and assigned a Hearing Examiner to conduct all further proceedings in this matter. The Commission also established an 11.30% ROE as a placeholder and directed that the ROE issue be litigated in the Company's 2011 biennial review. In addition, the Commission granted Dominion Virginia Power's request for a partial waiver of the Rate Application Rules' requirement for the filing of Schedule 46 in this proceeding.

Notices of Participation were filed by the Virginia Committee for Fair Utility Rates ("Committee"), Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"), and Chaparral (Virginia), Inc. ("Chaparral"). In addition, the Bath County Board of Supervisors filed written comments in this proceeding wherein they questioned the award of a 12.3% rate of return on the Bear Garden facility together with an incentive bonus and asserted that such a guaranteed return on equity would contribute negatively to ratepayer costs.

On December 1, 2010, a public hearing was convened before A. Ann Berkebile, Hearing Examiner, to receive evidence on the Rider R Application. The following participated at the hearing: Dominion Virginia Power; the Committee; Consumer Counsel; Chaparral; and the Commission's Staff ("Staff"). Post-hearing briefs were filed by the Company, Staff, Chaparral, the Committee, and Consumer Counsel.

¹ *Application of Virginia Electric and Power Company, For approval of a Rate Adjustment Clause for Recovery of the Costs of the Bear Garden Generating Station and Bear Garden-Bremo 230 kV Transmission Interconnection Line*, Case No. PUE-2009-00017, 2009 S.C.C. Ann. Rep. 416, Order Approving Rate Adjustment Clause (Dec. 16, 2009) ("*Bear Garden Generating Station*").

² In its Application, the Company requested a waiver, in both the present case and in future Rider R proceedings, of the filing requirements set forth in Rules 60 and 90 of the Rate Application Rules. Application at 14-16.

³ *Application of Virginia Electric and Power Company, For a certificate to construct and operate a generating facility; for certificates of public convenience and necessity for a transmission line: Bear Garden Generating Station and Bear Garden-Bremo 230 kV Transmission Interconnection Line*, Case No. PUE-2008-00014, 2009 S.C.C. Ann. Rep. 296, Final Order (March 27, 2009).

⁴ See *Bear Garden Generating Station*; Order Approving Stipulation and Addendum (March 11, 2010).

⁵ The Application did not propose the recovery of an actual true-up factor in this proceeding. However, the Company indicated that it anticipates that a true-up factor will be included in its next application to revise Rider R. See Application at 10.

⁶ See Ex. 7.

On January 13, 2011, the Hearing Examiner issued a report ("Hearing Examiner's Report") that explained the procedural history of this case, summarized the record, analyzed the evidence and issues in this proceeding, and made certain findings and recommendations. On February 3, 2011, Dominion Virginia Power filed comments on the Hearing Examiner's Report.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that Rider R is approved as set forth herein.

We find as follows: (1) the Company's actual end-of-period capital structure and cost of capital shall be used for determining the revenue requirement for Rider R; (2) the Company's proposed cost allocation method and modified proposal for rate design, incorporating Chaparral's alternative rate design for the Contract Class, shall be used for Rider R; (3) the Company's request for a continuous and ongoing partial waiver of the filing requirements of certificate of public convenience and necessity-related information in Schedule 46 shall be granted;⁷ and (4) an ROE of 11.3%, plus a 100 basis point adder required by statute, shall be used as a placeholder for Rider R until the Commission determines the appropriate ROE in the Company's 2011 biennial review proceeding. We also grant the Company's request to recover financing costs associated with the unamortized balance of deferred pre-commercial operations costs.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Rider R is approved as requested by the Company, modified as set forth herein.
- (2) The Company shall forthwith file with the Commission's Divisions of Energy Regulation and Public Utility Accounting a revised Rider R with workpapers supporting the total revenue requirement and rates, all of which shall reflect the findings and requirements set forth herein.
- (3) Rider R as approved herein shall become effective for service rendered on and after April 1, 2011.
- (4) The Company shall file its annual Rider R application on or before June 30 of each year.
- (5) This matter is continued.

⁷ However, approval of this limited waiver on an ongoing basis does not prohibit this issue from being revisited, if warranted.

**CASE NO. PUE-2010-00061
SEPTEMBER 27, 2011**

APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY

For authority under Chapter 3 of Title 56 of the Code of Virginia to restructure and refinance unsecured debt, to assume obligations, and for amendment to existing authority

ORDER EXTENDING AUTHORITY GRANTED

On June 15, 2010, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP" or "Company"), filed an application with the State Corporation Commission ("Commission") pursuant to Chapter 3 of Title 56 of the Code of Virginia ("Code"), § 56-55 *et seq.* of the Code, to restructure and refinance its existing debt ("Application").

The Company's Application, among other things, requested authority to replace its then current revolving credit facilities and to enter into one or more new credit facilities ("New Credit Facilities") to replace the existing multi-year revolving credit facilities authorized in Case No. PUE-2007-00056.¹ The Company stated that the term of the New Credit Facilities would not exceed five years, and that it expected the actual term of any New Credit Facility to run through December 31, 2014.

On October 19, 2010, the Commission issued its Order Granting Authority ("October 19, 2010 Order") that, among other things, authorized KU/ODP to enter into one or more New Credit Facilities to provide short-term financing up to \$400 million to replace its then current revolving credit facility with Fidelia Corporation, under the terms and conditions and for the purposes set forth in the Application.

On September 2, 2011, KU/ODP filed its Motion to Modify Order Granting Authority ("Motion") in which it noted that it had entered into New Credit Facilities and stated that "significant changes in the credit markets have recently occurred that have made it advantageous for KU/ODP to extend the New Credit Facilities beyond the current December 31, 2014 termination date, or the five year term contemplated in KU/ODP's Application."² The Company requested authorization to extend the term of its multi-year revolving credit facilities through December 31, 2016.

NOW THE COMMISSION, upon consideration of KU/ODP's request, is of the opinion and finds that the Company's Motion should be granted and that the Company should be authorized to amend and extend the term of its multi-year revolving credit facilities through December 31, 2016.

¹ *Application of Kentucky Utilities Company d/b/a Old Dominion Power Company, For authority to issue securities under Chapter 3 of Title 56 of the Code of Virginia*, Case No. PUE-2007-00056, 2007 S.C.C. Ann. Rept. 455, Order Granting Authority (Aug. 3, 2007).

² Motion at 2.

Accordingly, IT IS ORDERED THAT:

- (1) KU/ODP is hereby authorized to amend and extend the term of its multi-year revolving credit facilities through December 31, 2016.
- (2) KU/ODP shall file a copy of the extension agreement promptly after it becomes available.
- (3) Except to the extent modified herein, all of the other provisions of the Commission's October 19, 2010 Order shall remain in full force and effect.
- (4) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

**CASE NO. PUE-2010-00062
FEBRUARY 14, 2011**

CAPTAIN'S COVE UTILITY COMPANY, INC.

PRELIMINARY ORDER

On December 29, 2010, Captain's Cove Utility Company, Inc. ("CCUC" or "Company"), pursuant to the Small Water or Sewer Public Utility Act (§§ 56-265.13:1 *et seq.* of the Code of Virginia ("Code")), notified its customers and the State Corporation Commission's ("Commission") Division of Energy Regulation of its intent to increase rates and fees effective for service rendered on and after February 15, 2011.¹

The Company proposes to increase its monthly rates from \$7.00 per month for water service and \$7.00 per month for sewer service to \$30.00 per month for each respective service, an increase of approximately 328%. In addition, the Company proposes to increase its fee for lots that do not receive water or sewer service, but for which water and sewer facilities are available, from \$3.45 per month for each such service to \$15.00 per month, an increase of approximately 335%. Pursuant to § 56-265.13:6 C of the Code,

[i]f the change in rates, fees, and charges results in an increase of 50 percent or greater of the small water or sewer utility's annual revenues, the small water or sewer utility shall file the financial data required by the Commission's rules under this chapter simultaneously with providing notice of such change . . .

On January 6, 2011, Staff issued a Memorandum of Incompleteness, informing CCUC that its filing was incomplete for failure to provide: (1) copies of the tariff changes with its application pursuant to the Small Water or Sewer Public Utility Act; (2) a statement prepared in the format of the form rate of return statement in the Commission's Rules implementing the Small Water or Sewer Public Utility Act;² and (3) a balance sheet and income statement for the test period. Staff informs the Commission that, to date, the Company has not cured the deficiencies in its filing.³

NOW THE COMMISSION, having considered the matter, is of the opinion that, pursuant to § 56-265.13:6 of the Code, a hearing should be scheduled on the Company's proposed rate increase and that the proposed rates should be made interim, subject to refund with interest, until such time as the Commission renders its final decision in this proceeding.

Section 56-265.13:6 C of the Code, in part, provides:

If the change in rates, fees, and charges results in an increase of 50 percent or greater of the small water or sewer utility's annual revenues . . . and, if a hearing is ordered, the Commission shall expedite the hearing on the change in rates, fees, and charges. The Commission shall also direct that the funds produced by the increase in rates, fees, and charges shall be held in escrow by the small water or sewer utility until the Commission has rendered its decision, at which time the funds held in escrow shall either be released to the small water or sewer utility or refunded to its customers. The Commission may, however, allow the funds held in escrow to be used as necessary to comply with environmental or health laws or regulations or to allow the small water or sewer utility to provide adequate service to its customers.

The provisions of § 56-265.13:6 C of the Code are mandatory; that is, the Commission is required by this statute to direct the funds to be held in escrow when a threshold of 50% or more increase in annual revenue is met or exceeded. We will also direct the Company to produce the information specified in Staff's January 6, 2011 Memorandum of Incompleteness.

¹ On June 17, 2010, the Commission issued an Order and Rule to Show Cause directing the Company to continue providing adequate service to its customers and not to cease or reduce water or wastewater service pending further order of the Commission. On June 23, 2010, the Commission conducted a hearing on the Injunction and Rule. At the conclusion of the hearing, counsel for CCUC represented that the Company would be filing a petition for emergency rate relief no later than June 30, 2010. Upon request of the Company, the Commission extended this deadline to August 6, 2010, and subsequently to December 31, 2010, by Orders entered July 29, 2010, and September 27, 2010, respectively. On January 2, 2011, in Case No. PUE-2011-00002, the Company filed a petition seeking to transfer control of the utility to CCUC Note, LLC. Commission Staff ("Staff") issued a Memorandum of Incompleteness in the transfer proceeding on January 12, 2011, and the petition remains incomplete.

² These rules were amended by *Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the matter of adopting rules implementing the Small Water or Sewer Public Utility Act*, Case No. PUE-1987-00037, 1987 S.C.C. Ann. Rept. 294, Amending Order (Nov. 25, 1987).

³ Staff has informed the Commission that requests for hearing have been received from customers representing 153 lots as of February 11, 2011.

The Commission also finds that this matter should be assigned to a Hearing Examiner to conduct all further proceedings pursuant to 5 VAC 5-20-120 A, *Assignment*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules of Practice"). The Hearing Examiner shall set a procedural schedule in this matter establishing, among other things, the date of the hearing after the Company has provided the financial information required herein.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to 5 VAC 5-20-120 A of the Rules of Practice and § 12.1-31 of the Code, a Hearing Examiner is appointed to conduct all further proceedings in this matter, including the scheduling of the hearing ordered herein.

(2) Pursuant to § 56-265.13:6 of the Code, the Company's proposed rates are hereby made interim, subject to refund with interest until such time as the Commission has made a final decision in this proceeding.

(3) Pursuant to § 56-265.13:6 of the Code, any funds produced by the increase in rates, fees, and charges shall be held in escrow by the Company until the Commission has rendered its decision.

(4) On or before February 22, 2011, the Company shall file with the Commission all of the information set forth on the January 6, 2011 Memorandum of Incompleteness.

(5) This matter shall be continued subject to further order of the Commission.

**CASE NO. PUE-2010-00065
APRIL 13, 2011**

APPLICATION OF
MASSANUTTEN PUBLIC SERVICE CORPORATION

For Waiver of 2009 AIF Filing

FINAL ORDER

On August 5, 2010, the State Corporation Commission ("Commission") entered its Order Granting Partial Waiver ("August 6, 2010 Order") in response to a request for waiver filed on June 25, 2010, by Massanutten Public Service Corporation ("Massanutten" or "Company"). On August 31, 2010, the Company properly filed the designated Schedules 9, 11, 12, 14, and 16 for the 2009 test period, as directed by the August 6, 2010 Order. The Commission Staff ("Staff") submitted its analysis and report regarding those schedules on December 10, 2010 ("Staff Report").

On December 15, 2010, the Company submitted its response to the Staff Report agreeing with the first two recommendations: (i) to cease accruing AFUDC and to eliminate all AFUDC on the Company's books; and (ii) to book a specified amount for its negative acquisition adjustment and to amortize that amount annually.

The Company took exception with the Staff's third recommendation, claiming that implementation of this recommendation would disallow any equity return on the service company assets allocated to Massanutten. The Company proposed that a determination of this issue be deferred until its next rate case.

NOW THE COMMISSION, having considered the Staff Report and the Company's response, is of the opinion and finds that the Company's proposal will close this matter properly.

Accordingly, IT IS ORDERED THAT:

(1) Massanutten shall cease accruing AFUDC and shall eliminate all AFUDC on its books and records.

(2) Massanutten shall book a specified amount of its negative acquisition adjustment and shall amortize that amount annually.

(3) Massanutten's proposal to earn an equity return on assets of the service company allocated to Massanutten shall be addressed and determined in the Company's next rate case.

(4) This case is dismissed, and the record developed herein shall be placed in the file for ended causes.

**CASE NO. PUE-2010-00077
APRIL 6, 2011**

APPLICATION OF
ROANOKE GAS COMPANY

For an expedited rate increase

FINAL ORDER

On September 13, 2010, Roanoke Gas Company ("Roanoke Gas" or "Company") filed with the State Corporation Commission ("Commission") its application ("Application") for an expedited increase in rates as prescribed by the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.* ("Rate Case Rules"). Roanoke Gas applied to increase its annual revenues by approximately \$1,434,968 or approximately 2.6%. Base, non-gas rates would increase by approximately 6.2% spread proportionally to each class of customer. As provided by Rate Case Rule 20 VAC 5-201-20 D, Roanoke Gas requested that its proposed rates take effect, on an expedited basis and subject to refund, for service on and after November 1, 2010.

On October 7, 2010, the Commission entered an Order for Notice and Hearing in which we directed the Company to provide notice of its Application and established procedures for receiving comments on the Application and participating in this case. The Commission also set the matter for hearing before a Hearing Examiner, directed the Staff of the Commission ("Staff") to investigate the Application, and found that Roanoke Gas had satisfied the requirements of the Rate Case Rules for putting its proposed rates in effect on November 1, 2010, subject to refund.

No respondents filed notices of participation in this case. On March 11, 2011, the Staff and Roanoke Gas filed a stipulation and proposed settlement ("Stipulation") resolving all issues in the case. Among other things, the Stipulation provided for an annual increase in revenues of \$814,230, established a 10.1% return on equity for setting rates, and proposed revised rates. At the hearing on March 24, 2011, the Hearing Examiner admitted into the record proof of public notice; the prepared testimony and exhibits of the Company and the Staff; and the Stipulation filed March 11, 2011. No public witnesses appeared at the hearing.

On March 31, 2011, the Report of Howard P. Anderson, Jr., Hearing Examiner ("Hearing Examiner's Report"), was filed in this case. Hearing Examiner Anderson recommended that the Commission accept the Stipulation, permit the revised rates to be implemented for the Company's April 2011 billing cycle and direct the Company to refund the amounts charged in excess of the rates produced by the Stipulation. The Hearing Examiner waived the period for comments on the Hearing Examiner's Report.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows. We find that the record supports an increase in annual revenues of \$814,230. In addition, we find that the rates for the base cost of gas produced by the Stipulation are designed to afford Roanoke Gas an opportunity to earn the required gross annual revenues and are just and reasonable. We also direct that a refund be made to those customers whose monthly bills were higher under the interim rates than under the rates we approve in this Final Order.

Specifically, we accept the Stipulation and find as follows:

- (1) The use of a test year ending June 30, 2010, is proper in this proceeding;
- (2) Roanoke Gas's test year operating revenues from Virginia jurisdictional business, after adjustments, were \$56,606,578;
- (3) Roanoke Gas's test year Virginia jurisdictional operating income and adjusted operating income were \$4,324,858 and \$4,288,271, respectively;
- (4) Roanoke Gas's adjusted test year rate base is \$54,558,100;
- (5) Roanoke Gas's current rates produce a return on adjusted rate base of 7.86%;
- (6) For purposes of establishing rates in this proceeding, a return on equity of 10.1% is appropriate. An authorized return on equity range of 9.6% - 10.6% shall be used for future earnings tests;
- (7) Roanoke Gas requires \$814,230 in additional gross annual revenues to have an opportunity to earn a reasonable return on rate base;
- (8) The Company shall begin a radio and billboard campaign to encourage location requests and to minimize underground damage. The Company has entered into contracts that total \$15,530 for this campaign, and recovery of this amount shall be included in the revenue requirement;
- (9) Roanoke Gas shall use Staff's methodology to calculate its uncollectible expense adjustment in any future expedited rate cases and/or annual informational filings;
- (10) The rates produced by the Stipulation are designed to afford Roanoke Gas an opportunity to earn the required gross annual revenues and are just and reasonable;
- (11) The revenue apportionment used in this proceeding is appropriate within the context of the current rules for filing an expedited rate case.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the Hearing Examiner's Report are hereby adopted.
- (2) The Company's Application for an expedited increase in rates is granted as discussed herein.

(3) The Company shall forthwith file revised rates conforming to the proposed rates set out in Appendix B to the Stipulation and bearing an effective date of April 6, 2011, effective for service rendered on and after April 6, 2011.

(4) On or before June 15, 2011, the Company shall use the rates and charges approved in Ordering Paragraph (3) to recalculate each bill it rendered that used, in whole or in part, the rates and charges that took effect subject to refund on November 1, 2010. Where application of the rates prescribed in Ordering Paragraph (3) results in a reduced bill, the Company shall refund the difference with interest as set out below.

(5) The refunds with interest directed in Ordering Paragraph (4) for current customers may be made by a credit to the customers' accounts and shown on bills. The bill shall show the refund as a separate item or items. For former customers, the refunds with interest that exceed \$1.00 shall be made by check mailed to the last known address of such customers. The Company may set-off the credit or refund against any undisputed outstanding balance for the current or former customer. No set-off shall be permitted against any disputed portion of an outstanding balance.

(6) The refund amounts calculated as directed in Ordering Paragraph (4) shall bear interest at a rate for each calendar quarter that shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the "Bank prime loan" values published in the weekly Federal Reserve Statistical Release H.15 (519), *Selected Interest Rates*, for the three months of the preceding calendar quarter. The interest shall be computed from the date bills were due to the date of the bill showing the credit to current customers or the date of the refund check mailed to former customers.

(7) On or before August 15, 2011, the Company shall provide to the Commission's Divisions of Public Utility Accounting and Energy Regulation a report showing that all refunds have been made pursuant to this Final Order, detailing the costs of the refunds and the accounts charged.

(8) The Company shall bear all costs incurred in effecting the refund ordered herein.

(9) This matter is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2010-00081
APRIL 19, 2011**

JOINT PETITION OF
AQUA VIRGINIA, INC.,
and
JOSEPH H. QUAINANCE, JR. REVOCABLE TRUST

For approval of a transfer of utility assets

ORDER GRANTING APPROVAL

On July 23, 2010, Aqua Virginia, Inc. ("Aqua Virginia"), and the Joseph H. Quaintance, Jr. Revocable Trust (collectively, "Joint Petitioners" or "Petitioners") filed a Joint Petition with the State Corporation Commission ("Commission") for approval of the transfer of utility assets pursuant to the Utility Transfers Act¹ and for the amendment of Aqua Virginia's certificate of public convenience and necessity pursuant to the Utility Facilities Act.² Specifically, through the Joint Petition, Aqua Virginia is seeking authority to acquire the Cedarbrooke Subdivision Public Water System ("Cedarbrooke Water System") from the Joseph H. Quaintance, Jr. Revocable Trust.

On October 15, 2010, the Joint Petitioners filed a Motion to Suspend Proceedings ("Motion"). In this Motion, the Petitioners moved the Commission to suspend proceedings in this matter until the Commission issued a final order in Case No. PUE-2009-00059.³ On October 29, 2010, the Commission entered an Order in Case No. PUE-2009-00059 that, among other things, set new rates for customers. On January 12, 2011, the Joint Petitioners filed another motion ("Motion II"), in which the Petitioners asked the Commission to establish a procedural order in this proceeding and sought to amend the Joint Petition slightly.⁴ The Commission approved Motion II and established a procedural schedule to review the Joint Petition in its January 31, 2011 Order for Notice and Comment.

¹ Va. Code § 56-88 *et seq.*

² See Va. Code § 56-265.3 D. On August 2, 2010, the Joint Petitioners completed the Joint Petition by filing a letter with the Commission that provided further information concerning the Joint Petition.

³ *Application of Alpha Water Corporation; Aqua Virginia, Inc. (Lake Monticello); Aqua S/L, Inc. (Shawnee Land); Aqua Utility-Virginia, Inc. (Lake Shawnee); Blue Ridge Utility Company; Caroline Utilities, Inc.; Earlysville Forest Water Company; Heritage Homes of Virginia, Inc.; Indian River Water Company; James River Service Corporation; Aqua Lake Holiday Utilities, Inc.; Land'Or Utility Company, Inc.; Mountainview Water Company, Inc.; Powhatan Water Works, Inc.; Rainbow Forest Water Corporation; Sydnor Water Corporation; and Water Distributors, Inc., For an increase in water and sewer rates*, Case No. PUE-2009-00059, Doc. Con. Cen. No. 439067, Order (Oct. 29, 2010).

⁴ In the original filed Joint Petition, Aqua Virginia proposed to continue charging Cedarbrooke Water System's customers their current rates until on or after March 31, 2011, at which time, if approved by the Commission, the customers would have transitioned to Aqua Virginia's rates. In Motion II, the Joint Petitioners asked to withdraw the request to transfer the Cedarbrooke Water System's customers to Aqua Virginia's rate schedules. Instead, Aqua Virginia would, upon approval of the acquisition, charge rates that are identical to the metered rates currently being charged to the customers by the Joseph H. Quaintance, Jr. Revocable Trust. Currently, customers are charged \$26.39 for the first 3,000 gallons used per month and \$0.84 for each 100 gallons over 3,000 used per month. In other words, the proposed transfer would have no rate impact on Cedarbrooke Water System's customers.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Interested persons were given until March 9, 2011, to file hearing requests or comments. No comments or requests for hearing have been received. On March 22, 2011, the Staff filed its Staff Report. The Staff recommended approval of the proposed transfer of assets and amendment to Aqua Virginia's certificate of public convenience and necessity subject to the following requirements:

- 1) Within thirty (30) days of completing the proposed transfer, the Joint Petitioners should file a Report of Action ("Report") with the Commission. Included in the Report should be the date of the transfer, the actual sales price, and the actual accounting entries on Aqua Virginia's books to reflect the transfer. Such accounting entries should be in accordance with the [Uniform System of Accounts ("USOA")], which includes booking the difference between the purchase price and the verified net book value of the utility assets as an acquisition adjustment to Account 114.
- 2) [The Joseph H. Quaintance, Jr. Revocable Trust] should be directed to provide all records related to the transferred assets to Aqua Virginia at closing, which should be directed to maintain them henceforth in accordance with the USOA.
- 3) The Commission's Utility Transfers Act approval of the proposed transfer should have no ratemaking implications. In particular, the Commission's approval should not guarantee recovery of any costs directly or indirectly related to the transfer.
- 4) Aqua Virginia should maintain a separate set of accounting records for the Cedarbrooke [W]ater [S]ystem and continue to do so until the Commission finds such records should be merged into Aqua Virginia's books and records.
- 5) The Commission should direct Aqua Virginia that:
 - a) The quality of service in the Cedarbrooke service territory should not deteriorate due to a lack of maintenance or capital investment;
 - b) The quality of service in the Cedarbrooke service territory should not deteriorate due to a reduction in the number of employees providing services; and
 - c) Aqua Virginia should continue to maintain a high degree of cooperation with the Commission Staff and should take all actions necessary to ensure Aqua Virginia's timely response to Staff inquiries with regard to its provision of service in Virginia.⁵

On March 31, 2011, Aqua Virginia filed its Response to the Staff Report ("Response"). In its Response, Aqua Virginia objected to the Staff's recommendation to keep a separate set of accounting records for the Cedarbrooke Water System. Instead, Aqua Virginia asked the Commission to only require it to keep separate plant records for the Cedarbrooke Water System. Aqua Virginia also opposed the Staff's recommendation to record the entire purchase price as an acquisition adjustment.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the proposed transfer will not impair or jeopardize adequate service to the public at just and reasonable rates and, therefore, should be approved. The Commission further finds that the Staff's recommendations, as modified herein, should be accepted and made a part of this Order Granting Approval.

Aqua Virginia objected to the Staff's recommendation to keep a separate set of accounting records for the Cedarbrooke Water System. The Commission agrees that Aqua Virginia should not be required to establish a separate set of "formal" books and records for the Cedarbrooke Water System. However, the Commission finds, as it has in previous Utility Transfers Act cases, that Aqua Virginia should be required to keep separate more than plant records for the Cedarbrooke Water System.⁶ Therefore, Aqua Virginia is directed to keep separate accounting and financial information for the Cedarbrooke Water System in sufficient detail that will allow it to track all revenues received from the operations of the Cedarbrooke Water System, all expenses associated with serving the Cedarbrooke Water System customers (including all joint and common costs allocated to Cedarbrooke Water System customers from Aqua Virginia or other corporate affiliates), all operating income generated by the operations of the Cedarbrooke Water System, and all plant records for the Cedarbrooke Water System on a stand-alone basis. Such information should be kept on an ongoing basis until the Commission finds such information should be merged into Aqua Virginia's books and records.

Aqua Virginia also opposed the Staff's recommendation to record the entire purchase price of the Cedarbrooke Water System as an acquisition adjustment. However, Aqua Virginia, as a certificated Virginia utility, is required to conform its accounting treatment of the transfer of utility assets to USOA requirements. Under the USOA, when records are not available to verify the original cost of the utility assets that are transferred, the entire purchase price is booked as an acquisition adjustment to Account 114. The Commission has supported this accounting practice in numerous previous Utility Transfers Act cases, including previous cases involving Aqua Virginia and its subsidiaries, and will do so here.⁷ Therefore, the Commission finds that the Staff's recommendation related to this issue should be adopted.

⁵ Staff Report at 8-9.

⁶ See, e.g., *Joint Petition of Blue Ridge Heights Corporation and Water Distributors, Inc. d/b/a Aqua Virginia, Inc., For approval of change of ownership of utility assets, expansion of service territory, and implementation of new rates*, PUE-2007-00028, 2007 S.C.C. Ann. Rept. 430, Order Granting Joint Petition (Oct. 2, 2007).

⁷ See, e.g., *id.*; *Joint Petition of Alpha Water Corporation and Riverview Development Corporation, For approval of a change in ownership of the utility assets and expansion of service area*, Case No. PUE-2006-00077, 2007 S.C.C. Ann. Rept. 344, Final Order (July 9, 2007); *Joint Petition of Alpha Water Corporation and Blundo and Hinton, Incorporated (d/b/a Reedville Water Works), For approval of change of ownership of the utility assets and expansion of service area*, Case No. PUE-2006-00037, 2006 S.C.C. Ann. Rept. 419, Final Order (July 20, 2006).

In sum, with respect to the Joint Petition, the Commission finds that the transfer of the Cedarbrooke Water System from the Joseph H. Quintance, Jr. Revocable Trust to Aqua Virginia should be approved; the Staff's recommendations numbered (1), (2), (3), and (5) should be adopted; the Staff's recommendation numbered (4) should be adopted, as modified above; and Aqua Virginia's certificate of public convenience and necessity should be amended to include in its service area the geographic area currently served by the Joseph H. Quintance, Jr. Revocable Trust.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the Utility Transfers Act, the Joseph H. Quintance, Jr. Revocable Trust is hereby authorized to transfer the utility assets comprising the Cedarbrooke Water System to Aqua Virginia, consistent with the findings above and subject to the recommendations of the Staff, as modified herein.

(2) Aqua Virginia is hereby authorized to amend its certificate of public convenience and necessity pursuant to the Utility Facilities Act to include the Cedarbrooke Water System service territory.

(3) There appearing nothing further to be done in this matter, this case is hereby dismissed and the papers herein are placed in the files for ended cases.

**CASE NO. PUE-2010-00084
MARCH 22, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval to continue two rate adjustment clauses, Riders C1 and C2, as required by the Order Approving Demand-Side Management Programs of the State Corporation Commission in Case No. PUE-2009-00081

ORDER APPROVING RATE ADJUSTMENT CLAUSES

On July 30, 2010, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed an application with the State Corporation Commission ("Commission") for approval to continue two rate adjustment clauses, Riders C1 and C2 (collectively, "Rider C"), that are designed to recover costs associated with five demand-side management programs (collectively, the "DSM Programs") previously approved by the Commission in Case No. PUE-2009-00081.¹ Rider C1 currently allows the Company to recover costs associated with its Air Conditioner Cycling Program pursuant to § 56-585.1 A 5 b of the Code of Virginia ("Code"), while Rider C2 allows the Company to recover costs associated with its Residential Lighting Program, Low Income Program, Commercial HVAC Upgrade Program, and Commercial Lighting Program pursuant to § 56-585.1 A 5 c of the Code.

Dominion Virginia Power proposes that requested modifications to existing rates become effective for service on and after April 1, 2011.² For Rider C1, the Company requests a revenue requirement of \$5,920,000.³ For Rider C2, the Company requests a revenue requirement of \$17,352,000, which includes the proposed recovery of \$4,928,000 as "revenue reductions related to energy efficiency programs" pursuant to § 56-585.1 A 5 c of the Code.⁴ The Company attributes the proposed revenue reductions entirely to its Compact Fluorescent Light price reduction program ("CFL program"), which preceded the DSM Programs approved in Case No. PUE-2009-00081.

On August 16, 2010, the Commission issued an Order for Notice and Hearing that established the procedural requirements for this matter, scheduled a public evidentiary hearing to commence on February 8, 2011, directed Dominion Virginia Power to provide direct and published notice of this proceeding, and granted the Company a partial waiver of certain filing requirements.

The following parties filed notices of participation in this case: Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); and Southern Environmental Law Center, Sierra Club, Appalachian Voices, and Chesapeake Climate Action Network ("Environmental Respondents").

The Commission held a public evidentiary hearing in this matter on February 8, 2011, in which the following participated: Company; Environmental Respondents; Consumer Counsel; and the Commission's Staff ("Staff"). No public witnesses appeared to testify. The evidentiary hearing concluded after closing arguments by the participants.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that Riders C1 and C2 are approved as set forth herein.

¹ Application of Virginia Electric and Power Company, For approval to implement new demand-side management programs and for approval of two rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia, Case No. PUE-2009-00081, Order Approving Demand-Side Management Programs (Mar. 24, 2010).

² The existing rates for Riders C1 and C2 became effective for service rendered on and after May 1, 2010. *Id.* at 12.

³ Ex. 18 at 4 (Propst rebuttal).

⁴ *Id.* at 5.

CFL Price Reduction Program

No participant objected to the Company's proposal to include costs of its CFL program as design costs for the Residential Lighting Program approved by the Commission in Case No. PUE-2009-00081. Staff and Consumer Counsel, however, objected to the Company's request to recover revenue reductions that the Company asserts were caused by the CFL program in 2009. In this regard, § 56-585.1 A 5 of the Code provides in part as follows:

A utility may at any time, after the expiration or termination of capped rates, but not more than once in any 12-month period, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the following costs:

...

c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs, including a margin to be recovered on operating expenses, which margin for the purposes of this section shall be equal to the general rate of return on common equity determined as described in subdivision A 2 of this section. The Commission shall only approve such a petition if it finds that the program is in the public interest. As part of such cost recovery, the Commission, if requested by the utility, shall allow for the recovery of revenue reductions related to energy efficiency programs.

For this purpose, the statute defines "[r]evenue reductions related to energy efficiency programs" as follows:

reductions in the collection of total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a utility, that occur due to measured and verified decreased consumption of electricity caused by energy efficiency programs approved by the Commission and implemented by the utility, less the amount by which such non-fuel reductions in total revenues have been mitigated through other program-related factors, including reductions in variable operating expenses.⁵

Thus, Dominion Virginia Power has the burden to establish that its proposed revenue reductions "occur[red] due to *measured* and *verified* decreased consumption of electricity caused by energy efficiency programs approved by the Commission" (emphasis added).

We find that the Company has not met that burden with respect to its request for recovery of lost revenues associated with the CFL program. The Company has not provided sufficient evidence for the Commission to measure and to verify that a specific amount of decreased consumption of electricity was directly caused by the CFL program. Specifically, Staff witness Carsley explains that the Company relied upon secondary, non-Virginia sources for critical assumptions utilized in its measurement and verification of decreased consumption. In this regard, the Company assumed: (1) that 65% of the bulbs purchased from participating stores were a result of the CFL program (*i.e.*, only 35% were purchased by "free riders"), and that these bulbs were sold exclusively to the Company's customers; (2) 2.77 hours of daily use for these bulbs; and (3) an 84% in-service rate for these bulbs.⁶

We find that these assumptions are too speculative, and are not reasonable, to measure and verify lost revenues as a result of decreased consumption of electricity for this purpose. We conclude that the secondary sources used by the Company (including data from New England and California) were "sufficiently varied and/or uncertain as to be unreliable."⁷ Moreover, as explained by Staff, the assumptions utilized for hours of use and free riders were not entirely consistent within the confines of the secondary sources relied upon.⁸ The Company has not shown that – to measure and verify decreased consumption of electricity resulting from its CFL program in 2009 – it is reasonable to assume that 65% of the bulbs were purchased as a result of such program, that such bulbs were sold exclusively to the Company's customers, that 84% of such bulbs were placed into service, and that these bulbs were used 2.77 hours per day.⁹

We do not find that the general methodology used by the Company's contractor, KEMA, is *per se* inconsistent with the definition of measured and verified in § 56-576 of the Code; however, the data used in such methodology – or any methodology – must still meet a sufficient level of rigor and credibility before customers can be burdened with higher rates to compensate the Company for alleged lost revenues. Such rigor is especially important given that customers are being asked to pay higher rates because of the CFL program, regardless of whether they participate in such program. The use of purely secondary sources of formulae and data generated from outside of Virginia is less rigorous at measuring and verifying decreased consumption of electricity from the Company's CFL program than Virginia-specific data would be. Thus, while Company witness Pettit offers reasons as to why Virginia-specific data was not provided in this case, his testimony nevertheless illustrates why credible measurement and verification is so challenging for

⁵ Section 56-576 of the Code. This statute further defines "[m]easured and verified" as follows:

a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the United States Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

Id.

⁶ *See, e.g.*, Ex. 13 at 5 (Carsley direct).

⁷ *Id.* at 15.

⁸ *See, e.g., id.* at 6-12.

⁹ *See, e.g.*, Ex. 12 at 15 (Abbott direct); Ex. 13 (Carsley direct).

establishing that there are lost revenues resulting from programs such as the CFL program at issue in this proceeding. Indeed, KEMA previously acknowledged that reliable data for Virginia simply "does not exist" for this purpose:

This program is market based and therefore tracking actual end uses, hours of use, free ridership, and in-service rates are unknown. While a rich body of relevant secondary research can help inform these estimates, reliable data for Virginia itself does not exist.¹⁰

The plain language of § 56-576 of the Code requires the Commission to find that the alleged decreased consumption of electricity is both measured and verified. Such measurement and verification, by its very nature, will be dependent upon the particular energy efficiency program to which it is applied. In this instance, and for the purpose of the Company's request herein, we do not find that the requested decreased consumption of electricity resulting from the CFL program has been measured and verified, and we reject the proposed rate increase associated with alleged lost revenues.¹¹

Capital Structure, Cost Rates, and Return on Common Equity

The rates established herein, including the Monthly True-Up Adjustment, shall be based on the Company's actual end-of-test period capital structure, on the Company's actual end-of-test period cost rates for debt, and on a return on common equity ("ROE") placeholder of 11.3%. The ROE issue will be litigated in the Company's 2011 biennial review, consistent with our August 16, 2010 Order for Notice and Hearing in this matter.

Carrying Costs

We grant the Company's request to accrue and recover carrying costs on the 2009 under-recovery of Rider C costs. We note that such application of the statute does not inure only to the Company's benefit. That is, ratepayers will be entitled to a return of financing costs if there is an over-recovery of Rider C costs.¹²

Rate Design and Cost Allocation

We approve the Company's proposed rate design and allocation of costs and direct the lower revenue requirement approved herein to be allocated in a manner consistent with the Company's proposed methodology.¹³

Request for Waiver of Filing Requirements

Finally, we grant the Company's request for an ongoing and limited waiver of the Schedule 46 filing requirements, specifically as to supporting documentation for costs except to the extent such documentation has changed. No party or Staff has opposed this request or identified any difficulties during the course of this proceeding caused by our initial approval of this waiver.¹⁴

Accordingly, IT IS ORDERED THAT:

- (1) Riders C1 and C2 are approved as requested by the Company, modified as set forth herein.
- (2) The Company shall forthwith file with the Commission's Divisions of Energy Regulation and Public Utility Accounting revised Riders C1 and C2 with workpapers supporting the total revenue requirement and rates, all of which shall reflect the findings and requirements set forth herein.
- (3) Riders C1 and C2 as approved herein shall become effective for service rendered on and after April 1, 2011.
- (4) On or before August 1, 2011, the Company shall file its application to continue Riders C1 and C2.
- (5) This matter is continued.

¹⁰ Ex. 12 at 14 (Abbott direct) (quoting Appendix D of KEMA's October 1, 2010 Evaluation, Measurement, and Verification Report prepared for Dominion Virginia Power and filed in Case No. PUE-2009-00081).

¹¹ Based on our factual findings rejecting the Company's request for lost revenues herein, we need not reach other questions related to this issue, such as whether: (i) the statute requires recovery of measured and verified lost revenues associated with the design of an approved energy efficiency program; (ii) lost revenues are recoverable for a program (*i.e.*, the CFL program) that was not previously approved under § 56-585.1 A 5 of the Code; (iii) prior statutory law requires recovery of lost revenues occurring during the first six months of 2009; and (iv) the cost caps imposed on the energy efficiency programs as a condition of our approval in Case No. PUE-2009-00081 include lost revenues in the total costs to be capped. *See, e.g.*, Staff's January 11, 2011 Legal Memorandum; Company's January 25, 2011 Response; Tr. 135-136, 215-225.

¹² *See, e.g.*, Ex. 17 at 7 (Wilkinson rebuttal) ("In a situation of over-recovery, ... ratepayers are due the return of those costs, including associated financing costs. Recovery of financing costs in this manner under Subsection A 5 is equitable to both ratepayers and the Company.").

¹³ Based on our factual findings rejecting the Company's request for lost revenues herein, we need not reach the issue of how such costs should be allocated among customers. *See, e.g.*, Ex. 28 at 4-5 (Haynes rebuttal); Tr. 99.

¹⁴ However, approval of this limited waiver on an ongoing basis does not prohibit this issue from being revisited, if warranted.

**CASE NO. PUE-2010-00087
APRIL 21, 2011**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For approval of a SAVE plan and rider as provided by Va. Code § 56-604

ORDER APPROVING SAVE PLAN AND RIDER

On August 4, 2010, Washington Gas Light Company ("WGL" or "Company") filed with the State Corporation Commission ("Commission") an application ("Application") pursuant to Chapter 26 of Title 56 of the Code of Virginia ("Code") (§ 56-603 *et seq.* – Steps to Advance Virginia's Energy (SAVE) Plan ("SAVE Act")) seeking approval of a plan pursuant to the SAVE Act ("SAVE Plan"). The Company states that the "SAVE Act authorizes natural gas utilities to petition the Commission for authority to implement a separate rider for recovery of certain costs associated with eligible infrastructure replacement programs."¹ WGL proposes to recover approximately \$116.5 million in anticipated expenditures for replacement of facilities over a five-year period (2010-2014) through a rider ("SAVE Rider") authorized by the SAVE Act.²

Under the Company's proposal, its monthly SAVE Rider would take effect on the first day of the billing cycle following approval by the Commission.³ The Company projects that the SAVE Rider would add \$4.48 per year to the typical residential customer's bill in 2011.⁴ WGL proposes that the SAVE Rider be revised annually after review by the Commission's Staff ("Staff") and that the revised SAVE Rider become effective at the beginning of the January billing cycle.⁵ The proposed SAVE Plan would remain in effect through 2014.⁶

WGL states that the SAVE Act provides for the recovery of the costs of replacing gas utility infrastructure not otherwise recovered through rates previously approved by the Commission or through revenues from new customers who connect to the utility. The Company's proposed SAVE Plan comprises the following categories of eligible infrastructure replacement projects: (1) Bare and Unprotected Steel Service Replacement Program; (2) Bare and Unprotected Steel Main Replacement Program; (3) Mechanically Coupled Pipe Replacement Program; and (4) Enhancement of Optimum Decision Support Computer Program.⁷

As provided by 5 VAC 5-20-160, *Memorandum of completeness*, of the Commission's Rules of Practice and Procedure, the Staff determined that certain information required for consideration of the Application had not been filed and that the Application was incomplete.⁸ On October 25, 2010, WGL filed supplemental testimony and exhibits. A memorandum of completeness was filed by the Staff on November 2, 2010, and the Application was deemed complete as of October 25, 2010.⁹

On November 8, 2010, the Commission issued an Order for Notice and Hearing that, among other things: (1) docketed this proceeding; (2) required published and direct notice of the Application; (3) established procedures for participation in this matter; and (4) scheduled a public hearing on the Application. The Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel") filed a notice of its intent to participate in this matter. The Staff filed direct testimony, and the Company filed rebuttal testimony. The Commission received no written or electronic comments on the Application.

On March 8, 2011, the Commission convened the public hearing at which the following participated: WGL, Consumer Counsel, and the Staff. No public witnesses testified at the hearing.

On March 23, 2011, WGL filed a Notice of Washington Gas Light Company to Clarify the Record ("Notice to Clarify"). On March 28, 2011, the Staff and Consumer Counsel filed responses and did not object to WGL's Notice to Clarify. On March 29, 2011, WGL filed a reply letter.¹⁰ On April 1, 2011, post-hearing briefs were filed by WGL, Consumer Counsel, and the Staff.

The Company asserts, among other things, as follows: (1) "[WGL's] proposed SAVE Plan is consistent with the SAVE Act, and by legislative act, cannot be denied due to the Company's [performance-based regulation (PBR)] Plan;" (2) the "SAVE Act permits recovery of eligible infrastructure replacement costs relating to eligible infrastructure replacements commenced on or after January 1, 2010;" (3) the "SAVE Act does not require depreciation and property tax costs for the eligible replacements to be offset with the cost of retired plant;" (4) "[WGL's] application of its current cost of capital to

¹ Ex. 1A (Application) at 3.

² *Id.* at 1; Ex. 2 (Wagner).

³ Ex. 1A (Application) at 5.

⁴ *Id.* at 10.

⁵ *Id.* at 10-11.

⁶ *See* Ex. 2 (Wagner).

⁷ Ex. 1A (Application) at 6.

⁸ Memorandum of Completeness/Incompleteness of Aug. 16, 2010, Doc. Con. Cen. No. 434947, filed in Case No. PUE-2010-00087.

⁹ Memorandum of Completeness/Incompleteness of Nov. 2, 2010, Doc. Con. Cen. No. 439185, filed in Case No. PUE-2010-00087.

¹⁰ Absent any objection, we accept WGL's Notice to Clarify.

compute the return on investment for the SAVE Rider is consistent with the SAVE Act;" and (5) "[WGL's] five-year SAVE Plan proposal which provides for administrative review of each annual SAVE Rider is consistent with the SAVE Act."¹¹

Consumer Counsel "addresses ... the plant retirement issue" and argues that "costs eliminated from plant retirements should be netted against costs of new plant investment."¹² Consumer Counsel "urges the Commission to require that the SAVE [R]ider net the cost of old plant that is retired against the cost of the new plant placed into service" and states that the "SAVE Act does not require customers to be charged for two separate sets of plant when the utility is incurring cost on only one."¹³

The Staff asserts, among other things, as follows: (1) "the Commission [should] review any annual SAVE [R]ider updates in a single, synchronized, and docketed proceeding each year in a manner similar to the procedures employed by the Commission for other rate adjustment clause riders;" (2) "a reasonable reading of the SAVE Act does not entitle [WGL] to realize an excess recovery of depreciation expense related to retired plant;" (3) "the proper capital structure to use in determining the revenue requirement for the Company's SAVE [P]lan is the most recently approved annual update of the Company's capital structure as proposed by Staff witness Maddox;" and (4) "[w]hile the Staff agrees that, in this case, June 1, 2010 [sic] is a prudent and reasonable date to begin accumulating costs, the Staff suggests that, as a matter of precedent, the statute should not be read to allow recovery on any costs beginning January 1, 2010, without regard to the timeliness of the utility's application for a SAVE [P]lan."¹⁴

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Company's SAVE Plan and SAVE Rider, as modified in accordance with the findings made herein and subject to the requirements in this Order, satisfy the statutory provisions of the SAVE Act and are therefore approved.

Infrastructure Replacement Projects

We approve the four infrastructure replacement projects proposed by the Company: (1) Bare and Unprotected Steel Service Replacement Program; (2) Bare and Unprotected Steel Main Replacement Program; (3) Mechanically Coupled Pipe Replacement Program; and (4) Enhancement of Optimain Decision Support Computer Program.¹⁵ We also order, as part of our approval herein, the commitments agreed to by WGL subsequent to the filing of its Application.¹⁶

Plant Retirements

We find that infrastructure replacement costs include plant retirements associated with the replacement project. Pursuant to statute, "*Eligible infrastructure replacement costs*" include a "[r]eturn on the investment," and "*Investment*" means costs incurred on eligible infrastructure replacement projects.¹⁷ In order to determine accurately the "costs incurred" on a replacement project, we find that plant retirements associated with such project should be recognized. That is, as a factual matter, we conclude that the value of plant retirements is an integral and necessary component for purposes of calculating the costs incurred on a replacement project.¹⁸

Furthermore, and contrary to the Company's argument, this finding does not violate the SAVE Act's prohibition against: (i) examining other revenue requirement or ratemaking issues,¹⁹ or (ii) offsetting other Commission-approved costs of service or revenue requirements.²⁰ Rather, our analysis herein is limited to the proposed SAVE Plan and SAVE Rider, and to the specific statute governing this case. As noted above, the plain language of the statute requires the Commission factually to determine the "costs incurred on eligible infrastructure replacement projects." In this regard, we have found – for purposes of the SAVE Act and the instant Application – that plant retirements must be recognized in order reasonably to calculate the costs associated with a replacement project.²¹

¹¹ WGL's April 1, 2011 Post-Hearing Brief at 6, 9, 12, 16, and 19 (typeface modified).

¹² Consumer Counsel's April 1, 2011 Post-Hearing Brief at 3 (case and typeface modified).

¹³ *Id.* at 7.

¹⁴ Staff's April 1, 2011 Post-Hearing Brief at 5.

¹⁵ We further note that this is WGL's first request under the SAVE Act, and none of the participants in this case have objected to these specific programs.

¹⁶ *See, e.g.*, WGL's April 1, 2011 Post-Hearing Brief at 2-3 ((i) "[WGL] agrees to apply the SAVE Rider to rate schedules 8 and 10;" (ii) "[WGL] agrees to provide a detailed report showing how the SAVE spending differs from the eight million spent required under the PBR Plan;" (iii) "[t]he calculation of accumulated depreciation will be performed on actual monthly expenditures in the reconciliation filing, and the current factor will be based on monthly forecasted plant expenditures as described [by Staff witness Armstrong];" (iv) "[WGL] agrees to use the latest available information for the calculation of the property tax component in the current factor;" and (v) WGL agrees "to have a line item on customers' bills for all applicable Riders"). *See also* Consumer Counsel's April 1, 2011 Post-Hearing Brief at 2; Ex.10 (Wagner); Tr. 15-17.

¹⁷ Va. Code § 56-603 (emphasis in original).

¹⁸ *See, e.g.*, Ex. 8 at 9-12 (Armstrong); Tr. 72-74.

¹⁹ Va. Code § 56-604 D.

²⁰ Va. Code § 56-604 G.

²¹ Plant retirements associated with the approved replacement projects will be reflected in the SAVE Rider. Specifically, WGL shall reflect plant retirements associated with replacement projects as part of its SAVE Rider filings (discussed later in this Order), which encompass projections of future costs and reconciliations for actual costs incurred. In addition, if the Company "is unable to forecast retirements" as required herein, we hereby "adopt [the] method to estimate plant retirements" as proposed by the Staff. Staff's April 1, 2011 Post-Hearing Brief at 19-20.

This finding not only provides a reasonable accounting of the costs incurred on replacement projects, it avoids the possibility of double-recovery of costs by the Company. Indeed, WGL has not asserted that recognizing plant retirements as required herein prevents the Company from recovering its just and reasonable cost of service. To the contrary, the Company acknowledges that there could be double-recovery of certain costs associated with plant retirements absent such a requirement.²²

Weighted Average Cost of Capital

Section 56-603 of the Code states in part as follows with respect to weighted average cost of capital:

"Eligible infrastructure replacement costs" includes the following:

1. Return on the investment. In calculating the return on the investment, the Commission shall use the natural gas utility's regulatory capital structure as calculated utilizing the weighted average cost of capital, including the cost of debt and the cost of equity used in determining the natural gas utility's base rates in effect during the construction period of the eligible infrastructure replacement project. If the natural gas utility's cost of capital underlying the base rates in effect at the time its proposed SAVE plan is filed has not been changed by order of the Commission within the preceding five years, the Commission may require the natural gas utility to file an updated weighted average cost of capital, and the natural gas utility may propose an updated weighted average cost of capital. The natural gas utility may recover the external costs associated with establishing its updated weighted average cost of capital through the SAVE rider. Such external costs shall include legal costs and consultant costs; (Emphasis in original.)

This statute directs the Commission to utilize "the cost of debt and the cost of equity used in determining the natural gas utility's base rates in effect during the construction period of the eligible infrastructure replacement project." As explained by the Staff, however, WGL's existing base rates were not determined by a specific cost of debt and cost of equity; rather, existing rates were the result of a stipulation, which "allowed for a \$3.9 million increase in rates which was not calculated or based upon any capital structure or cost of capital."²³ Indeed, the Commission's Order in Case No. PUE-2006-00059 approving WGL's existing base rates (which adopted the stipulation in that case) did not use or approve any specific cost of capital. Thus, there exists no specific cost of debt and cost of equity that the Commission may use in the instant proceeding pursuant to this statutory requirement.

We must, nevertheless, establish a reasonable weighted average cost of capital for purposes of this case. In this regard, we further note that: (i) as discussed by WGL, a new cost of capital will be established at the conclusion of the Company's pending base rate case (Case No. PUE-2010-00139);²⁴ (ii) due to the pending base rate case, "the cost of capital which is at issue in [the instant] proceeding is likely to be applied only to part of the Company's first annual SAVE Rider;"²⁵ and (iii) the SAVE Act requires WGL to file reconciliation adjustments (*i.e.*, true-ups) to account for any prior over- or under-recoveries.²⁶ Accordingly, we direct as follows: (1) WGL shall utilize its proposed weighted average cost of capital of 8.4% as a temporary placeholder – subject to true-up – for purposes of the SAVE Rider approved herein; and (2) after the Commission approves a weighted average cost of capital in Case No. PUE-2010-00139, WGL shall reflect such weighted average cost of capital – back to the effective date of the SAVE Rider approved in this Order – in its reconciliation adjustment filings under the SAVE Act.

Cost Recovery Effective Date

Although the SAVE Act did not become effective until July 2010, this statute explicitly states that "*Eligible infrastructure replacement*" means natural gas utility facility replacement projects that: . . . (iv) are commenced on or after January 1, 2010."²⁷ Thus, the SAVE Act contemplates recovery for replacement projects that began prior to implementation of the statute and, therefore, prior to the filing of an application thereunder. Accordingly, we grant the Company's request for a cost recovery effective date of "June 2010 – the date when [WGL] began installing plant subject to the SAVE Rider."²⁸

This finding necessarily requires WGL to establish a new regulatory asset effective June 2010. In this regard, the Staff explains that in Case No. PUE-2006-00059 the Company agreed – and the Commission ordered WGL – not to create new regulatory assets prior to October 2011.²⁹ Thus, the Company's proposal herein violates its prior agreement with the participants in Case No. PUE-2006-00059 and the Commission's order directing compliance with such agreement. Section 56-604 A of the Code, however, states that "[n]otwithstanding any provisions of law to the contrary, a natural gas utility may file a SAVE plan as provided in this chapter," and subsequent provisions of § 56-604 explicitly direct as follows:

D. No other revenue requirement or ratemaking issues may be examined in consideration of the application filed pursuant to the provisions of this chapter.

²² See, *e.g.*, Tr. 141-142.

²³ Ex. 9 (Maddox) at 3.

²⁴ Ex. 10 (Wagner) at 11.

²⁵ WGL's April 1, 2011 Post-Hearing Brief at 17.

²⁶ Va. Code § 56-604 E.

²⁷ Va. Code § 56-603 (emphasis in original).

²⁸ Ex. 10 (Wagner) at 7. We also note that "Staff does not oppose June 1, 2010, as a prudent and reasonable start date for the SAVE [P]lan submitted by [WGL]." Staff's April 1, 2011 Post-Hearing Brief at 26.

²⁹ Ex. 8 (Armstrong) at 16.

G. Costs recovered pursuant to this chapter shall be in addition to all other costs that the natural gas utility is permitted to recover, shall not be considered an offset to other Commission-approved costs of service or revenue requirements, and shall not be included in any computation relative to a performance-based regulation plan revenue-sharing mechanism.

As a result of this statute, WGL's previous commitment not to create a new regulatory asset prior to October 2011 – and the Commission's prior Order prohibiting the same – do not stand as legal impediments to the Company's request to create a new regulatory asset under the SAVE Act in violation of its prior agreement. As a result, the ultimate price paid by WGL's customers for non-gas service will be higher than the amounts agreed to by the Company and ordered by the Commission in Case No. PUE-2006-00059.

SAVE Rider Filings

Section 56-604 E of the Code states as follows:

At the end of each 12-month period the SAVE rider is in effect, the natural gas utility shall reconcile the difference between the recognized eligible infrastructure replacement costs and the amounts recovered under the SAVE rider, and shall submit the reconciliation and a proposed SAVE rider adjustment to the Commission to recover or refund the difference, as appropriate, through an adjustment to the SAVE rider. The Commission shall approve or deny, within 90 days, a natural gas utility's proposed SAVE rider adjustment.

This statute requires a true-up, or reconciliation adjustment, at the end of each 12-month period the SAVE Rider is in effect. Accordingly, we will establish a schedule for rate updates that complies with this requirement.³⁰ As requested by WGL, the rate for the SAVE Rider approved herein shall initially become effective for bills rendered on and after May 1, 2011,³¹ and will be based on projections of total costs through December 31, 2011.³² Thus, this statute requires a reconciliation adjustment for the 12-month period ending April 30, 2012. In addition, during the pendency of the SAVE Plan, WGL will need to propose new SAVE Rider rates based on projected expenditures for future calendar years.³³

As a result, we establish a specific schedule for SAVE Rider filings, all of which shall be docketed and will proceed as formal Commission cases.³⁴ First, on or before September 1, 2011, the Company shall file new proposed SAVE Rider rates based on its projected SAVE Plan expenditures for calendar year 2012, and the rates approved in such case will be effective from January 1, 2012 through December 31, 2012.³⁵ Second, on or before September 1, 2012, WGL shall file new proposed SAVE Rider rates based on: (a) its projected SAVE Plan expenditures for calendar year 2013, and (b) its proposed reconciliation adjustment for the 12-month period ending April 30, 2012;³⁶ the rates approved therein will be effective from January 1, 2013, through December 31, 2013. Third, WGL shall make a similar filing on or before September 1, 2013.³⁷

The SAVE Plan approved herein concludes on December 31, 2014. Thus, absent an extension of the SAVE Plan approved by the Commission: (1) on or before September 1, 2014, WGL shall file new proposed SAVE Rider rates based on its proposed reconciliation adjustment for the 12-month period ending April 30, 2014; (2) the SAVE Rider shall terminate on January 1, 2015; and (3) on or before April 1, 2015, WGL shall file a final proposed reconciliation adjustment and a proposed method for recovery or refund thereof.

³⁰ Moreover, we note that while this statute requires a reconciliation to be performed at the end of each 12-month period, the rates reflected in the SAVE Rider obviously need not change until after the conclusion of the 90-day reconciliation case, on an effective date chosen by the Commission.

³¹ See, e.g., Ex. 1A (Application) at 5.

³² The rate for the SAVE Rider should be designed to recover such costs via bills rendered between May 1, 2011, and December 31, 2011.

³³ We also note that § 56-604 F requires SAVE Rider rates to be "reset . . . to zero, when new base rates and charges that incorporate eligible infrastructure replacements costs previously reflected in the currently effective SAVE rider become effective . . ." Upon such occurrence, additional changes to SAVE Rider rates will need to be implemented.

³⁴ We reject WGL's request to implement new SAVE Rider rates based on new projections absent a Commission proceeding on the same. The SAVE Act in no manner precludes such Commission review. We find that the Staff and interested parties should be given the opportunity to evaluate whether WGL's projections and actual expenditures are within the SAVE Plan limits set forth below in this Order. In addition, we find that the Staff's "Sample List of Information to be Included with annual SAVE Filing," without exclusion or prejudice, appears relevant to such proceedings. The Staff's April 1, 2011 Post-Hearing Brief at Attachment 1.

³⁵ As noted above, WGL's projected expenditures (for the initial and subsequent SAVE Rider rates) shall also reflect projected net plant retirements, and, likewise, its actual costs reflected in the reconciliation adjustments shall include actual plant retirements associated with the replacement projects.

³⁶ This first reconciliation adjustment should compare actual SAVE Plan costs incurred from June 2010 through April 2012 to recoveries from the SAVE Rider rates during May 2011 through April 2012.

³⁷ Specifically, on or before September 1, 2013, WGL shall file new proposed SAVE Rider rates based on (a) its projected SAVE Plan expenditures for calendar year 2014, and (b) its proposed reconciliation adjustment for the 12-month period ending April 30, 2013; the rates approved therein will be effective from January 1, 2014 through December 31, 2014.

SAVE Plan Limits

We approve a SAVE Plan totaling \$116,500,000 – commencing June 2010 and ending December 31, 2014 – subject to certain requirements.³⁸ First, WGL may exceed the total approved expenditures of \$116,500,000 by up to 5%. Second, we approve the timing of expenditures as set forth by Company witness Townsend: (1) June 2010 through December 2011 – \$26,750,000; (2) calendar year 2012 – \$29,750,000; (3) calendar year 2013 – \$30,000,000; and (4) calendar year 2014 – \$30,000,000. Finally, in the above four periods, WGL may spend up to 125% of the approved expenditures – but may not exceed the total SAVE Plan cap set forth herein.³⁹

Based on WGL's projected cost allocation ratio among the four proposed replacement projects, the total SAVE Plan expenditures approved herein shall be allocated among the projects as follows: (1) Bare and Unprotected Steel Service Replacement Program – 39%; (2) Bare and Unprotected Steel Main Replacement Program – 7.5%; (3) Mechanically Coupled Pipe Replacement Program – 53%; and (4) Enhancement of Optimize Decision Support Computer Program – 0.5%.⁴⁰ WGL shall have the flexibility to modify each of these allocations by 10% of the approved amount.⁴¹

We find that the SAVE Plan restrictions set forth above permit reasonable flexibility in implementation of the infrastructure replacement projects approved by the Commission, while providing reasonable limits on rate fluctuations. Finally, as part of its SAVE Rider filings for the SAVE Plan approved herein, the Company may request modifications of the SAVE Plan limits set forth above for good cause shown.⁴²

Bill Format

The Company shall include on customer bills a separate line item labeled "All Applicable Riders."⁴³ WGL asserts, however, that "the implementation of this option by the billing area could take up to 120 days."⁴⁴ Thus, the Company commits, and we herein direct, that: (1) "implementation of the 'All Applicable Riders' line item [shall] become effective within 120 days of the initial billing of the SAVE Rider;" and (2) WGL shall "bill[] the SAVE Rider against the distribution charge in the initial months of its implementation."⁴⁵

Accordingly, IT IS HEREBY ORDERED THAT:

(1) A SAVE Plan, as permitted by § 56-603 *et seq.* of the Code of Virginia, is approved as set forth in this Order Approving SAVE Plan and Rider.

(2) A SAVE Rider, as permitted by § 56-603 *et seq.* of the Code of Virginia, is approved as set forth in this Order Approving SAVE Plan and Rider and shall become effective for bills rendered on and after May 1, 2011.

(3) WGL shall forthwith file with the Commission's Divisions of Energy Regulation and Public Utility Accounting revised tariffs and terms and conditions of service for the SAVE Rider, with workpapers supporting the total revenue requirement and rates, all of which shall reflect the findings and requirements set forth in this Order Approving SAVE Plan and Rider.

(4) The Notice of Washington Gas Light Company to Clarify the Record is accepted.

(5) This matter is dismissed.

³⁸ This amount is based on a cost recovery effective date of June 2010 and WGL's projected expenditures through 2014. *See, e.g.*, Ex. 4 (Townsend) at TLT-2.

³⁹ In addition, as discussed above, the SAVE Rider rates will be based, in part, on WGL's projected expenditures. For purposes of the SAVE Rider filings required herein, the Company's projected SAVE Plan expenditures may not exceed 125% of the amounts approved above for the relevant periods.

⁴⁰ *See, e.g.*, Ex. 4 (Townsend) at TLT-2.

⁴¹ Any such modifications, however, may not serve to exceed the SAVE Plan expenditure limits set forth herein.

⁴² The Company's ability to request such modifications is part of the SAVE Plan approved herein and, thus, does not constitute an amendment to the SAVE Plan under § 56-604 of the Code.

⁴³ *See, e.g.*, Ex. 7 (Stevens) at 21; Ex. 10 (Wagner) at 5.

⁴⁴ Ex. 10 (Wagner) at 5.

⁴⁵ *Id.*

**CASE NO. PUE-2010-00091
JUNE 30, 2011**

JOINT PETITION OF
MANAKIN FARMS, INC.; MANAKIN WATER AND SEWERAGE CORPORATION;
AQUA VIRGINIA, INC.;
and
AQUA VIRGINIA UTILITIES, INC.

For approval of a transfer of utility assets, the transfer of a certificate of public convenience and necessity, and an affiliates arrangement

FINAL ORDER

On August 10, 2010, Manakin Water and Sewerage Corporation ("MWS"),¹ Manakin Farms, Inc. ("Manakin Farms"), and Aqua Virginia, Inc. ("Aqua Virginia"), filed a Joint Petition with the State Corporation Commission ("Commission") for approval of the transfer of utility assets pursuant to the Utility Transfers Act² and for the transfer of MWS's certificate of public convenience and necessity ("CPCN") pursuant to the Utility Facilities Act.³

On September 15, 2010, the Commission issued an Order for Notice and Comment ("September 15, 2010 Order") in this case. On October 5, 2010, MWS, Manakin Farms, and Aqua Virginia filed a Motion to Suspend Procedural Schedule ("Motion"), requesting that the Commission vacate the September 15, 2010 Order, suspend further proceedings in this case, and hold this proceeding in abeyance until the issuance of a final order in Case No. PUE-2009-00059.⁴ The Commission granted the Motion on October 12, 2010.

On April 1, 2011, after the Commission entered its Order in Case No. PUE-2009-00059,⁵ the parties filed an amendment ("April 1, 2011 Amendment") to the Joint Petition in the present proceeding. Specifically, MWS, Manakin Farms, and Aqua Virginia (collectively, along with Aqua Virginia Utilities, Inc. ("Aqua Virginia Utilities"), "Joint Petitioners" or "Petitioners"),⁶ have sought Commission approval of the transfer of certain utility assets to Aqua Virginia Utilities. The utility assets at issue in this case are those used to provide sewer treatment and collection service to the Manakin Farms Subdivision development, as well as to the Cedar Grove, Hillside Estates, and Parke at Manakin Woods sections of the expanded development (collectively, "Manakin Farms Area"), in Goochland County, Virginia.⁷

The Petitioners also seek approval for the transfer of MWS's CPCN to Aqua Virginia Utilities. Further, pursuant to the April 1, 2011 Amendment, Aqua Virginia and Aqua Virginia Utilities have proposed to enter into an affiliates arrangement ("Affiliate Arrangement") providing for the furnishing of Aqua Virginia employees to Aqua Virginia Utilities for "management, supervisory, construction, engineering, accounting, legal, financial and similar services."⁸ Aqua Virginia has also noted during the proceeding that Aqua Virginia Utilities will not provide any services under the Affiliate Arrangement. Instead, all services will be provided by Aqua Virginia or a subcontractor, when such subcontractor can provide specific services at a lower cost. Aqua Virginia may subcontract some services to Aqua Services, Inc. ("Aqua Services"). As such, Aqua Virginia is also seeking Commission approval of the proposed Affiliate Arrangement, pursuant to § 56-77 A of the Code of Virginia ("Code"), or alternatively, for exemption of its proposed arrangement from the filing and prior approval requirements, pursuant to § 56-77 B of the Code.⁹

Finally, in the April 1, 2011 Amendment, the Joint Petitioners stated that, if the proposed transaction were approved, Aqua Virginia Utilities would provide service at the same rates as are currently being charged by MWS. In other words, there would be no immediate change in rates to the current customers of MWS if the proposed transaction was approved. If any increase in rates is sought in the future, Aqua Virginia Utilities will notify customers of the proposed rate increase in accordance with § 56-265.13:5 of the Code.¹⁰

¹ In the August 10, 2010 Joint Petition, MWS was referred to as "Manakin Water & Sewerage Corp." However, review of the company's certificate of incorporation indicates the name is officially "Manakin Water and Sewerage Corporation."

² Va. Code § 56-88 *et seq.*

³ Va. Code § 56-265.1 *et seq.*

⁴ *Application of Alpha Water Corporation; Aqua Virginia, Inc. (Lake Monticello); Aqua S/L, Inc. (Shawnee Land); Aqua Utility-Virginia, Inc. (Lake Shawnee); Blue Ridge Utility Company; Caroline Utilities, Inc.; Earlysville Forest Water Company; Heritage Homes of Virginia, Inc.; Indian River Water Company; James River Service Corporation; Aqua Lake Holiday Utilities, Inc.; Land'Or Utility Company, Inc.; Mountainview Water Company, Inc.; Powhatan Water Works, Inc.; Rainbow Forest Water Corporation; Sydnor Water Corporation; and Water Distributors, Inc., For an increase in water and sewer rates*, Case No. PUE-2009-00059.

⁵ *Id.*, 2010 S.C.C. Ann. Rept. 346, Order (Oct. 29, 2010). Among other things, this Order set new rates for Aqua Virginia customers.

⁶ The April 1, 2011 Amendment did not specifically name Aqua Virginia Utilities as a co-petitioner in this case. However, given the relief requested in the Joint Petition and the April 1, 2011 Amendment, we will treat Aqua Virginia Utilities as such.

⁷ Joint Petition at 1-2; April 1, 2011 Amendment at 2. As set forth in the April 1, 2011 Amendment, if the proposed transfer of assets were approved, the utility assets currently owned by MWS and land owned by Manakin Farms would become part of Aqua Virginia Utilities. Aqua Virginia Utilities would own and operate the utility assets and provide service to Manakin Farms Area customers, and MWS would no longer provide any sewer service. April 1, 2011 Amendment at 3.

⁸ April 1, 2011 Amendment at 3. Aqua Virginia employees will keep time records allocating their time to Aqua Virginia Utilities and will be subject to all Aqua Virginia employment rules and policies in performing services for Aqua Virginia Utilities.

⁹ *Id.* at 3-4.

¹⁰ *Id.* at 4.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On April 21, 2011, the Commission issued an Order for Notice and Comment that, among other things, ordered the Joint Petitioners to provide notice of their Joint Petition and April 1, 2011 Amendment to the public, provided interested persons an opportunity to comment on, or request a hearing on, the case, directed Commission Staff ("Staff") to analyze the reasonableness of the Joint Petition and present its findings in a report filed on or before June 3, 2011, and provided the Petitioners an opportunity to file a response to the Staff's report or to any comments or hearing requests. No comments or requests for hearing have been received.

On June 3, 2011, the Staff filed its staff report of the Division of Public Utility Accounting ("Staff Report"). The Staff recommended approval of the transfer of utility assets and land from MWS and Manakin Farms to Aqua Virginia Utilities and approval of the transfer of MWS's CPCN to Aqua Virginia Utilities. The Staff further recommended approval of the proposed Affiliate Arrangement. However, the Staff recommended that Commission approval should be subject to the following requirements:

1. Within thirty (30) days of completing the proposed transfer, the Joint Petitioners should file a Report of Action ("Report") with the Commission. Included in the Report should be the date of the transfer, the actual sales price, and the actual accounting entries on Aqua [Virginia] Utilities' books to reflect the transfer. Such accounting entries should be in accordance with the [Uniform System of Accounts ("USOA")], which includes booking the difference between the purchase price and the net book value of the utility assets as an acquisition adjustment to Account 114.
2. [MWS and Manakin Farms] should be directed to provide all records related to the transferred Manakin Assets to Aqua [Virginia] Utilities at closing, which should be directed to maintain them henceforth in accordance with the USOA.
3. The Commission's approval granted herein should have no ratemaking implications. In particular, the Commission's approval should not guarantee recovery of any costs directly or indirectly related to the transfer and Affiliate Arrangement.
4. The Commission should direct Aqua [Virginia] Utilities that:
 - (a) The quality of service in the MWS service territory should not deteriorate due to a lack of maintenance or capital investment;
 - (b) The quality of service in the MWS service territory should not deteriorate due to a reduction in the number of employees providing services; and
 - (c) Aqua [Virginia] Utilities should continue to maintain a high degree of cooperation with the Commission Staff and should take all actions necessary to ensure Aqua [Virginia] Utilities' timely response to Staff inquiries with regard to its provision of service in Virginia.-
5. Approval of the Affiliate Arrangement should be limited to two (2) years.
6. Approval of the Affiliate Arrangement should not include the service category of "similar" services.¹¹

On June 15, 2011, the Joint Petitioners filed a response to the Staff Report ("Response to Staff Report"), in which the Joint Petitioners stated that they had no objection to the Staff Report,¹² though they did comment on several specific recommendations that were made by the Staff.¹³

NOW THE COMMISSION, UPON CONSIDERATION of this matter, is of the opinion and finds that the transfer of utility assets to Aqua Virginia Utilities, the transfer of MWS's CPCN to Aqua Virginia Utilities, and the proposed Affiliate Arrangement shall be approved, subject to the requirements set forth in this Final Order. The Joint Petitioners' request for exemption of the proposed Affiliate Arrangement from Commission approval pursuant to § 56-77 B of the Code is denied.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, Aqua Virginia is hereby granted approval to enter into the proposed Affiliate Arrangement with Aqua Virginia Utilities, consistent with the findings set forth in this Final Order and subject to all recommendations noted in the Staff Report. The Joint Petitioners' request for exemption of the proposed Affiliate Arrangement from Commission approval pursuant to § 56-77 B of the Code is denied.
- (2) Approval of the Affiliate Arrangement is limited to two (2) years from the date of this Final Order.
- (3) Approval of the Affiliate Arrangement does not include the service category of "similar" services.
- (4) For services that Aqua Virginia receives from Aqua Services to provide services to Aqua Virginia Utilities, such services shall be priced at the lower of cost or market. Aqua Virginia shall bear the burden of proving, in any annual informational filing or rate case proceeding, that it paid the lower of cost or market under the proposed Affiliate Arrangement for services received from Aqua Services.
- (5) Commission approval shall be required for any changes in the terms and conditions of the Affiliate Arrangement approved herein, including any successors or assigns.

¹¹ Staff Report at 12-13. As used in the Staff Report, the term "Manakin Assets" includes the MWS utility assets and the land on which they sit. Staff Report at 1.

¹² Response to Staff Report at 5.

¹³ *Id.* at 2-5.

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- (6) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (7) The approval granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.
- (8) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- (9) Aqua Virginia shall include the transactions associated with the Affiliate Arrangement approved herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Commission's Director of Public Utility Accounting.
- (10) Aqua Virginia Utilities shall submit an ARAT to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting, to cover services received from Aqua Virginia pursuant to the Affiliate Arrangement approved herein.
- (11) If annual informational and/or general rate case filings are not based on a calendar year, then Aqua Virginia and/or Aqua Virginia Utilities shall include the affiliate information contained in the ARAT in such filings.
- (12) Pursuant to the Utility Transfers Act, MWS is hereby authorized to transfer the utility assets comprising its water system, and Manakin Farms is hereby authorized to transfer land, to Aqua Virginia Utilities, consistent with the findings of this Final Order and subject to all recommendations noted in the Staff Report.
- (13) The Petitioners are hereby authorized to transfer CPCN No. S-96 from MWS to Aqua Virginia Utilities, pursuant to § 56-265.3 D of the Code.
- (14) Within thirty (30) days of completing the proposed transfer, the Joint Petitioners shall file a Report of Action with the Commission. Included in the Report of Action shall be the date of the transfer, the actual sales price, and the actual accounting entries on Aqua Virginia Utilities' books to reflect the transfer. Such accounting entries shall be in accordance with the USOA, which includes booking the difference between the purchase price and the net book value of the utility assets as an acquisition adjustment to Account 114.
- (15) MWS and Manakin Farms shall provide all records related to the transferred utility assets and the land on which they sit to Aqua Virginia Utilities at closing, and Aqua Virginia Utilities shall maintain these records henceforth in accordance with the USOA.
- (16) The quality of service in the MWS service territory shall not deteriorate due to a lack of maintenance or capital investment or due to a reduction in the number of employees providing services. Further, Aqua Virginia Utilities shall continue to maintain a high degree of cooperation with the Staff and shall take all actions necessary to ensure Aqua Virginia Utilities' timely response to the Staff inquiries with regard to its provision of service in Virginia.
- (17) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2010-00091
JULY 7, 2011**

JOINT PETITION OF
MANAKIN FARMS, INC.; MANAKIN WATER AND SEWERAGE CORPORATION;
AQUA VIRGINIA, INC.;
and
AQUA VIRGINIA UTILITIES, INC.

For approval of a transfer of utility assets, the transfer of a certificate of public convenience and necessity, and an affiliates arrangement

CORRECTING ORDER

On August 10, 2010, Manakin Water and Sewerage Corporation ("MWS"), Manakin Farms, Inc. ("Manakin Farms"), and Aqua Virginia, Inc. ("Aqua Virginia"), filed a Joint Petition with the State Corporation Commission ("Commission"), in part, for approval of the transfer of certain utility assets to Aqua Virginia. On April 1, 2011, MWS, Manakin Farms, and Aqua Virginia, with Aqua Virginia Utilities, Inc. ("Aqua Virginia Utilities") (collectively, "Petitioners"), filed an amendment to the Joint Petition instead seeking, in part, Commission approval of the transfer of certain utility assets to Aqua Virginia Utilities.

On June 30, 2011, the Commission issued a Final Order in this proceeding. Ordering Paragraph (12) of the Final Order states, "Pursuant to the Utility Transfers Act, MWS is hereby authorized to transfer the utility assets comprising its water system, and Manakin Farms is hereby authorized to transfer land, to Aqua Virginia Utilities, consistent with the findings of this Final Order and subject to all recommendations noted in the Staff Report." This paragraph is incorrect. As is noted earlier in the Final Order, the Petitioners seek authorization to transfer utility assets including MWS's wastewater system to Aqua Virginia Utilities.

Accordingly, IT IS ORDERED THAT:

(1) Ordering Paragraph (12) of the June 30, 2011 Final Order is corrected and amended to read as follows:

Pursuant to the Utility Transfers Act, MWS is hereby authorized to transfer the utility assets comprising its wastewater system, and Manakin Farms is hereby authorized to transfer land, to Aqua Virginia Utilities, consistent with the findings of this Final Order and subject to all recommendations noted in the Staff Report.

(2) All other provisions of the June 30, 2011 Final Order shall remain in full force and effect.

**CASE NO. PUE-2010-00094
FEBRUARY 22, 2011**

APPLICATION OF
KENTUCKY UTILITIES COMPANY D/B/A OLD DOMINION POWER COMPANY

For approval of affiliate transactions in connection with transfer of ownership and control and restructuring and refinancing of debt pursuant to Chapter 4 of Title 56 of the Code of Virginia

AMENDING ORDER

On October 19, 2010, the State Corporation Commission ("Commission") issued an Order Granting Approval ("October 19 Order") in this proceeding, which, in part, granted approval of certain affiliate agreements to be entered into by Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP") upon completion of the change in control of KU/ODP from E.ON AG to PPL Corporation ("PPL") that was approved by the Commission in Case No. PUE-2010-00060.¹ In the October 19 Order, the Commission approved an insurance agreement between PPL Power Insurance, Ltd., a subsidiary of PPL, and KU/ODP, which KU/ODP prepared to enter following the transfer of control.

On December 2, 2010, KU/ODP filed a letter with the Commission advising that the transfer of control involving KU/ODP had been completed. KU/ODP further advised that, in connection with the closing of the transfer, the legal name of E.ON U.S. LLC was changed to LG&E and KU Energy LLC on November 1, 2010. E.ON U.S. LLC was named as a party on the insurance agreement approved in the October 19 Order.

On December 20, 2010, the Commission issued an Amending Order ("December 20 Amending Order"), which, in part, granted KU/ODP's request for an order amending the authority granted in the October 19 Order to permit the replacement of the name E.ON U.S. LLC with LG&E and KU Energy LLC in the insurance agreement. On February 2, 2011, KU/ODP filed for approval of additional clerical changes and minor corrections to the insurance agreement previously approved herein. KU/ODP requests that the Commission approve the revised agreement by February 28, 2011, so that it may be executed by March 4, 2011.

NOW THE COMMISSION, upon consideration of the foregoing and of the applicable law, is of the opinion and finds that KU/ODP's request should be granted and that the insurance agreement previously approved herein should be amended to reflect the revisions and corrections set forth in the Company's February 2, 2011 filing.

Accordingly, IT IS ORDERED THAT:

(1) Case No. PUE-2010-00094 is reopened for consideration of the issues described herein.

(2) Pursuant to §§ 56-77 and 56-80 of the Code of Virginia, KU/ODP is authorized to amend the insurance agreement to include the revisions and corrections filed in this case on February 2, 2011.

(3) All other provisions set forth in the Commission's October 19 Order, as amended by the December 20 Amending Order, shall remain in full force and effect.

(4) KU/ODP shall file a copy of the executed insurance agreement with the Commission within thirty (30) days of execution of that agreement.

(5) There being nothing further to come before the Commission, this matter is dismissed.

¹ *Joint Petition of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S. LLC, and Kentucky Utilities Company d/b/a Old Dominion Power Company, For approval of transfer of ownership and control*, Case No. PUE-2010-00060, Doc. Con. Cen. No. 438579, Final Order (Oct. 19, 2010).

**CASE NO. PUE-2010-00095
JANUARY 25, 2011**

APPLICATION OF
CENTRAL VIRGINIA ELECTRIC COOPERATIVE

For a general increase in electric rates

ORDER FOR NOTICE AND HEARING

On December 22, 2010, Central Virginia Electric Cooperative ("CVEC" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission") for a general increase in its electric rates. The Applicant filed this Application pursuant to §§ 56-231.33, 56-231.34, 56-235, 56-238 and 56-585.3 of the Code of Virginia ("Code").

CVEC seeks approval to increase test year jurisdictional revenues by \$2,965,137, an increase of approximately 5.21%. According to the Applicant, the proposed increase would produce total test year jurisdictional margins of \$5,520,813 and, based on pro forma test year results, the requested increase would result in a jurisdictional rate of return on rate base of 8.14%. The proposed increase is expected to produce a Times Interest Earned Ratio of 2.15. CVEC states that the proposed increase in rates will more accurately reflect the cost of service and "will enable CVEC to maintain its financial strength so that it can fulfill its distribution and power supply responsibilities, respond promptly to the demands of its customer base, and continue its long history of providing excellent service to its member-customers."¹ CVEC requests that the revised rates and charges set forth in the Application be suspended for a period of 128 days and permitted to take effect for service rendered on and after May 1, 2011.²

The Applicant also proposes revisions to its Terms and Conditions for Providing Electric Service that seek to clarify and standardize the format of the document and to address changes in operating practices and the nature of business. Pursuant to Rule 20 VAC 5-200-21 B 7, CVEC also requests a waiver of Rule 20 VAC 5-200-21 E, which requires that any electric cooperative filing a rate application pursuant to § 56-582 of the Code submit Schedules 15 through 19.³

NOW THE COMMISSION, upon consideration of the Application and applicable statutes and rules, is of the opinion and finds that a public hearing should be convened to receive evidence on the Application and that, pursuant to Rule 5 VAC 5-20-120 A, *Assignment*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules of Practice"), this matter should be assigned to a Hearing Examiner to conduct all further proceedings. The Staff of the Commission ("Staff") shall investigate the Application and present its findings in testimony. The Applicant will be permitted to file testimony in rebuttal to the testimony filed by the respondents and the Staff. We grant the Applicant's request for waiver of Schedules 15 through 19 as required by Rule 20 VAC 5-200-21 E, and we will permit CVEC's proposed rates to become effective for service rendered on and after May 1, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2010-00095.
- (2) Pursuant to 5 VAC 5-20-120 A of the Rules of Practice, a Hearing Examiner is appointed to conduct all further proceedings in this matter.
- (3) CVEC's proposed rates and charges shall take effect for service rendered on and after May 1, 2011, on an interim basis and subject to refund.
- (4) CVEC's request for waiver of Rule 20 VAC 5-200-21 E with regard to the filing of Schedules 15 through 19 is granted.
- (5) A public hearing shall be convened on July 28, 2011, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive evidence related to the establishment of rates in this proceeding. Any person desiring to offer testimony as a public witness at the hearing concerning the Application need only appear in the Commission's Courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff.
- (6) CVEC shall forthwith make copies of its Application, testimony, and schedules, as well as a copy of this Order, available for public inspection during regular business hours at CVEC's business office at 800 Cooperative Way, Arrington, Virginia 22922. Copies also may be obtained by submitting a written request to counsel for CVEC, Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219. In addition, interested persons may review copies in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, or download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.
- (7) On or before March 3, 2011, CVEC shall cause a copy of the following notice to be published as display advertising (not classified) in newspapers of general circulation in its service territory:

¹ Application at 2.

² *Id.*

³ *Id.* at 3.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

NOTICE TO THE PUBLIC OF AN APPLICATION BY CENTRAL VIRGINIA ELECTRIC
COOPERATIVE, FOR A GENERAL INCREASE IN ELECTRIC RATES
CASE NO. PUE-2010-00095

On December 22, 2010, Central Virginia Electric Cooperative ("CVEC" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission") for a general increase in its electric rates. The Applicant filed this Application pursuant to §§ 56-231.33, 56-231.34, 56-235, 56-238 and 56-585.3 of the Code of Virginia ("Code").

CVEC seeks approval to increase test year jurisdictional revenues by \$2,965,137, an increase of approximately 5.21%. According to the Applicant, the proposed increase would produce total test year jurisdictional margins of \$5,520,813 and, based on pro forma test year results, the requested increase would result in a jurisdictional rate of return on rate base of 8.14%. The proposed increase is expected to produce a Times Interest Earned Ratio of 2.15. CVEC states that the proposed increase in rates will more accurately reflect the cost of service and "will enable CVEC to maintain its financial strength so that it can fulfill its distribution and power supply responsibilities, respond promptly to the demands of its customer base, and continue its long history of providing excellent service to its member-customers." CVEC requests that the revised rates and charges set forth in the Application be suspended for a period of 128 days and permitted to take effect for service rendered on and after May 1, 2011. The Applicant also proposes revisions to its Terms and Conditions for Providing Electric Service that seek to clarify and standardize the format of the document and to address changes in operating practices and the nature of business.

The Commission has scheduled a public hearing to commence at 10:00 a.m. on July 28, 2011, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, for the purpose of receiving evidence related to CVEC's Application. Any person desiring to offer testimony as a public witness at the hearing concerning the Application need only appear in the Commission's Courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff.

Copies of CVEC's Application, testimony, and schedules, as well as a copy of the Commission's Order for Notice and Hearing in this proceeding, are available for public inspection during regular business hours at CVEC's business office at 800 Cooperative Way, Arrington, Virginia 22922. Copies also may be obtained by submitting a written request to counsel for CVEC, Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219. In addition, interested persons may review copies in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, or download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before July 21, 2011, any interested person may file an original and fifteen (15) copies of any written comments on the Application with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website, noted above. Interested persons commenting electronically need not file comments in writing.

Any person or entity may participate as a respondent as provided by the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules of Practice") and the requirements set by the Commission's Order for Notice and Hearing entered in this proceeding. On or before April 7, 2011, any person or entity desiring to participate as a respondent must file a notice of participation in accordance with 5 VAC 5-20-140 and 5 VAC 5-20-150 of the Rules of Practice. If not filed electronically, an original and fifteen (15) copies of the notice of participation must be submitted to the Clerk of the Commission at the address set forth above. For further details on participation as a respondent, please see the Commission's Order for Notice and Hearing. The Rules of Practice may be viewed at the Commissioner's website, noted above.

All written communications to the Commission concerning CVEC's Application shall be directed to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, shall refer to Case No. PUE-2010-00095, and shall simultaneously be served on counsel for CVEC at the address set forth above.

CENTRAL VIRGINIA ELECTRIC COOPERATIVE

(8) On or before March 3, 2011, CVEC shall serve a copy of this Order on the chairman of the board of supervisors and county attorney of each county and upon the mayor or manager of every city and town (or upon equivalent officials in counties, towns and cities having alternate forms of government) in which the Applicant provides service. Service shall be made by first class mail to the customary place of business or residence of the person served.

(9) On or before April 7, 2011, CVEC shall provide proof of service and notice as required in this Order.

(10) On or before July 21, 2011, any interested person may file an original and fifteen (15) copies of any written comments on the Application with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. PUE-2010-00095. Any person not participating as a respondent as provided for in Ordering Paragraph (11) below may make a statement as a public witness at the hearing on July 28, 2011. Any person desiring to make a statement need

only appear in the Commission's Second Floor Courtroom in the Tyler Building at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff.

(11) On or before April 7, 2011, any person or entity may participate as a respondent in this proceeding by filing a notice of participation in accordance with 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-150, *Copies and format*, of the Rules of Practice. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (10) above. Any person or entity shall simultaneously serve a copy of the notice of participation upon counsel for CVEC at the address set forth in Ordering Paragraph (6) above. Pursuant to Rule 5 VAC 5-20-80, *Regulatory proceedings*, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Respondents shall refer in all filed papers to Case No. PUE-2010-00095.

(12) Within five (5) business days of receipt of a notice of participation as a respondent, CVEC shall serve upon each respondent a copy of this Order, a copy of the Application, and all materials filed with the Commission, unless these materials have already been provided to the respondent.

(13) On or before April 28, 2011, each respondent may file with the Clerk of the Commission at the address set forth in Ordering Paragraph (10) above and serve on the Staff and all parties, in accordance with 5 VAC 5-20-140 and 5-20-150 of the Rules of Practice, any testimony and exhibits by which the respondent expects to establish its case. If not filed electronically, an original and fifteen (15) copies of such testimony shall be submitted to the Clerk of the Commission.

(14) The Staff shall investigate the reasonableness of CVEC's Application and, on or before June 30, 2011, shall file with the Clerk of the Commission and serve on the Applicant and all parties in accordance with the Rules of Practice, its testimony and exhibits regarding its investigation of the Application. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be submitted to the Clerk of the Commission.

(15) On or before July 14, 2011, CVEC shall file with the Clerk of the Commission and serve on the Staff and all parties, in accordance with 5 VAC 5-20-140 and 5 VAC 5-20-150 of the Rules of Practice, any testimony and exhibits that it expects to offer in rebuttal to the testimony and exhibits of the respondents and the Staff. If not filed electronically, an original and fifteen (15) copies of such rebuttal testimony shall be submitted to the Clerk of the Commission.

(16) CVEC and respondents shall respond to written interrogatories within ten (10) calendar days after receipt of the same. Except as modified herein, discovery shall be in accordance with Part IV of the Rules of Practice, 5 VAC 5-20-240 *et seq.*

(17) This matter is continued generally.

**CASE NO. PUE-2010-00095
SEPTEMBER 7, 2011**

APPLICATION OF
CENTRAL VIRGINIA ELECTRIC COOPERATIVE

For general rate relief

FINAL ORDER

On December 22, 2010, Central Virginia Electric Cooperative ("CVEC" or "Cooperative") filed an application ("Application") with the State Corporation Commission ("Commission") for a general increase in electric rates pursuant to §§ 56-231.33, 56-231.34, 56-235, 56-238, and 56-585.3 of the Code of Virginia ("Code").

According to the Application, CVEC's requested increase in rates is intended to better reflect CVEC's cost of service and to "enable CVEC to maintain its financial strength so that it can fulfill its distribution and power supply responsibilities, respond promptly to the demands of its customer base, and continue its long history of providing excellent service to its member-customers."¹ More specifically, CVEC states that it has experienced increased interest expense and upward cost pressure on health care costs, pensions, and materials; that its Board of Directors has made a commitment to retire capital credits on an annual basis; and that it seeks to strengthen CVEC's financial position over time to reduce credit concerns of potential suppliers on the wholesale market.²

To respond to these concerns, CVEC requested approval of a 5.21% increase in base rates, which according to the Cooperative would generate an additional \$2,965,137 of jurisdictional revenues annually and would produce a Times Interest Earned Ratio ("TIER") of 2.15.³ CVEC requested that the proposed rates and charges take effect, on an interim basis and subject to refund, on May 1, 2011, 128 days after the Cooperative filed the Application.⁴

¹ Ex. 2 at 2 (Application).

² Ex. 3 at 3 (Wood Direct).

³ Ex. 2 at 2 (Application).

⁴ *Id.*

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In addition to requesting an increase in rates, CVEC proposed changes to its terms and conditions, including changes to its fee schedule and line extension policy. Further, pursuant to Rule 20 VAC 5-200-21 B 7 of the Virginia Administrative Code, CVEC requested a partial waiver of Rule 20 VAC 5-200-21 E, which requires that any electric cooperative filing a rate application pursuant to § 56-582 of the Code submit Schedules 15-19.⁵

On January 25, 2011, the Commission issued its Order for Notice and Hearing that, among other things, granted the Cooperative's request for partial waiver of the filing requirements of Rule 20 VAC 5-200-21 E; directed that CVEC's proposed rates and charges take effect, on an interim basis and subject to refund, on May 1, 2011; directed the Commission Staff ("Staff") to investigate the Application; assigned a Hearing Examiner to conduct all further proceedings; and scheduled a public hearing for July 28, 2011.

No notices of participation were filed in this case. On June 30, 2011, the Staff filed its testimony in this proceeding. CVEC did not file rebuttal testimony.

On July 26, 2011, the Cooperative filed a Motion to Accept Stipulation ("Motion") concurrently with a proposed stipulation ("Stipulation") addressing the issues in this proceeding. CVEC stated in its Motion that the Cooperative and the Staff ("Stipulating Participants") had reached agreement on all of the issues represented in the Stipulation and that the Staff does not oppose the Commission's approval of the Motion.⁶ CVEC requested that the Commission accept the Stipulation and adopt its terms in the Final Order.⁷

On July 28, 2011, the Hearing Examiner convened a hearing on the Application. No public witnesses appeared at the hearing. Consistent with the Stipulation, the Hearing Examiner admitted all of the Cooperative's and the Staff's pre-filed testimony and errata filings, revisions and supplements to the Application, and the Stipulation into the record without cross-examination of the witnesses.

In the Stipulation, the Stipulating Participants agreed to a TIER of 2.20 and a revenue increase of \$2,904,945 for the Cooperative.⁸ CVEC also agreed to adopt all of the Staff's recommended adjustments.⁹ The resulting rates and rate design would allow the Cooperative to collect total base rate revenues of \$56,331,599 annually.¹⁰

The Stipulating Participants further agreed that in its next rate case, CVEC would file: (i) a Class Cost of Service study, System Functional Analysis or Schedule 20, and a Consumer Delivery Charge study for purposes of reviewing the rate design of Rate Schedule SHL- Street, Highway and Homestead Lighting Service; and (ii) a revised power cost adjustment mechanism that "trues-up" CVEC's energy costs and revenues on an annual basis.¹¹

The Stipulating Participants also agreed to the following amendments to the Cooperative's terms and conditions: (i) revised language to limit billing adjustments to no more than six (6) months for billing errors resulting from meter inaccuracy; (ii) additional language in CVEC's tariffs to account for billing errors that arise for reasons other than meter inaccuracy; (iii) clarifying language relating to meter tampering; and (iv) a requirement of at least ten (10) days' notice before disconnecting a customer's service when a customer denies access to the meter or misrepresents information to the Cooperative. The Stipulating Participants also agreed to add a Re-engineering Fee to the Cooperative's Schedule F-Fees.¹²

On August 17, 2011, the Hearing Examiner issued his Report finding that the Stipulation represented a fair and just resolution of the case and recommending that it be accepted by the Commission. The Hearing Examiner further found that since CVEC and the Staff had agreed to the Stipulation and since there are no other case participants, there was no need to allow an opportunity for comments on his Report.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the executed Stipulation should be accepted and the stipulated revenue requirement should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) CVEC's application for general rate relief is granted in part and denied in part, as set forth herein.
- (2) The Stipulation presented by CVEC and the Staff is hereby accepted.
- (3) The rates, terms and conditions, and changes so established shall be effective for service rendered on and after May 1, 2011.

(4) CVEC shall forthwith file revised tariffs and terms and conditions of service with the Commission's Division of Energy Regulation in accordance with the Stipulation.

⁵ *Id.* at 3.

⁶ Motion at 1.

⁷ *Id.* at 2.

⁸ Ex. 10 at 1 (Stipulation).

⁹ *Id.* at 2.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 2.

¹² *Id.* at 2-3 and Attachment C.

(5) In its next rate case, CVEC shall file a Class Cost of Service study, System Functional Analysis or Schedule 20, and a Consumer Delivery Charge study for purposes of reviewing the rate design of Rate Schedule SHL- Street, Highway and Homestead Lighting Service, as well as a revised power cost adjustment mechanism that "trues-up" CVEC's energy costs and revenues on an annual basis.

(6) There being nothing further to come before the Commission, this matter is dismissed from the Commission's active docket and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. PUE-2010-00097
JANUARY 27, 2011**

PETITION OF
WESTERN VIRGINIA WATER AUTHORITY
and
WESTLAKE WATER COMPANY, INC.

For approval of a transfer of a public utility pursuant to Chapter 5 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On August 23, 2010, Western Virginia Water Authority ("WV Authority") and Westlake Water Company, Inc. ("Westlake") (collectively, "Petitioners"), filed a petition ("Petition") with the State Corporation Commission ("Commission") seeking approval for Westlake to transfer the Chestnut Creek, Grand Harbour, and Arrowhead Subdivision Water System ("Westlake System") to the WV Authority pursuant to Chapter 5 of Title 56 ("Utility Transfers Act") of the Code of Virginia ("Code").

Westlake is a Virginia corporation and the owner of the Westlake System, which supplies potable water to the owners of the homes and lots situated in the Chestnut Creek, Grand Harbour, and Arrowhead Subdivisions located at Smith Mountain Lake in Franklin County, Virginia. Westlake is owned by David Petrus.

WV Authority is a regional water authority formed by the Council of the City of Roanoke and the Board of Supervisors of the County of Roanoke on July 1, 2004. The WV Authority is chartered pursuant to Chapter 51 of Title 15.2, also known as the Virginia Water and Waste Authorities Act, of the Code to acquire, finance, construct, manage, and maintain fully integrated public water, wastewater, septage disposal, and other related facilities. The WV Authority currently provides potable water service to approximately 56,000 customer accounts (155,000 residents) in the Roanoke Valley, including the Town of Vinton, the City of Salem, Botetourt County, and Franklin County. Since the WV Authority is a political subdivision of the Commonwealth of Virginia, it is not subject to regulation by the Commission.

The Petitioners seek approval of a Water System Purchase Agreement ("Purchase Agreement") whereby Westlake agrees to sell to the WV Authority the Westlake System assets for a purchase price of approximately \$225,000 in cash. The Westlake System serves approximately 195 active connections, 29 unconnected but fully developed lots in the Chestnut Creek subdivision, 26 unconnected but fully developed lots in the Grand Harbour subdivision, and an undetermined number of lots in the Arrowhead subdivision. The Westlake System assets consist of five parcels of real estate; eight groundwater wells; two ground storage tanks;¹ a treatment plant building and two buildings with booster pumps and pressure tanks; and approximately 15,000 feet of four-inch, six-inch, eight-inch, and ten-inch distribution piping.

The Petitioners represent that the eight existing groundwater wells for the Westlake System lack the capacity to adequately serve Westlake's customers. The Virginia Department of Health ordered Westlake to find an additional water source to correct the deficiency. After studying the matter, Westlake determined that its best option was to sell the Westlake System assets to the WV Authority.

The Petitioners represent that an immediate benefit of the transfer will be improved water service for the Westlake System customers. The WV Authority plans to spend approximately \$50,000 to connect the Westlake System permanently to its existing facilities, which utilize Smith Mountain Lake as a water source and employs a state of the art membrane filtration system for water treatment. The permanent interconnection line will also provide fire protection at the entrance to the development. The Petitioners further represent that, as a governmental entity with significant operational and financial resources, the WV Authority is better equipped than Westlake over the long-term to provide reliable service at reasonable rates to the Westlake System customers.

Upon consummation of the transfer, the WV Authority proposes to change the Westlake System's rates to the WV Authority's rates for its Franklin County users. The Petitioners estimate that the monthly bill will increase approximately 3%, from \$31 to \$32 per month, for an average user of 4,000 gallons per month.

NOW THE COMMISSION, upon consideration of the Petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the Petition and, therefore, finds that it should be approved. However, we note that Westlake's corporate status was terminated effective January 3, 2011, by the Clerk of the Commission. We will require Westlake to attain a current active corporate status in Virginia prior to closing.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-88 *et seq.* of the Code, Westlake is hereby granted approval to transfer the Westlake System to the WV Authority as described in the Purchase Agreement discussed herein.

¹ One tank has a 30,000 gallon storage capacity; the other tank has a 40,000 storage capacity.

- (2) Westlake shall attain a current active corporate status in Virginia prior to closing.
- (3) Westlake shall provide all records related to the Westlake System to the WV Authority at closing.
- (4) Westlake shall identify and remove from its records all costs and plant items related to the Westlake System upon closing.
- (5) The Petitioners shall file a Report of Action ("Report") with the Commission within thirty (30) days of completing the transfer, subject to administrative extension by the Director of the Commission's Division of Public Utility Accounting. Included in the Report will be the date of the transfer, the actual sales price, the settlement sheet, any legal documentation, and Westlake's accounting entries recording the transfer. Such accounting entries shall be made in accordance with the Uniform System of Accounts.
- (6) There appearing nothing further to be done, this case shall be dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2010-00102
APRIL 18, 2011**

JOINT PETITION OF
AQUA VIRGINIA, INC.,
and
MARK INVESTMENT CORPORATION

For approval of a transfer of utility assets

ORDER GRANTING APPROVAL

On August 27, 2010, Aqua Virginia, Inc. ("Aqua Virginia"), and the Mark Investment Corporation (collectively, "Joint Petitioners" or "Petitioners") filed a Joint Petition with the State Corporation Commission ("Commission") for approval of the transfer of utility assets pursuant to the Utility Transfers Act¹ and for the amendment of Aqua Virginia's certificate of public convenience and necessity pursuant to the Utility Facilities Act.² Specifically, through the Joint Petition, Aqua Virginia is seeking authority to acquire the Brookwood Manor Subdivision Public Water System ("Brookwood Manor Water System" or "Brookwood System") from the Mark Investment Corporation.

On October 15, 2010, the Joint Petitioners filed a Motion to Suspend Proceedings ("Motion"). In this Motion, the Petitioners moved the Commission to suspend proceedings in this matter until the Commission issued a final order in Case No. PUE-2009-00059.³ The Commission entered an Order in Case No. PUE-2009-00059 on October 29, 2010, that, among other things, set new rates for customers. On January 12, 2011, the Joint Petitioners filed another motion ("Motion II"), in which the Petitioners asked the Commission to establish a procedural schedule governing this proceeding and sought to slightly amend the Joint Petition.⁴ The Commission approved Motion II and established a procedural schedule to review the Joint Petition in its January 31, 2011 Order for Notice and Comment ("Notice Order").

Interested persons were given until March 9, 2011, to file hearing requests or comments. No comments or requests for hearing have been received. On March 8, 2011, the Staff filed its Staff Report. The Staff recommended approval of the proposed transfer of assets and amendment to Aqua Virginia's certificate of public convenience and necessity subject to certain requirements. Staff's recommendations are set forth below:

First, Staff recommends that the Commission approve the addition of the Brookwood System to Aqua Virginia's certificated service territory pursuant to § 56-265.3 D of the Code.

Second, Staff recommends that the Commission direct [the] Mark [Investment Corporation] to provide all records related to the transferred Brookwood System to Aqua Virginia at closing, which henceforth should maintain them in accordance with the Uniform System of Accounts ("USOA").

¹ Va. Code § 56-88 *et seq.*

² See Va. Code § 56-265.3 D.

³ *Application of Alpha Water Corporation; Aqua Virginia, Inc. (Lake Monticello); Aqua S/L, Inc. (Shawnee Land); Aqua Utility-Virginia, Inc. (Lake Shawnee); Blue Ridge Utility Company; Caroline Utilities, Inc.; Earlysville Forest Water Company; Heritage Homes of Virginia, Inc.; Indian River Water Company; James River Service Corporation; Aqua Lake Holiday Utilities, Inc.; Land'Or Utility Company, Inc.; Mountainview Water Company, Inc.; Powhatan Water Works, Inc.; Rainbow Forest Water Corporation; Sydnor Water Corporation; and Water Distributors, Inc., For An Increase in Water and Sewer Rates*, Case No. PUE-2009-00059, Doc. Con. Cen. No. 439067, Order (Oct. 29, 2010).

⁴ In the original filed Joint Petition, Aqua Virginia proposed to continue charging the Brookwood System customers their current rates until on or after March 31, 2011, at which time, if approved by the Commission, the customers would have transitioned to Aqua Virginia's rates. In Motion II, the Petitioners asked to withdraw the request to transfer the Brookwood Manor Water System's customers to Aqua Virginia's rate schedules. Instead, Aqua Virginia would, upon approval of the acquisition, charge rates that are identical to the metered rates currently being charged to the customers by the Mark Investment Corporation. Currently, customers are charged bimonthly rates of \$20.00, plus \$4.50 for each 1,000 gallons. In other words, the proposed transfer would have no rate impact on Brookwood System's customers.

Third, Staff recommends that the Commission direct Aqua Virginia to file a Report of Action ("Report") with the Commission within thirty (30) days after closing. The Report should include the date of the transfer, the actual purchase price, the settlement sheet, any legal documentation, and Aqua Virginia's accounting entries recording the transfer.

Staff disagrees with Aqua Virginia's proposed accounting for the transfer. Under the USOA, when records are not available to verify the original cost of the utility assets that are transferred, the entire purchase price is booked as an acquisition adjustment to Account 114. The Commission has supported this accounting practice in several previous Utility Transfers Act cases involving Aqua Virginia and its subsidiaries. Therefore, Staff recommends that the Commission specifically direct Aqua Virginia to prepare its accounting entries recording the transfer in accordance with the USOA, which includes booking the difference between the purchase price and the verified net book value of the utility assets as an acquisition adjustment to Account 114.

Fourth, Staff recommends that the Commission direct Aqua Virginia to keep separate accounting records for the Brookwood System until such time that its rates are transitioned to Aqua Virginia's rate schedules.

Fifth, Staff recommends that the Commission state that its Utility Transfers Act approval of the Brookwood System transfer has no ratemaking implications. In particular, the Commission should clarify that its approval in this case does not guarantee the recovery of any costs directly or indirectly related to the transfer.

Sixth, Staff recommends that the Commission should direct Aqua Virginia that:

- a) The quality of service in the Brookwood System should not deteriorate due to a lack of maintenance or capital investment;
- b) The quality of service in the Brookwood System should not deteriorate due to a reduction in the number of employees providing services; and
- c) Aqua Virginia should continue to maintain a high degree of cooperation with Staff and should take all actions necessary to ensure Aqua Virginia's timely response to Staff inquiries with regard to its provision of service in Virginia.⁵

On March 31, 2011, Aqua Virginia filed its Response to the Staff Report ("Response"). In its Response, Aqua Virginia objected to the Staff's recommendation to keep a separate set of accounting records for the Brookwood Manor Water System. Instead, Aqua Virginia asked the Commission to only require it to keep separate plant records for the Brookwood System. Aqua Virginia also opposed the Staff's recommendation to record the entire purchase price as an acquisition adjustment.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the proposed transfer will not impair or jeopardize adequate service to the public at just and reasonable rates and, therefore, should be approved. The Commission further finds that the Staff's recommendations, as modified herein, should be accepted and made a part of this Order Granting Approval.

Aqua Virginia objected to the Staff's recommendation to keep a separate set of accounting records for the Brookwood Manor Water System. The Commission agrees that Aqua Virginia should not be required to establish a separate set of "formal" books and records for the Brookwood System. However, the Commission finds, as it has in previous Utility Transfers Act cases, that Aqua Virginia should be required to keep separate more than plant records for the Brookwood Manor Water System.⁶ Therefore, Aqua Virginia is directed to keep separate accounting and financial information for the Brookwood Manor Water System in sufficient detail that will allow it to track all revenues received from the operations of the Brookwood System, all expenses associated with serving the Brookwood System customers (including all joint and common costs allocated to Brookwood System customers from Aqua Virginia or other corporate affiliates), all operating income generated by the operations of the Brookwood System, and all plant records for the Brookwood System on a stand-alone basis. Such information should be kept on an ongoing basis until the Commission finds such information should be merged into Aqua Virginia's books and records.

Aqua Virginia also opposed the Staff's recommendation to record the entire purchase price of the Brookwood System as an acquisition adjustment. However, Aqua Virginia, as a certificated Virginia utility, is required to conform its accounting treatment of the transfer of utility assets to USOA requirements. Under the USOA, when records are not available to verify the original cost of the utility assets that are transferred, the entire purchase price is booked as an acquisition adjustment to Account 114. The Commission has supported this accounting practice in numerous previous Utility

⁵ Staff Report at 6-8.

⁶ See, e.g., *Joint Petition of Blue Ridge Heights Corporation and Water Distributors, Inc. d/b/a Aqua Virginia, Inc., For approval of change of ownership of utility assets, expansion of service territory, and implementation of new rates*, Case No. PUE-2007-00028, 2007 S.C.C. Ann. Rept. 430, Order Granting Joint Petition (Oct. 2, 2007).

Transfers Act cases, including previous cases involving Aqua Virginia and its subsidiaries, and will do so here.⁷ Therefore, the Commission finds that Staff's recommendation related to this issue should be adopted.

In sum, with respect to the Joint Petition, the Commission finds that the transfer of the Brookwood Manor Water System from the Mark Investment Corporation to Aqua Virginia should be approved; the Staff's recommendations numbered (1), (2), (3), (5), and (6) should be adopted; the Staff's recommendation numbered (4) should be adopted, as modified above; and Aqua Virginia's certificate of public convenience and necessity should be amended to include in its service area the geographic area currently served by the Mark Investment Corporation.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the Utility Transfers Act, the Mark Investment Corporation is hereby authorized to transfer the utility assets comprising the Brookwood Manor Water System to Aqua Virginia, consistent with the findings above and subject to the recommendations of the Staff, as modified herein.

(2) Aqua Virginia is hereby authorized to amend its certificate of public convenience and necessity pursuant to the Utility Facilities Act to include the Brookwood Manor Water System service territory.

(3) There appearing nothing further to be done in this matter, this case is hereby dismissed and the papers herein are placed in the files for ended cases.

⁷ See, e.g., *id.*; *Joint Petition of Alpha Water Corporation and Riverview Development Corporation, For approval of a change in ownership of the utility assets and expansion of service area*, Case No. PUE-2006-00077, 2007 S.C.C. Ann. Rept. 344, Final Order (July 9, 2007); *Joint Petition of Alpha Water Corporation and Blundon and Hinton, Incorporated (d/b/a Reedville Water Works), For approval of change of ownership of the utility assets and expansion of service area*, Case No. PUE-2006-00037, 2006 S.C.C. Ann. Rept. 419, Final Order (July 20, 2006).

**CASE NO. PUE-2010-00104
SEPTEMBER 21, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For authority to establish a credit facility

ORDER EXTENDING AUTHORITY GRANTED

On September 1, 2010, Virginia Electric and Power Company ("Virginia Power" or the "Company") filed an application with the State Corporation Commission ("Commission") under Chapters 3 of Title 56 of the Code of Virginia seeking approval of a \$120 million, three-year syndicated revolving credit facility to support its variable rate tax-exempt securities ("Credit Facility"). The Company represented that the initial term of the Credit Facility would be three years from the date of execution of the Credit Facility, or until September 24, 2013. By Order Granting Authority dated September 23, 2010, the Commission granted Virginia Power authority to establish the Credit Facility.

By filing dated September 6, 2011, Request for Authorization to Amend its \$120 Million Revolving Credit Facility, Virginia Power requested authorization to extend the original term of the Credit Facility from September 2013 to September 2016, and to modify the associated fee schedules. Virginia Power indicated that the annual facility fees, which are based on the Company's credit ratings, will be reduced upon execution of the extension. In addition, the margin added to the interest rate index used to calculate interest expense will also be reduced.

NOW THE COMMISSION, upon consideration of the Company's request is of the opinion and finds that extending the Credit Facility for an additional three years while reducing the ongoing fees and applicable margin will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

(1) Applicant is hereby authorized to extend the term of the Credit Facility for three years beyond the initial three-year term, under the terms and conditions and for the purposes set forth in Virginia Power's September 1, 2010 application and its filing request of September 6, 2011.

(2) Virginia Power shall file a copy of the extension agreement promptly after it becomes available.

(3) On or before December 31 of 2011, 2012, 2013, 2014, 2015 and 2016, Virginia Power shall file a report detailing the use of the Credit Facility for the annual period commencing on the date the Credit Agreement is executed to include the date, amount, and applicable interest rate of each loan under the Credit Facility.

(4) Except to the extent modified herein, all of the other provisions of the Commission's September 23, 2010 Order entered in this case shall remain in full force and effect.

(5) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

**CASE NO. PUE-2010-00105
SEPTEMBER 21, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For authority to establish a credit facility

ORDER EXTENDING AUTHORITY GRANTED

On September 1, 2010, Virginia Electric and Power Company ("Virginia Power" or the "Company") filed an application with the State Corporation Commission ("Commission") under Chapters 3 and 4 of Title 56 of the Code of Virginia seeking approval of a \$500 million, three-year syndicated letter of credit facility with its parent company, Dominion Resources, Inc. ("LOC Facility"). The LOC Facility would be established pursuant to a credit agreement between the Company, DRI, the administrative agent and the lenders ("Credit Agreement"). The Company represented that the initial term of the LOC Facility would be three years from the date of execution of the Credit Agreement, or until September 24, 2013. By Order Granting Authority dated September 23, 2010, the Commission granted Virginia Power authority to establish the LOC Facility.

By filing dated September 6, 2011, Request for Authorization to Amend its \$500 Million Letter of Credit Facility, Virginia Power requested authorization to extend the original term of the LOC Facility from September 2013 to September 2016, and to modify the associated fee schedules. Virginia Power indicated that the annual facility fees, which are based on the Company's credit ratings, will be reduced upon execution of the extension. In addition, the margin added to the interest rate index used to calculate interest expense will also be reduced.

NOW THE COMMISSION, upon consideration of the Company's request is of the opinion and finds that extending the LOC Facility for an additional three years while reducing the ongoing fees and applicable margin will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Applicant is hereby authorized to extend the term of the LOC Facility for three years beyond the initial three-year term, under the terms and conditions and for the purposes set forth in Virginia Power's September 1, 2010 application and its filing request of September 6, 2011.
- (2) Virginia Power shall file a copy of the extension agreement promptly after it becomes available.
- (3) On or before December 31 of 2011, 2012, 2013, 2014, 2015 and 2016, Virginia Power shall file a report detailing the use of the LOC Facility for the annual period commencing on the date the Credit Agreement is executed to include the date, amount, and applicable interest rate of each loan under the LOC Facility.
- (4) Except to the extent modified herein, all of the other provision of the Commission's September 23, 2010 Order entered in this case shall remain in full force and effect.
- (5) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

**CASE NO. PUE-2010-00106
SEPTEMBER 21, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For authority to establish a credit facility

ORDER EXTENDING AUTHORITY GRANTED

On September 1, 2010, Virginia Electric and Power Company ("Virginia Power" or the "Company") filed an application with the State Corporation Commission ("Commission") under Chapters 3 and 4 of Title 56 of the Code of Virginia seeking approval of a shared \$3 billion, three-year syndicated revolving credit and competitive loan facility ("Credit Facility") with its parent company, Dominion Resources, Inc. ("DRI"). The Credit Facility was to be established pursuant to a credit agreement between the Company, DRI, the administrative agent and the lenders ("Credit Agreement"). The Company represented that the initial term of the Credit Facility was to be three years from the date of execution of the Credit Agreement, or until September 24, 2013. By Order Granting Authority dated September 23, 2010, the Commission granted Virginia Power authority to establish the Credit Facility to be shared with DRI.

By filing dated September 6, 2011, Request for Authorization to Amend its \$3Billion Revolving Credit and Competitive Loan Facility, Virginia Power requested authorization to extend the original term of the Credit Facility from September 2013 to September 2016, and to modify the associated fee schedules. Virginia Power indicated that the annual facility fees, which are based on the Company's credit ratings, will be reduced upon execution of the extension. In addition, the margin added to the interest rate index used to calculate interest expense will also be reduced.

NOW THE COMMISSION, upon consideration of the Company's request is of the opinion and finds that extending the Credit Facility for an additional 3 years while reducing the ongoing fees and applicable margin will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Applicant is hereby authorized to extend the term of the Credit Facility for three years beyond the initial three-year term, under the terms and conditions and for the purposes set forth in Virginia Power's September 1, 2010 application and its filing request of September 6, 2011.
- (2) Virginia Power shall file a copy of the extension agreement promptly after it becomes available.
- (3) On or before December 31 of 2011, 2012, 2013, 2014, 2015 and 2016, Virginia Power shall file a report detailing the use of the Credit Facility for the annual period commencing on the date the Credit Agreement is executed to include the date, amount, and applicable interest rate of each loan under the Credit Facility.
- (4) Except to the extent modified herein, all of the other provisions of the Commission's September 23, 2010 Order entered in this case shall remain in full force and effect.
- (5) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

**CASE NO. PUE-2010-00112
MARCH 7, 2011**

APPLICATION OF
BOTETOURT FOREST WATER CORP.

For approval of transfer of control and transfer of stock to SLS Enterprises, Inc.

ORDER DENYING APPROVAL

On September 9, 2010, Botetourt Forest Water Corp. ("Botetourt Forest" or "Applicant") filed an application with the State Corporation Commission ("Commission") for approval of the transfer of control and stock of Botetourt Forest to SLS Enterprises, Inc. ("SLS"), pursuant to Chapter 5 of Title 56 ("Utility Transfers Act") of the Code of Virginia ("Code"). On November 5, 2010, the Commission entered an Order Extending Time for Review extending the period of review through January 7, 2011. On December 27, 2010, the Commission entered a second Order Extending Time for Review extending the review period through March 8, 2011.

Botetourt Forest is a Virginia public service corporation owned by Jerry B. Bowen ("Mr. Bowen") and headquartered in Blue Ridge, Virginia. Botetourt Forest is the owner and operator of assets that provide water service to 145 customers in the Heatherstone Subdivision in Botetourt County, Virginia.

SLS is a newly created company formed for the purpose of acquiring Botetourt Forest. All of the outstanding shares of SLS are held by Stuart L. Smith ("Mr. Smith") and SLS Enterprises, Inc. 401(k) Plan F/B/O Stuart Lee Smith. Mr. Smith is the President and operator of SLS as well as a resident of the Heatherstone Subdivision and customer of Botetourt Forest.

Pursuant to an Amended Stock Purchase Agreement, Mr. Bowen proposes to sell, and SLS intends to purchase, all of the common stock of Botetourt Forest. Botetourt Forest would then become a wholly owned subsidiary of SLS. After the proposed transaction, Mr. Smith, through his ownership of SLS, will own and operate the Botetourt Forest water system. The Applicant states that the proposed transaction will not change the way customers receive service and that it is anticipated there will be no change in customer rates. The proposed sales price is \$375,000.

The purpose of the proposed transaction for Mr. Bowen is to dispose of the water system. The purpose of the proposed transaction for Mr. Smith is to become an independent business owner. Mr. Smith views the acquisition of the water system as a financial investment and states that operating the system will be a lifelong endeavor.

In accordance with the Agreement, SLS will purchase all of the shares of Botetourt Forest from Mr. Bowen for \$375,000. At closing of the proposed transaction, SLS will make a down payment of \$175,000 and the remaining balance will be paid through a promissory note. The promissory note will be paid over 180 months in equal payments of \$1,581, which includes an interest rate of five percent. The purchase price was negotiated at arm's length by the parties.

NOW THE COMMISSION, upon consideration of this matter, is not persuaded that the proposed transfer of control and stock will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates. As such, we find the application should be denied. We note that the book value of the Botetourt Forest water system is approximately \$49,245 and that the proposed purchase price is \$375,000. We further note that the application and supporting materials do not provide us adequate information about the effect of this sale on future rates, which is of particular concern when the purchase price is so much higher than the book value of the company being purchased and, significantly, that a large portion of the purchase price is being financed by debt. For example, if it is assumed by the purchaser that customers will provide funds through their rates to provide recovery of, or return on the equity and to service the debt associated with the proposed transaction, significant rate changes could be sought in the future as a result of the proposed transaction.

We do not, however, foreclose another application for the proposed transfer that alters the terms of the transaction or clarifies how such a transfer would neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates, now or in the foreseeable future.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-88.1 and 56-90 of the Code, the proposed transfer of stock and control of Botetourt Forest is hereby denied.

(2) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2010-00112
MARCH 28, 2011**

APPLICATION OF
BOTETOURT FOREST WATER CORP.

For approval of transfer of control and transfer of stock to SLS Enterprises, Inc.

ORDER GRANTING PETITION FOR RECONSIDERATION

On March 7, 2011, the State Corporation Commission ("Commission") issued its Order Denying Approval and dismissed this matter. On March 28, 2011, pursuant to Rules 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-220, *Petition for rehearing or reconsideration*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, Botetourt Forest Water Corp., ("Botetourt") filed its Petition for Reconsideration ("Petition").

NOW THE COMMISSION, having considered the Petition and the applicable law, is of the opinion and finds that the Petition should be granted to extend the Commission's jurisdiction.

Accordingly, IT IS ORDERED THAT:

- (1) Botetourt's Petition is granted. The Commission's Order of March 7, 2011, is hereby suspended.
- (2) This matter is continued pending further order of the Commission.

**CASE NO. PUE-2010-00112
APRIL 15, 2011**

APPLICATION OF
BOTETOURT FOREST WATER CORP.

For approval of transfer of control and transfer of stock to SLS Enterprises, Inc.

ORDER ON RECONSIDERATION

On March 7, 2011, the State Corporation Commission ("Commission") issued its Order Denying Approval and dismissed this matter. On March 28, 2011, pursuant to Rules 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-220, *Petition for rehearing or reconsideration*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, Botetourt Forest Water Corp. ("Applicant") filed its Petition for Reconsideration ("Petition"). For the purpose of extending its jurisdiction, the Commission issued its Order Granting Petition for Reconsideration on March 28, 2011.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Petition should be denied.

We previously noted that "the book value of the Botetourt Forest water system is approximately \$49,245 and that the proposed purchase price is \$375,000" and that "if it is assumed by the purchaser that customers will provide funds through their rates to provide recovery of, or return on the equity and to service the debt associated with the proposed transaction, significant rate changes could be sought in the future as a result of the proposed transaction."¹ The Petition does not alter our conclusion herein.

The Applicant makes three arguments in support of its request. First, the "Applicant respectfully argues that the book value of the company does not reflect fair market value of the Applicant."² Second, the Applicant asserts that it "has maintained the water system in good repair and working condition."³ Third, the "Applicant respectfully argues that historical revenues for the Applicant adequately support the debt service proposed by the transaction."⁴ The Applicant, however, has made no showing as to the additional capital and/or maintenance expenditures that might be required over the proposed new 15-year debt service for a system that has already been in operation for approximately 35 years. Nor has the Applicant shown that expected revenues can reasonably cover the new debt service in addition to any potential increases in expenditures or taxes. Further, the Applicant has not shown sufficient added value to customers that justifies the proposed purchase price and the added risk of the long-term financial commitment. Our concern that the purchase price places a potentially large financial burden on customers remains. Thus, as previously explained, we are "not persuaded that the proposed transfer of control and stock will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates."⁵

¹ Order Denying Approval at 2-3.

² Petition for Reconsideration at 2.

³ *Id.* at 3.

⁴ *Id.* at 2.

⁵ Order Denying Approval at 2.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition for Reconsideration is hereby denied.
- (2) This matter is dismissed.

**CASE NO. PUE-2010-00115
MAY 24, 2011**

APPLICATION OF
PATH ALLEGHENY VIRGINIA TRANSMISSION CORPORATION

For approval and certification of electric transmission facilities under Va. Code § 56-46.1 and the Utility Facilities Act, Va. Code § 56-265.1 *et seq.*

ORDER GRANTING WITHDRAWAL

On September 20, 2010, PATH Allegheny Virginia Transmission Corporation ("PATH-VA") filed a second application ("Application") with the State Corporation Commission ("Commission") for approval and certification of electric transmission facilities pursuant to the Utility Facilities Act, § 56-265.1 *et seq.* of the Code of Virginia ("Code"), and § 56-46.1 of the Code.¹ PATH-VA requests authority to construct, own, operate, and maintain the Virginia portions of the proposed Potomac-Appalachian Transmission Highline ("PATH Project"). The PATH Project is a proposed 765 kilovolt ("kV") transmission line that would originate at the existing Amos Substation near St. Albans, West Virginia; cross the Virginia counties of Frederick, Loudoun, and Clarke; and terminate at the proposed Kemptown Substation near New Market, Maryland.

On October 20, 2010, the Commission issued an Order for Notice and Hearing that, among other things, directed notice of the Application, established a procedural schedule, and appointed a Hearing Examiner to conduct all further proceedings in this matter.

On December 21, 2010, PATH-VA filed a Motion to Hold Proceeding in Abeyance ("Motion for Abeyance"), which proposed extensions to the procedural schedule based on updated load flow projections conducted by PJM Interconnection, LLC ("PJM"). Senior Hearing Examiner Alexander F. Skirpan, Jr., denied the Motion for Abeyance but convened a prehearing conference for the purpose of determining scenarios for updated analyses to be conducted by PATH-VA and PJM.

By Ruling dated January 19, 2011, the Senior Hearing Examiner directed PATH-VA to file specific updated analyses by March 15, 2011, and approved a corresponding extension of the procedural schedule. The updated PJM analyses directed by the Senior Hearing Examiner were as follows:

1. **Updated Base Case** - The Updated Base Case load flow analysis shall reflect: (i) PJM's 2011 Load Forecast; (ii) the most currently available generation and generation queues; (iii) the results of PJM's May 2010 [Reliability Pricing Model] auction, including demand response; and (iv) an update of PJM-approved transmission system projects, including reactive power support. The Updated Base Case scenario should not include: (i) the PATH Project; (ii) the rebuilding of the Mt. Storm - Doubs line; (iii) Dominion Alternative 1 (the rebuilding of the Mt. Storm - Doubs line, the installation of a 900 MVAR SVC on the 230 kV bus at Loudoun and the T157 tap 500 kV bus, the installation of 900 MVAR of static capacitors at other locations, the installation of series compensation on the Meadow Brook - Loudoun 500 kV line, and the rebuilding of the Pruntytown - Mt. Storm 500 kV line); (iv) the Liberty Project;
2. **PATH Case** - This scenario shall include the Updated Base Case load flow analysis and the PATH Project;
3. **Mt. Storm - Doubs Rebuild Case** - This scenario shall include the Updated Base Case load flow analysis and the rebuilding of the Mt. Storm - Doubs line;
4. **Dominion Alternative 1 Case** - This scenario shall include the Updated Base Case load flow analysis and Dominion Alternative 1; and
5. **Liberty Case** - This scenario shall include the Updated Base Case load flow analysis and the Liberty Project.²

On February 28, 2011, PATH-VA filed a Motion to Withdraw Application ("Motion to Withdraw"), in which PATH-VA stated as follows:

PJM has now advised PATH-VA that using the updated load forecast and current transmission topology, the projected appearance of violations of [North American Electric Reliability Corporation ("NERC")] Reliability Standards that the PATH Project was designed to resolve has advanced into the future. Consequently, the PJM Board of Managers has taken official action to hold the PATH Project in abeyance as an [Regional Transmission Expansion Plan ("RTEP")] baseline project. . . . PATH-VA still believes that underlying system

¹ PATH-VA's initial application was considered in Application of PATH Allegheny Virginia Transmission Corporation, For certificates of public convenience and necessity to construct facilities: 765 kV transmission line through Loudoun, Frederick, and Clarke Counties, Case No. PUE-2009-00043.

² Jan. 19, 2011, Senior Hearing Examiner's Ruling at 2.

weaknesses eventually will require backbone transmission projects to ensure the future stability of the regional transmission grid. Under the present circumstances, however, withdrawing the Application is in the public interest, and the PATH applicants in Maryland and West Virginia today will be taking steps to withdraw the pending applications in those jurisdictions. PATH-VA will await further direction from PJM and will continue to fulfill its obligations under the PJM Tariff and the Consolidated Transmission Owners Agreement.³

On March 17, 2011, the Senior Hearing Examiner received oral argument on PATH-VA's Motion to Withdraw. During oral argument, counsel to PATH-VA indicated that reliability violations previously cited by PATH-VA in support of constructing the PATH Project no later than 2015 had moved beyond 2026 based on certain updated studies conducted by PJM.⁴ These updated results were illustrated, in part, by a slide presented to the PJM Transmission Expansion Advisory Committee ("TEAC Slide") dated March 10, 2011.⁵ The TEAC Slide summarizes the results of four scenarios that incorporate the updated 2011 PJM Load Forecast, which are identified as "Base Case"; "Base Case + Warren"; "[Renewable Portfolio Standard ("RPS")] to Existing"; and "RPS to At Risk." The TEAC Slide also summarizes results that incorporate a different load forecast, which are identified as "Base Case" and "Base Case + Warren." The record indicates that "Warren," as referenced in the TEAC Slide, is a gas-fired generation project currently under development in Warren County, Virginia.⁶

On April 12, 2011, the Senior Hearing Examiner issued a report that explained the procedural history of this case and made certain findings and recommendations ("Senior Hearing Examiner's Report" or "Report"). Specifically, the Senior Hearing Examiner made the following findings:

- (1) PATH-VA's Motion to Withdraw should be granted;
- (2) PATH-VA should be directed to preserve the analyses underlying the TEAC Slide;
- (3) PATH-VA should be directed to file the following information in this docket: (i) the solution of the 'Base Case' and 'Base Case + Warren' as text files; (ii) the power flow tests used to identify NERC thermal violations for the 'Base Case' and 'Base Case + Warren' scenarios in PSS/e electronic format; (iv [sic]) the results of the studies summarized on the TEAC Slide for the 'Base Case' and 'Base Case + Warren' in a format and level of detail equivalent to Exhibit Nos. 1-3, of Mr. Paul McGlynn's prefiled direct testimony in this proceeding; and (iv) tables of generation loaded into the 'Base Case' and 'Base Case +Warren' and what generation was reduced in the at-risk scenario.
- (4) Any future application for the PATH Project should include information regarding PJM's 2012 or later RTEP;
- (5) Any future application for the PATH Project should include an analysis of changes in circumstances (as measured from the 'Base Case' of the TEAC Slide), including changes in generation, demand response, and energy efficiency resources;
- (6) Any future application for the PATH Project should provide information on the PATH Project's original routes (including routes that do not impact Virginia), consistent with other proposed and alternative routes; and
- (7) The Protective Ruling in this proceeding should be amended as provided [in the Senior Hearing Examiner's Report].⁷

³ Motion to Withdraw at 2.

⁴ Tr. 415-21 (Gary).

⁵ By filing dated March 18, 2011, PATH-VA filed the TEAC Slide in this docket.

⁶ Tr. 417 (Gary).

⁷ Senior Hearing Examiner's Report at 17-18. More specifically, the seventh recommendation in the Report was to modify paragraphs (5) and (18) of the October 21, 2010 Protective Ruling to read as follows:

(5) All Confidential Information filed or produced by a party shall be used solely for the purpose of this proceeding (including any appeals) and, by leave of the Commission, in any future, related application for the PATH Project. Any use of such Confidential Information at a hearing shall be governed by the notice requirements contained in Paragraph 15(a) herein.

(18) Two years from the conclusion of this proceeding (including any appeals), any originals or reproductions of any Confidential Information produced pursuant to this Protective Ruling shall be returned to the producing party, if requested by the producing party, or destroyed. In addition, at such time, any notes, analysis or other documents prepared containing Confidential Information shall be destroyed. At such time, any originals or reproductions of any Confidential Information, or any notes, analysis or other documents prepared containing Confidential Information in Staff's possession, will be returned to the producing party, destroyed or kept with Staff's permanent work papers in a manner that will preserve the confidentiality of the Confidential Information. Insofar as the provisions of this Protective Ruling restrict the communications and use of the Confidential Information produced thereunder, such restrictions shall continue to be binding after the conclusion of this proceeding (including any appeals) as to the Confidential Information.

Based on these findings, the Senior Hearing Examiner's Report recommended that the Commission enter an order in this matter that adopts the findings of the Report, grants PATH-VA's Motion to Withdraw, and dismisses this case without prejudice.⁸

The following parties filed comments on the Senior Hearing Examiner's Report: PATH-VA; Piedmont Environmental Council ("Piedmont"); Theresa Ghiorzhi; and Alfred T. and Irene A. Ghiorzhi ("Ghiorzhis").

NOW THE COMMISSION, having considered the pleadings and the record developed in this matter, finds as follows. We adopt the findings and recommendations of the Senior Hearing Examiner's Report. We grant the Motion to Withdraw subject to the requirements in the Report as set forth above. PATH-VA shall file forthwith the information that the Report recommends to be filed in this docket. We further clarify that this docket will remain open temporarily for the limited purpose of receiving this information from PATH-VA.⁹

In addition, the Senior Hearing Examiner explained that, under Virginia law, this legislative proceeding must be dismissed without prejudice:

In response to PATH-VA's Motion for Modification of Procedural Schedule in PUE-2009-00043, many respondents argued that that application be dismissed with prejudice. In the Hearing Examiner's Ruling dated November 24, 2009, in that case, the issue of dismissing with prejudice was addressed. In that ruling it was pointed out that the issuance of a certificate of public convenience and necessity generally falls within the Commission's legislative authority, which requires the Commission to determine if a proposed new facility is 'in the public interest.' Because the public interest may change over time due to changes in circumstances, a strict legal application of 'with prejudice' is not available in applications for certificates of public convenience and necessity under § 56-46.1 and the Utilities Facilities Act of the Code of Virginia.¹⁰

We adopt the Senior Hearing Examiner's recommendation and dismiss this case without prejudice.

Accordingly, IT IS ORDERED THAT this case is dismissed, subject to PATH-VA's compliance with the requirements set forth herein.

⁸ *Id.* at 18.

⁹ We note that no additional clarification is needed to ensure compliance with this Order. See Piedmont's Apr. 28, 2011 Comments at 3-4. Additionally, we reject outstanding requests for further clarification of the Senior Hearing Examiner's Report. See *id.* at 4; Ghiorzhis' Apr. 29, 2011 Comments at 1-2.

¹⁰ See Senior Hearing Examiner's Report at 10 (internal quotes omitted).

**CASE NO. PUE-2010-00116
FEBRUARY 7, 2011**

PETITION OF
UNITED WATER VIRGINIA INC.

For extension of time to file Annual Informational Filing

FINAL ORDER

On September 20, 2010, United Water Virginia Inc. ("United Water Virginia" or "Company") filed a Request for Extension of Time to File Annual Informational Filing ("Motion") with the State Corporation Commission ("Commission"). In its Motion, United Water Virginia requested that the Commission grant an extension of time for the filing of its Annual Informational Filing ("AIF") for the twelve months ended June 30, 2010, or, in the alternative, that the Commission waive the requirement that the Company file an AIF. In support of its request, United Water Virginia noted that it planned, subject to regulatory approval, to merge with its parent company, Virginia-American Water Company.

On September 30, 2010, the Commission issued an Order Granting Request for Extension of Time to File Annual Informational Filing ("Order"). In the Order, the Commission determined that if United Water Virginia did not file for regulatory approval of a merger with Virginia-American Water Company by December 30, 2010, then United Water Virginia must file its AIF on or before February 28, 2011, and if United Water Virginia did file for regulatory approval of a merger with Virginia-American Water Company on or before December 30, 2010, the Company's AIF filing would be extended pending the issuance of a Commission decision in that merger proceeding.

On September 28, 2010, Virginia-American Water Company and United Water Virginia filed a joint petition with the Commission pursuant to Utility Transfers Act of the Code of Virginia¹ requesting exemption from the filing and prior approval requirements of the Utility Transfers Act or, alternatively, approval of a plan of merger. Following this merger, United Water Virginia would not file a separate AIF, but instead would be included in Virginia-American Water Company's AIF, which is currently based on the twelve-month period ending September 30th of each year. The Commission granted approval of the merger between Virginia-American Water Company and United Water Virginia in its December 21, 2010 Order Granting Approval.² On December 21, 2010, the merger between Virginia-American Water Company and United Water Virginia was completed.

¹ Va. Code § 56-88 *et seq.*

² See *Joint Petition of United Water Virginia Inc. and Virginia-American Water Company, For exemption from the filing and prior approval requirements of the Utility Transfers Act and Affiliates Act or, alternatively, for approval of a plan of merger pursuant to the Utility Transfers Act and Affiliates Act*, Case No. PUE-2010-00118, Order Granting Approval, Doc. Con. Cen. No. 441235 (Dec. 21, 2010). On October 22, 2010, United Water Virginia and Virginia-American Water Company amended the joint petition pursuant to the Affiliates Act of the Code of Virginia to also request exemption from the filing and prior approval requirements of the Affiliates Act or, alternatively, approval of a plan of merger.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that United Water Virginia shall no longer file a separate AIF, but instead shall be included in all future Virginia-American Water Company AIFs.

Accordingly, IT IS ORDERED THAT:

(1) United Water Virginia shall no longer file a separate AIF, but instead shall be included in all future Virginia-American Water Company AIFs.

(2) There being nothing left to be done in this case, it is hereby dismissed.

**CASE NO. PUE-2010-00117
MARCH 24, 2011**

PETITION OF
CENTRAL VIRGINIA ELECTRIC COOPERATIVE

For approval out of time of purchase of electrical facilities under the Utility Transfers Act and for certification of such facilities under the Utility Facilities Act

ORDER GRANTING APPROVAL

On September 27, 2010, Central Virginia Electric Cooperative ("CVEC" or "Cooperative"), filed a petition and application with the State Corporation Commission ("Commission") for approval out of time of the acquisition of utility assets pursuant to the Utility Transfers Act¹ and for certification of such facilities pursuant to the Utility Facilities Act² ("Petition").

CVEC stated that, in order to increase its use of renewable energy generation resources and to augment and diversify its power supply sources, the Cooperative purchased Harris Bridge Hydro Plant ("Hydro Plant") from Blue Sky Investments, LLC ("Blue Sky"), on December 8, 2009, for a purchase price of \$315,000. The Cooperative further stated that the Hydro Plant is a run-of-river hydroelectric generation unit located on the Rockfish River in Nelson County, Virginia and that the Hydro Plant is rated 0.400 megawatts ("MW") but currently has only one 0.192 MW generation unit operational. According to the Cooperative, it will soon replace an inoperable generator with a new 0.075 MW generator, bringing the facility's total capacity to 0.267 MW.³

The Petition was filed on September 27, 2010, even though the acquisition had occurred on December 8, 2009. However, the Cooperative asserted that granting the approval out of time would result in no harm to the public, including CVEC's members, because prior to the transaction CVEC was purchasing the entire output of the Hydro Plant from Blue Sky. The Petition further stated that CVEC intends to comply with all applicable Virginia laws and regulations in the future.⁴

On November 12, 2010, the Commission issued its Order for Notice and Comment that, among other things, directed CVEC to provide public notice of its Petition, afforded interested persons an opportunity to file comments or request a hearing on the Petition, and directed the Commission Staff ("Staff") to review the Petition and present its findings and recommendations in a Staff Report.

No interested persons filed comments or requested a hearing in this proceeding. On February 9, 2011, the Staff filed its Staff Report in which it recommended that the Commission approve the acquisition of the Hydro Plant by CVEC and issue a certificate of public convenience and necessity as requested by the Cooperative in its Petition. The Staff noted that prior to the transaction, CVEC purchased the entire output of the Hydro Plant from Blue Sky and that, since the transaction, CVEC has continued to use its entire output to provide electric service to its members.⁵ The Staff reported that adding the anticipated cost of the Hydro Plant to CVEC's 2009 Cost of Purchases and Generation, the transaction would result in an increase in power cost of \$0.001 per kilowatt hour.⁶ The Staff further noted that the Cooperative anticipates that, after the first four years of operation, the Hydro Plant will slightly reduce power cost.⁷ The Staff concluded that the acquisition "will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates" and that "there is not expected to be any adverse effect upon the reliability of electric service provided by CVEC or a material adverse effect upon the rates paid by CVEC's customers" due to the transaction.⁸

¹ Va. Code § 56-88 *et seq.*

² Va. Code § 56-265.1 *et seq.*

³ Petition at 1- 2.

⁴ *Id.* at 2.

⁵ Staff Report at 3-4.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.* at 4.

On February 16, 2011, CVEC filed a letter with the Commission in which it stated that it has no objection to the Staff Report and that it chose not to file rebuttal testimony.

NOW THE COMMISSION, having considered the Petition, other documents filed in this case, and the applicable law, is of the opinion and finds that the above-described transfer will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and should, therefore, be approved. We further find that CVEC's acquisition of the Hydro Plant: (i) will have no material adverse effect upon the rates paid by the Cooperative's members; (ii) will have no material adverse effect upon reliability of electric service provided by CVEC to its members; and (iii) is not contrary to the public interest. Accordingly, we find that the acquisition is justified by the public convenience and necessity and that a certificate of public convenience and necessity should be issued to CVEC for the Hydro Plant.

We note, however, that § 56-89 of the Code of Virginia ("Code") requires our prior approval for the acquisition of utility assets and that such approval was not sought or obtained prior to the above-referenced acquisition. While we believe that no further action is warranted in this instance, we remind the Cooperative that it should be more diligent in seeking and obtaining prior approval from the Commission for any future actions falling within the Utility Transfers Act.

Accordingly, IT IS ORDERED THAT:

- (1) The Commission, having found that the public convenience and necessity require the acquisition by CVEC of the subject Hydro Plant for use in public utility service, hereby grants the Cooperative a certificate therefore, pursuant to § 56-265.2 of the Code.
- (2) The Commission's Division of Energy Regulation is hereby directed to issue Certificate No. ET-194 to CVEC for the Hydro Plant. By this certificate of public convenience and necessity, CVEC is hereby authorized under § 56-265.2 A of the Code to own and operate the subject Hydro Plant referenced above and described in its Petition, the same being an existing electrical power generation facility located in Nelson County, Virginia.
- (3) Pursuant to §§ 56-89 and 56-90 of the Code, approval is hereby granted for the sale of the Hydro Plant from Blue Sky to CVEC, which sale was effected on December 8, 2009.
- (4) CVEC shall book its acquisition of the Hydro Plant approved herein in accordance with the Uniform System of Accounts for Electric Cooperatives.
- (5) The approval granted herein shall have no ratemaking implications. More specifically, the approval granted herein shall not guarantee the recovery of any costs directly or indirectly related to the acquisition of the Hydro Plant.
- (6) There being nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2010-00124
JANUARY 12, 2011**

PETITION OF
APPALACHIAN POWER COMPANY

For waiver of certain provisions of the Rules Governing Retail Access to Competitive Energy Services

FINAL ORDER

On October 12, 2010, Appalachian Power Company ("Appalachian") filed with the State Corporation Commission ("Commission") a petition ("Petition") requesting a waiver from compliance with 20 VAC 5-312-90(J)(3), which is Rule 90(J)(3) of the Commission's Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 *et seq.* ("Retail Access Rules").¹

On November 2, 2010, the Commission issued its Order Inviting Comments that invited comments from interested persons, permitted Commission Staff ("Staff") to file comments on the Petition, and allowed Appalachian to respond to any comments. In response to the Order Inviting Comments, Staff, by counsel, filed comments indicating that it does not oppose approval of the Petition. Appalachian did not file a response to Staff's comments.

NOW THE COMMISSION, upon consideration of Appalachian's Petition and the comments filed, is of the opinion and finds that Appalachian should be granted waiver of Rule 90(J)(3) of the Commission's Retail Access Rules on the terms stated in the Petition.

¹ 20 VAC 5-312-90(J)(3) of the Retail Access Rules states as follows:

J. The local distribution company shall comply with the following additional billing information standards applicable to the bills of customers that are not subject to demand-based billing charges and that purchase regulated electricity supply service or regulated natural gas supply service from the local distribution company:

....

3. The investor-owned electric local distribution company shall provide on each bill a "price-to-compare" value, stated in cents per kilowatt-hour, representing the cost of regulated electricity supply service that would be applicable if such service were purchased from a competitive service provider. The appropriate use and limitations of such "price-to-compare" value shall be stated on the bill.

Accordingly, IT IS ORDERED THAT:

- (1) Appalachian is granted a waiver of 20 VAC 5-312-90(J)(3) but shall furnish customer-specific price-to-compare information to any customer who requests such information.
- (2) There being nothing further to be done in this matter, it is hereby dismissed, and the papers filed herein shall be placed in the file for ended causes.

**CASE NO. PUE-2010-00126
APRIL 28, 2011**

APPLICATION OF
SOUTH BOSTON ENERGY, LLC

For approval to construct, own and operate a nominal 49.9 MW biomass electric generating facility in Halifax County pursuant to Va. Code § 56-580 D

ORDER ON APPLICATION

On October 18, 2010, South Boston Energy, LLC ("SBE"), filed an application ("Application") with the State Corporation Commission ("Commission"), pursuant to 5 VAC 5-20-80 of the Commission's Rules of Practice and Procedure ("Rules of Practice"), for the issuance of a certificate of public convenience and necessity ("certificate") under § 56-580 D of the Code of Virginia ("Code") for approval to construct, own, and operate a 49.9 MW (gross) biomass electric generating facility in Halifax County, Virginia ("Facility").

The Facility will be located east of the town of South Boston, at the south end of State Route 879. The proposed site is a "brownfield" site, previously the location of a Georgia-Pacific particle board manufacturing facility that has now been removed. According to SBE, the Facility will burn biomass fuel, primarily consisting of wood byproducts, to generate electricity. SBE states that it will obtain additional fuel from other sources, including non-slash waste wood, sawdust, wood shavings, and residues from wood processing industries. According to SBE, in order to obtain wood fuels, it will execute contracts with a number of suppliers such as logging operations, wood processing industries, and others.

In its Application, SBE explains that it is owned by NOVI Energy and that NOVI Energy is developing the Facility. SBE also states that Northern Virginia Electric Cooperative ("NOVEC") will be the ultimate owner and operator of SBE and that NOVEC will be involved with the development of the Facility to ensure that the design, construction, and operation of the Facility will be appropriate to meet the needs of NOVEC's customers.¹ SBE states that the permanent financing of the Facility is expected to be provided by Rural Utilities Service by way of a loan to NOVEC.²

In support of its Application, SBE states that the Facility will not have a substantial impact on the environment. SBE states that it has proposed to the Virginia Department of Environmental Quality ("DEQ") to limit emissions from all New Source Review-regulated pollutants to less than 250 tons per year and, because of this, the Facility will not be subject to Major New Source Review regulation. SBE expects to meet the Facility's water needs by utilizing non-sewage wastewater, or grey water, that it will obtain from the neighboring Halifax County Service Authority ("HCSA") municipal wastewater treatment plant. SBE further states that because of the arrangement with HCSA, no water discharge permit is required for the Facility. SBE indicates in its Application that the Facility will have minimal impact on wetlands. According to SBE, the development, construction, and operation of the Facility will create jobs and have a positive impact on economic development in Halifax County.

Coincident with its Application, SBE filed with the Commission its Motion for Interim Authority in which the Applicant requested that the Commission grant SBE authorization to commence certain construction activities associated with the Facility. In support of its Motion, SBE states that the American Recovery and Reinvestment Act of 2009 makes funds available for certain energy-related projects and that the proposed Facility may be eligible for cash payments in lieu of tax credits ("IRS Cash Grant") in the amount of 30% of qualified expenditures, provided that significant physical work on the Facility commences by December 31, 2010, and continues until completion of the project. SBE further states that the IRS Cash Grant is contingent on a Facility in-service date of December 31, 2013.

On November 9, 2010, the Commission issued an Order for Notice and Hearing that, among other things: (1) established the procedural requirements for this matter; (2) scheduled a public evidentiary hearing to commence on February 1, 2011; (3) directed SBE to provide direct and published notice of this proceeding; (4) granted SBE's Motion for Interim Authority as set forth in such Order; and (5) directed NOVEC to enter an appearance as a necessary party to this proceeding.

On November 12, 2010, NOVEC filed an appearance and joined SBE as an applicant (collectively, "Applicants") in this matter.

DEQ coordinated an environmental review of the proposed Facility by a number of governmental agencies and, on January 11, 2011, submitted a report thereon ("DEQ Report").

On January 12, 2011, the Commission issued an Order granting the Applicants' motion to revise the procedural schedule and to commence the evidentiary hearing on March 15, 2011.

¹ SBE has subsequently been transferred to NOVEC. Tr. 85 (Dailey).

² According to the Application, SBE, NOVI Energy, and NOVEC do not anticipate seeking any additional Commission authorization for NOVEC to take ownership of the Facility. Application at 1-2, n.1.

On February 1, 2011, the Commission convened the public hearing, as previously scheduled, to receive testimony from public witnesses.³ In addition, the Commission received written and/or electronic public comments on the Application.⁴

On March 15, 2011, the Commission held the evidentiary hearing in this matter. The following parties participated and presented the testimony of one or more witnesses: Applicants; Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); and the Commission's Staff ("Staff"). No public witnesses appeared to testify. On April 7, 2011, the Applicants, Consumer Counsel, and Staff filed post-hearing briefs.

The Applicants

respectfully request that the Commission grant a [certificate] for the Project as promptly as possible, as the Project conforms with Virginia law; will further reliable electric service, and will result in a minimal impact on the environment, an efficient use of resources, and positive economic development in the Commonwealth; and, finally, is fully in the public interest.⁵

Consumer Counsel states that

[t]aken together, the lack of a formal evaluation process that resulted in the selection of the biomass facility to meet NOVEC's power supply need, the incorrect cost methodology utilized that skewed the comparison to make it the least-cost alternative, and the question of the adequacy of the fuel supply create a situation where Consumer Counsel cannot endorse this proposed project as being in the ratepayers' interest.⁶

Staff states that its

concerns notwithstanding, the Staff is not opposed to this project, *per se*. . . [but] believes that any approval of the Application should be made subject to the conditions suggested by the Staff in this brief, as a means of mitigating, at least in part, the considerable concerns about this generation project expressed by both the Commission Staff and Consumer Counsel.⁷

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Application is granted as set forth herein.⁸

Code of Virginia

Section 56-580 of the Code provides in part as follows:

The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. In review of 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 on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1 . . .

Section 56-265.2 A states in part as follows:

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.

³ The following persons testified at the hearing: Delegate James E. Edmunds, II; Mike Sexton, Director of the Halifax Industrial Development Authority; George Nester, Halifax County Administrator; Doug Bowman, Halifax County Board of Supervisors; Joel Cathey; J.A. Devin; Larry Clark, Chairman of the Board of the Halifax County Chamber of Commerce and Deputy Superintendent of Schools for Halifax County; Chris Lumsden, Chief Executive Officer for Halifax Regional Health System; Nancy Pool, President of the Halifax County Chamber of Commerce; K.R. Snead, Halifax County Board of Supervisors; Kenneth Hodges; Michel A. King, President of Old Mill Power Company; Edward Owens, Vice Mayor of South Boston and member of the Virginia Tobacco Commission; Al Weed, Chairman of Public Policy Virginia; and Daniel Letovsky, Legislative Assistant for Delegate Jackson H. Miller.

⁴ These included comments from: Southern Environmental Law Center; Barbara Kessinger; Kathy L. Stone; Jennifer A. Brophy-Price; Gisi M. Stewart; Delegate David B. Albo; Senator Linda T. Puller; Delegate Jackson H. Miller; Delegate Luke E. Torian; Delegate James E. Edmunds, II; Senator Charles J. Colgan; Delegate Mark L. Keam; Alan G. Merten, President, George Mason University; Delegate Richard L. Anderson; Delegate Timothy D. Hugo; Delegate Joe T. May; Robert Hurt, House of Representatives, United States Congress; and Gerald E. Connolly, House of Representatives, United States Congress.

⁵ Applicants' April 7, 2011 Post-hearing Brief at 34.

⁶ Consumer Counsel's April 7, 2011 Post-hearing Brief at 9.

⁷ Staff's April 7, 2011 Post-hearing Brief at 28.

⁸ Such approval shall have no ratemaking implications.

Section 56-46.1 A states in part as follows:

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. ... In every proceeding under this subsection, the Commission 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) shall 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.

Section 56-596 A states that "[i]n all relevant proceedings pursuant to [the Virginia Electric Utility Regulation Act], the Commission shall take into consideration, among other things, the goal of economic development in the Commonwealth."

Application

In the following sections of this Order, we apply the statutory standards to the proposed Facility and approve the Application subject to specific requirements. Our path to reaching this result, however, has been made particularly arduous by the numerous deficiencies in NOVEC's case apparent during this proceeding.

NOVEC's explanations of how it chose this Facility have been contradictory. The Applicants originally asserted that "NOVEC did not evaluate the proposed Facility against an alternative coal-fired, gas-fired or other fossil fueled plants."⁹ Indeed, the Applicants steadfastly confirmed this: "[T]he decision to construct the [Facility] ... was based upon an analysis of resources that would qualify as a renewable resource," and "[f]or purposes of this application, that is the only analysis that was under consideration for this portion of its power supply portfolio."¹⁰ When confronted with compelling criticisms and concerns from Consumer Counsel and Staff, however, the Applicants changed their message and asked the Commission to believe something quite different, *i.e.*, that the Facility was not evaluated only against other renewables: "[The Facility] had to be deemed competitive against not only other renewable alternatives available to NOVEC at the time but also competitive against the known cost of other non-renewable projects under consideration by NOVEC during the same period."¹¹ Such changes in recollection appear disingenuous.

The Applicants' original submissions and data responses also lacked critical information that would reasonably be expected in a proceeding such as this. For example, Consumer Counsel and Staff noted that the cost estimates used to evaluate the Facility were not supported in the Application, that the Applicants' responses lacked sufficient detail to provide useful comparative analyses, and that the Application did not contain a completed fuel study for the Facility.¹² Moreover, the Applicants' attempt at a justification, that they "assemble[d] and file[d]" the Application "expeditiously," which "hampered the ability" to fully explain their case, is equally unsatisfactory.¹³

The Applicants also expected the Commission to countenance distorted cost comparisons favoring NOVEC's generation preference. NOVEC received \$50 million when, as further discussed below, it withdrew from Old Dominion Electric Cooperative ("ODEC").¹⁴ In cost comparisons, NOVEC reduced the cost of its preferred Facility by this \$50 million but opposed attempts to do the same for other options, which prevented the Facility and the alternatives from being evaluated on a comparable basis.¹⁵ Only at the end of this proceeding, after pointed questioning from the bench, did NOVEC concede the obvious: in an accurate cost comparison, the \$50 million would be applied consistently across all of the potential alternatives.¹⁶

The Applicants also presented inconsistent positions on the schedule for this proceeding. In brief, the Applicants opine that they "had hoped that there would be no delay between the evidentiary hearing and a Commission Order" and question the delay caused by the filing of post-hearing briefs.¹⁷ This

⁹ Ex. 8 at 9 (Dailey). *See also id.* ("In response to the national energy policy discussions regarding carbon legislation and carbon policies, NOVEC determined that it was prudent to go forward with evaluation of carbon-neutral and renewable energy resource facilities to diversify its current portfolio.")

¹⁰ Tr. 197; Ex. 16C (NOVEC discovery response). *See also* Ex. 14 (NOVEC discovery response) ("NOVEC solicited proposals for select counterparties for purchased power arrangements and conventional power projects under consideration by developers, but this work was not viewed or evaluated as alternatives to the [Facility]," and the Facility, "as stated in the original testimony of Witness Dailey was screened against related generation assets with renewable attributes to allow NOVEC the ability to consider a renewable resource as a potential small but important component of its overall future power supply portfolio.")

¹¹ Ex. 21 at 5-6 (Dailey). *See also* Tr. 185-200. Indeed, the Applicants repeatedly contradicted their initial declarations in this case that the Facility was not evaluated against non-renewable resources. *See, e.g.*, Ex. 24 at 3 (Rainey) ("NOVEC's consideration of the [Facility] was done similarly to its evaluation of all other known renewable and conventional projects presented to NOVEC during the same period."); Tr. 287 (Rainey) ("[NOVEC] evaluated [the Facility] over a period of about a year and a half in concert with these other [non-renewable] projects.")

¹² *See, e.g.*, Ex. 9 (Norwood) at 4; Ex. 13 (Walker, C.) at 11.

¹³ Ex. 21 (Dailey) at 4-5.

¹⁴ *See, e.g.*, Applicants' April 7, 2011 Post-hearing Brief at 9; Ex. 20 (Walker, D.) at 4.

¹⁵ *See, e.g.*, Tr. 153-154 (Norwood); Tr. 185-188 (Walker, C.); Ex. 20 (Walker, D.); Tr. 266-268 (Walker, D.).

¹⁶ Tr. 272-273 (Walker, D.).

¹⁷ Applicants' April 7, 2011 Post-hearing Brief at 31-32.

request, however, is made without any citation or any support for why it would be reasonable to expect post-hearing briefs to be waived in a significant, complex proceeding where the Commission must apply an evolving factual record to Virginia statutes in a case of first impression for NOVEC. The Applicants' complaints in this regard should be considered in light of the fact that the Commission originally scheduled the hearing for February 1, 2011, but the Applicants subsequently asked for it to be delayed until March 15, 2011.¹⁸

As noted above, NOVEC was previously a member of ODEC. NOVEC withdrew from ODEC as of December 31, 2008. Upon such withdrawal, NOVEC relinquished its rights to certain ownership shares of nuclear, natural gas, and coal generation. This action, which required federal, but not state, regulatory approval, placed NOVEC's ratepayers in a position where NOVEC had to obtain essentially all of its power from the wholesale market, the costs and risks of which must be borne by its ratepayers.¹⁹ This situation is exacerbated by the fact that, due to the size of NOVEC's load compared to larger electric utilities, NOVEC's limited economies of scale restrict its ability to implement cost effective self-build options on a going-forward basis.²⁰ This makes NOVEC's failure to utilize a formal, rigorous resource planning and evaluation process that much more questionable. NOVEC's planning process to meet its load requirements appears to be non-systematic. As noted by Consumer Counsel, "[t]here was no formal planning analysis, like an integrated resource plan," and "[t]here were no formal solicitations or requests for proposal[s]."²¹ NOVEC's ratepayers, who already pay some of the highest tarified rates in the Commonwealth, deserve a better resource planning process.²²

Ultimately, however, our obligation herein is to apply the relevant Virginia statutes to the case before us. We have performed this function as set forth in this Order. This has required looking beyond the multitude of inconsistencies, as well as deficiencies, in NOVEC's planning process and reaching a conclusion based on the unique situation presented by the facts in this record. As explained below, we find that based on the specific facts of this case taken as a whole, and only with the numerous additional requirements set forth herein, the Application satisfies statutory standards.

Public Convenience and Necessity

Need

All of the participants agree that NOVEC needs the electric generation that will be provided by the proposed Facility.²³

Reliability

The Applicants assert that the proposed Facility will not have an adverse effect on the reliability of electric service provided by any regulated public utility and will provide additional reliability to the local and regional transmission grid.²⁴ No participant in this proceeding argued otherwise.

Biomass Facility

Based on the particular facts (taken as a whole) attendant to this case, we find that the proposed Facility, subject to the additional requirements set forth herein, is required by the public convenience and necessity.²⁵ This finding is strictly limited to the unique situation presented by the Applicants and, thus, does not serve as precedent for future generating facilities, renewable or otherwise, proposed by NOVEC or others. These unique facts, taken as a whole, include but are not limited to: (1) NOVEC was previously a member of ODEC; (2) prior to its withdrawal from ODEC, NOVEC relied upon ODEC for its electric generating supply; (3) NOVEC currently obtains its electric power supply from the wholesale market; (4) this is NOVEC's first foray into self-ownership of an electric generation facility; (5) a biomass facility of the type proposed herein is not a novel construct; (6) the Facility provides some initial renewable fuel diversity; (7) the Applicants have obtained an engineering, procurement, and construction contract with a fixed cost and guaranteed schedule; (8) the size of the proposed Facility will serve approximately 5% of NOVEC's projected 2014 capacity requirements of 1000 MW; (9) NOVEC's load requirements, as compared to that of other utilities, may limit NOVEC's ability to justify sole ownership of larger, less expensive generating facilities; (10) the size of the proposed Facility may leave NOVEC with sufficient remaining load requirements that permit it to engage in a more formal and proficient process, which is further addressed below, to evaluate ownership (full or partial) of less expensive generating facilities and/or other long-term supply options; (11) the Facility will be constructed on an existing "brownfield" site that already contains a sufficiently-sized substation; and (12) the Facility will receive the benefit of a \$43 million IRS Cash Grant.

¹⁸ See Applicants' January 11, 2011 Motion for Modification of Procedural Schedule.

¹⁹ For example, "NOVEC is serving its current load of 878 MW in 2011 through [purchased power agreements ('PPA')] (expiring in 2028) providing 204 MW of capacity, with the balance procured through [PJM]." Staff's April 7, 2011 Post-hearing Brief at 18 (citing Tr. 322 (Rainey)).

²⁰ For example, NOVEC suggests that it cannot justify certain large projects with a lower cost-per-kW due to the limited size of its load and that, consequently, NOVEC would need to find a partner for certain projects. See, e.g., Tr. 299-302, 308 (Rainey). As noted above, NOVEC's relative size has not appeared to prevent the procurement of long-term contracts for power.

²¹ Consumer Counsel's April 7, 2011 Post-hearing Brief at 8.

²² See, e.g., Tr. 82-84 (Dailey). We note that NOVEC asserts its tarified rates should be considered "from a net standpoint after patronage retirement." *Id.* at 83.

²³ See, e.g., Applicants' April 7, 2011 Post-hearing Brief at 5.

²⁴ See, e.g., Ex. 5 (Application) at 11-12.

²⁵ In addition, we emphasize that this finding does not serve as an endorsement or approval of the specific process, or lack thereof, utilized to date by NOVEC for selecting its generating capacity investments.

Public Interest

Section 56-580 D states that the "Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities . . . (iii) are not otherwise contrary to the public interest." This public interest requirement is separate and distinct from the other statutory criteria that we must apply and as set forth in this Order. We find that for the Facility to be "not otherwise contrary to the public interest," NOVEC must also meet the following additional requirements.

Planning and Procurement of Generation Supply

Consumer Counsel sets forth valid concerns regarding NOVEC's "lack of a formal or rigorous resource evaluation process supporting the project's selection."²⁶ Likewise, Staff explains that "the significant changes in NOVEC's power supply arrangements associated with its voluntary severance from ODEC at the end of 2008, warrant a more structured, deliberate approach to securing reliable sources of generation capacity to serve its customer load."²⁷ On or before August 1, 2011, NOVEC shall file with the Commission's Divisions of Energy Regulation, Public Utility Accounting, and Economics and Finance: (1) an integrated resource plan, similar to that required of investor-owned electric utilities,²⁸ detailing NOVEC's plans for meeting its load in a manner that is both economical and reliable; and (2) a detailed update on NOVEC's progress in issuing a request for proposals attendant to meeting its generation capacity and remaining load needs in a cost-effective manner.

Transfers Act

NOVEC and SBE shall file an application under the Transfers Act, Chapter 5 (§ 56-88 *et seq.*) of Title 56 of the Code, "not later than 6 months [after] the expiration of the [federal stimulus investment tax credit ('ITC')] grant's 5 year recapture period," to determine whether the Facility should be transferred to NOVEC.²⁹

In addition, "any subsequent (i) transfer of the [F]acility, or any other utility asset, by SBE, or (ii) transfer of control of SBE by NOVEC, without prior approval of this Commission pursuant to the Transfers Act is prohibited."³⁰

Affiliates Act

On or before June 1, 2011, NOVEC shall "file pursuant to Chapter 4 [(§ 56-76 *et seq.*) of Title 56 of the Code ('Chapter 4')] requesting Commission approval of any existing contracts or arrangements (written or otherwise) between NOVEC and SBE."³¹

On or before June 1, 2011, NOVEC shall "file for approval of a [PPA] with SBE, pursuant to Chapter 4," and "[s]uch PPA should specify that the output of the [F]acility will be dedicated to benefit the native load of NOVEC customers at cost, subject to the Commission's determination that such PPA satisfies the requirements of Chapter 4 and any other applicable provisions of law."³²

Fuel Supply

The Applicants shall "furnish the Commission within 6 months of [the date of this Order], a comprehensive, waste wood procurement plan detailing the supply of this [F]acility, through purchase contracts, sufficient to ensure the availability of at least 350,000 tons per year during the [F]acility's first five years of commercial operation."³³

Limit on Expenditures

A "limit on expenditures for the construction of the [F]acility [is] placed at \$180 million, a limit that may not be exceeded except upon application to[, and approval of,] the Commission, and for good cause shown."³⁴

Environmental Impact

The DEQ Report contains the following recommendations:

1. Follow DEQ's recommendations to avoid and minimize impacts to wetlands and streams.

²⁶ Consumer Counsel's April 7, 2011 Post-hearing Brief at 8.

²⁷ Staff's April 7, 2011 Post-hearing Brief at 18.

²⁸ *See, e.g.*, Va. Code § 56-597 *et seq.*

²⁹ Staff's April 7, 2011 Post-hearing Brief at 5, 25.

³⁰ *Id.* at 27.

³¹ *Id.* at 26.

³² *Id.*

³³ *Id.* at 10, 27.

³⁴ *Id.* at 27.

2. Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable, and follow DEQ's recommendations to manage waste, as applicable.
3. Coordinate with Department of Conservation and Recreation for updates to the Biotics Data System database if a significant amount of time passes before the project is implemented.
4. Coordinate with the Department of Game and Inland Fisheries pertaining to in-stream work and recommendations on the protection of wildlife and other natural resources.
5. Coordinate with the William M. Tuck Airport and the Department of Aviation on its recommendations to ensure safe ingress and egress at the airport.
6. Follow the principles and practices of pollution prevention to the maximum extent practicable.
7. Limit the use of pesticides and herbicides to the extent practicable.³⁵

In addition, DEQ prepared a Wetland Impact Consultation ("Wetlands Report"), which analyzed the wetland impacts analysis submitted by the Applicants and provided a number of recommendations.³⁶ The Applicants agreed to adopt the recommendations found in the DEQ Report and in the Wetlands Report.³⁷ We find that requiring the Applicants to comply with the recommendations in the DEQ Report and the Wetlands Report is "desirable or necessary to minimize adverse environmental impact."³⁸ Thus, as a requirement of our approval herein, the Applicants shall comply with the recommendations in the DEQ Report and the Wetlands Report.³⁹

Economic Development

The Applicants and public witnesses assert that the proposed Facility will promote economic development in Halifax County and surrounding areas.⁴⁰ No participant in this proceeding argued otherwise. Halifax County and surrounding areas will receive economic benefits from the Facility, which is a positive development for a region that has been struggling economically.

We further note, however, that the applicable statutes require us to give consideration to economic development *in the Commonwealth*: (1) § 56-46.1 A of the Code states in part that, "[a]dditionally, the Commission (i) shall consider the effect of the proposed facility on economic development within the Commonwealth;" and (2) § 56-596 A of the Code states in part that "[i]n all relevant proceedings ... the Commission shall take into consideration, among other things, the goal of economic development in the Commonwealth." There is a significant cost to this project, and that cost will be borne by the thousands of businesses and residential consumers in NOVEC's service territory. NOVEC's customers, of course, will receive power in return, and a reliable and adequate supply of power is essential to economic development everywhere in the Commonwealth. The cost of that power, however, is critically important in evaluating the economic effects of this, or any other, project.

Regardless of whether a "least cost" option is mandated by § 56-580 of the Code, to the extent that this project is not the least cost option to supply NOVEC's customers with needed power, and there is substantial evidence in the record that it is not, then there is a negative effect on the economy of NOVEC's service territory. That negative effect intensifies in direct proportion to the amount by which NOVEC's business and residential consumers are paying more for power than otherwise may be necessary.

Thus, whether this project serves the goal of economic development *in the Commonwealth*, which the statutes require us to consider, is problematic at best, and certainly unproven by the record evidence in front of us. Nevertheless, neither of the statutes requiring consideration of economic impact mandates a specific and separate finding of net economic benefit to the Commonwealth in order to approve the Facility. Due to NOVEC's unique circumstances, including having given up its fractional share of generation owned through ODEC and with limited options for self-build generation that may be less costly than this project, due to NOVEC's relative lack of economies of scale,⁴¹ we approve the Application subject to the requirements set forth herein.

Accordingly, IT IS ORDERED THAT:

(1) Subject to the findings and requirements set forth in this Order, the Application is approved, and SBE is granted a certificate of public convenience and necessity to construct and to operate the biomass Facility as described in this proceeding.

(2) On or before August 1, 2011, NOVEC shall file with the Commission's Divisions of Energy Regulation, Public Utility Accounting, and Economics and Finance an integrated resource plan, similar to that required of investor-owned electric utilities, detailing NOVEC's plans for meeting its load in a manner that is both economical and reliable.

³⁵ Ex. 3 (DEQ Report) at 5.

³⁶ Ex. 4 (Wetlands Report).

³⁷ Tr. 76 (Walker, D.).

³⁸ Va. Code §§ 56-46.1 A and -580 D.

³⁹ The Applicants shall coordinate the implementation of these recommendations with DEQ.

⁴⁰ See, e.g., Ex. 5 (Application) at 10-12.

⁴¹ See, e.g., Tr. 297-300, 308 (Rainey).

(3) On or before August 1, 2011, NOVEC shall file with the Commission's Divisions of Energy Regulation, Public Utility Accounting, and Economics and Finance a detailed update on NOVEC's progress in issuing a request for proposals attendant to meeting its generation capacity and remaining load needs in a cost-effective manner.

(4) NOVEC and SBE shall file an application under the Transfers Act, Chapter 5 (§ 56-88 *et seq.*) of Title 56 of the Code, not later than 6 months after the expiration of the ITC grant's 5 year recapture period, to determine whether the Facility should be transferred to NOVEC.

(5) Any subsequent (i) transfer of the Facility, or any other utility asset, by SBE, or (ii) transfer of control of SBE by NOVEC, without prior approval of this Commission, pursuant to the Transfers Act, is prohibited.

(6) On or before June 1, 2011, NOVEC shall file, pursuant to Chapter 4 (§ 56-76 *et seq.*) of Title 56 of the Code, for approval of any existing contracts or arrangements (written or otherwise) between NOVEC and SBE.

(7) On or before June 1, 2011, NOVEC shall file for approval of a PPA with SBE, pursuant to Chapter 4, and such PPA should specify that the output of the Facility will be dedicated to benefit the native load of NOVEC customers at cost, subject to the Commission's determination that such PPA satisfies the requirements of Chapter 4 and any other applicable provisions of law.

(8) The Applicants shall furnish the Commission within six (6) months of the date of this Order, a comprehensive, waste wood procurement plan detailing the supply of this Facility, through purchase contracts, sufficient to ensure the availability of at least 350,000 tons per year during the Facility's first five years of commercial operation.

(9) A limit on expenditures for the construction of the Facility is placed at \$180 million, a limit that may not be exceeded except upon application to, and approval of, the Commission, and for good cause shown.

(10) The Applicants shall comply with the recommendations in the DEQ Report and the Wetlands Report.

(11) This case is continued pending further order of the Commission.

DIMITRI, Commissioner, Dissents:

I respectfully disagree with my colleagues on the decision approving NOVEC's application based upon the record in this case, though I find myself in agreement with many of the weaknesses and criticisms of NOVEC's proposal raised in their Order. I would add additional emphasis to several points made. There is significant cost to this project, with a relatively high cost per kilowatt, and these costs will be borne by the businesses and residential consumers of a cooperative that has only recently voluntarily relinquished its interests in a diversified portfolio of generation. It now will likely not have the flexibility in construction or procurement of generation as compared to a larger utility or group of cooperatives, and it is therefore imperative that NOVEC undertake a thorough, systematic review of all of its options and the impacts on ratepayers before making a significant decision that will affect its members for years to come. The record shows that NOVEC has failed to undertake the evaluation and due diligence required for such a significant economic decision.

As pointed out by witnesses for the Commission Staff and the Division of Consumer Counsel of the Office of the Attorney General ("Attorney General") and demonstrated through the testimony of NOVEC's own witnesses, NOVEC failed to fully analyze the generation options available to meet its long-term needs. For example, in prefiled testimony and in response to discovery, NOVEC stated clearly that it compared its proposed biomass facility only to other potential renewable energy projects,⁴² rather than a comparison to a range of generation using other fuels, whether through construction or purchased power. While it later claimed to have engaged in certain comparisons, NOVEC's analysis at the decision point was limited and its later testimony as to the process was lacking in key respects. This deficiency is particularly noteworthy where a utility has not previously constructed generation, owns no other generation facilities and may be limited in the number and scale of other potential generation projects.

Regarding cost, while Virginia law does not require that a "least cost" standard be applied in every case, it is of the utmost importance that the relative costs of alternative sources for meeting load be developed and considered prior to a decision to pursue a particular project. Cost of power is clearly an important economic factor and must be carefully evaluated in advance in order to avoid potentially adverse economic impacts. In this case, there was testimony that alternatives may well have been available at a lower cost. How much savings might result? We do not know and will not know because adequate analysis and comparison were not undertaken. Moreover, when NOVEC did eventually undertake its limited review, it skewed the results by effectively excluding \$50 million in the cost of its proposed project only, undermining the credibility of any claimed adequate analysis.

By statute, we also consider the potential economic benefits of a project. Here, the benefits to Halifax County and surrounding areas are positive. Unfortunately, however, it has not been shown that these benefits, as important as they are, outweigh the potentially significant negative economic impacts on NOVEC's ratepayers addressed by the Attorney General and the Commission Staff regarding the high cost of the project compared to alternatives, the lack of a rigorous evaluation process for selection of the project, and the high cost of this project as an unreasonably expensive cost hedge with respect to fuel diversity.⁴³ Moreover, fuel diversity was not presented as a primary justification for this project, and there is no evidence of NOVEC's current fuel mix (through its purchased power agreements) or any systematic approach to achieving certain levels of fuel diversity. Added to this is the concern that approval of this project, without full information and careful evaluation of its overall long-term options, may well preclude NOVEC's pursuit of other, potentially more cost-effective projects in the future.

Based upon the record in this case, I am unable to conclude that the project, as developed and presented by NOVEC, is required by the public convenience and necessity or that the project is not otherwise contrary to the public interest.

⁴² See, e.g., Ex. 8 at 9 (Dailey); Tr. 197; Ex. 14; Ex. 16C.

⁴³ See, e.g., Tr. 111-113 (Norwood).

**CASE NO. PUE-2010-00129
FEBRUARY 11, 2011**

APPLICATION OF
SOUTHWESTERN VIRGINIA GAS COMPANY

For an Annual Informational Filing for the Test Period Ending June 30, 2010

**ORDER ACCEPTING STAFF RECOMMENDATIONS
AND DISMISSING PROCEEDING**

On October 26, 2010, Southwestern Virginia Gas Company ("Southwestern" or the "Company") filed its Annual Informational Filing ("AIF") for the twelve months ending June 30, 2010, with the State Corporation Commission ("Commission"), together with a Request for Waiver ("Request") of certain information required by the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.* ("Rate Case Rules"). In its Request Southwestern, by counsel, sought a waiver pursuant to Rate Case Rule 20 VAC 5-201-10 E for reporting information for Southwestern Virginia Energy Industries, Ltd. (the "Parent"), and consolidated information of the Parent and the Company as required in Rate Case Rule Schedules 1, 2, 6, and 7, as well as a waiver of the Rate Case Rules applicable to AIFs that require the Company to prepare and submit a jurisdictional cost of service study as part of Schedule 40 of the Rate Case Rules.

On November 16, 2010, the Commission granted Southwestern's Request, but the Commission advised that the waivers granted therein were limited to the unique circumstances identified for this AIF and that the November 16, 2010 Order Granting Waiver should not be cited in support of other waiver requests by the Company or other public utilities subject to the Commission's jurisdiction.

On January 26, 2011, the Commission's Staff ("Staff") filed its Report in the captioned matter. That Report consisted of financial and accounting analyses. In Exhibit 3 of the financial analysis portion of its Report, Staff noted that the Company's capital structure consisted of 27.412% of Long-Term Debt, 0.818% of Preferred Stock, 71.546% of Common Equity, and 0.224% of Investment Tax Credits. Staff noted that Southwestern's authorized range of return on equity of 9.30% - 10.30% was established in Case No. PUE-2006-00103, and that the Company's weighted average cost of capital range was between 7.477% and 8.193%. Staff further reported that Southwestern's ratemaking capital structure remained relatively unchanged during the AIF test period.¹

In its accounting analysis, Staff explained that because the Company's AIF reported that Southwestern had no regulatory assets, Staff did not conduct an earnings test analysis. Staff reported that it made two revisions to Southwestern's accounting adjustments. With regard to Southwestern's per books rate base, Staff determined that the Company improperly included Deferred Gas in rate base as net of the effect of only federal income taxes. Staff corrected the Company's Deferred Gas adjustment to reflect the effect of both federal and state income taxes, which had the effect of increasing rate base by \$33,547.²

With regard to interest on customer deposits, Staff reported that the Company calculated the interest on customer deposits using the 2010 Commission-approved interest rate of 0.4%. Staff calculated its adjustment for interest on customer deposits using the 2011 Commission-approved interest rate of 0.2%. Staff's revision to this adjustment reduced interest on customer deposits by \$594.³

Staff concluded that, after all adjustments, Southwestern's return on common equity was 9.53%, which was within the Company's authorized range of return on common equity of 9.30% to 10.3%. Staff recommended that no action be taken on the Company's rates at this time.⁴

On January 31, 2011, Southwestern filed with the Clerk of the Commission a letter dated January 27, 2011, advising that the Company did not wish to comment on the Staff Report and had no objection thereto.

NOW THE COMMISSION, upon consideration of the Company's AIF, the Staff's January 26, 2011 Report, the Company's January 27, 2011 letter, and the applicable statutes, is of the opinion and finds that the accounting adjustments, capital structure, and recommendations set out in the Staff Report should be adopted as supported by the record; that no further action should be taken on the Company's rates at this time; and that this case should be dismissed from the Commission's docket of active proceedings.

Accordingly, IT IS ORDERED THAT

:

(1) In accordance with the findings made herein, the accounting adjustments, capital structure, and recommendations set forth in the Staff's January 26, 2011 Report are hereby accepted.

(2) No action shall be taken on the Company's rates at this time.

(3) There being nothing further to be done herein, this case is dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

¹ Staff Report at 4. For information on Southwestern's last rate case, see *Application of Southwestern Virginia Gas Company, For approval of an expedited increase in rates*, Case No. PUE-2006-00103, 2007 S.C.C. Ann. Rept. 357, Final Order (July 30, 2007).

² Staff Report at 5.

³ *Id.*

⁴ *Id.* at 6.

**CASE NO. PUE-2010-00130
DECEMBER 1, 2011**

APPLICATION OF
BROOKFIELD WATER COMPANY, INC.

For an increase in rates and fees

FINAL ORDER

On or about August 25, 2010, Brookfield Water Company, Inc. ("Brookfield" or "Company"), pursuant to the Small Water or Sewer Public Utility Act (§§ 56-265.13:l *et seq.* of the Code of Virginia ("Code")), notified its customers and the State Corporation Commission's Division of Energy Regulation ("Division") of its intent to increase rates and fees effective for service rendered on and after November 1, 2010. The Company also requested to change from a bi-monthly billing cycle to a monthly billing cycle.

The Company proposed to increase its rates and fees as follows:

Existing Rates:

1. Service Connections
 - a. ¾ inch service connection \$800.00
 - b. Service connection over ¾ inch \$800.00
Plus applicable fees, plus cost to Company greater than for ¾ inch connection.
2. Water Rates (Rates Bi-monthly)

| | |
|--------------------------------------------|-------------------------------|
| For any portion of the first 4,000 gallons | \$20.00 (minimum charge) |
| For the next 1,000 gallons | \$ 3.00 per each 1000 gallons |
3. Minimum Charge – There shall be a bi-monthly service charge of \$20.00 for water service and no bill will be rendered for less than the minimum charge. This minimum bi-monthly service charge shall become effective when the water service is connected to the lot.

Proposed Rates:

1. Service Connections
 - a. ¾ inch service connection \$1000.00
 - b. Service connection over ¾ inch \$1000.00
Plus applicable fees, plus cost to Company greater than for ¾ inch connection.
2. Water Rates (Rates Monthly)

| | |
|--------------------------------------------|-------------------------------|
| For any portion of the first 3,000 gallons | \$20.00 (minimum charge) |
| For the next 1,000 gallons | \$ 4.65 per each 1000 gallons |
3. Minimum Charge – There shall be a monthly service charge of \$20.00 for water service and no bill will be rendered for less than the minimum charge. This minimum monthly service charge shall become effective when the water service is connected to the lot.

On October 26, 2010, the Division received a petition signed by 91 of Brookfield's 118 customers opposing the proposed rate increase. The petition requested that the State Corporation Commission ("Commission") fully review the proposed rate increase. The number of customers objecting to the proposed rate increase represented approximately 77% of the Company's total customers.

On October 29, 2010, the Commission issued a Preliminary Order ("Preliminary Order") docketing the proceeding; suspending the proposed rate increase for sixty (60) days, or until December 31, 2010, and thereafter making the proposed rates interim, subject to refund with interest upon a final determination by the Commission in this proceeding; and requiring the Company to file certain financial information including evidence of the percentage increase in annual revenue expected from the proposed increase.

As required by the Preliminary Order, on November 19, 2010, the Company filed certain financial information as well as sufficient evidence to show the percentage increase in annual revenues that the Company expects to result from the proposed rates. The information submitted by the Company showed that the proposed increase in rates and fees would result in an increase in annual revenue of greater than 50%. The Company also stated that it did not contest that the escrow provisions of § 56-265.13:6 C of the Code are applicable to this case. However, the Company requested that the Commission allow the Company the option to refrain voluntarily from collecting the proposed rate increase and to postpone actually implementing an escrow account until such time as it implements proposed rates subject to refund.

On December 20, 2010, the Commission issued an Order for Notice and Hearing ("Notice Order"), which, among other things, granted Brookfield's request to defer interim rates; ordered the Company to hold increased revenues produced by the interim rates in escrow once interim rates were implemented; established a procedural schedule, including scheduling a public hearing; directed the Company to give notice to the public of its proposed rates and fees; and assigned this case to a Hearing Examiner to conduct all further proceedings in this matter.

On December 28, 2010, Brookfield notified the Commission that it intended to implement interim rates on and after February 1, 2011. The Company stated that it would hold the increase in revenues produced by the interim rates in escrow as required by the Commission's Notice Order.

During the course of this proceeding, the Commission received a resolution from the Board of Supervisors of Botetourt County and a letter from Delegate William H. Cleveland requesting that the Commission conduct a detailed, fair, and thorough review of the proposed rates and fees. The

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Commission also received a public comment from a customer of the Company. A public hearing was held on May 4, 2011, at which two additional public witnesses testified.

On August 25, 2011, the Report of Howard P. Anderson, Jr. Hearing Examiner ("Hearing Examiner's Report" or "Report") was filed. In the Report, the Hearing Examiner discussed the procedural history and the record in this case and made certain findings and recommendations. Specifically, the Report found that:

1. The use of a test ending December 31, 2009, is proper in this proceeding;
2. The Company's test year operating revenues, after all adjustments, were \$29,517;
3. The Company's test year net operating income, after all adjustments, was \$(16,715);
4. The Company's test year operating expenses, after all adjustments, were \$44,016;
5. The Company's overall end of test period rate base, after all adjustments, is \$309,576;
6. The adjustments recommended by [the] Staff and agreed to by the Company are reasonable and should be adopted;
7. The Company's connection fees should be retained at their present level;
8. The Company requires \$18,265 in additional revenues. This revenue increase will afford the Company a 2.6% return on rate base; and
9. [The] Staff's recommendations are appropriate and should be adopted, including the recommendation for the Company to amend its certificate to include the church it is currently serving.¹

Based on these findings, the Report recommended that the Commission enter an order adopting the findings contained in the Report, granting the Company an increase in gross annual revenues of \$18,265, and dismissing the case from the Commission's docket of active proceedings.²

On September 15, 2011, Brookfield filed a response to the Hearing Examiner's Report requesting that the Commission adopt the findings of the Hearing Examiner. The Company further requested that the Commission permit the Company to terminate the escrow of revenues collected under the interim rates.

NOW THE COMMISSION, having considered the matter, is of the opinion and finds that the Hearing Examiner's findings and recommendations should be adopted. Further, we find that the Company's request to terminate the escrow of revenues collected under the interim rates should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the August 25, 2011 Hearing Examiner's Report are hereby adopted.
- (2) Brookfield is hereby granted an increase in gross annual revenues of \$18,265;
- (3) Brookfield is hereby authorized to make the rates approved herein final, consistent with the Hearing Examiner's findings and recommendations.
- (4) Brookfield shall implement the Staff's accounting and recordkeeping recommendations as detailed on page 6 of the Hearing Examiner's Report.
- (5) Brookfield is hereby authorized to terminate the escrow of revenues collected under interim rates pursuant to § 56-265.13:6 C of the Code.
- (6) The Company shall forthwith file with the Clerk of the Commission and with the Commission's Division of Energy Regulation revised tariffs and terms and conditions of service that reflect the rates and charges approved herein. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.
- (7) Within ninety (90) days of the date of this Order, Brookfield shall file an application pursuant to § 56-265.3 D of the Code to amend its certificate of public convenience and necessity as discussed in the Hearing Examiner's Report.
- (8) This matter is dismissed.

¹ Hearing Examiner's Report at 7.

² *Id.*

**CASE NO. PUE-2010-00132
JUNE 17, 2011**

PETITION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For a declaratory judgment

ORDER ON PETITION

On October 29, 2010, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed a petition for a declaratory judgment ("Petition") with the State Corporation Commission ("Commission") pursuant to Rule 100 C of the Commission's Rules of Practice and Procedure ("Rules of Practice"), 20 VAC 5-20-100 C, and the Commission's Final Order in Case No. PUE-2009-00082¹ in which it requested the following:

that the [Commission] enter a declaratory judgment that Dominion Virginia Power has the right to report to the Commission and to use, for purposes of fulfilling its Renewable Energy Portfolio Standard ("RPS") goals, renewable energy it purchases from qualifying renewable resources under a power purchase agreement ["PPA"] that contains no provision addressing environmental or renewable energy attributes or renewable energy certificates or credits ("RECs").²

The Company stated that it initiated its request due to a present dispute regarding the ownership of renewable energy attributes associated with waste-to-energy electric generation facilities owned by Covanta Fairfax, Inc., and Covanta Alexandria/Arlington, Inc. (collectively, "Covanta"). The Company purchases electric power from these Covanta facilities for resale to its retail electric customers.

The Company's Petition states that it is seeking a determination from the Commission that its statutory obligation under § 56-585.2 of the Code of Virginia ("Code") to use renewable energy obtained under contract to meet Virginia's voluntary RPS goals "confers a reciprocal right to report and use the renewable energy for the benefit of the public interest in utilities fulfilling their RPS goals and mitigating costs to the ratepayers."³ The Company explains that pending resolution of this conflict, the Company is unable to determine whether to apply the energy it purchases from Covanta toward the Company's RPS goals or to make replacement purchases of RECs to meet these goals.⁴

On November 29, 2010, the Commission issued an Order for Notice and Comment that, among other things, established a procedural schedule for this matter. Notices of Participation were filed by the following: Covanta; Landfill Energy Systems ("LES"); and the City of Alexandria, Virginia, the County Board of Arlington County, Virginia, and the Arlington Solid Waste Authority (collectively, "Jurisdictions"). Comments concerning the Petition were filed on January 19, 2011, by Covanta and by the Jurisdictions (as incorporated into the Jurisdictions' Notice of Participation).

In its comments, Covanta requests that the Commission deny the Company's Petition. Covanta argues that the ownership of RECs should be determined by the terms of the underlying PPA and, if the PPA does not expressly transfer ownership of RECs to a purchasing utility, then the generator of the energy retains ownership of the renewable attributes associated with that energy. According to Covanta, the Federal Energy Regulatory Commission ("FERC") has ruled that contracts for the sale of energy and capacity entered into pursuant to the Public Utility Regulatory Policies Act ("PURPA") do not, absent an express provision in the contract so stating, convey REC ownership to the purchasing utility.⁵ Because the underlying PPA is silent on the issue of REC ownership, Covanta relies on state law to determine which entity owns the renewable attributes. Covanta concludes that § 56-585.2 of the Code plainly and unambiguously establishes that the generators, rather than the utilities, own the RECs associated with the energy they produce absent a contractual provision to the contrary. Covanta further argues that the transfer of RECs to Dominion Virginia Power would result in an unfair windfall to the Company.

In their comments, the Jurisdictions also request that the Commission deny Dominion Virginia Power's Petition and similarly argue that, under FERC precedent, RECs are not transferred to a purchasing utility unless the underlying PPA or state law so provide. The Jurisdictions state that FERC has found as follows:

[C]ontracts for the sale of [qualified facility] capacity and energy entered into pursuant to PURPA do not convey RECs to the purchasing utility (absent an express provision in a contract to the contrary). While a state may decide that a sale of power at wholesale automatically transfers ownership of the state-created RECs, that requirement must find its authority in state law, not PURPA.⁶

Turning to Virginia's RPS statute, the Jurisdictions state that § 56-585.2 of the Code does not mandate the transfer of renewable attributes from the generator to the purchasing utility. According to the Jurisdictions, "if a participating utility is to apply renewable energy generated by a third party toward its RPS program goals, it must expressly contract with that generator to purchase the right to do so."⁷ The Jurisdictions conclude that neither FERC precedent nor

¹ *Application of Virginia Electric and Power Company, For approval to participate in a Renewable Energy Portfolio Standard Program pursuant to Va. Code § 56-585.2, Case No. PUE-2009-00082, Final Order (May 18, 2010).*

² Petition at 1.

³ *Id.* at 5.

⁴ *Id.*

⁵ See *American Ref-Fuel Co. et. al., Order Granting Petition for Declaratory Ruling*, Docket No. EL03-133-000, 105 FERC ¶ 61,004 (Oct. 1, 2003) ("*American Ref-Fuel*").

⁶ Jurisdictions' January 19, 2011 Notice of Participation at 6 (citing *American Ref-Fuel*).

⁷ *Id.* at 10.

Virginia law conveys renewable attributes generated by the Covanta facilities to Dominion Virginia Power and, therefore, the RECs at issue remain the property of the generator.

On January 19, 2011, LES filed a Motion to Dismiss or, in the Alternative, to Revise the Procedural Schedule ("Motion to Dismiss or to Revise"). LES alleges three grounds for dismissal: (1) the Petition does not comply with the Commission's Rules of Practice; (2) the Petition asks for general relief and does not seek a declaration of rights between specific parties; and (3) the Petition fails to recognize that a threshold question (renewable attributes ownership) must be addressed before the Commission can make a determination on the action sought in the Petition. In the alternative, LES moves the Commission to amend the procedural schedule in this proceeding in order to address factual and legal questions raised by the Petition.

On February 7, 2011, the Commission entered an Order Extending Filing Dates in which, responding to a motion of the Commission Staff ("Staff") of even date, the Commission directed that the Staff and all interested parties be permitted to respond to LES's Motion to Dismiss or to Revise on or before February 18, 2011, and that LES be permitted to reply to any responses on or before March 4, 2011.⁸ On February 18, 2011, Dominion Virginia Power and the Staff filed responses to LES's Motion to Dismiss or to Revise. On March 4, 2011, LES filed a reply to the responses.

On March 18, 2011, the Staff filed, in the form of a legal pleading, its report in this proceeding. The Staff states that "[t]here is no necessity for the Commission to enter into the purported 'controversy' between the Company and Covanta regarding the ownership of the 'renewable attributes' of the generated power," and that "Who owns the RECs?" is a question the Commission need not answer.⁹ Staff further concludes as follows:

Clearly, the Covanta plants generate renewable energy in the Commonwealth and [Dominion Virginia Power], the participating utility, purchases this energy in the Commonwealth. The facts are not in dispute. Subsection F of § 56-585.2 of the Code requires [Dominion Virginia Power] to apply this energy towards its RPS goal.¹⁰

On March 25, 2011, Covanta concurrently filed a Motion for Leave to Respond to the Commission Staff Response to Petition for Declaratory Judgment ("Motion to Respond") and a Response to the Commission Staff Response to Petition for Declaratory Judgment.¹¹ Covanta expresses concerns that the Staff "cites no legislative history to support its interpretation, does not seek to reconcile its interpretation with conflicting references to renewable energy certificates throughout the statutory language and does not address the serious constitutional issues raised by its interpretation."¹²

On April 6, 2011, LES filed a Response to Staff's Response to Petition for Declaratory Judgment. LES disagrees with the Staff's assessment that the Commission need not "enter into the purported 'controversy' between the Company and Covanta regarding the ownership of the 'renewable attributes' of the generated power."¹³ LES expresses concern that the outcome of this proceeding will have a precedential impact on similarly situated non-utility generators such as LES. LES also discusses REC tracking systems and mechanisms employed to prevent double counting of RECs. According to LES, if Dominion Virginia Power counts the energy generated by the Covanta facilities toward its RPS goal, the associated RECs would be rendered unmarketable for Covanta. LES further asserts that, if Dominion Virginia Power is permitted to count the energy at issue toward its RPS goal, then "the Commission has essentially given to [Dominion] Virginia Power all of the value of the renewable attributes."¹⁴ LES asks that the Commission "fully address the issue that Staff contends is 'irrelevant' (*i.e.*, whether or not the RECs have a direct relationship to the energy produced) prior to making any determination," and to "provide an opportunity for other interested parties to intervene in this matter relative to this issue."¹⁵ LES further requests that interested parties be given an opportunity to respond to any response by the Company to comments filed in this proceeding and to the Staff Response.

On April 12, 2011, Dominion Virginia Power filed a Reply to Comments and Staff Response. The Company asserts that: (1) the Staff properly assessed the Virginia RPS reporting obligation; (2) Virginia's RPS statute addresses renewable energy as bundled energy and renewable attributes, with no separate distinction required; (3) bundled renewable attributes follow the contractual ownership of the energy under the Virginia RPS statute; and (4) if the Company cannot count the RECs at issue toward its RPS goals, the costs will be passed through to the Company's ratepayers. The Company further states that constitutional claims raised by Covanta's March 25, 2011 Response are unfounded.

On April 26, 2011, Covanta filed a Motion for Leave to Reply to the Reply to Comments and Staff Response filed by Virginia Electric and Power Company ("Motion for Leave") and a Reply to the Reply of Virginia Electric and Power Company to Comments and Staff Response filed on April 12, 2011. Addressing the Company's April 12, 2011 Reply, Covanta, *inter alia*, disagrees with Dominion Virginia Power's conclusion that, under the Virginia RPS statute, renewable attributes are bundled with renewable energy. Dominion Virginia Power objected to Covanta's April 26, 2011 Motion for Leave in its Motion to Strike Covanta Pleading filed April 28, 2011 ("Motion to Strike"). On May 4, 2011, Covanta filed an Opposition to the Company's Motion to Strike.

⁸ The Commission's February 7, 2011 Order also modified the underlying docket's procedural schedule to permit the Staff to submit a Staff Report concerning this matter on or before March 18, 2011, and to permit the Company to file a reply to the Staff Report and previously filed comments on or before April 1, 2011.

⁹ Staff's March 18, 2011 Response at 3, 5.

¹⁰ *Id.* at 4.

¹¹ We granted Covanta's Motion to Respond by Order dated March 30, 2011, which: (i) accepted Covanta's March 25, 2011 Response for filing; (ii) provided any interested person an opportunity to respond to the Staff Response on or before April 6, 2011; and (iii) provided Dominion Virginia Power an opportunity to respond to the Staff Response, Covanta's March 25, 2011 Response, and any responses to the Staff Response filed by any other parties on or before April 12, 2011.

¹² Covanta's March 25, 2011 Response at 3.

¹³ See Staff's March 18, 2011 Response at 3.

¹⁴ LES's April 6, 2011 Response at 1.

¹⁵ *Id.* at 6.

On May 5, 2011, the Commission issued an Order Scheduling Oral Argument. On May 17, 2011, the Commission convened a hearing for the purpose of receiving oral argument at which the following participated: Dominion Virginia Power; Covanta; LES; and the Staff.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

The RPS goals under the Virginia statute are not mandatory. If an investor-owned electric utility voluntarily chooses to participate in an RPS program and meets certain RPS goals, then it is rewarded with an increase of 50 basis points (0.50%) on top of its otherwise fair rate of return on common equity ("ROE").¹⁶ The resulting increase in rates, however, is not voluntary for ratepayers – and the RPS statute defines the specific requirements necessary to achieve this ROE adder.¹⁷ In this regard, the RPS statute is purely a Virginia-specific construct. For example, in order for a utility to receive the rewards offered by the statute, the Virginia General Assembly could limit the types of energy permitted under the RPS program,¹⁸ could permit or prohibit the recognition of RECs,¹⁹ could give certain renewable energy more weight than others,²⁰ or could create an entirely different mechanism for these purposes. Accordingly, the issue raised by the Petition requires the Commission to apply the specific Virginia RPS statute and to rule on a question of law.²¹

Section 56-585.2 A of the Code provides that:

"Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such renewable energy is (i) generated or purchased in the Commonwealth or in the interconnection region of the regional transmission entity of which the participating utility is a member, as it may change from time to time; (ii) generated by a public utility providing electric service in the Commonwealth from a facility in which the public utility owns at least a 49 percent interest and that is located in a control area adjacent to such interconnection region; or (iii) represented by certificates issued by an affiliate of such regional transmission entity, or any successor to such affiliate, and held or acquired by such utility, which validate the generation of renewable energy by eligible sources in such region. "Renewable energy" shall not include electricity generated from pumped storage, but shall include run-of-river generation from a combined pumped-storage and run-of-river facility.

Section 56-576 of the Code states that:

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas or nuclear power. Renewable energy shall also include the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

¹⁶ Va. Code § 56-585.2 C ("[T]he Commission, in addition to providing recovery of incremental RPS program costs pursuant to subsection E, shall increase the fair combined rate of return on common equity for each utility participating in such program by a single Performance Incentive . . . of 50 basis points whenever the utility attains an RPS Goal established in subsection D . . . Any such Performance Incentive, if implemented, shall be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of return on common equity for the same time periods. However, if the utility receives any other Performance Incentive increasing its fair combined rate of return on common equity by more than 50 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance Incentive during the term of such other Performance Incentive."). In addition, a "utility participating in such program shall have the right to recover all incremental costs incurred for the purpose of such participation in such program, as accrued against income, through rate adjustment clauses . . ." Va. Code § 56-585.2 E.

¹⁷ In addition, any incremental costs of a voluntary RPS program are borne by all but large industrial customers:

All incremental costs of the RPS program shall be allocated to and recovered from the utility's customer classes based on the demand created by the class and within the class based on energy used by the individual customer in the class, except that the incremental costs of the RPS program shall not be allocated to or recovered from customers that are served within the large industrial rate classes of the participating utilities and that are served at primary or transmission voltage.

Va. Code § 56-585.2 E.

¹⁸ For example, the Virginia General Assembly has excluded from this statute "electricity generated from pumped storage." Va. Code § 56-585.2 A.

¹⁹ See, e.g., Va. Code § 56-585.2 A.

²⁰ For example, a "utility shall receive double credit toward meeting the renewable energy portfolio standard for energy derived from sunlight or from onshore wind, and triple credit toward meeting the renewable energy portfolio standard for energy derived from offshore wind." Va. Code § 56-585.2 C.

²¹ We deny LES's Motion to Dismiss or to Revise. We note that, during oral argument, LES stated that "LES's Motion to Dismiss or to Revise the Procedural Schedule seems largely to be moot now, because we are here in this legal argument, we are being given an opportunity to respond, finally, to [Dominion] Virginia Power's April 12th argument." Tr. 64-65. There clearly is a controversy between the Company and Covanta. For example, Covanta states as follows: "The parties agree that the issue before the Commission is a question of statutory interpretation. Does the Virginia RPS statute permit Dominion to apply towards meeting its RPS goals the electricity it purchases from Covanta's facilities?" Tr. 26. Furthermore, since our ruling herein is limited to a question of law, we find that it is unnecessary to establish procedures to address any alleged factual questions.

Finally, § 56-585.2 F of the Code states in part as follows: "A utility participating in such program shall apply towards meeting its RPS Goals any renewable energy from existing renewable energy sources owned by the participating utility or purchased as allowed by contract at no additional cost to customers to the extent feasible."

Taken together, and for purposes of the instant controversy between Covanta and Dominion Virginia Power, § 56-585.2 F and related statutes require the Company to "apply towards meeting its RPS Goals any [energy from . . . municipal solid waste] [provided such renewable energy is . . . generated . . . in the Commonwealth] . . . purchased as allowed by contract at no additional cost to customers to the extent feasible." Covanta is generating energy in the Commonwealth from municipal solid waste.²² Dominion Virginia Power represents that it is purchasing such energy as allowed by contract and does not claim that it is not feasible for the Company to apply these purchases under the statute.²³ Accordingly, Dominion Virginia Power must apply such energy towards meeting its RPS goals under the Virginia statute.²⁴

In addition, the Company "seeks clarification of whether it would be allowed to report the renewable energy it purchases from Covanta towards its RPS goals if Covanta were to sell the RECs related to that renewable energy to a load serving entity for its use in meeting its home state RPS compliance obligation before the Company could apply the RECs to its Virginia RPS goals."²⁵ The Virginia statute contains no such restriction.²⁶ That is, the plain language of the statute, as applied above, is not affected by the creation and selling of RECs – either before or after the renewable energy is applied towards meeting RPS goals under the Virginia statute.²⁷

Accordingly, IT IS SO ORDERED and this case is dismissed.

²² See, e.g., Covanta's January 19, 2011 Comments at 3; Petition at 3.

²³ See, e.g., Company's April 12, 2011 Reply at 19.

²⁴ Covanta also contends that the "[r]egulatory assignment of RECs to the utilities without just compensation would constitute an unconstitutional taking of private property in violation of the Fifth and Fourteenth Amendments to the United States Constitution and/or the Commonwealth's Constitution, and would obligate the Commonwealth to compensate [Covanta] for the value of the RECs." Covanta's January 19, 2011 Comments at 13 n.7. We disagree. Neither the Virginia statute, nor the Commission's instant Order, results in a regulatory taking under any applicable precedents of the United States Supreme Court.

²⁵ Company's April 12, 2011 Reply at 8-9.

²⁶ Dominion Virginia Power asserted as much during oral argument but questioned whether the Commission had any "concern[]" regarding "a double-counting effect." See, e.g., Tr. 23-24. Any potential "concern" by the Commission, however, is irrelevant to this matter. There is no ambiguity in the statute.

²⁷ Finally, we grant Covanta's Motion for Leave and deny the Company's Motion to Strike.

**CASE NO. PUE-2010-00134
MAY 18, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

In re: Appalachian Power Company's proposed pilot programs on dynamic rate structures for renewable generation facilities

ORDER ESTABLISHING PILOT PROGRAMS

During its 2009 Session, the Virginia General Assembly passed Chapter 816 of the 2009 Virginia Acts of Assembly ("Chapter 816"), an uncodified enactment, directing the State Corporation Commission ("Commission") to conduct a proceeding to establish two types of pilot programs for certain customers of electric utilities that generate electricity from renewable generation facilities. The first type of pilot program is intended to address dynamic rates for power purchases by eligible customers ("Pilot 1"); the second type is intended to address dynamic rates at which participating customers can sell electricity to a participating utility ("Pilot 2") (collectively, "Pilot Programs" or "Programs"). As defined by § 1 of Chapter 816, the purpose of the Programs is:

to determine the feasibility, and the implications on the public interest, of making specific rate structures available to the participating utilities' customers that generate electricity on-site with renewable generation facilities, or that generate electricity at off-site renewable generation facilities that have a rated capacity to generate not more than five megawatts from falling water and are located within six miles of the nonresidential customer, connected on the customer's side of the meter.

In establishing the Pilot Programs, Chapter 816 further directs the Commission to determine the scope of the Programs, establish thresholds for participation, and establish requirements relating to the implementation of the Pilot Programs.

On August 19, 2009, the Commission established Case No. PUE-2009-00084 by its Order for Notice and Comment ("Notice Order") that, among other things, docketed the matter, established a procedural schedule, directed Appalachian Power Company ("APCo" or "Company") and Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power") to file written comments concerning the issues in the proceeding and

directed the Staff of the Commission ("Staff") to review the comments and file a report thereon ("Staff Report in Case No. PUE-2009-00084").¹ In accordance with the Notice Order, APCo and Dominion Virginia Power filed comments in that proceeding on October 23, 2009.²

In its comments, APCo asserted that the scope of the Pilot Programs should be based on the consideration of four factors: (i) the characteristics of the customers who will participate; (ii) clear yet flexible parameters established by the Commission; (iii) dynamic pricing elements already used by APCo and its affiliates; and (iv) the use of PJM Interconnection, L.L.C.'s ("PJM") Locational Marginal Pricing ("LMP") for the American Electric Power, Inc. Zone ("AEP Zone") within the dynamic pricing design. APCo stated that it has a number of pricing structures and programs in place with varying degrees of dynamic pricing elements and anticipates that any new dynamic pricing pilot programs proposed for its Virginia customers could build upon already-established pricing principles. APCo recommended that, initially, participation in the Programs be limited to five (5) to seven (7) customers with properly certificated renewable generation facilities. APCo stated that it would require at least six (6) months to implement the Programs.

In the Staff Report in Case No. PUE-2009-00084, the Staff stated that any dynamic pricing Pilot Programs to be offered by APCo should be broadly defined to encourage participation. The Staff recommended that: (i) APCo develop voluntary Pilot Programs that offer dynamic pricing on an hourly and monthly basis; (ii) APCo structure its dynamic pricing Pilot Programs around the AEP Zone LMP as published by PJM; (iii) APCo's Pilot Programs be limited to its non-residential rate classes; and (iv) participation in APCo's Pilot Programs be limited to ten (10) to fifteen (15) percent of the customers that have properly certificated renewable generation facilities. APCo did not file a response to the Staff Report in Case No. PUE-2009-00084.

On July 30, 2010, the Commission issued an Order in Case No. PUE-2009-00084 ("July 30, 2010 Order") finding, in part, that APCo, as one of the two investor-owned utilities with the largest number of customers in the Commonwealth, should establish Pilot Programs under which eligible customers/renewable generators that volunteer to participate are provided the ability to purchase and sell electricity to the utility at dynamic rates. The Commission directed APCo to develop voluntary Pilot Programs that offer dynamic pricing for electricity on an hourly and monthly basis. The Commission noted "that § 3 of Chapter 816 provides that if a participating utility is a member of a regional transmission entity that supports an active market for energy and capacity, then 'the energy and capacity prices related to that market may be used as surrogates for the marginal or avoided energy and capacity costs' for purposes of § 1 of this act."³ Accordingly, the Commission found that APCo should structure its Pilot Programs around the AEP Zone LMP as published by PJM.

Furthermore, the Commission found that APCo's Pilot Programs should be limited to its non-residential rate customers and limited to ten (10) to fifteen (15) percent of the customers that have properly certificated renewable generation facilities. Finally, the Commission directed APCo to file details of its Pilot Programs within sixty (60) days of the entry of the July 30, 2010 Order. The Commission ordered APCo to include tariff sheets describing the terms and conditions for participation in each of the Pilot Programs and APCo's proposed effective date for implementation. The Commission stated that it would rule on APCo's proposal in a subsequent order.

On September 28, 2010, APCo filed the details of its Pilot Programs ("September 28, 2010 filing") as directed in the July 30, 2010 Order. APCo included in this filing the tariff sheets setting forth the terms and conditions for eligible customers to participate voluntarily in each of the proposed Pilot Programs. APCo stated that these voluntary Pilot Programs will offer dynamic pricing on an hourly and monthly basis to non-residential rate customers that have properly certificated renewable generation facilities. Under the proposed Pilot Programs up to fifteen (15) percent of qualifying customers may volunteer to sell electricity to APCo at dynamic rates under Pilot 1 and/or purchase electricity from APCo at dynamic rates under Pilot 2.

APCo's proposed Pilot Programs are structured using the AEP Zone LMP within the dynamic pricing area as published by PJM as the surrogate for the marginal or avoided energy cost. In addition, the auction price established in the PJM Reliability Pricing Model (RPM) Base Residual Auction is used as the surrogate for the marginal or avoided capacity cost.

APCo proposed that the effective date for implementation of the Pilot Programs be six (6) months after the date of Commission approval of the Pilot Programs. APCo stated that during the intervening six (6) months, the Company anticipated developing a World Wide Web-based portal to provide hourly PJM energy pricing information to customers, evaluating metering requirements and installation of necessary metering upgrades/interconnection facilities for potential eligible customers who express an interest in participating in either or both Pilot Programs, and developing manual billing processes for the Pilot Programs.

With regard to cost recovery, APCo requested permission to recover the capacity and energy payments made under Pilot 2 in its fuel factor, asserting that it is proper to include these payments in the fuel factor as they are not being made for reliability reasons or for maintenance of reserve margin requirements and are, therefore, within the Company's Definitional Framework of Fuel Expenses.

Finally, APCo stated that it will incur certain one-time costs to implement the Pilot Programs, including costs for customer education programs. APCo anticipates that these costs will not be recovered through the schedules of the Pilot Programs. Accordingly, APCo has requested permission to defer these costs as they are identified until cost recovery can be addressed in a future proceeding.

¹ *Commonwealth of Virginia, ex rel. State Corporation Commission, In re: Establishing pilot programs to develop certain rate structures for renewable generation facilities*, Case No. PUE-2009-00084, Doc. Con. Cen. No. 416820, Order for Notice and Comment (Aug. 19, 2009), modified, Doc. Con. Cen. No. 417454, Order Modifying Notice Requirement (Aug. 31, 2009).

² Dominion Virginia Power's proposal was considered in Case No. PUE-2010-00135. See *Commonwealth of Virginia, ex rel., State Corporation Commission, In re: Virginia Electric and Power Company's proposed pilot program on dynamic rates*, Case No. PUE-2010-00135, Doc. Con. Cen. No. 446094, Order Establishing Pilot Program (Apr. 8, 2011).

³ *Commonwealth of Virginia, ex rel. State Corporation Commission, In re: Establishing pilot programs to develop certain rate structures for renewable generation facilities*, Case No. PUE-2009-00084, 2010 S.C.C. Ann. Rept. 371, 373, Order Establishing Pilot Programs (July 30, 2010).

On December 3, 2010, the Commission issued an Order in Case No. PUE-2009-00084, in which the Commission directed that review of the proposed Pilot Programs of APCo and Dominion Virginia Power be separated into individually docketed proceedings for further consideration, to include notice to the public of the details of the proposed Programs, with an opportunity for the public to comment or request a hearing on the Pilot Programs.⁴

Simultaneously, the Commission entered an Order for Notice and Comment in this proceeding that, among other things, docketed Case No. PUE-2010-00134 for further consideration of APCo's proposed Pilot Programs; directed that public notice should be given; provided an opportunity for interested persons to comment and request a hearing on APCo's proposed Pilot Programs; and directed the Staff to review APCo's filing and present its findings and recommendations in a Staff Report.

Several comments on APCo's Proposed Pilot Programs were received in this proceeding. On January 21, 2011, Doug Hullett, on behalf of the Patrick County Taxpayer Watchdog Group, submitted comments requesting that the Commission not approve APCo's Pilot Programs. The Patrick County Taxpayer Watchdog Group asserted that it was concerned the Pilot Programs "will lead to an increase in our energy rates that are already out of control and will increase the enormous burden already on citizens and businesses in Patrick County, Virginia."⁵

Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, "Wal-Mart"), filed comments and a Notice of Participation on January 31, 2011. Wal-Mart stated that it "is supportive of the development of a menu of dynamic and real-time pricing options that offer transparent price signals that help customers to more efficiently manage their own energy loads."⁶ Wal-Mart stated that it does not oppose the voluntary trial application of APCo's proposed Pilot Programs. However, Wal-Mart suggested that the Commission "also consider extending the availability of the LMP-based pricing scheme to customers whose generators do not have Qualifying Facility status", should either the Commission or APCo later seek broader application of the Pilot Programs in APCo's service territory.⁷ Finally, Wal-Mart recommended further review before the dynamic pricing principles and schedules in the Pilot Programs are incorporated into APCo's standard service schedules.

The Commission received one request for a public hearing on the Pilot Programs. On February 17, 2011, the Commission issued an Order Granting Request for Public Hearing in which the Commission arranged for interested persons in APCo's service territory to be able to testify in person or by telephone in a public hearing to be held in Richmond, Virginia, on March 10, 2011. No public witnesses appeared either telephonically or in person to provide testimony.

On March 31, 2011, the Staff filed its Staff Report in Case No. PUE-2010-00134 in which it concluded that the Company's Pilot Programs: "will not unreasonably prejudice or disadvantage any customer or class of customers, will not jeopardize the continuation of adequate and reliable electric service, and will otherwise comply with the directives established by the Commission in its July 30, 2010 Order."⁸ The Staff stated that it did not oppose implementation of the Pilot Programs proposed by APCo.

On April 21, 2011, APCo filed a letter informing the Commission that the Company would not be filing a formal response to the comments filed in this proceeding or to the Staff Report. APCo stated that it supported statements made by the Staff and Wal-Mart that they did not oppose the implementation of APCo's proposed dynamic pricing Pilot Programs on a voluntary trial basis.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the Pilot Programs proposed by APCo are in the public interest, will not unreasonably prejudice or disadvantage any customer or class of customers or the Company, and will not jeopardize the continuation of reliable electric service. We further find that the Company's September 28, 2010 filing to implement the Pilot Programs should be approved subject to the conditions set forth below.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's September 28, 2010 filing to implement the Pilot Programs is hereby approved for the periods proposed.
- (2) The Company shall submit to the Division of Energy Regulation for approval applicable tariffs or tariff changes necessary to implement the Pilot Programs within 180 days from the date of the entry of this Order.
- (3) The Company may begin deferring incremental costs associated with the Pilot Programs. However, the Commission makes no order regarding any recovery of costs incurred by the Company for the Pilot Programs.
- (4) The Company shall submit an annual report to the Commission each year that each of the Pilot Programs is in effect that includes, but is not limited to, the following information for each of the Pilot Programs: (i) the number of participants in the Pilot Program; (ii) an assessment of the feasibility

⁴ *Commonwealth of Virginia, ex rel. State Corporation Commission, In re: Establishing pilot programs to develop certain rate structures for renewable generation facilities*, Case No. PUE-2009-00084, 2010 S.C.C. Ann. Rept. 374, 376, Order Establishing Separate Proceedings (Dec. 3, 2010).

⁵ Patrick County Taxpayer Watchdog Group Comments at 1.

⁶ Wal-Mart Comments at 1.

⁷ *Id.* at 2.

⁸ Staff Report at 9. The Staff did note that § 56-585.1 A 5 of the Code of Virginia ("Code") allows a utility, at its option, to petition for approval of rate adjustment clauses for the "timely" and "current" recovery of certain costs, such as costs sought to be deferred by APCo in the present proceeding. The Staff stated its belief that the language of the Code required rate adjustment clause recovery to begin in a timely manner and that such costs should not be deferred for an extended time period. The Staff remarked that APCo's September 28, 2010 filing did not indicate the timeframe in which the Company intends to apply for a rate adjustment clause and begin cost recovery, but the Staff noted that an extended deferral would appear to conflict with the intent of the Code. Additionally, the Staff stated that, while APCo is not currently seeking approval to defer carrying costs on either capital investments or on unrecovered deferral balances, such approval could be sought at a later date, and if these costs were approved, an extended deferral period would increase the magnitude of such costs. *Id.*

and implications on the public interest of continuing the Pilot Program; and (iii) any information relevant to the Pilot Program requested by the Staff. Such report initially shall be submitted to the Commission within thirty (30) days of the Pilot Programs' first year of operation and, thereafter, shall be submitted to the Commission on an annual basis for the duration of each of the Pilot Programs. The Company's final annual report shall include a protocol for each of the Pilot Programs, developed with input from the Staff and other interested parties, for determining the Pilot Programs' effect on customer modification of electricity consumption and the Company's methods for determining any associated material revenue loss or migration revenue adjustments.

- (5) The Company shall obtain further Commission approval before changing the Pilot Programs.
- (6) This case shall remain open to receive the reports as required by this Order.

**CASE NO. PUE-2010-00135
APRIL 8, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

In re: Virginia Electric and Power Company's proposed pilot program on dynamic rates

ORDER ESTABLISHING PILOT PROGRAM

During its 2009 Session, the Virginia General Assembly passed Chapter 816 of the 2009 Virginia Acts of Assembly ("Chapter 816"), an uncodified enactment, directing the State Corporation Commission ("Commission") to conduct a proceeding to establish two types of pilot programs for certain customers of electric utilities that generate electricity from renewable generation facilities. The first type of pilot program is intended to address dynamic rates for power purchases by eligible customers ("Pilot 1"); the second type is intended to address dynamic rates at which participating customers can sell electricity to a participating utility ("Pilot 2") (collectively, "Pilot Programs" or "Programs"). As defined by § 1 of Chapter 816, the purpose of the Programs is:

to determine the feasibility, and the implications on the public interest, of making specific rate structures available to the participating utilities' customers that generate electricity on-site with renewable generation facilities, or that generate electricity at off-site renewable generation facilities that have a rated capacity to generate not more than five megawatts from falling water and are located within six miles of the nonresidential customer, connected on the customer's side of the meter.

In establishing the Pilot Programs, Chapter 816 further directs the Commission to determine the scope of the Programs, establish thresholds for participation, and establish requirements relating to the implementation of the Pilot Programs.

On August 19, 2009, the Commission established Case No. PUE-2009-00084 by its Order for Notice and Comment ("Notice Order") that, among other things, docketed the matter, established a procedural schedule, directed Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") and Appalachian Power Company ("APCo") to file written comments concerning the issues in the proceeding and directed the Staff of the Commission ("Staff") to review the comments and file a report thereon ("Staff Report"). In accordance with the Notice Order, Dominion Virginia Power and APCo filed comments in this proceeding on October 23, 2009.¹

In its comments, Dominion Virginia Power first asserted that it should be exempt from the provisions of Chapter 816 because it had applied for Commission approval of dynamic pricing tariffs that satisfy the requirements of Chapter 816 in Case No. PUE-2009-00019.² The Company further stated that its existing and proposed Virginia Rate Schedule 19, "Power Purchases from Cogeneration and Small Power Production Qualifying Facilities," per Case Nos. PUE-2007-00034³ and PUE-2008-00078,⁴ exempts it from implementing the Pilot Programs pursuant to § 2 of Chapter 816.

Dominion Virginia Power also asserted that if it were not found to be exempt, the Pilot 1 requirements outlined in Chapter 816 are satisfied by the dynamic pricing tariffs proposed for Commission approval in Case No. PUE-2009-00019, including proposed tariffs CPP and DP-R (applicable to residential customers), as well as DP-1, DP-2, DP-3, and DP-4 (applicable to non-residential customers). Similarly, if no exemptions were granted, Dominion Virginia Power claimed that the Pilot 2 requirements are satisfied by its existing and proposed Virginia Rate Schedule 19 for small generators.

In the Staff Report filed on February 16, 2010, in Case No. PUE-2009-00084, the Staff noted that the Company's dynamic pricing tariffs are not currently approved by the Commission, but if the Commission did approve these tariffs, there would be no need for the Company to have a dynamic pricing pilot program. The Staff also expressed that if the proposed dynamic pricing schedules are not approved by the Commission, then the dynamic pricing methodology could form the basis for a dynamic pricing pilot program. In that situation, the Staff stated it would recommend that Dominion Virginia Power develop updated rates for the dynamic pricing tariffs CPP, DP-R, DP-1, DP-2, DP-3, and DP-4, reflecting the revenue requirement and revenue

¹ APCo's proposal is being considered concurrently in Case No. PUE-2010-00134.

² *Application of Virginia Electric and Power Company, For a 2009 statutory review of the rates, terms, and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2009-00019 (Amended Filing of Virginia Electric and Power Company, Direct Testimony, Exhibits and Schedules, filed July 24, 2009).

³ *Application of Virginia Electric and Power Company, To revise its cogeneration tariff pursuant to PURPA Section 210*, Case No. PUE-2007-00034, Order of Approval (May 25, 2007).

⁴ *Application of Virginia Electric and Power Company, Notification to the Commission of election to abandon the Company's bidding program and application to revise its cogeneration tariff pursuant to PURPA Section 210*, Case No. PUE-2008-00078, Final Order (May 18, 2010).

apportionment that the Commission approved in Case No. PUE-2009-00019. The Staff proposed a limit of ten to fifteen percent customer participation for each rate class in such a pilot program. The Staff also suggested, as an alternative, that Dominion Virginia Power offer the dynamic pricing schedules to all customers on a voluntary basis as it had proposed to do in Case No. PUE-2009-00019, with the appropriate revenue adjustments.

In Case No. PUE-2009-00019, the Company proposed dynamic pricing tariffs CPP and DP-R (applicable to residential customers), as well as DP-1, DP-2, DP-3, and DP-4 (applicable to non-residential customers). However, on November 5, 2009, Dominion Virginia Power and other parties filed a Stipulation and Recommendation ("Stipulation") in that proceeding, which stated in pertinent part: "There is to be no increase in currently approved and effective base rates and no change in any rates . . . terms or conditions of standard tariff offerings until the first biennial review pursuant to Va. Code § 56-585.1."⁵ Further, on February 26, 2010, Dominion Virginia Power and other parties filed an Addendum and Modification of Stipulation and Recommendation ("Addendum"), which stated in pertinent part: "There will be no base rate adjustment prior to December 1, 2013, except upon a determination that emergency rate relief is warranted, as authorized under Va. Code § 56-245. This Paragraph modifies the provisions of Paragraph 1 of the Stipulation only in that it extends the base rate freeze until December 1, 2013."⁶ On March 11, 2010, the Commission issued its Order Approving Stipulation and Addendum in Case No. PUE-2009-00019, adopting both the Stipulation and Addendum in total.⁷ Accordingly, Dominion Virginia Power's proposed dynamic pricing tariffs CPP, DP-R, DP-1, DP-2, DP-3, and DP-4 have not been adopted by the Commission.

On March 23, 2010, Dominion Virginia Power filed its response ("Response") to the Staff Report, as well as a motion to supplement response to Staff Report ("Motion"). In its Motion, the Company requested sixty (60) days to consider how it will offer the Pilot Programs to customers who would have been eligible to participate in the proposed CPP, DP-R, DP-1, and DP-2 tariffs had they been approved in Case No. PUE-2009-00019, as well as to allow sufficient time to receive a decision in Case No. PUE-2009-00081 and make any necessary adjustments to the Pilot Programs in light of that Commission decision.⁸ Dominion Virginia Power also asserted in its Motion and Response that its current Rate Schedule 10 meets the requirements of Pilot 1 and, further, continued to assert that the Pilot 2 requirements outlined in Chapter 816 are satisfied by its existing and proposed Virginia Rate Schedule 19 for small generators.⁹

On April 22, 2010, the Commission issued its Order Granting Motion to Supplement Staff Report ("April 22, 2010 Order"), which directed the Company to file its supplemental response to the Staff Report on or before May 21, 2010. Pursuant to the April 22, 2010 Order, Dominion Virginia Power filed its Supplemental Response to Staff Report ("Supplemental Response") on May 21, 2010.

In its Supplemental Response, Dominion Virginia Power proposed to offer three experimental dynamic pricing tariffs to meet the requirements of Pilot 1: DP-R (applicable to residential customers); and DP-1, and DP-2 (applicable to non-residential customers). The Company asserted that its large general service Rate Schedule 10 currently meets the requirements for dynamic pricing rates for both of its large general service customer classes.¹⁰ The Company proposed to limit participation in Pilot 1 to customers that have either an interval data recorder meter ("IDR") or Advanced Metering Infrastructure ("AMI") meter already installed at their service location, making three percent, six percent, and eighteen percent of the residential, small general service, and intermediate general service populations, respectively, eligible for participation.¹¹ The Company further proposed to file its experimental dynamic pricing tariffs with the Commission no later than September 30, 2010.

Dominion Virginia Power also asserted in its Supplemental Response that the requirements of Pilot 2 are satisfied by its current Virginia Rate Schedule 19 for small generators. Under Virginia Rate Schedule 19, energy payments for each hour are calculated using the hourly \$/MWh PJM Interconnection, L.L.C. ("PJM") Locational Marginal Price for the Dominion Zone ("Dominion Zone"). According to Dominion Virginia Power, payments for capacity to small generators are based upon the generator's net hourly on-peak generation, and the small generator is paid for such generation at prices based on the clearing results from PJM's Base Residual Auction for the Dominion Zone.

On July 30, 2010, the Commission issued an Order in Case No. PUE-2009-00084 ("July 30, 2010 Order") finding, in part, that Dominion Virginia Power, as one of the two investor-owned utilities with the largest number of customers in the Commonwealth, should establish Pilot Programs under which eligible customers/renewable generators that volunteer to participate are provided the ability to purchase and sell electricity to the utility at dynamic rates. The Commission found: (i) that Dominion Virginia Power's proposed experimental dynamic pricing tariffs DP-R, DP-1, and DP-2 satisfy the requirements for Pilot 1 established in Paragraph 1 of § 1 of Chapter 816; (ii) that Dominion Virginia Power's current Rate Schedule 10 satisfies the requirements for Pilot 1 established in Paragraph 1 of § 1 of Chapter 816 for large general service customers; and (iii) that the requirements for Pilot 2 established in Paragraph 2 of § 1 of Chapter 816 are satisfied by Dominion Virginia Power's Virginia Rate Schedule 19 for small generators and, therefore, Dominion Virginia Power should be exempt from implementing Pilot 2 in accordance with § 2 of Chapter 816. The Commission directed that tariffs DP-R,

⁵ Stipulation, Paragraph (1).

⁶ Addendum, Paragraph (12).

⁷ *Application of Virginia Electric and Power Company, For a 2009 statutory review of the rates, terms, and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2009-00019, Order Approving Stipulation and Addendum, Ordering Paragraph (1) (Mar. 11, 2010).

⁸ *Application of Virginia Electric and Power Company, For approval to implement new demand-side management programs and for approval of two rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia*, Case No. PUE-2009-00081, Order Approving Demand-Side Management Programs (Mar. 24, 2010) (approving certain demand-side management programs proposed by Dominion Virginia Power and two rate adjustment clauses designed to recover the costs of the approved programs).

⁹ The proposed Virginia Rate Schedule 19 has since been approved. See *Application of Virginia Electric and Power Company, Notification to the Commission of election to abandon the Company's bidding program and application to revise its cogeneration tariff pursuant to PURPA Section 210*, Case No. PUE-2008-00078, Final Order (May 18, 2010).

¹⁰ Large general service customers are those whose demand exceeds 500 kilowatts.

¹¹ In the event that additional AMI meters are installed in Dominion Virginia Power's territory during the period of the Pilot Programs, the Company states that customers at those service locations would also be eligible to participate.

DP-1, and DP-2 be filed by the Company no later than September 30, 2010, and that the Company's Pilot 1 should be limited to customers who have either an IDR meter or AMI meter or who have AMI installed during the period of the Pilots.

On September 30, 2010, Dominion Virginia Power filed an Application to Establish Pilot Program ("Application") in which it proposes to offer three experimental and voluntary dynamic pricing tariffs pursuant to Chapter 816 and the Commission's directives in Case No. PUE-2009-00084 ("Pilot Program").¹² The Company asserts that "introducing experimental dynamic rates to customers through this Pilot Program will ensure that dynamic rates are successful now and in the long-run" and that "by providing better opportunities to promote participation and introduce new technologies, to learn about customer reactions and concerns and reduce customer confusion, and to better ensure successful eventual wider implementation, the Pilot Program is vital to the ultimate success of dynamic rates."¹³

Specifically, the Company proposes a pilot enrollment of 2,000 participants consisting of 1,000 residential customers taking service under experimental dynamic pricing tariff DP-R and 1,000 commercial/general customers taking service under dynamic pricing tariffs DP-1 and DP-2. The Company states that it will begin enrollment of eligible customers¹⁴ in the Pilot Program ninety (90) days from Commission approval but no earlier than April 1, 2011. The Company proposes to keep the Pilot Program in effect until November 30, 2013.

As part of its Application, Dominion Virginia Power requests approval to begin deferring incremental costs related to the Pilot Program, projected to be approximately \$2.9 million, for future recovery in a cost recovery rate adjustment clause pursuant to § 56-585.1 A of the Code of Virginia. According to the Company, the types of incremental costs that it will seek to defer for future recovery include costs associated with design of the Pilot Program; development of solicitation, instructional, educational, and promotional material; Customer Service Center impact expenses; data capturing and measurement by third-party vendors; and technology-related hardware/material related to notifying customers of day classifications.

By separate Order issued simultaneously in Case No. PUE-2009-00084, the Commission directed that review of the proposed Pilot Programs of APCo and Dominion Virginia Power be separated into individually docketed proceedings for further consideration, to include notice to the public of the details of the proposed Programs, with an opportunity for the public to comment or request a hearing on the Pilot Programs defined in the September filings. The Order in Case No. PUE-2009-00084 further directed that Dominion Virginia Power's filing on September 30, 2010, be moved into this newly established proceeding for further consideration.

On December 3, 2010, the Commission entered an Order for Notice and Comment in this proceeding that, among other things, docketed the Application as Case No. PUE-2010-00135; directed that public notice should be given; provided an opportunity for interested persons to comment and request a hearing on the Application; and directed the Staff to review the Application and present its findings and recommendations in a Staff Report.

Notices of Participation were filed by the following: Utility Management Services, Inc. ("UMS"); Wal-Mart Stores East, LP; and Sam's East, Inc. (collectively, "Wal-Mart"). Comments concerning the Application were filed by the following: Brittany Garcia; Wal-Mart; the Virginia Cable Telecommunications Association ("VCTA"); and AARP Virginia ("AARP"). Comments were also filed by UMS in conjunction with its Notice of Participation.

In its comments, Wal-Mart stated that at this time it does not oppose the Pilot Program presented in the Company's Application; however, it expressed concern that duplication of the "demand-response" style dynamic pricing proposed in this Pilot Program may not be appropriate for other customer classes insofar as such pricing for large commercial and industrial customers may restrict participation in demand response programs offered through PJM. VCTA stated in its comments that it supports implementation of the dynamic pricing schedule DP-1 proposed in the Application and is eager to participate in the Pilot Program. UMS requested in its comments that: (i) the Commission approve the dynamic pricing rates proposed by the Company; (ii) that the Company's final design of Schedule DP-2 ensure revenue neutrality with existing Schedule GS-2T; and (iii) that a written contract or service agreement should not be required for a customer to switch to Schedule DP-1 or DP-2. Brittany Garcia's comments expressed concern that the Company's rates for electric service may increase.

On February 18, 2011, the Staff filed its Staff Report in which it concluded that the Company's Pilot Program: (i) will not unreasonably prejudice or disadvantage any customer or class of customers; (ii) will not jeopardize the continuation of adequate and reliable electric service; and (iii) complies with the directives established by the Commission in its July 30, 2010 Order. Staff stated that it does not oppose implementation of the Pilot Program proposed by Dominion Virginia Power but offered two additional recommendations "to improve the effectiveness of the Company's Pilot Program and ensure that all of the data necessary to evaluate future dynamic rate proposals will be available when needed."¹⁵ First, Staff suggested that Company-initiated notification such as outbound phone calls, text messages, or e-mail may be a more appropriate method of official notification of the daily classification of rates¹⁶ than the Company's website, as proposed by the Company. Staff also recommended that Dominion Virginia Power "work with the Staff and any other interested parties to develop a protocol for determining how customers may have modified their behaviors in response to the dynamic rates and specifically, how any 'material revenue loss' or 'migration revenue adjustment' associated with those behavior modifications will be determined."¹⁷

¹² Dominion Virginia Power simultaneously filed with the Clerk of the Commission both an original copy of its Application, under seal, containing confidential and extraordinarily sensitive information, and a public version of its Application with confidential and extraordinarily sensitive information redacted.

¹³ Application at 4.

¹⁴ The Company states that participation is "limited to those customers of the Company who have either an interval data recorder [IDR] or advanced metering infrastructure [AMI] meter, or who have AMI installed during the Pilot Program through the ongoing AMI demonstrations in Midlothian, Charlottesville and Northern Virginia." *Id.* at 5.

¹⁵ Staff Report at 13.

¹⁶ The Company proposes to classify each day as either an "A," "B," or "C" day, with "A" days being the highest priced days, "B" days being the medium priced days, and "C" days being the lowest priced days. The Company states that it will call no more than 30 "A" days and will call at least 280 "C" days during the year. Remaining days will be classified as "B" days. Direct Testimony of Kurt W. Swanson at 8-9.

¹⁷ Staff Report at 14.

On March 4, 2011, Dominion Virginia Power filed its response to the Staff Report and comments. In response to Staff's recommendations, the Company stated that, while it can offer participants secondary notification options such as outbound phone calls or e-mail, it is essential that the Company's website remain the official form of notification for price classifications because people often change points of contact such as telephone numbers and e-mail addresses. The Company stated that "to the extent possible, the Company is committed to providing customers with the form(s) of secondary notification that they desire."¹⁸ Regarding Staff's second recommendation, the Company stated that it "welcomes the opportunity to review our [evaluation, measurement and verification] plans with Staff and other interested parties and solicit their feedback."¹⁹

Addressing UMS's request that Rate Schedule DP-2 be designed to be revenue neutral with Rate Schedule GS-2T, the Company stated that there is no rationale for UMS's proposal.²⁰ In response to UMS's request that a written contract or service agreement should not be required for a customer to switch to Schedule DP-1 or DP-2, the Company stated that it anticipates that a similar agreement, as currently required for customers taking service under Schedule GS-2T, will be executed under Schedules DP-1 and DP-2 committing customers to a one-year term. The Company noted that such a written agreement is standard practice.

In response to Wal-Mart's comments, Dominion Virginia Power stated that "a dynamic pricing option is already available for GS-3 and GS-4 customers via Schedule 10."²¹ And under Schedule 10 today, customers who voluntarily take service on that schedule are similarly prohibited from participating in PJM's capacity programs.²² The Company further stated that "eliminating the PJM demand response restrictions in those offerings could lead to double compensation for commercial and industrial customers reducing consumption on peak days."²³

On March 11, 2011, AARP filed its comments. AARP stated that it understood that the time period for submitting comments established in the Order for Notice and Comment had passed, but hoped the Commission would consider its comments and concerns. Specifically, AARP noted five concerns: (i) that the Pilot Program does not offer peak time rebates as well as critical peak pricing; (ii) that the Company's proposal is complex and will be difficult to explain to customers; (iii) that customers who enroll in the Pilot Program must remain in the program for a minimum of one year; (iv) that reliance on in-home technologies has the potential for increasing costs for the Pilot Program and any expanded implementation of dynamic pricing; and (v) that the Pilot Program's enrollment and evaluation protocols are not publicly available. AARP urged the Commission to reject the Pilot Program as proposed by the Company.

On March 25, 2011, the Company filed a letter objecting and responding to AARP's comments. According to Dominion Virginia Power, AARP's recommendation that the Pilot Program offer peak time rebates is not consistent with the Commission's directives in Case No. PUE-2009-00084 or the requirements mandated by Chapter 816. Addressing AARP's other concerns, the Company stated that the Pilot Program allows customers to choose their individual desired level of complexity; that a full year commitment to the program by enrolled customers is necessary to gauge customer reactions to dynamic pricing and to collect data that covers all four seasons; and that the Pilot Program neither requires nor provides in-home technologies to manage customer loads. Further, the Company stated that the Pilot Program's proposed enrollment of 2,000 customers is sufficient to obtain statistically valid data and enable future dynamic rate designs.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the Pilot Program proposed by Dominion Virginia Power is in the public interest, will not unreasonably prejudice or disadvantage any customer or class of customers or the Company, and will not jeopardize the continuation of reliable electric service. We further find that the Company's Application to implement the Pilot Program should be approved subject to the conditions set forth below.

Accordingly, IT IS ORDERED THAT:

- (1) The Application to implement the Pilot Program is hereby approved for the period proposed.
- (2) AARP's comments are accepted for filing.
- (3) The Company shall submit to the Division of Energy Regulation for approval applicable tariffs or tariff changes necessary to implement the Pilot Program within ninety (90) days from the entry of this Order.
- (4) The Company may begin deferring incremental costs associated with the Pilot Program. However, the Commission makes no order regarding any recovery of costs incurred by the Company for the Pilot Program.
- (5) The Company shall submit an annual report to the Commission each year that the Pilot Program is in effect that includes, but is not limited to, the number of participants in the Pilot Program, an assessment of the feasibility and implications on the public interest of continuing the Pilot Program, and any information relevant to the Pilot Program requested by Staff. Such report shall initially be submitted to the Commission within thirty (30) days of the Pilot Program's first year of operation and, thereafter, shall be submitted to the Commission on an annual basis. The Company's final annual report shall include a protocol, developed with input from Staff and other interested parties, for determining the Pilot Program's effect on customer modification of electricity consumption and the Company's methods for determining any associated material revenue loss or migration revenue adjustments.

¹⁸ Company comments at 6.

¹⁹ *Id.* at 7.

²⁰ *Id.* at 8.

²¹ In our Order Establishing Pilot Programs in Case No. PUE-2009-00084, we found that the Company's Schedule 10 satisfies the requirements for Pilot 1 established in Paragraph 1 of § 1 of Chapter 816 for large general service customers.

²² *Id.* at 10.

²³ *Id.* at 9.

- (6) The Company shall obtain further Commission approval before changing the Pilot Program.
- (7) This case shall remain open to receive the reports required by this Order.

**CASE NO. PUE-2010-00137
JANUARY 7, 2011**

PETITION OF
COLUMBIA GAS OF VIRGINIA

For an order on a public utility line crossing a railroad and for certification of public necessity or essential public convenience in the exercise of authority of eminent domain with regard to certain interests in the real property owned by Norfolk Southern Corporation

DISMISSAL ORDER

On November 23, 2010, Columbia Gas of Virginia ("Columbia") filed a petition ("Petition") with the State Corporation Commission ("Commission"), pursuant to Rule 5 VAC 5-20-100 B of the Commission's Rules of Practice and Procedure. The Petition requested that the Commission: (1) issue an order requiring Norfolk Southern Corporation ("Norfolk Southern") to grant Columbia an easement and setting compensation and damages associated with Columbia's plan for a gas pipeline to cross under the tracks and property of Norfolk Southern, pursuant to §§ 56-259 C and 56-575.13 of the Code of Virginia ("Code"); and/or (2) certify, pursuant to § 25.1-102 of the Code, that Columbia's proposal to take an easement by condemnation for real property owned by Norfolk Southern for the purpose of constructing a gas pipeline is required by a public necessity or an essential public convenience and grant Columbia permission to institute a condemnation action. Norfolk Southern did not file any response to the Petition.

On December 15, 2010, Columbia, by counsel, submitted a letter and proposed order of dismissal stating that the parties had agreed to settle and resolve all matters addressed in the Petition. Columbia's counsel stated that counsel for Norfolk Southern did not object to the dismissal of the Petition.

NOW THE COMMISSION, having reviewed the filings in this matter, is of the opinion and finds that, since there is no objection to the dismissal of the Petition by either party, the Petition should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) The Petition is hereby dismissed.
- (2) The papers submitted herein shall be sent to the file for ended causes.

**CASE NO. PUE-2010-00138
MARCH 3, 2011**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to engage in affiliate transactions pursuant to § 56-76 *et seq.* of the Code of Virginia

ORDER DENYING APPROVAL

On December 3, 2010, Washington Gas Light Company ("WGL" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission") requesting authority: (i) to transfer its contracts for certain storage capacity resources and to sell its storage gas balances associated with these storage resources to an affiliate, Capitol Energy Ventures Corporation ("CEV");¹ and (ii) to execute a letter agreement ("Letter Agreement") for a permanent capacity release of these storage resources, pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code").

WGL is a regulated public utility headquartered in Washington, D.C., which provides natural gas distribution service to more than one million residential, commercial and industrial customers, including service to approximately 486,000 customers in Virginia. WGL is a wholly owned subsidiary of WGL Holdings, Inc. ("Holdings"). CEV is a Delaware corporation that engages in natural gas energy marketing with an independent portfolio of capacity resources. CEV is a wholly owned subsidiary of Washington Gas Resources Corporation, which is wholly owned by Holdings. WGL and CEV are considered affiliated interests under § 56-76 of the Code. As such, WGL is required to obtain prior approval from the Commission pursuant to the Affiliates Act for any agreement or arrangement between the companies for the provision of services, the exchange of property, rights, or things, or the purchase or sale of treasury bonds or stock.

WGL is requesting approval to transfer its Washington Storage Service ("WSS") and Eminence Storage Service ("ESS") Agreements with the Transcontinental Gas Pipeline Company ("Transco") to CEV, effective March 31, 2011. WGL also proposes to transfer its storage gas balances in the WSS and ESS storage fields to CEV at the same time.

¹ CEV was formerly known as Washington Gas Credit Corporation. The name change took place December 17, 2009.

The WSS Agreement provides for natural gas storage at the WSS storage field, which is located in St. Landry Parish, Louisiana. The WSS Agreement provides for a maximum storage contract quantity of 1,929,012 dekatherms ("Dth") with a maximum storage injection rate of 10,717 Dth per day and a maximum demand quantity, or withdrawal rate, of 22,694 Dth per day.² The annual demand cost for the WSS Agreement is \$394,800.³ The current WSS Agreement became effective July 1, 2004, and has a ten-year primary term ending on June 30, 2014.

The Eminence Storage Service ("ESS") Agreement provides for natural gas storage at the ESS storage field, which is located in Covington County, Mississippi. The ESS Agreement provides for a maximum storage contract quantity of 190,415 Dth with a maximum storage injection rate of 4,150 Dth per day and a maximum storage withdrawal rate of 19,120 Dth per day. The annual demand cost for the ESS Agreement is \$425,100.⁴ The ESS Agreement became effective March 1, 2007, and has a twenty-two year, six-month primary term ending September 30, 2029.

WGL represents that the proposed transfer will be a permanent assignment of the capacity rights under the WSS/ESS agreements to CEV. There will be no exchange of consideration. CEV will assume legal ownership of the WSS/ESS contracts, and WGL will be relieved of all obligations and liabilities under the WSS/ESS agreements. WGL states that it will transfer any WSS and ESS storage gas balances at the higher of cost or market price. WGL represents that it plans to withdraw all of the storage gas from the WSS and ESS fields during the 2010-11 winter season. By March 31, 2011, WGL expects the WSS and ESS storage gas inventories to be zero, so no actual storage gas transfer will be necessary.

WGL represents that neither the WSS nor the ESS storage fields support its utility system requirements. Since 2007, both the WSS and the ESS have been used solely for asset optimization activities. WGL states that it does not make any gas sales or generate any revenues associated with WSS and ESS that are included in its Virginia cost of service. WGL further represents that it does not incur any gas costs or other costs associated with WSS and ESS that are included in its Virginia cost of service. WGL asserts that it books all WSS and ESS revenues and costs, including demand charges and inventory-related costs, to "below-the-line" non-utility accounts. After the transfer, the WSS and ESS demand costs will become the responsibility of CEV. WGL further represents that the proposed transfer will relieve the utility of the risk associated with "catastrophic failure" of the WSS/ESS storage reservoirs. WGL states that by "catastrophic failure" it means any force majeure event that impacts the integrity of the WSS/ESS storage fields or the transport of gas from the WSS/ESS fields.

Pursuant to the Stipulation agreed to in WGL's performance based rate plan ("PBR Plan") approved by the Commission in Case No. PUE-2006-00059,⁵ Virginia ratepayers share in the margins generated from WGL's asset optimization of the WSS and ESS storage. Over the past four years, WSS and ESS have generated approximately \$4.77 million in margins from asset optimization activities that have been shared with Virginia customers as a credit to their gas costs through the actual cost adjustment ("ACA") mechanism.⁶ WGL proposes to continue sharing with Virginia ratepayers the asset optimization margins generated from WSS and ESS through the end of the current PBR Plan, which expires September 30, 2011. After that date, however, Virginia ratepayers will not share in the asset optimization margins earned from WSS and ESS. Based on the Commission Staff's calculations, that will cause about a \$2.45 annual increase in the gas commodity portion of the average customer's bill.

NOW THE COMMISSION, upon consideration of the Application, the representations and Comments of the Applicant, and having been advised by its Staff, is of the opinion and finds the Application should be denied. The Affiliates Act imposes an affirmative burden on WGL to demonstrate that the proposed affiliate transaction serves the public interest. WGL's Application, however, contains little, if any, substantive information demonstrating how, or if, the proposed transaction serves the public interest. Additionally, we find that the current and past uses of the WSS and ESS Agreements are relevant to our decision on the Application and should be further developed before approving WGL's Application. WGL's Application states that WGL's customers paid the demand costs of the WSS Agreement through the end of the 2006-2007 winter heating season. If ratepayers have paid for either of the WSS and ESS Agreements in WGL's cost of service, we question whether it is in the public interest to authorize an assignment of the agreements for no consideration. Accordingly, prior to approving an assignment of the WSS and ESS Agreements, we find that the past and current uses of the WSS and ESS Agreements as well as any payments made for the agreements should be further developed. These issues can be developed in WGL's currently pending general rate case, Case No. PUE-2010-00139, or in a separate proceeding.

Accordingly, IT IS ORDERED THAT:

(1) Washington Gas Light Company's Application is hereby denied.

(2) There appearing nothing further to be done, this case is dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

² The WSS storage withdrawal rate is scheduled to be reduced by ten percent on April 1, 2011.

³ See WGL's Response to Staff Data Request No. 13 in Case No. PUE-2010-00138.

⁴ *Id.*

⁵ *Application of Washington Gas Light Company, For a general increase in rates, fees, charges and revisions to the terms and conditions of service as well as approval of a performance-based rate regulation methodology under Va. Code § 56-235.6, 2007 S.C.C. Ann. Rept. 315, Final Order (Sept. 19, 2007); recons. granted, 2007 S.C.C. Ann. Rept. 320, Order Granting Petition for Reconsideration (Oct. 5, 2007).*

⁶ See WGL's Revised Response dated February 15, 2011, to Staff Data Request No. 2 in Case No. PUE-2010-00138.

**CASE NO. PUE-2010-00139
FEBRUARY 24, 2011**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For a general increase in rates and charges and to revise its terms and conditions for gas service

ORDER FOR NOTICE AND HEARING

On January 31, 2011, Washington Gas Light Company ("WGL" or the "Company") filed with the State Corporation Commission ("Commission") an application for a general increase in rates and to revise its terms and conditions for gas service, effective October 1, 2011 ("Application"). WGL's Application proposes rates and charges designed to increase the Company's annual operating revenues by \$29,601,306.¹

The Application explains that WGL's current request for general rate relief was filed in response to the Commission's September 19, 2007 Final Order in Case No. PUE-2006-00059, which, among other things, approved a performance based rate regulation plan ("PBR Plan") for WGL commencing October 1, 2007, and terminating September 30, 2011.² Under the terms and conditions of a Stipulation adopted by the Commission in Case No. PUE-2006-00059, the Company was required to file a proposal for a new PBR Plan, a request to extend its current PBR Plan, or a general rate application, by February 1, 2011.³

WGL's Application states that the Company does not propose to renew or modify its current PBR Plan or to provide a new PBR Plan.⁴ Instead, WGL filed an Application for a general increase in rates pursuant to § 56-237 of the Code of Virginia ("Code") and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings.

The Company's Application states that an increase in rates is necessary because the Company is not earning sufficient annual revenues to cover its cost of service, including a reasonable return on common equity capital.⁵ According to WGL's Application, its proposed rate increase is necessary because of "increases in [the Company's] net rate base, operation and maintenance costs, including employee-related costs, compliance and safety-related expenses, depreciation expense and general tax increases . . ."⁶ In addition, the proposed rate increase is designed to recover a proposed increase in WGL's research and development funding through participation in programs sponsored by the Gas Technology Institute.⁷

WGL's proposed \$29.6 million rate increase represents an increase of approximately 6.0% in total going-forward operating revenues based on the Company's operations, as adjusted, for the test year ended September 30, 2010.⁸ The proposed rate increase is based on an overall rate of return of 8.58% on rate base and a return on common equity capital of 10.5%.⁹ The Company proposes to collect 47% of its proposed rate increase through increases in System Charges, with the remaining 53% balance of its proposed rate increase recovered through increases in Distribution Charges applicable to firm customers. The Company also proposes to increase System Charges and Distribution Charges for interruptible distribution customers to match the cost of serving these customers.¹⁰

WGL's Application further advises that its proposed annual increase in rates for its Northern Virginia customers and its Shenandoah Gas Division customers will increase by the following amounts:

¹ Application at 1 and Schedule 21, filed in accordance with the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.*

² *Application of Washington Gas Light Company, For a general increase in rates, fees, charges and revisions to the terms and conditions of service as well as approval of a performance-based rate regulation methodology under Va. Code § 56-235.6*, Case No. PUE-2006-00059, 2007 S.C.C. Ann. Rept. 315, Final Order (Sept. 19, 2007).

³ *Id.*, 2007 S.C.C. Ann. Rept. at 318-19.

⁴ Application at 1-2.

⁵ *Id.* at 5.

⁶ *Id.* at 4.

⁷ *Id.* at 13-14.

⁸ *Id.* at 1, 4-5.

⁹ *Id.* at 5.

¹⁰ *Id.* at 6.

WGL Northern Virginia Customers

| | |
|---------------------------|------|
| Residential | 5.9% |
| Commercial and Industrial | 3.1% |
| Group Metered Apartments | 1.5% |

WGL Shenandoah Gas Division Customers

| | |
|---------------------------|--------------------|
| Residential | 6.1% |
| Commercial and Industrial | 2.7% |
| Group Metered Apartments | 4.5% ¹¹ |

WGL also proposes to continue its Weather Normalization Adjustment ("WNA")¹² approved by the Commission in Case No. PUE-2006-00059. However, as part of this proceeding, the Company proposes to update certain items in its WNA, including: (i) normal weather heating degree days ("HDDs"); (ii) variation in usage by HDD by customer class; (iii) base usage; and (iv) weighted average distribution rates. Since the update of these items will be based on the rates and charges ultimately approved by the Commission in this proceeding, WGL's Application proposes to update these items within sixty (60) days after the Commission issues its Final Order in this proceeding.¹³

WGL's Application also requests that the recovery mechanism for its hexane costs approved by the Commission in Case No. PUE-2006-00059 be revised. Under its PBR Plan, WGL is authorized to recover the Btu-component of its Virginia-allocated hexane costs from sales customers through its Purchased Gas Charge ("PGC") provision¹⁴ and from delivery service customers through balancing charges.¹⁵ The Company is required to expense the entire amount of its non-Btu hexane costs.¹⁶ WGL's Application proposes to amend the PBR Plan recovery mechanism for hexane costs to allow the Company to recover all of its Virginia-allocated hexane costs (both the Btu-component and non-Btu hexane costs) from sales customers through the PGC and from delivery service customers through balancing charges. If the Commission does not approve the Company's proposed recovery mechanism for hexane costs, WGL proposes to recover the Btu-component of its hexane costs from sales customers through the PGC and from delivery service customers through balancing charges, and to recover the going level of its non-Btu hexane costs through base rates.¹⁷

The Company's Application further proposes a new sharing arrangement for earnings generated by its asset management activities. Under the Company's PBR Plan, the Commission approved a sharing arrangement for WGL's asset management activities, which, among other things, shared earnings beginning at a 10.5% ROE, with WGL's ratepayers receiving 75% of shared earnings and WGL's shareholders receiving 25% of shared earnings. WGL's Application proposes a new sharing arrangement for the Virginia allocated portion of net revenues generated by its asset management activities, with WGL's firm customers receiving 100% of the first \$1 million of net revenues generated by its asset management activities. Earnings in excess of \$1 million would also be shared, with customers receiving 60% of any earnings in excess of \$1 million and the Company retaining 40% of such earnings.¹⁸

WGL further proposes a number of additional changes to its tariff, including: (a) General Service Provision ("GSP") No. 4, Payments – proposed revisions to update when payments are posted to customer accounts, to update when payments must be received to assure same day processing, to eliminate fees paid by customers who use credit or debit cards to pay their bills, and a new proposed automatic name change program for tenants and property managers of rental property; (b) GSP No. 13, Installation of Service Pipes and Connections – proposed revisions to eliminate refundable customer deposits

¹¹ *Id.* at 6-7.

¹² The WNA is a billing adjustment mechanism designed to stabilize and normalize the Company's monthly non-gas revenues due to variations from normal weather.

¹³ Application at 7.

¹⁴ Va. S.C.C. No. 9, General Service Provision No. 16, Purchased Gas Charge.

¹⁵ Va. S.C.C. No. 9, General Service Provision No. 24, Balancing Charge.

¹⁶ If WGL earns less than a 10% return on equity ("ROE") during any PBR period, the PBR Plan allows the Company to file an application with the Commission to recover non-Btu hexane costs in excess of \$400,000 required to achieve a ROE of 10%. *See Application of Washington Gas Light Company, For approval to recover hexane costs and to revise tariffs*, Case No. PUE-2010-00063. Doc. Con. Cen. No. 440930, Final Order (Dec. 15, 2010) (allowing WGL to recover an additional \$507,121 of non-Btu hexane costs for the fiscal year ended Sept. 30, 2009).

¹⁷ Application at 8-9.

¹⁸ *Id.* at 9-10.

for future service stubs and to clarify that contractors may install facilities pursuant to this general service provision; (c) GSP No. 14, Economic Evaluation of Facilities Extensions – proposed revisions to eliminate the collection of refundable customer deposits for future extensions and to revise the calculation of customer contributions for facilities extensions; (d) GSP No. 16, Purchased Gas Charge – proposed revisions to reflect the Company's new asset management revenue sharing proposal, to eliminate the tariff language that differentiates between the Btu-component and non-Btu hexane costs, and to update the Gas Administrative Charge ("GAC") for uncollectible accounts expenses related to gas costs; (e) GSP No. 25, Automated Payment Plan – proposed revisions to provide customers with additional enrollment methods; (f) Rate Schedule No. 8, Developmental Natural Gas Vehicle Service – proposed revisions to close this rate schedule to new customers because the use of compressed natural gas as a motor vehicle fuel has not developed as the Company anticipated when the schedule was proposed; (g) GSP No. 34, Balancing for Natural Gas-Fired Generating Stations – a proposed new tariff provision requiring operators of electric generating stations to balance daily gas deliveries and daily gas usage within specific tolerances; (h) Rate Schedule Nos. 5, 5A, 6 and 6A – proposed new rate schedules for Large Commercial and Industrial ("C&I") Service, Large C&I Delivery Service, Large Group Metered Apartment ("GMA") Service, and Large GMA Delivery Service, respectively, under which large non-residential customers will receive service; (i) Rate Schedule No. 6, Special Purpose Service – a proposal to eliminate this rate schedule because no customers receive service under this rate schedule; (j) Rate Schedule Nos. 2 and 2A – a proposal to eliminate the fourth rate block in these schedules, which apply to customers with usage above 30,000 therms in any month during the test year, since the Company's large C&I customers will be moved to proposed new Rate Schedule Nos. 5 and 5A if they are approved by the Commission, and since large GMA service and delivery customers with usage above 30,000 therms during any month of the test year will be moved from Rate Schedule Nos. 3 and 3A to proposed new Rate Schedule Nos. 6 and 6A if they are approved by the Commission; and (k) GSP No. 30, Earnings Sharing Mechanism, and GSP No. 33, Performance Based Rate Recovery – proposed provisions that provide that these two general service provisions will only apply for service rendered through September 30, 2011 – the last day of the Company's current PBR Plan.¹⁹

WGL's Application further advises that the Company plans to file a depreciation study shortly after the filing of its current Application and requests leave of the Commission to file supplemental testimony and schedules, if necessary, after the depreciation study is filed so as to support the results of the depreciation study in the rates to be determined herein.²⁰ WGL advises, however, that the Company will not request an increase greater than the \$29.6 million requested in its Application.²¹

WGL also proposes to place its proposed rates and charges and revised terms and conditions of service into effect, on an interim basis and subject to refund, for gas service rendered on and after October 1, 2011. However, since the Company's proposed asset management revenue sharing proposal, proposed hexane cost recovery mechanism, and proposed update of the GAC are dependent on the Commission's Final Order in this case, the Company proposes to implement these provisions on an interim basis on October 1, 2011, subject to reconciliation through its Actual Cost Adjustment ("ACA") factor of its PGC and the reconciliation factor in its balancing charges.²²

Finally, simultaneously with the filing of the Company's Application on January 31, 2011, the Company also filed Washington Gas Light Company's Motion for Confidential Treatment of Prefiled Direct Testimony ("Motion"). In its Motion, WGL requests that the Commission enter a ruling designating as confidential certain portions of Company witness Tuoriniemi's direct testimony, including his proposed ratemaking adjustment nos. 14 and 36, which relate to costs incurred by the Company for environmental matters and safety initiatives. In its Motion, the Company requests that the information be withheld from public disclosure and be maintained in strict confidence by the Commission Staff ("Staff") on the grounds the testimony and proposed adjustments contain confidential business sensitive information.

NOW THE COMMISSION, having considered the Company's Application and the applicable law, is of the opinion and finds that the Company's Application should be docketed; that the Company's proposed rates and charges and terms and conditions of service should be allowed to go into effect, on an interim basis and subject to refund, with interest, for gas service rendered on and after October 1, 2011; that a Hearing Examiner should be assigned to this matter to conduct all further proceedings on behalf of the Commission, including ruling on WGL's Motion; and that a procedural schedule should be established as prescribed herein.

Accordingly, IT IS ORDERED THAT:

(1) The Company's Application for approval of a general increase in natural gas rates and charges and revisions to the Company's terms and conditions of service is docketed as Case No. PUE-2010-00139;

(2) The Company's proposed rates and charges and terms and conditions of service may be placed into effect, on an interim basis and subject to refund, with interest, for gas service rendered on and after October 1, 2011.

(3) A public version of the Application and its supporting documents, this Order for Notice for Hearing, and any other documents now or hereafter filed in this proceeding shall be made available for public inspection in the Commission's Document Control Center located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. A copy of the public version of the Application may also be obtained by requesting a copy of the same from counsel for WGL, Meera Ahamed, Esquire, Washington Gas Light Company, 101 Constitution Avenue, N.W., Washington, D.C. 20080. Upon receipt of a request for a copy of the Application, WGL shall serve copies of the same upon the requesting party within three (3) business days of such request. If acceptable to the requesting party, the Company may provide copies of the Application, with or without attachments, by electronic means. In addition, unofficial copies of the public version of the Application and supporting documents, the Commission's Order for Notice and Hearing, other orders entered in this docket, the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules"), as well as other information concerning the Commission and the statutes it administers, may be viewed on the Commission's website at <http://www.scc.virginia.gov/case>.

¹⁹ *Id.* at 10-13. See also the direct pre-filed testimony of Company witness Paul S. Buckley.

²⁰ Company witness Tuoriniemi states on page 72 of his direct pre-filed testimony that "[t]he Company expects to be able to file the results of that updated study on or about March 31, 2011."

²¹ Application at 13.

²² *Id.* at 14-15.

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(4) As provided by § 12.1-31 of the Code and the Commission's Rules, 5 VAC 5-20-120, *Procedure before hearing examiners*, a hearing examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission, concluding with the filing of a final report containing the hearing examiner's findings and recommendations.

(5) A public hearing shall be convened on October 5, 2011, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence on the Company's Application. Any person not participating as a respondent as provided in Ordering Paragraph (7) below, may give oral testimony concerning the Application as a public witness at the October 5, 2011 public hearing. Any person desiring to offer testimony as a public witness at the hearing concerning this Application need only appear in the Commission's Second Floor Courtroom in the Tyler Building at the address set forth above prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

(6) On or before March 31, 2011, the Company shall file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of any additional direct testimony, exhibits, and other materials supporting its Application for a general increase in rates. In the alternative, the additional direct testimony, exhibits, and other materials may be filed electronically as provided by 5 VAC 5-20-140, *Filing and service*.

(7) Any person or entity may participate as a respondent in this proceeding by filing, on or before April 29, 2011, a notice of participation. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to the Clerk at the address in Ordering Paragraph (6) above. Any person or entity simultaneously shall serve a copy of the notice of participation on counsel to the Company, Meera Ahamed, Esquire, at the address in Ordering Paragraph (3) above. Pursuant to Rule 5 VAC 5-20-80 B, *Participation as a respondent*, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by Rule 5 VAC 5-20-30, *Counsel*. All filed papers shall refer to Case No. PUE-2010-00139.

(8) Within five (5) business days of receipt of a notice of participation from a respondent, the Company shall serve upon each respondent a copy of this Order, a copy of the Application, and all materials filed by the Company with the Commission, unless these materials have already been provided to the respondent.

(9) On or before June 15, 2011, each respondent may file with the Clerk of the Commission and serve on the Staff, the Company, and all other respondents any testimony and exhibits by which the respondent expects to establish its case. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be submitted to the Clerk of the Commission at the address in Ordering Paragraph (6) above. In all filings the respondent shall comply with the Commission's Rules of Practice and Procedure, 5 VAC 5-20-140, *Filing and service*; 5 VAC 5-20-150, *Copies and format*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*.

(10) On or before September 28, 2011, any interested person wishing to comment on the Company's Application shall file written comments with the Clerk of the Commission at the address in Ordering Paragraph (6) above. Any interested person desiring to submit comments electronically may do so by following the instructions found at the Commission's website: <http://www.scc.virginia.gov/case>. If not filed electronically, an original and fifteen (15) copies of written comments must be submitted to the Clerk of the Commission. All comments should refer to Case No. PUE-2010-00139.

(11) The Staff shall investigate the Company's Application. On or before August 31, 2011, the Staff shall file with the Clerk of the Commission its testimony and exhibits regarding the Application and shall promptly serve a copy on counsel to the Company and all respondents participating in this proceeding.

(12) On or before September 21, 2011, the Company may file with the Clerk of the Commission any rebuttal testimony and exhibits that it expects to offer in rebuttal to the testimony and exhibits of the respondents and the Staff, and shall on the same day serve a copy on the Staff assigned to this proceeding and on all respondents participating in this proceeding. If not filed electronically as provided by 5 VAC 5-20-140, an original and fifteen (15) copies of such rebuttal testimony and exhibits shall be submitted to the Clerk of the Commission.

(13) The Commission's Rules of Practice and Procedure, 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be modified for this proceeding as follows: answers to interrogatories and requests for production of documents shall be served within seven (7) calendar days after receipt of the same. Except as modified herein, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-240 *et seq.*

(14) On or before March 31, 2011, WGL shall complete publication of the following notice as display advertising (not classified) on two occasions in newspapers of general circulation throughout WGL's service territory within the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY WASHINGTON
GAS LIGHT COMPANY FOR A GENERAL INCREASE IN RATES
AND CHARGES AND TO REVISE ITS TERMS
AND CONDITIONS FOR GAS SERVICE

On January 31, 2011, Washington Gas Light Company ("WGL" or the "Company") filed with the State Corporation Commission ("Commission") an application for a general increase in rates and to revise its terms and conditions for gas service, effective October 1, 2011 ("Application"). WGL's Application proposes rates and charges designed to increase the Company's annual operating revenues by \$29,601,306.

WGL filed its current Application for a general increase in rates pursuant to § 56-237 of the Code of Virginia ("Code") and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*). The Company's Application states that an increase in rates is necessary because the Company is not earning sufficient annual revenues to cover its cost of service, including a reasonable return on common equity capital.

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WGL's proposed \$29.6 million rate increase represents an increase of approximately 6.0% in total going-forward operating revenues based on the Company's operations, as adjusted, for the test year ended September 30, 2010. The proposed rate increase is based on an overall rate of return of 8.58% on rate base and a return on common equity capital of 10.5%. The Company proposes to collect 47% of its proposed rate increase through increases in System Charges, with the remaining 53% balance of its proposed rate increase recovered through increases in Distribution Charges applicable to firm customers. The Company also proposes to increase System Charges and Distribution Charges for interruptible distribution customers to match the cost of serving these customers.

WGL further advises that its proposed annual increase in rates for its Northern Virginia customers and its Shenandoah Gas Division customers will increase by the following amounts:

WGL Northern Virginia Customers

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| Residential | 5.9% |
| Commercial and Industrial | 3.1% |
| Group Metered Apartments | 1.5% |

WGL Shenandoah Gas Division Customers

| | |
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| Residential | 6.1% |
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WGL also proposes to continue its Weather Normalization Adjustment ("WNA") approved by the Commission in Case No. PUE-2006-00059. However, as part of this proceeding, the Company proposes to update certain items in its WNA, including: (i) normal weather heating degree days ("HDDs"); (ii) variation in usage by HDD by customer class; (iii) base usage; and (iv) weighted average distribution rates. WGL's Application proposes to update these items within sixty (60) days after the Commission issues its Final Order in this proceeding.

WGL's Application also requests that the recovery mechanism for its hexane costs approved by the Commission in Case No. PUE-2006-00059 be revised. Under its current performance-based rate regulation plan ("PBR Plan"), WGL is authorized to recover the Btu-component of its Virginia-allocated hexane costs from sales customers through its Purchased Gas Charge ("PGC") provision and from delivery service customers through balancing charges. The Company is required to expense the entire amount of its non-Btu hexane costs. WGL's Application proposes to amend the PBR Plan recovery mechanism for hexane costs to allow the Company to recover all of its Virginia-allocated hexane costs (both the Btu-component and non-Btu hexane costs) from sales customers through the PGC and from delivery service customers through balancing charges. If the Commission does not approve the Company's proposed recovery mechanism for hexane costs, WGL proposes to recover the Btu-component of its hexane costs from sales customers through the PGC and from delivery service customers through balancing charges, and to recover the going level of its non-Btu hexane costs through base rates.

The Company's Application further proposes a new sharing arrangement for earnings generated by its asset management activities. Under the Company's PBR Plan, the Commission approved a sharing arrangement for WGL's asset management activities, which, among other things, shared earnings beginning at a 10.5% return on equity, with WGL's ratepayers receiving 75% of shared earnings and WGL's shareholders receiving 25% of shared earnings. WGL's Application proposes a new sharing arrangement for the Virginia allocated portion of net revenues generated by its asset management activities, with WGL's firm customers receiving 100% of the first \$1 million of net revenues generated by its asset management activities. Earnings in excess of \$1 million would also be shared, with customers receiving 60% of any earnings over \$1 million and the Company retaining 40% of such excess earnings.

WGL further proposes a number of changes to the general service provisions of its tariff, including changes to: General Service Provision ("GSP") No. 4, Payments; GSP No. 13, Installation of Service Pipes and Connections; GSP No. 14, Economic Evaluation of Facilities Extensions; GSP No. 16, Purchased Gas Charge; GSP No. 25, Automated Payment Plan; Rate Schedule No. 8, Developmental Natural Gas Vehicle Service; GSP No. 34, Balancing for Natural Gas-Fired Generating Stations; Rate Schedule Nos. 5, 5A, 6, and 6A – proposed new rate schedules for Large Commercial and Industrial ("C&I") Service, Large C&I Delivery Service, Group Metered Apartment ("GMA") Service, and Large GMA Delivery Service, respectively; Rate Schedule No. 6, Special Purpose Service; Rate Schedule Nos. 2 and 2A (to conform to proposed new Rate Schedule Nos. 5, 5A, 6, and 6A); GSP No. 30, Earnings Sharing Mechanism, and GSP No. 33, Performance Based Rate Recovery. Interested persons should consult the Company's Application for further details concerning these proposed revisions.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

WGL's Application further advises that the Company plans to file a depreciation study shortly after the filing of its current Application. WGL advises, however, that it will not request an increase greater than the \$29.6 million requested in the Application.

WGL also proposes to place its proposed rates and charges and terms and conditions of service into effect, on an interim basis and subject to refund, for gas service rendered on and after October 1, 2011. Pursuant to the Commission's Order for Notice and Hearing, the Company is authorized to place its proposed rates and charges and terms and conditions of service into effect, on an interim basis and subject to refund, with interest, for gas service rendered on and after October 1, 2011.

Interested persons are encouraged to review the Application and supporting documents for the details of these and other proposals. Interested persons should also be advised that, after considering all of the evidence, the Commission may approve revenues and adopt rates, fees, charges, tariff revisions, and terms and conditions of service that differ from those appearing in the Company's Application or may apportion revenues among customer classes or design rates in a manner differing from that shown in the Company's Application.

A public hearing on the Company's Application shall be convened on October 5, 2011, at 10:00 a.m., before a Hearing Examiner in the Commission's Second Floor Courtroom, located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219. Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD). Any person not participating as a respondent as provided for below may present oral testimony concerning the Application as a public witness at the hearing.

Any person desiring to offer testimony at the public hearing as a public witness need only appear in the Commission's Second Floor Courtroom at the Tyler Building at the address set forth above prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

Interested persons may review a copy of the public version of the Application and the Commission's Order for Notice and Hearing in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. A copy of the Application may also be obtained at no cost by interested persons by requesting the same from counsel for the Company, Meera Ahamed, Esquire, Washington Gas Light Company, 101 Constitution Avenue, N.W., Washington, D.C. 20080. If acceptable to the requesting party, the Company may provide these documents, with or without attachments, by electronic means. Interested persons may also download unofficial copies of the public version of the Application from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before April 29, 2011, any person or entity may participate as a respondent in this proceeding by filing a notice of participation in accordance with Rule 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to Joel H. Peck, Clerk of the Commission at the address set forth below. Each respondent shall serve a copy of the same upon counsel for the Company at the address set forth above on or before April 29, 2011. Any notice of participation shall set forth: (i) a precise statement of the interest of the respondent, (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the actions. Any person or entity should obtain a copy of the Commission's Order for Notice and Hearing in this proceeding for additional information about participation as a respondent.

On or before September 28, 2011, any interested person wishing to comment on the Company's Application shall file written comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to submit comments electronically may do so by following the instructions found at the Commission's website: <http://www.scc.virginia.gov/case>. If not filed electronically, an original and fifteen (15) copies of written comments must be submitted to the Clerk of the Commission. All comments should refer to Case No. PUE-2010-00139.

WASHINGTON GAS LIGHT COMPANY

(15) On or before March 31, 2011, the Company shall serve a copy of its Application and this Order for Notice and Hearing on the chairman of the board of supervisors and county attorney of each county and upon the mayor or manager of every city and town (or upon equivalent officials in counties, towns, and cities having alternate forms of government) in which the Company provides service. Service shall be made by personal delivery or by first class mail, postage prepaid, to the customary place of business or residence of the person served.

(16) On or before August 31, 2011, WGL shall file with the Clerk of the Commission proof of the publication and service required in Ordering Paragraphs (14) and (15) above.

(17) This matter is continued pending further order of the Commission.

**CASE NO. PUE-2010-00140
MARCH 3, 2011**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to engage in affiliate transactions and for approval of an affiliate agreement pursuant to § 56-76 *et seq.* of the Code of Virginia

ORDER GRANTING APPROVAL

On December 3, 2010, Washington Gas Light Company ("WGL" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission") requesting authority: (i) to enter into a service agreement ("Services Agreement") to provide general management services ("Management Services") to a new affiliate, WGSW, Inc. ("WGSW"); and (ii) to engage in the affiliate transactions contemplated by that Service Agreement, pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code").¹

WGL is a regulated public utility headquartered in Washington, D.C., which provides natural gas distribution service to more than one million residential, commercial and industrial customers, including service to approximately 486,000 customers in Virginia. WGL is a wholly owned subsidiary of WGL Holdings, Inc. ("Holdings"). Another wholly owned subsidiary of Holdings, Washington Gas Resources Corporation, in turn wholly owns WGSW, a Delaware corporation recently formed to participate as a limited partner in certain solar projects in California.

WGL and WGSW are considered affiliated interests under § 56-76 of the Code. As such, WGL is required to obtain prior approval from the Commission pursuant to the Affiliates Act for any agreement or arrangement between the companies for the provision of services, the exchange of property, rights, or things, or the purchase or sale of treasury bonds or stock.

The proposed Services Agreement lists fourteen (14) specific Management Services that WGL may provide to WGSW: (i) Accounting, Financial, and Statistical Services; (ii) Auditing and Internal Audit Services; (iii) Budget Services; (iv) Corporate and Legal Services; (v) Engineering, Operations and Planning Services; (vi) Human Resources Services; (vii) Information Systems Services; (viii) Gas Dispatching Services; (ix) Marketing and Advertising Services; (x) Insurance Services; (xi) Methods Services; (xii) Officers; (xiii) Rate Services; and (xiv) Tax Services.

The proposed Services Agreement also includes a Miscellaneous Services category² to capture other Management Services in which WGL has some expertise but which are not described in detail elsewhere in the Services Agreement. In addition, the proposed Services Agreement contains a provision to allow WGL to utilize affiliated third parties to provide Management Services to WGSW.³

The proposed Services Agreement states that WGL will provide Management Services to WGSW at cost, which includes salary, indirect labor, employee benefits, and overhead costs, as well as other expenses. Per the Services Agreement, if WGL utilizes affiliated third parties to provide Management Services, the affiliates will bill WGL for their costs, which will include the same items listed above, and WGL will bill these costs to WGSW. Further, WGL proposes that, if it bills WGSW based on estimated costs, such charges will be trueed-up to actual cost annually except for construction costs, which will be adjusted upon project completion.

The Services Agreement also includes a provision allowing the sale or transfer of goods to and from WGL affiliates at approved tariff prices or, if a tariff price is not available, at net book value as of the date of the transfer.⁴ As proposed, the Services Agreement becomes effective as of the date of the Commission's approval in this case and contains conditional open-ended termination provisions.

NOW THE COMMISSION, upon consideration of the Application, the representations of the Applicant, the February 17, 2011 Comments of WGL to the Commission Staff's February 4, 2011 Draft Recommendations ("Comments"),⁵ and having been advised by its Staff, is of the opinion and makes the following findings. WGL represents that the provision of Management Services on a centralized basis allows WGL and its affiliates to benefit from: (i) the efficient use of personnel and equipment; (ii) the coordination of analysis and planning; and (iii) the availability of specialized personnel and equipment that WGL and its affiliates cannot economically maintain on an individual basis. However, the proposed Services Agreement contains several provisions that we generally disallow because they are not in the public interest. The proposed Services Agreement also omits certain provisions that we normally require for affiliate agreements. Therefore, we will approve the Services Agreement subject to certain revisions and requirements that we find necessary to protect the public interest.

First, we will limit the duration of our approval of the proposed Services Agreement to five (5) years from the date of this Order Granting Approval. In its Comments, WGL objected to a time limitation on approval of the proposed Services Agreement on the basis that it would create administrative uncertainty. We disagree. Affiliate agreements concerning the provision of centralized administrative services require periodic review because they typically involve a wide range of services, substantial transactions, and are subject to significant change over time. Accordingly, we have established a five-year time limitation in numerous Affiliates Act cases.⁶ If WGL wishes to continue the Services Agreement after our initial approval ends, further approval will be required.

¹ § 56-76 *et seq.* of the Code.

² See Article II, Section O of Attachment A to the Services Agreement.

³ See Article II, Section P of Attachment A to the Services Agreement.

⁴ See Article III, Section H of Attachment A to the Services Agreement.

⁵ WGL's Comments are attached to Staff's Action Brief in this case.

⁶ *Application of Virginia Natural Gas, Inc., and AGL Services Company, For approval of a revised services agreement under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2010-00070, Doc. Cont. No. 437645, Order Granting Approval (Sept. 30, 2010); *Application of Columbia Gas of Virginia*,

Second, we will require WGL to delete the: (i) Engineering, Operations, and Planning Services; (ii) Gas Dispatching Services; and (iii) Rate Services service categories from the proposed Services Agreement. Since WGL will not be providing these services to WGSW, these service categories are unnecessary.

Third, we will require WGL to delete the Miscellaneous Services service category from the proposed Services Agreement. We typically disallow such open-ended clauses in Affiliates Act cases,⁷ because they can permit significant changes to affiliate agreements without prior Commission approval. If WGL wishes to provide a new Management Service to WGSW that is not specifically identified in the proposed Services Agreement, separate Commission approval will be required.

Fourth, we will require WGL to eliminate from the proposed Services Agreement the provision allowing it to utilize affiliated third parties to provide Management Services to WGSW. WGL represents that the clause will not be used. Furthermore, we typically disallow such provisions in Affiliates Act cases⁸ because they permit dealings between the utility and its affiliates without prior Commission approval. If WGL wishes to utilize affiliated third parties to provide Management Services to affiliates, separate Commission approval will be required.

Fifth, we will require WGL to eliminate from the proposed Services Agreement the provision allowing the transfer of equipment or goods to or from WGL and its affiliates, including WGSW. WGL represents that the clause will not be used. Furthermore, as previously discussed with the Miscellaneous Services service category and the affiliated third party provision, we find such open-ended clauses to be contrary to the prior approval requirements of § 56-77 of the Code. If WGL wishes to transfer equipment or goods between itself and WGSW, separate Commission approval will be required.

Sixth, we will require WGL to maintain records to demonstrate that the Management Services provided by WGL to WGSW are cost-beneficial to Virginia ratepayers. Furthermore, for services where a market may exist, WGL should investigate whether alternative service providers are available and, if they exist, WGL should compare the market price to WGL's costs and charge WGSW the higher of cost or market. WGL will bear the burden, in any rate proceeding, of demonstrating that the services provided to WGSW under the proposed Services Agreement were priced at the higher of cost or market where a market exists.

Seventh, we will require separate Commission approval for any changes in the terms and conditions of the proposed Services Agreement authorized in this case, including any changes in allocation methodologies and successors or assigns.

Eighth, we find that the authority granted in this case will have no ratemaking implications.

Finally, we make two findings related to other WGL affiliate agreements mentioned in the instant Application. During the review process, Staff discovered that the Services Agreement proposed in this case is substantively similar to the ones that WGL uses to provide Management Services to its other affiliates. We approved these other affiliate agreements with differing regulatory requirements in four separate cases dating back ten (10) to twenty-two (22) years. Given the numerous changes indicated for the proposed Services Agreement, Staff recommended that WGL be directed to re-file these other Management Services agreements. Staff also noted that WGL's current tax sharing agreement, which was included in the Application, contained outdated references and may not allocate consolidated taxes consistent with the income tax ratemaking provisions of § 56-235.2 A of the Code. Therefore, Staff recommended that the tax sharing agreement be re-filed or a tax reconciliation report be submitted annually.

In its Comments, WGL objected to both recommendations. WGL asserted that its other affiliated Management Services agreements and its tax sharing agreement are not part of the instant proceeding. In addition, WGL argued that it has not been afforded either adequate notice of recommended revisions or the opportunity to evaluate and respond to Staff's recommendations regarding the Management Services agreements or tax sharing agreement.

We will not direct WGL to re-file previously approved agreements as part of this proceeding. Rather, if deemed appropriate, we will subsequently issue one or more orders directing WGL to re-file previously approved agreements. Any such requirement, however, would not constitute a substantive finding on these agreements. Rather, WGL and all participants will be afforded the opportunity to participate in any such proceeding.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, Washington Gas Light Company is hereby granted approval to enter into the proposed Services Agreement, consistent with the findings set out above and effective as of the date of the entry of this Order Granting Approval. Within ninety (90) days after the date of this Order, WGL shall file with the Commission an executed and revised Services Agreement that incorporates the changes described in the findings set out above.

(2) The approval granted herein is limited to five years from the date of the entry of the Order Granting Approval in this case. Should WGL wish to continue the Services Agreement beyond that date, further Commission approval shall be required.

(3) Approval is denied for the: (i) Engineering, Operations, and Planning Services; (ii) Gas Dispatching Services; and (iii) Rate Services service categories.

Inc., For approval of a Service Agreement, as amended, between Columbia Gas of Virginia, Inc., and NiSource Corporate Services Company pursuant to Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2009-00063, 2009 S.C.C. Ann. Rept. 495, Order Granting Approval (Sept. 25, 2009); Application of Appalachian Power Company and American Electric Power Service Corporation, For authority to enter into an affiliate transaction under Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2007-00055, 2007 S.C.C. Ann. Rept. 452, Order Granting Authority (Oct. 18, 2007).

⁷ *Id.*

⁸ *Id.*

(4) Approval is denied for the Miscellaneous Services service category and any other non-specific service categories. If WGL wishes to add a new category of Management Services that is not specifically identified in the Services Agreement, separate Commission approval shall be required.

(5) Approval is denied for the provision permitting WGL to provide Management Services to WGSW through the engagement of affiliated third parties. Should WGL wish to make use of its affiliates' expertise, separate Commission approval shall be required.

(6) Approval is denied for the provision permitting WGL to transfer goods or equipment between itself and WGSW. Should WGL wish to make such transfers, separate Commission approval shall be required.

(7) WGL shall be required to maintain records demonstrating that the Management Services provided to WGSW are cost-beneficial to Virginia ratepayers. For any Management Services provided by WGL where a market may exist, WGL shall investigate whether alternative service providers are available and, if they exist, WGL shall compare the market price to WGL's costs and charge WGSW the higher of cost or market. WGL will bear the burden, in any rate proceeding, of demonstrating that the services provided to WGSW under the proposed Services Agreement were priced at the higher of cost or market where a market exists.

(8) The approval granted in this case shall have no ratemaking implications.

(9) The approval granted herein shall not preclude the Commission from exercising its authority under the provisions of § 56-78 or § 56-80 of the Code hereafter.

(10) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein whether or not such affiliate is regulated by this Commission.

(11) WGL shall include the transactions associated with the revised Services Agreement approved herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of the Division of Public Utility Accounting ("PUA Director") on May 1 of each year, subject to administrative extension by the PUA Director.

(12) In the event that WGL's annual informational filings or expedited or general rate case filings are not based on a calendar year, then WGL shall include the affiliate information contained in its ARAT for the test period in such filings.

(13) There appearing nothing further to be done, this case shall be dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2010-00141
MAY 11, 2011**

JOINT APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY,
LOUISVILLE GAS AND ELECTRIC COMPANY,
and
LG&E AND KU SERVICES COMPANY

For authority to engage in affiliate transactions and to enter into an Amended and Restated Utility Service Agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia, § 56-76 *et seq.*

ORDER GRANTING AUTHORITY

On November 29, 2010, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP"), Louisville Gas & Electric Company ("LG&E"), and LG&E and KU Services Company ("Services Company") (collectively, the "Joint Applicants") filed a joint application ("Joint Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"),¹ requesting authority to engage in affiliate transactions and to enter into an Amended and Restated Utility Service Agreement ("Amended Service Agreement").

On February 10, 2011, the Joint Applicants filed with the Commission a revised version of Exhibit A to the Amended Service Agreement² and an updated Cost Allocation Manual for KU/ODP and Services Company ("February 10, 2011 Filing"). The Cost Allocation Manual outlines the methods, policies and procedures that Services Company will follow in performing certain services for affiliate companies, including KU/ODP and LG&E. Revised Exhibit A updated the list of services that Services Company may provide to KU/ODP under the Amended Service Agreement, the rules for determining and allocating the costs of such services, and the terms and conditions for the provision of such services. The Joint Applicants, however, made substantial changes and revisions in Revised Exhibit A compared to the original Exhibit A of the Amended Service Agreement filed with the Joint Application. Specifically, the Joint Applicants made the following changes in Revised Exhibit A: reduced the number of allocation methods from thirty-six (36) in Exhibit A to a total of eighteen (18) in Revised Exhibit A; revised the language in sixteen (16) of the allocation methods; and added two new allocation methods, (#16) Total Utility Plant Assets Ratio and (#18) Utility Ownership Percentages.

On February 28, 2011, the Commission issued an Order on Review of Amended Application finding that the February 10, 2011 Filing constituted an amendment to the Joint Application and thereby reset the sixty (60)-day statutory review period effective February 10, 2011, for consideration of the

¹ Va. Code § 56-76 *et seq.* (the "Affiliates Act").

² Hereafter, the previous version of Exhibit A will be referred to as "Exhibit A." The revised version of Exhibit A filed February 10, 2011, will be referred to as "Revised Exhibit A."

amended Joint Application. Accordingly, the Commission ordered that the period of review for the amended Joint Application be reset to run sixty (60) days from February 10, 2011.³

The Joint Applicants filed the instant Joint Application in compliance with Ordering Paragraph (16) of the Commission's Final Order entered October 19, 2010, in Case No. PUE-2010-00060 ("2010 Order")⁴ requesting Commission authorization to engage in affiliate transactions and to enter into the Amended Service Agreement, which reflects the change of Services Company's legal name⁵ and the repeal of the Public Utility Holding Company Act of 1935 ("1935 Act").⁶ The Amended Service Agreement will replace the existing Service Agreement and Exhibit A attached thereto between KU/ODP, LG&E, and LG&E Energy Services, Inc., approved by the Commission on August 10, 2000, in Case No. PUA-2000-00050 ("2000 Service Agreement").⁷

The Amended Service Agreement states that Services Company supplies or will supply certain administrative, technical, management, engineering, legal, accounting, or other services to KU/ODP and that such services will be provided to KU/ODP at its request and can be terminated upon its request. These services will be the same, without addition or deletion, as those approved in the 2000 Service Agreement. Services Company will provide services to KU/ODP at fully allocated costs with no return on investment included. The costs of such services provided by Services Company will be directly assigned, distributed, or allocated by activity, project, program, work order, or other appropriate basis. The primary basis for charges from Services Company will be the direct-charge method. For all other costs, the allocation methods set forth in Revised Exhibit A will be used, which lists specific methods to be applied to particular projects and services.

The Amended Service Agreement also states that KU/ODP and LG&E may, from time to time, provide or receive such services, construction, or goods to or from each other, at cost, as are reasonably required to meet a breakdown or other emergency, when KU/ODP and LG&E believe in good faith that, under the conditions then existing, such transaction will be to the advantage of KU/ODP or LG&E. The Amended Service Agreement also allows for KU/ODP and LG&E to provide or receive from each other any goods, at not more than cost less depreciation, that were purchased for their own use. The Amended Service Agreement provides that KU/ODP, LG&E, or Services Company may terminate the Amended Service Agreement by providing sixty (60) days' written notice to the remaining parties. However, the Amended Service Agreement does not provide for renewability, nor does it have an expiration date; rather, the Amended Service Agreement is intended to continue indefinitely until written notice of termination is provided.

The Amended Service Agreement states that Services Company will provide services to KU/ODP by utilizing the Services Company's executives, accountants, financial advisers, technical advisers, attorneys, and other persons with the necessary qualifications. If necessary, however, Services Company, after consultation with KU/ODP, may also arrange for the services of non-affiliated experts, consultants, engineers, and attorneys to provide services to KU/ODP.

Concerning the cost determination and allocation of services provided to KU/ODP, the Amended Service Agreement states that, as and to the extent required by law, Services Company will provide services to KU/ODP. The list of services that Services Company may provide to KU/ODP, the rules for determining and allocating the costs of such services, and the terms and conditions for the provision of such services are set forth in Revised Exhibit A (Description of Services and Allocation Methods) and may be further set forth in such other policies and procedures as the parties may agree upon that are not inconsistent with the Amended Service Agreement and Revised Exhibit A. The Joint Applicants represent that, regarding services provided by Services Company to KU/ODP for which a market exists, labor costs are at market, being based on market survey information obtained by the Human Resources Department.

The Joint Applicants represent that it is more cost effective for KU/ODP to obtain services described herein jointly through a service agreement rather than provide such services internally. They further represent that obtaining services from Services Company allows the overhead costs of providing such services to be shared and allocated between KU/ODP and its affiliates and allows for more efficient and specialized use of personnel with greater expertise who have better opportunities to improve their skills and knowledge to the benefit of both KU/ODP and its customers. The Amended Service Agreement is non-exclusive, and KU/ODP is free to obtain services from a source other than Services Company whenever it is preferable or more cost effective.

The Joint Applicants state that KU/ODP needs the various services that may be provided under the Amended Service Agreement to continue providing the current level of service to its customers in Virginia. The Joint Applicants further state that approval of the Amended Service Agreement will

³ On April 6, 2011, the Commission issued an Order Extending Time for Review pursuant to § 56-77 of the Code, extending the period for Commission review of the Joint Application by an additional thirty (30) days.

⁴ See *Joint Petition of PPL Corporation, E. ON AG, E. ONUS. Investments Corp., E. ONUS., LLC, and Kentucky Utilities Company d/b/a Old Dominion Power Company, For approval of transfer of ownership and control*, Case No. PUE-2010-00060, 2010 S.C.C. Ann. Rept. 534, Final Order (Oct. 19, 2010). Ordering Paragraph (16) of the 2010 Order states: "When any of the affiliates with which KU/ODP currently has an approved affiliate agreement undergoes a name change as a result of the Proposed Transfer, KU/ODP shall file an application for Commission approval of a new affiliate agreement within sixty (60) days of such name change taking effect." *Id.* at 537. Therefore, KU/ODP is required to file the instant Joint Application due to the change of Services Company's legal name on September 30, 2010.

⁵ Services Company was incorporated under the laws of Kentucky on July 2, 2000, as LG&E Energy Services, Inc. Services Company was renamed E.ON U.S. Services, Inc., in 2005 and obtained its current legal name on September 30, 2010.

⁶ Effective February 8, 2006, the 1935 Act was repealed and replaced by the Public Utility Holding Company Act of 2005, which provides the Federal Energy Regulatory Commission with oversight authority in lieu of the Security and Exchange Commission's oversight role under the 1935 Act. (Energy Policy Act of 2005, Pub. L. No. 109-58, August 8, 2005, 119 Stat. 594 (the Energy Policy Act), §§ 1263, 1274.)

⁷ See *Joint Petition of Kentucky Utilities Company, Louisville Gas and Electric Company, and LG&E Energy Services, Inc., For approval of a services agreement*, Case No. PUA-2000-00050, 2000 S.C.C. Ann. Rept. 210, Order Granting Approval (Aug. 10, 2000). Subsequently, and in the same case, the Joint Applicants submitted an updated Exhibit A to the 2000 Service Agreement for Commission approval, which revised the services and allocation factors set forth therein. Therefore, on November 9, 2000, the Commission issued an Order Granting Approval that approved the revisions in the updated Exhibit A to the 2000 Service Agreement. See *Motion of Kentucky Utilities Company, For order regarding allocations factors*, Case No. PUA-2000-00050, 2000 S.C.C. Ann. Rept. 213, Order Granting Approval (Nov. 9, 2000).

allow for the continued provision of administrative, management, and other services to KU/ODP and for proper allocation of the costs of those services. In addition, KU/ODP will continue to provide or receive other goods and services related to incidental needs.

NOW THE COMMISSION, upon consideration of the Joint Application, representations of the Joint Applicants, and having been advised by its Staff, is of the opinion and makes the following findings. It appears that KU/ODP continues to have a need for services that cannot be performed economically on an internal basis that are necessary to meet its obligations to provide service to its Virginia customers and, therefore, the Amended Service Agreement, which provides for the same services as the Commission approved in the 2000 Service Agreement, would be a reasonable way for KU/ODP to continue to obtain needed services. However, we believe that several changes are necessary to ensure that the Amended Service Agreement continues to be in the public interest. First, due to the nature of service agreements and the energy industry, we believe it is appropriate to limit our approval of the Amended Service Agreement to five (5) years from the date of this Order.⁸ We also believe that, for the majority of services that KU/ODP receives from Services Company, pricing at cost is appropriate. However, some services may be obtainable from unaffiliated parties, and a market price may exist for those services. Therefore, we believe that KU/ODP should maintain records to demonstrate that the provision of services by Services Company to KU/ODP is cost beneficial to Virginia consumers and that, where a market exists, KU/ODP pay Services Company the lower of cost or market. The transfer of services at cost between KU/ODP and LG&E, which are both regulated utilities, and the transfer of goods at cost less depreciation are appropriate.

Finally, we believe that it is in the public interest to have certain clarifications made to the Amended Service Agreement to reflect the changes and additional information provided in Revised Exhibit A. We believe that KU/ODP should revise the Amended Service Agreement to reflect the following: (i) the allocation methods in Revised Exhibit A should include the specific components of the numerator and denominator used in determining each ratio: (#2) Departmental Charge Ratio; (#7) Number of Customers Ratio; (#8) Number of Employees Ratio; (#14) Revenue, Total Assets and Number of Employees Ratio; (#15) Total Assets Ratio; (#17) Transportation Resource Management System Chargeback Ratio; and (# 18) Utility Ownership Percentages; (ii) the language in each of the allocation methods in Revised Exhibit A that are calculated on an annual basis should include the following statement: "This ratio is calculated on an annual basis. Any changes in the ratio will be determined no later than May 1st of the following calendar year, and charges to date will be reallocated for any significant changes in the ratio from that used in the prior year"; and (iii) the Cost Allocation Manual for KU/ODP and Services Company, filed with Revised Exhibit A as part of the February 10, 2011 Filing, should be included as an exhibit to the Amended Service Agreement.

We are hereby of the opinion that the above-described affiliate transactions and the Amended Service Agreement are in the public interest and should, therefore, be approved provided that the requirements set forth above are met.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, the Joint Applicants are hereby granted authority to engage in affiliate transactions and to enter into the Amended Service Agreement as described herein, provided that the requirements as set forth herein are met.

(2) The authority granted herein for the Amended Service Agreement is limited to five (5) years from the date of this Order Granting Authority.

(3) Should KU/ODP wish to continue receiving services from Services Company and LG&E, as approved herein, after the five (5)-year period, subsequent Commission approval shall be required.

(4) The authority granted herein shall not include the provision by Services Company of services to KU/ODP through the use of KU/ODP affiliates. Should Services Company desire to use KU/ODP affiliates in providing services, KU/ODP shall be required to file a separate application for approval pursuant to the Affiliates Act.

(5) Approval of the Amended Service Agreement shall be limited to services specifically identified in the Description of Services in Revised Exhibit A of the Amended Service Agreement. Should KU/ODP wish to obtain additional services from Services Company other than those specifically approved in this case, subsequent Commission approval shall be required.

(6) Separate Commission approval shall be required for any changes in the terms and conditions in the Amended Service Agreement approved herein, including changes in allocation methodologies affecting KU/ODP, service category descriptions, and successors and assigns.

(7) KU/ODP shall maintain records to demonstrate that the services provided by Services Company are cost beneficial to Virginia ratepayers. For all services provided by Services Company where a market may exist, KU/ODP shall investigate whether there are alternative sources from which it could purchase such services. If an alternative source exists, KU/ODP shall compare the market price to Services Company's charges and pay the lower of cost or market. Records of such investigations and comparisons shall be available for Commission Staff review upon request.

(8) KU/ODP shall revise the Amended Service Agreement to include the following: (i) the following allocation methods in Revised Exhibit A shall include the specific components of the numerator and denominator used in determining each ratio: Departmental Charge Ratio; Number of Customers Ratio; Number of Employees Ratio; Revenue, Total Assets and Number of Employees Ratio; Total Assets Ratio; Transportation Resource Management System Chargeback Ratio; and Utility Ownership Percentages; (ii) the language in each of the allocation methods in Revised Exhibit A that are calculated on an annual basis shall include the following statement: "This ratio is calculated on an annual basis. Any changes in the ratio will be determined no later than May 1st of the following calendar year, and charges to date will be reallocated for any significant changes in the ratio from that used in the prior year"; and (iii) the Cost Allocation Manual for KU/ODP and Services Company, filed with Revised Exhibit A as part of the February 10, 2011 Filing, shall be included as an exhibit to the Amended Service Agreement.

⁸ A similar time limitation has been approved in other cases. See Application of Virginia Natural Gas, Inc., and AGL Services Company, For approval of a revised services agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2005-00025, 2005 S.C.C. Ann. Rept. 424, Order Denying Petition for Clarification and Granting Approval (July 8, 2005), modified, 2005 S.C.C. Ann. Rept. 428, Order on Reconsideration (Nov. 1, 2005); Application of Columbia Gas of Virginia, Inc., For approval of a service agreement with NiSource Corporate Services Company pursuant to Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2004-00072, 2004 S.C.C. Ann. Rept. 477, Order Granting Approval (Sept. 30, 2004), modified, 2004 S.C.C. Ann. Rept. 480, Order on Reconsideration (Dec. 1, 2004).

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (9) KU/ODP shall file an executed copy of the Amended Service Agreement approved herein, reflecting revisions ordered, within thirty (30) days of approval by the Commission, subject to administrative extension by the Commission's Director of Public Utility Accounting.
- (10) The authority granted herein shall supersede the authority granted in Case No. PUA-2000-00050.
- (11) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (12) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- (13) The authority granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Amended Service Agreement.
- (14) All transactions under the Amended Service Agreement shall be included in KU/ODP's Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Commission's Director of Public Utility Accounting. In addition to information currently provided in the ARAT, all transactions under the Amended Service Agreement shall be reported in the ARAT as follows:
- (a) By Case Number in which the transactions were approved;
 - (b) Description of services provided to KU/ODP by Services Company, and services and goods provided between KU/ODP and LG&E;
 - (c) FERC Account;
 - (d) Transactions by month; and
 - (e) Dollar amount paid by KU/ODP for each type of service, such as amount paid for Retail Business Services, Operations Services, etc.
- (15) If Annual Informational and/or General Rate Case Filings are not based on a calendar year, then KU/ODP shall include the affiliate information contained in the ARAT in such filings.
- (16) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2010-00142
MARCH 10, 2011**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For an increase in base rates and for authority to revise the terms and conditions applicable to natural gas service pursuant to Chapter 10 (§ 56-232 *et seq.*) of Title 56 of the Code of Virginia

ORDER FOR NOTICE AND HEARING

On February 23, 2011, Virginia Natural Gas, Inc. ("VNG" or "Company"), completed an application filed with the State Corporation Commission ("Commission") pursuant to Chapter 10 of Title 56 (§ 56-232 *et seq.*) of the Code of Virginia ("Code") requesting an increase in its base rates, effective August 1, 2011, and for authority to revise the Company's terms and conditions applicable to its natural gas service, including subdividing the General Services class on Schedule 2 into three rate tiers ("Application").¹ VNG's Application states that the proposed rates and charges are designed to increase the Company's annual base rate revenue by \$28.4 million. The Company's Application further advises that the actual increase to be borne by customers, as proposed, is \$25.1 million when adjusted to account for the impact of resetting its Revenue Normalization Adjustment ("RNA") Rider² and Weather Normalization Adjustment ("WNA") Rider.³

Pursuant to its July 24, 2006 Order in Case Nos. PUE-2005-00057 and PUE-2005-00062, the Commission approved VNG's current performance based regulatory plan and associated rates, charges, and terms and conditions of service, effective for the period commencing August 1, 2006, and

¹ Application at 1; Cogburn Prefiled Direct Testimony at 5.

² VNG's RNA Rider was initially approved in *Application of Virginia Natural Gas, Inc., For approval to implement a natural gas conservation and ratemaking efficiency plan including a decoupling mechanism and to record accounting entries associated with such mechanism*, Case No. PUE-2008-00060, 2008 S.C.C. Ann. Rept. 566, Order Approving Natural Gas Conservation and Ratemaking Efficiency Plan (Dec. 23, 2008). Amendments to the plan approved in Case No. PUE-2008-00060 subsequently were approved by the Commission in *Application of Virginia Natural Gas, Inc., For Authority to Amend its Conservation and Ratemaking Efficiency Plan*, Case No. PUE-2009-00139, Order Approving Modifications and Amended Application (July 23, 2010).

³ VNG'S WNA Rider for residential customers was made permanent in 2006 in *Application of Virginia Natural Gas, Inc., For extension of its Weather Normalization Adjustment Rider*, Case No. PUE-2002-00237, 2006 S.C.C. Ann. Rept. 297, Final Order (Sept. 13, 2006).

automatically terminating five years from that date ("PBR Plan").⁴ VNG states in its Application that the Company is not proposing to renew, modify, or extend its currently approved PBR Plan, which will expire on August 1, 2011.⁵ The Company also proposes to terminate its experimental WNA "Rider C"⁶ for its General Service Customers and "requests Rider C become permanent applicable to Rate Schedule 2, tier b and tier c."⁷ VNG's Application advises that since the Company's PBR Plan remains in effect and has not been withdrawn or terminated, the rates approved by the Commission for VNG in 1996 in Case No. PUE-1996-00227⁸ are the same rates that continue to be in effect as of the date of the filing of its Application.⁹

VNG notes in its Application that, "[b]ased on an adjusted 2010 test year, the Company has a total revenue requirement of approximately \$147.5 million, which represents an increase in its annual base rate revenue of \$28.4 million over present annual revenue of \$119.1 million, excluding gas costs."¹⁰ The Company states that its proposed weighted cost of capital for the rate year is 8.20% based on a return on equity of 10.95%, which it requests the Commission to approve, and a capital structure ratio of 51.00% equity and 49.00% total debt.¹¹ According to VNG's Application, pursuant to its proposed rates, "the monthly bill for a typical residential customer using 620 hundred cubic feet ('CCF') of natural gas per year will increase on August 1, 2011 by \$6.27, or 9.6% per month, from an average of \$65.24 to \$71.51 when the impact of changes in base rates, the WNA and [RNA] are taken into account and gas prices are held constant between the test year and the rate year."¹²

The Company also proposes an alternative three-year phase-in of rates, which it advises will mitigate the impacts of the Company's proposed rate increase on VNG customers ("Mitigation Plan").¹³ VNG states that under the Mitigation Plan, the revenue requirement associated with the capital cost and depreciation expense of the Hampton Roads Crossing and associated facilities ("HRX") would be phased in over three years with a revenue requirement of \$14.6 million on August 1, 2011, and an increase to the Company's revenue requirement of \$5.5 million and \$5.3 million beginning on August 1, 2012, and August 1, 2013, respectively.¹⁴ According to VNG, the Mitigation Plan further provides that "beginning on August 1, 2011, the costs associated with carrying stored gas inventory, the interest on unrecovered gas costs, and bad debt associated with gas cost would be moved to the gas cost recovery mechanism with a projected annual impact of \$3.4 million."¹⁵ VNG states that under its Mitigation Plan, a typical residential customer using 620 CCFs annually should expect an increase of \$3.11 per month, or a 4.8% increase in the total bill in the first year, taking into account the impact of WNA and RNA revenue shift (effective August 1, 2011); a \$1.48 per month, or 2.1% increase, in total bill in the second year (effective August 1, 2012); and a \$1.42 per month, or 2.0% increase, in total bill in the third year (effective August 1, 2013).¹⁶

VNG also advises that its Application contains confidential and/or redacted information, in compliance with Rule 10 F of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.*, and includes an accompanying Motion for Entry of a Protective Order.¹⁷

NOW THE COMMISSION, having considered the Application, is of the opinion and finds that this matter should be docketed; that public notice and an opportunity for participation in this proceeding should be given; and that a public hearing should be convened to receive evidence on the Application. The Commission further finds that the proposed rates, charges, and terms and conditions should be suspended pursuant to § 56-238 of the

⁴ *Application of Virginia Natural Gas, Inc., For approval of a performance based rate regulation methodology pursuant to Virginia Code § 56-235.6, Case No. PUE-2005-00057, and General Rate Case Filing of Virginia Natural Gas, Inc., For investigation of the justness and reasonableness of current rates, charges, and terms and conditions of service in compliance with prior Commission Order, Case No. PUE-2005-00062, 2006 S.C.C. Ann. Rept. 341, Order (July 24, 2006).*

⁵ Application at 2.

⁶ The Company's "Rider C" experimental WNA Rider for General Service Customers is effective through and including September 5, 2011, pursuant to the Commission's September 3, 2009 Order Approving Extension of Experiment in *Application of Virginia Natural Gas, Inc., For Approval of an Experimental Weather Normalization Adjustment for General Service Customers, Case No. PUE-2006-00095, 2009 S.C.C. Ann. Rept. 272, Order Approving Extension of Experiment (Sept. 3, 2009).*

⁷ Application at 2. Schedule 2.B applies to General Firm Gas Sales Service, Small Commercial and Industrial Accounts with less than 4,000 CCF Annual Consumption in CCF. Schedule 2.C applies to General Firm Gas Sales Service, Large Commercial and Industrial Accounts with more than 4,000 CCF Annual Consumption in CCF.

⁸ *Application of Virginia Natural Gas, Inc., For an expedited increase in gas rates, Case No. PUE-1996-00227, 1998 S.C.C. Ann. Rept. 338, Final Order (Apr. 27, 1998).*

⁹ Application at 4.

¹⁰ *Id.* at 6. VNG also advises that the "return on equity ('ROE') the Commission determines in this proceeding . . . will also be vital in providing the Company access to capital markets to fund its current and future infrastructure plans, including the replacement of an average of approximately 55 miles of bare steel and cast iron pipe per year for the next five years." *Id.* at 5.

¹¹ *Id.* at 7.

¹² *Id.* at 8.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 9.

¹⁷ *Id.* at 11.

Code;¹⁸ and that the Company may, but is not obligated to, implement the proposed rates, charges, and terms and conditions on an interim basis, subject to refund with interest, for service rendered on and after August 1, 2011, when its PBR Plan automatically terminates.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's Application is hereby docketed and assigned Case No. PUE-2010-00142.
- (2) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120, *Procedures before hearing examiners*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10, *et seq.*, a Hearing Examiner is appointed to conduct all further proceedings, and to file a report containing the Hearing Examiner's findings and recommendations.
- (3) The proposed rates, charges, and terms and conditions shall be suspended for 150 days from the date of filing, pursuant to Chapter 10 of Title 56 of the Code. The Company may, but is not obligated to, implement the proposed rates, charges, and terms and conditions on an interim basis, subject to refund with interest, for service rendered on and after August 1, 2011.
- (4) A public hearing shall be convened on October 25, 2011, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, before a Hearing Examiner to receive testimony from members of the public and the evidence of VNG, any respondents, and the Staff. Public witnesses desiring to testify at the public hearing need only appear in the Commission's Second Floor Courtroom in the Tyler Building at the address set forth above prior to 9:45 a.m. on the day of the hearing and contact the Commission's Bailiff.
- (5) The Company shall make a copy of the public version of its Application, as well as a copy of this Order for Notice and Hearing, available for public inspection during regular business hours at the Company's business office at 544 South Independence Boulevard, Virginia Beach, Virginia 23452. Copies also may be obtained, at no charge, by submitting a written request to VNG's counsel, Edward L. Flippen, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. The Company shall serve a copy of the Application upon the requesting party within three (3) business days of such request. If acceptable to the requesting party, the Company may provide the Application, with or without attachments, by electronic means. Copies of the Application and related documents shall be available for public inspection in the Commission's Document Control Center located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.
- (6) On or before April 8, 2011, VNG shall cause the following notice to be published as display advertising (not classified) on one occasion in newspapers of general circulation throughout the Company's service territory in Virginia:

NOTICE TO THE PUBLIC OF
VIRGINIA NATURAL GAS, INC.'S
APPLICATION FOR AN INCREASE IN BASE RATES
AND FOR AUTHORITY TO REVISE THE TERMS AND
CONDITIONS APPLICABLE TO NATURAL GAS SERVICE
CASE NO. PUE-2010-00142

On February 23, 2011, Virginia Natural Gas, Inc. ("VNG" or "Company"), filed with the State Corporation Commission ("Commission") an application pursuant to Chapter 10 of Title 56 (§ 56-232 *et seq.*) of the Code of Virginia ("Code") requesting an increase in its base rates, effective August 1, 2011, and for authority to revise the Company's terms and conditions applicable to its natural gas service, including subdividing the General Services class on Schedule 2 into three rate tiers ("Application"). VNG's Application states that the proposed rates and charges are designed to increase the Company's annual base rate revenue by \$28.4 million. The Company's Application further advises that the actual increase to be borne by customers, as proposed, is \$25.1 million when adjusted to account for the impact of resetting its Revenue Normalization Adjustment ("RNA") Rider and Weather Normalization Adjustment ("WNA") Rider.

VNG states in its Application that the Company is not proposing to renew, modify, or extend its current performance based regulatory plan ("PBR Plan"), which will expire on August 1, 2011. The Company also proposes to terminate its experimental WNA "Rider C" for its General Service Customers and "requests Rider C become permanent applicable to Rate Schedule 2, tier b and tier c."

VNG notes in its Application that, "[b]ased on an adjusted 2010 test year, the Company has a total revenue requirement of approximately \$147.5 million, which represents an increase in its annual base rate revenue of \$28.4 million over present annual revenue of \$119.1 million, excluding gas costs." According to VNG's Application, pursuant to its proposed rates, "the monthly bill for a typical residential customer using 620 hundred cubic feet ("CCF") of natural gas per year will increase on August 1, 2011 by \$6.27, or 9.6% per month, from an average of \$65.24 to \$71.51 when the impact of changes in base rates, the WNA and [RNA] are taken into account and gas prices are held constant between the test year and the rate year."

The Company also proposes an alternative three-year phase-in of rates, which it advises will mitigate the impacts of the Company's proposed rate increase on VNG customers ("Mitigation Plan"). VNG states that under the Mitigation Plan, the revenue requirement associated with the capital cost and depreciation expense of

¹⁸ VNG's Application notes that the "rate schedules contained in Filing Schedule 41 reflect an effective date of March 10, 2011, . . ., with the expectation that the Commission will suspend them for 150 days from the date of the filing and that the Company will defer putting them into effect until August 1, 2011." *Id.* at 7. VNG also notes that the proposed Terms and Conditions and Schedules for Supplying Gas reflect the same effective date and suspension period. *Id.*

the Hampton Roads Crossing and associated facilities ("HRX") would be phased in over three years with a revenue requirement of \$14.6 million on August 1, 2011, and an increase to the Company's revenue requirement of \$5.5 million and \$5.3 million beginning on August 1, 2012, and August 1, 2013, respectively. According to VNG, the Mitigation Plan further provides that "beginning on August 1, 2011, the costs associated with carrying stored gas inventory, the interest on unrecovered gas costs, and bad debt associated with gas cost would be moved to the gas cost recovery mechanism with a projected annual impact of \$3.4 million." VNG states that under its Mitigation Plan, a typical residential customer using 620 CCFs annually should expect an increase of \$3.11 per month or a 4.8% increase in the total bill in the first year, taking into account the impact of WNA and RNA revenue shift (effective August 1, 2011); a \$1.48 per month, or 2.1% increase, in total bill in the second year (effective August 1, 2012); and a \$1.42 per month, or 2.0% increase, in total bill in the third year (effective August 1, 2013).

Interested persons are encouraged to review the Application and supporting documents for the details of these and other proposals. While the total revenue that may be approved by the Commission is limited to the amount produced by the Company's proposed rates, TAKE NOTICE that the Commission may approve revenues and adopt rates, fees, charges, tariff revisions, and terms and conditions of service that differ from those appearing in the Company's Application and supporting documents and may apportion revenues among customer classes and/or design rates in a manner differing from that shown in the Company's Application and supporting documents.

The Commission entered an Order for Notice and Hearing that, among other things, permits the Company to place its proposed rates, charges, and terms and conditions of service into effect and subject to refund, on and after August 1, 2011.

A public hearing shall be convened on October 25, 2011, at 10:00 a.m., before a Hearing Examiner in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive testimony from members of the public and to receive evidence in the above-referenced docket. Public witnesses desiring to testify at the public hearing need only appear in the Commission's Second Floor Courtroom at the address set forth above prior to 9:45 a.m. on the day of the hearing and identify himself or herself to the Commission's Bailiff.

The public version of the Company's Application and the Commission's Order for Notice and Hearing are available for public inspection during regular business hours at the Company's business office at 544 South Independence Boulevard, Virginia Beach, Virginia 23452. A copy of the Application may also be obtained at no cost by interested persons by making a written request to the Company's counsel, Edward L. Flippen, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. Interested persons may also review a copy of the Application, the Commission's Order for Notice and Hearing, and related documents, in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. Interested persons may also download unofficial copies from the Commission's website <http://www.scc.virginia.gov/case>.

Any interested person may participate as a respondent in this proceeding by filing a notice of participation, on or before May 13, 2011. If not filed electronically, an original and fifteen (15) copies of a notice of participation shall be filed with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. The respondents simultaneously shall serve a copy of the notice of participation on counsel to VNG at the address set out above. Pursuant to Rule 5 VAC 5-20-80, *Regulatory Proceedings*, of the Commission's Rules of Practice and Procedure, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. All filed papers shall refer to Case No. PUE-2010-00142.

On or before August 23, 2011, each respondent may file with the Clerk of the Commission any testimony and exhibits by which the respondent expects to establish its case. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be filed with the Clerk of the Commission at the address set forth above. Each respondent shall serve copies of the testimony and exhibits on counsel to VNG at the address above and on all other respondents and Commission Staff.

On or before October 18, 2011, any interested person may file with the Clerk of the Commission, at the address set forth above, comments on the Application. On or before October 18, 2011, any interested person desiring to submit comments electronically may do so by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. PUE-2010-00142.

VIRGINIA NATURAL GAS, INC.

(7) On or before April 8, 2011, VNG shall serve a copy of its Application and this Order for Notice and Hearing on the chairman of the board of supervisors and county attorney of each county and on the mayor or manager of every city and town (or on equivalent officials in counties, towns, and cities having alternate forms of government) in which VNG provides service. Service shall be made by personal delivery or by first class mail, postage prepaid, to the customary place of business or residence of the person served.

(8) On or before April 22, 2011, VNG shall file with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, proof of the notice and service required in Ordering Paragraphs (6) and (7).

(9) Any interested person may participate as a respondent in this proceeding by filing, on or before May 13, 2011, a notice of participation. If not filed electronically, an original and fifteen (15) copies of a notice of participation shall be filed with the Clerk of the Commission at the address in Ordering Paragraph (8), and simultaneously shall serve a copy of the notice of participation on counsel to VNG at the address in Ordering Paragraph (5). Pursuant to Rule 5 VAC 5-20-80, *Regulatory proceedings*, of the Commission's Rules of Practice and Procedure, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. All filed papers shall refer to Case No. PUE-2010-00142.

(10) Within five (5) business days of receipt of a notice of participation as a respondent, the Company shall serve upon each respondent a copy of this Order for Notice and Hearing, a copy of the Application, and all materials filed by the Company with the Commission, unless these materials have already been provided to the respondent.

(11) On or before August 23, 2011, each respondent may file with the Clerk of the Commission any testimony and exhibits by which the respondent expects to establish its case. If not filed electronically, the respondent shall file an original and fifteen (15) copies of its testimony and exhibits with the Clerk of the Commission at the address set forth in Ordering Paragraph (8). Each respondent also shall serve copies of the testimony and exhibits on counsel to the Company, Commission Staff ("Staff") and on all other respondents. In all filings, the respondent shall comply with the Commission's Rules of Practice and Procedure, including 5 VAC 5-20-140, *Filing and service*; 5 VAC 5-20-150, *Copies and format*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*.

(12) The Staff shall investigate the Application. On or before September 20, 2011, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of its testimony and exhibits regarding its investigation of the Application.

(13) On or before October 11, 2011, VNG shall file with the Clerk of the Commission any rebuttal testimony and exhibits it expects to offer in rebuttal to the testimony and exhibits of the respondents and the Staff, and shall on the same day serve a copy of the same on the Staff and all respondents in this proceeding. If not filed electronically, an original and fifteen (15) copies of such rebuttal testimony and exhibits shall be filed with the Clerk of the Commission at the address set forth above.

(14) On or before October 18, 2011, any interested person may file comments on VNG's Application with Joel H. Peck, Clerk of the Commission, at the address set forth in Ordering Paragraph (8). On or before October 18, 2011, any interested person desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>.

(15) The Company shall respond to written interrogatories or requests for production of documents within seven (7) business days after receipt of same. Except as so modified, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-240 *et seq.*

(16) This matter is continued pending further order of the Commission.

**CASE NO. PUE-2010-00142
DECEMBER 20, 2011**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.

For an increase in base rates and for authority to revise the terms and conditions applicable to natural gas service pursuant to Chapter 10 (§ 56-232 *et seq.*) of Title 56 of the Code of Virginia

FINAL ORDER

On February 23, 2011, Virginia Natural Gas, Inc. ("VNG" or "Company"), completed an application filed with the State Corporation Commission ("Commission") pursuant to Chapter 10 of Title 56 (§ 56-232 *et seq.*) of the Code of Virginia ("Code") requesting an increase in its base rates, effective August 1, 2011, and for authority to revise the Company's terms and conditions applicable to its natural gas service, including subdividing the General Services class on Schedule 2 into three rate tiers ("Application").¹ VNG's Application stated that the proposed rates and charges are designed to increase the Company's annual base rate revenue by \$28.4 million.² The Company's Application further advised that the actual increase to be borne by customers, as proposed, is \$25.1 million when adjusted to account for the impact of resetting its Revenue Normalization Adjustment ("RNA") Rider³ and Weather Normalization Adjustment ("WNA") Rider.⁴

¹ Ex.1 (Application) at 1; Ex.8 (Cogburn Direct) at 5.

² Ex.1 (Application) at 1.

³ *Id.* VNG's RNA Rider was initially approved in *Application of Virginia Natural Gas, Inc., For approval to implement a natural gas conservation and ratemaking efficiency plan including a decoupling mechanism and to record accounting entries associated with such mechanism*, Case No. PUE-2008-00060, 2008 S.C.C. Ann. Rept. 566, Order Approving Natural Gas Conservation and Ratemaking Efficiency Plan (Dec. 23, 2008). Amendments to the plan approved in Case No. PUE-2008-00060 subsequently were approved by the Commission in *Application of Virginia Natural Gas, Inc., For Authority to Amend its Conservation and Ratemaking Efficiency Plan*, Case No. PUE-2009-00139, Order Approving Modifications and Amended Application (July 23, 2010).

⁴ Ex.1 (Application) at 1. VNG'S WNA Rider for residential customers was made permanent in 2006 in *Application of Virginia Natural Gas, Inc., For extension of its Weather Normalization Adjustment Rider*, Case No. PUE-2002-00237, 2006 S.C.C. Ann. Rept. 297, Final Order (Sept. 13, 2006).

Pursuant to its July 24, 2006 Order in Case Nos. PUE-2005-00057 and PUE-2005-00062, the Commission approved VNG's current performance-based regulatory plan and associated rates, charges, and terms and conditions of service, effective for the period commencing August 1, 2006, and automatically terminating five years from that date ("PBR Plan").⁵ VNG stated in its Application that the Company was not proposing to renew, modify, or extend its currently approved PBR Plan, which was scheduled to, and did, expire on August 1, 2011.⁶ The Company also proposed to terminate its experimental WNA "Rider C"⁷ for its General Service Customers and requested that "Rider C become permanent applicable to Rate Schedule 2, tier b and tier c."⁸ VNG's Application advised that since the Company's PBR Plan remains in effect and has not been withdrawn or terminated, the rates approved by the Commission for VNG in 1996 in Case No. PUE-1996-00227⁹ are the same rates that continue to be in effect as of the date of the filing of its Application.¹⁰

VNG noted in its Application that, "[b]ased on an adjusted 2010 test year, the Company has a total revenue requirement of approximately \$147.5 million, which represents an increase in its annual base rate revenue of \$28.4 million over present annual revenue of \$119.1 million, excluding gas costs."¹¹ The Company stated that its proposed weighted cost of capital for the rate year is 8.20% based on a return on equity of 10.95%, which it requests the Commission to approve, and a capital structure ratio of 51.00% equity and 49.00% total debt.¹²

By Order for Notice and Hearing entered on March 10, 2011, the Commission docketed the Application; established a procedural schedule; directed the Company to provide public notice of its Application; scheduled a public hearing on the Application for October 25, 2011; and assigned the case to a Hearing Examiner to conduct all further proceedings on behalf of the Commission and file a report with his findings and recommendations.

The Virginia Industrial Gas Users' Association ("VIGUA") and the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel") each filed a Notice of Participation in this proceeding.

Pursuant to Ordering Paragraph (3) of the Commission's Order for Notice and Hearing issued on March 10, 2011, VNG was authorized to implement its proposed rates, charges, and terms and conditions of service on an interim basis, subject to refund with interest, for service rendered on and after August 1, 2011. Accordingly, on July 29, 2011, VNG filed a Notice of Intent to Implement Interim Rates. VNG advised the Commission that it would defer placing its interim rates into effect prior to October 1, 2011, and would continue to apply the currently effective rates through September 30, 2011.

Consumer Counsel, VIGUA, and the Staff of the Commission ("Staff") each prefiled testimony and exhibits addressing various aspects of the Company's Application.

On October 21, 2011, VNG filed a Motion to Suspend Hearing Schedule. VNG requested that the evidentiary portion of the public hearing be continued from October 25, 2011, to October 27, 2011, for purposes of allowing settlement discussions to continue among the case participants. VNG further requested that the October 25, 2011, public hearing be convened for the limited purpose of receiving the testimony of any public witnesses who might appear. By Hearing Examiner's Ruling entered on October 21, 2011, the Company's Motion to Suspend Hearing Schedule was granted. The Hearing Examiner ruled that the public hearing scheduled for October 25, 2011, would be held for the limited purpose of receiving the testimony of any public witnesses, and the evidentiary hearing was continued until October 27, 2011.

The hearing for public witnesses was convened as scheduled on October 25, 2011. Paul Koonce, Executive Vice President of Dominion Resources, Inc. and Chief Executive Officer of Dominion Virginia Power, was the only public witness to appear and testify.

The evidentiary hearing was convened as scheduled on October 27, 2011. VNG, Consumer Counsel, VIGUA, and the Staff advised the Commission that they had reached an agreement in principle to settle the case, and they requested additional time within which to formalize their agreement. The hearing was continued to November 4, 2011, for the case participants to submit a Proposed Stipulation and Recommendation ("Stipulation").

⁵ *Application of Virginia Natural Gas, Inc., For approval of a performance based rate regulation methodology pursuant to Virginia Code § 56-235.6*, Case No. PUE-2005-00057, and *General Rate Case Filing of Virginia Natural Gas, Inc., For investigation of justness and reasonableness of current rates, charges, and terms and conditions of service in compliance with prior Commission Order*, Case No. PUE-2005-00062, 2006 S.C.C. Ann. Rept. 341, Order (July 24, 2006).

⁶ Ex.1 (Application) at 2.

⁷ The Company's "Rider C" experimental WNA Rider for General Service Customers was effective through and including September 5, 2011, pursuant to the Commission's September 3, 2009 Order Approving Extension of Experiment in *Application of Virginia Natural Gas, Inc., For Approval of an Experimental Weather Normalization Adjustment for General Service Customers*, Case No. PUE-2006-00095, 2009 S.C.C. Ann. Rept. 272, Order Approving Extension of Experiment (Sept. 3, 2009).

⁸ Ex.1 (Application) at 2. Schedule 2.B applies to General Firm Gas Sales Service, Small Commercial and Industrial Accounts with less than 4,000 CCF Annual Consumption in CCF. Schedule 2.C applies to General Firm Gas Sales Service, Large Commercial and Industrial Accounts with more than 4,000 CCF Annual Consumption in CCF.

⁹ *Application of Virginia Natural Gas, Inc., For an expedited increase in gas rates*, Case No. PUE-1996-00227, 1998 S.C.C. Ann. Rept. 338, Final Order (Apr. 27, 1998).

¹⁰ Ex.1 (Application) at 4.

¹¹ *Id.* at 6. VNG also advised that the "return on equity ('ROE') the Commission determines in this proceeding . . . will also be vital in providing the Company access to capital markets to fund its current and future infrastructure plans, including the replacement of an average of approximately 55 miles of bare steel and cast iron pipe per year for the next five years." *Id.* at 5.

¹² *Id.* at 7.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On November 4, 2011, the case participants presented a Stipulation for the Commission's consideration.¹³ Pursuant to the terms of the Stipulation, the Application and supporting attachments and schedules, the testimony and exhibits of the case participants' witnesses, and the Stipulation were admitted into the evidentiary record. The Stipulation, in part, provides for an increase in VNG's jurisdictional revenue requirement of \$11,295,585 based upon a return on common equity of 10.0% within a recommended authorized range of 9.5% to 10.5%.

On November 17, 2011, the Hearing Examiner issued his report ("Report"). After summarizing the evidence and Stipulation, the Hearing Examiner found the Stipulation to be fair, reasonable, and in the public interest.¹⁴

The Hearing Examiner recommended that the Commission enter an order that adopts the findings and recommendations contained in the Report; adopts the Stipulation; approves the Company's Application as modified by the Stipulation; directs the Company to make appropriate refunds; and dismisses the case from the Commission's docket of active proceedings.¹⁵

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the findings and recommendations of the Hearing Examiner should be adopted. We find that the Stipulation satisfies the statutory requirements that we must follow in this case. Accordingly, we will approve and adopt the Stipulation (Attachment A) as part of this Final Order. The Company is authorized to increase its current fully adjusted non-gas base jurisdictional revenue by \$11,295,585, and the resulting rates to recover this increase shall be developed as shown on Attachment 1 to the Stipulation accepted herein. A refund will be ordered for customers whose monthly bills were higher under the interim rates implemented by the Company on October 1, 2011, than under those rates approved by the Commission herein.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the November 17, 2011, Hearing Examiner's Report are hereby adopted.
- (2) The Stipulation is hereby adopted and made a part of this Final Order.
- (3) The rates and charges approved herein are fixed and substituted for the rates and charges and terms and conditions that took effect on an interim basis on October 1, 2011. The Company shall forthwith file revised tariff sheets incorporating the findings herein on rates and charges and terms and conditions of service with the Clerk of the Commission and the Commission's Division of Energy Regulation in accordance with this Final Order. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>. Refunds of interim rates shall be made as required below.
- (4) VNG shall recalculate, using the rates and charges approved herein, each bill it rendered that used, in whole or in part, the rates and charges that took effect on an interim basis and subject to refund on and after October 1, 2011, and, where application of the new rates results in a reduced bill, refund the difference with interest as set out below within ninety (90) days of the issuance of this Final Order.
- (5) Interest upon the ordered refunds shall be computed from the date payments of monthly bills were due to the date each refund is made at the average prime rate for each calendar quarter, compounded quarterly. The average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin or in the Federal Reserve's Selected Interest Rates (Statistical Release H. 15) for the three (3) months of the preceding calendar quarter.
- (6) The refunds ordered herein may be credited to the current customers' accounts. Refunds to former customers shall be made by check mailed to the last known address of such customers when the refund amount is \$1 or more. VNG may offset the credit or refund to the extent of any undisputed outstanding balance for the current or former customer. No offset shall be permitted against any disputed portion of an outstanding balance. VNG may retain refunds to former customers when such refund is less than \$1. VNG shall maintain a record of former customers for which the refund is less than \$1, and such refunds shall be promptly made upon request. All unclaimed refunds shall be subject to § 55-210.6:2 of the Code.
- (7) Within sixty (60) days of completing the refunds ordered herein, the Company shall deliver to the Commission's Divisions of Energy Regulation and Utility Accounting and Finance a report showing that all refunds have been made pursuant to this Final Order and detailing the costs incurred in effecting such refunds and the accounts charged.
- (8) VNG shall bear all costs incurred in effecting the refunds ordered herein.
- (9) There being nothing further to come before the Commission, this matter is dismissed from the Commission's active docket and the papers filed herein placed in the Commission's file for ended causes.

NOTE: A copy of Attachment A entitled "Proposed Stipulation and Recommendation" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

¹³ Attachment A hereto.

¹⁴ Report at 11.

¹⁵ *Id.* at 12.

**CASE NO. PUE-2010-00144
MARCH 9, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION RESOURCES SERVICES, INC.

For approval of a Revised Services Agreement under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On December 10, 2010, Virginia Electric and Power Company ("Dominion Virginia Power", "DVP" or "Company"), and Dominion Resources Services, Inc. ("DRS") (collectively, "Applicants"), filed an application¹ with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"),² and the Commission's March 11, 2010 Order Approving Stipulation and Addendum issued in Case No. PUE-2009-00019,³ requesting approval of a revised services agreement ("Revised Agreement")⁴. Under the Revised Agreement, DRS will continue to provide accounting; auditing, legal and regulatory; information technology, electronic transmission, and computer; software and hardware pooling; operations; human resources, executive and administrative; business; risk management; corporate planning; supply chain; rates; research; tax; corporate secretary; investor relations; environmental compliance; customer service; energy marketing; treasury and finance; and external affairs services at cost, which excludes a return component. DVP will continue to select which services it wants DRS to provide and may modify its selection of services at any time within 30 days' written notice to DRS. Further, the Applicants represent that pricing for such services meets the Commission's lower of cost or market standard. The Applicants request approval to implement the Revised Agreement effective January 1, 2012.

The Applicants state that there are several general accounting safeguards⁵ in place that will remain in effect to prevent any improper subsidization of affiliates. First, only a limited number of users can post intercompany journal entries, and access lists are reviewed on an annual basis. Second, restrictions in Dominion's SAP enterprise software system ("SAP") prevent intercompany billings unless corporate accounting confirms that proper authorizations and agreements are in place. Third, corporate accounting coordinates the preparation of the Company's Annual Report of Affiliate Transactions ("ARAT"), reviews all intercompany transactions in SAP, maintains documentation for all such transactions, and conducts variance analyses against the prior year to identify significant changes in the dollar amounts of affiliate transactions.

The Revised Agreement makes several modifications to the current Services Agreement. First, the current Services Agreement between DVP and DRS includes a provision whereby DRS can flow necessary services provided by other affiliates to DVP. That provision has been eliminated; the Revised Agreement only covers services provided by DRS directly to DVP. Other affiliates will begin providing services directly to DVP. Such agreements are the subject of a companion application filed with the Commission in Case No. PUE-2010-00145.⁶ Upon approval by the Commission of the affiliate agreements proposed in that case, beginning January 1, 2012, the services provided by these affiliates will be billed directly to DVP.

Second, the current Services Agreement does not have a termination date; however, the Applicants propose that the Revised Agreement have an effective date of January 1, 2012, and remain in effect, unless terminated earlier pursuant to the provisions of the Revised Agreement, for a period of five years.

Third, the current Services Agreement was approved prior to the repeal of the Public Utility Holding Company Act of 1935 ("PUHCA 1935").⁷ Therefore, all references to PUHCA 1935, which are now rendered obsolete, have been deleted in the Revised Agreement.

Fourth, in its January 5, 2007 Order Accepting Agreement for Filing and Permitting Operation Thereunder Pursuant to G.S. 62-153, the North Carolina Utilities Commission ("NCUC") directed Virginia Electric and Power Company d/b/a Dominion North Carolina Power ("DNCP"), among other

¹ On February 3, 2011, the Commission entered its Order Extending Time for Review extending the review period through March 10, 2011.

² Va. Code § 56-76 *et seq.*

³ *Application of Virginia Electric and Power Company, For a 2009 statutory review of rates, terms and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2009-00019, Doc. Con. Cen. No. 426295, Order Approving Stipulation and Addendum (Mar. 11, 2010).

⁴ The Applicants filed a Revised Agreement with its application on December 10, 2011. On February 25, 2011, the Applicants filed a Revised and Updated DRS Services Agreement. All references to the Revised Agreement refer to the Revised and Updated DRS Services Agreement filed on February 25, 2011.

⁵ The Applicants included a copy of the DRS Accounting Policy and Cost Allocation Manual with the application. The Applicants included exhibits listing the services that DRS will offer DVP along with an exhibit detailing the methodologies used to track and allocate costs among affiliates.

⁶ *Application of Virginia Electric and Power Company, Dominion Energy, Inc., Dominion Energy Kewaunee, Inc., Dominion Nuclear Connecticut, Inc., Dominion Technical Solutions, Inc., Dominion Transmission, Inc., and Virginia Power Energy Marketing, Inc., For approval of Affiliate Services Agreements and future exemptions from the filing and prior approval requirements under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2010-00145.

⁷ Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005). Subtitle F of Title XII of EPAct 2005 repealed PUHCA 1935 effective February 8, 2006.

things, to include specific provisions in all affiliate agreements to which DNCP is a party.⁸ Therefore, XIV(B) of the Revised Agreement includes language required by the NCUC. DVP has determined that the Revised Agreement needs to be filed with the NCUC and plans to do so.⁹

The Applicants represent that the Revised Agreement is in the public interest as it allows DVP to receive services from DRS to continue to fulfill its public service obligations in both a reliable and cost-effective manner. DVP further represents that ratepayers will benefit because DVP will only take services from DRS on an as-needed basis and will benefit from the economies of scale associated with receiving those services at the lower of cost or market.

NOW THE COMMISSION, upon consideration of the application and representations of the Applicants and having been advised by its Staff, is of the opinion and makes the following findings. The Revised Agreement between DVP and DRS allows DVP to obtain Centralized Services as necessary from DRS, thereby reducing the need to provide such services internally or go to the market to obtain individual services. DVP should benefit from economies of scale with the Revised Agreement, and it appears to be cost beneficial for DVP to continue obtaining such services through DRS. The Applicants have made certain revisions to the Revised Agreement during the course of Staff's review to strengthen the Revised Agreement from a public interest perspective. However, we do have concerns with the Revised Agreement as it is proposed.

Our first concern relates to the difficulty in verifying DRS charges to DVP due to: (i) the lack of reporting capabilities within Dominion's SAP, (ii) the lack of detailed information available on DVP's books, and (iii) the complex conversion process from SAP's natural chart of accounts ("natural accounts") to the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("FERC accounts" or "USoA").

DRS' and DVP's books are maintained in SAP natural accounts that do not directly map to FERC accounts and cannot be reconciled easily to such FERC accounts. The conversion of DRS charges from natural accounts to FERC accounts on DVP's books results in FERC account balances without source documentation because SAP lacks reporting capabilities to document the process. Staff advises that it was not able to verify DRS charges on DVP's books on a natural account basis because all DRS-related charges are aggregated in a series of natural accounts by service category (e.g., accounting, legal, information technology), instead of by type of cost (e.g., base salaries, benefits, office supplies, pensions). We find that DVP shall work with Staff to provide appropriate verification to satisfy DVP's burden in proceedings where such information is relevant thereto. In addition, as discussed in DVP's March 3, 2011 Comments, DVP and DRS shall (1) assist Staff in verifying and auditing DRS charges, and (2) engage an independent auditor to review DRS costs and allocation methodologies with the continuing involvement of, and on terms acceptable to, Staff.

We also find that the calculation of DRS' Company Group Formula ("Operating Expense Factor") should be modified. DRS uses the Operating Expense Factor as a general basis of allocation when other specific targeted allocators are not available. We do not believe that the use of depreciation, depletion, amortization, and taxes other than income as components of the Operating Expense Factor is appropriate. The exclusion of these components is appropriate, because these costs are not recorded in Operating and Maintenance accounts. Furthermore, including depreciation, depletion, amortization, and taxes other than income in the Operating Expense Factor may result in a disproportionate share of DRS costs allocated to Dominion affiliates with large capital investments. Therefore, such modification to the Corporate-wide Allocation Factor shall be implemented on December 1, 2013.

The Applicants represent that, by DVP paying DRS' cost for services received from DRS, such pricing arrangement meets the Commission's lower of cost or market standard. We will require DVP to maintain records demonstrating that the Centralized Services provided by DRS to DVP are cost-beneficial to ratepayers. In doing so, for Centralized Services provided by DRS where a market may exist, DVP will be required to investigate alternative sources from which to purchase such services. If an alternative source for such services exists, DVP should be required to compare that market price to DRS' cost and pay the lower of cost or market for all Centralized Services received.

We are, hereby, of the opinion that the Revised Agreement as filed on February 25, 2011, is in the public interest and should be approved, provided that the requirements discussed above are met.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, DVP is hereby granted approval to enter into the Revised Agreement with DRS as filed herein on February 25, 2011, provided that the requirements as set forth herein are met.

(2) The Revised Agreement shall be effective as of January 1, 2012, and shall extend for five years from the effective date.

(3) Should DVP wish to continue receiving Centralized Services from DRS after the five-year period, subsequent Commission approval shall be required.

(4) Approval of the Revised Agreement shall be limited to services specifically identified in the Revised Agreement. Should DVP wish to obtain additional services from DRS, subsequent Commission approval shall be required.

(5) Separate Commission approval shall be required for any changes in terms and conditions in the Revised Agreement, including changes in allocation methodologies and successors and assigns.

(6) DVP shall maintain records demonstrating that the Centralized Services obtained from DRS are and continue to be cost-beneficial to ratepayers and, therefore, in the public interest. For Centralized Services where a market exists, DVP shall investigate alternative sources from which to purchase such services. If such an alternative exists, DVP shall compare the market price to DRS' cost and pay the lower of cost or market. DVP shall bear the burden of proving that it paid the lower of cost or market for all Centralized Services received from DRS.

⁸ *In the Matter of Petition of Virginia Electric and Power Company d/b/a Dominion North Carolina Power and Virginia Power Energy Marketing, Inc., For approval of a Fuel Purchase, Sale, and Services Agreement*, Docket No. E-22, Sub 434, 2007 N.C. PUC LEXIS 19 (N.C. Util. Comm'n Jan. 5, 2007).

⁹ Letter from William H. Baxter II, Senior Counsel, Dominion Resources Services, Inc., of January 5, 2011, to Robert C. Dalton, Manager of Regulatory Analysis, Virginia State Corporation Commission, filed in Case No. PUE-2010-00144, Doc. Con. Cen. No. 441734.

(7) Effective December 1, 2013, DVP shall change the language in the Revised Agreement related to the Basis of Allocation for the Company Group Formula to state: "Total operating expenses, excluding purchased gas expense, purchased power expense (including fuel expense), other purchased products and royalties, depreciation, depletion, and amortization, and taxes other than income for the preceding year ended December 31¹ for the affected Dominion Companies."

(8) All DRS-DVP transactions under the Revised Agreement shall be included in the Company's ARAT submitted with the Commission's Director of Public Utility Accounting. In addition to information currently provided in the ARAT, all transactions under the Revised Agreement shall be reported as follows:

- (a) By Case Number in which the transactions were approved;
- (b) Description of services provided to DVP;
- (c) FERC account;
- (d) Month; and
- (e) Dollar amount paid by DVP for each type of service, such as amount paid for Business Services, Operations Services, etc.

(9) DVP shall work with Staff to provide appropriate verification to satisfy DVP's burden in proceedings where such information is relevant thereto. In addition, as discussed in DVP's March 3, 2011 Comments, DVP and DRS shall (1) assist Staff in verifying and auditing DRS charges, and (2) engage an independent auditor to review DRS costs and allocation methodologies with the continuing involvement of, and on terms acceptable to, Staff.

(10) DVP shall file a revised Virginia Power Support Agreement for approval under the Affiliates Act between February 1, 2012, and February 15, 2012, and all revised Virginia Power Energy Marketing agreements with DVP between May 1, 2012, and May 15, 2012. This will ensure that these agreements continue to be in the public interest.

(11) DVP shall file an executed copy of the Revised Agreement approved herein, reflecting revisions ordered, within 30 days of approval by the Commission.

(12) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(13) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein whether or not such affiliate is regulated by this Commission.

(14) The approval granted herein shall have no ratemaking implications. Specifically, the approval granted herein shall not guarantee the recovery of any costs directly or indirectly related to the Revised Agreement.

(15) In the event that rate filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in its ARAT in such filings.

(16) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2010-00145
MARCH 9, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY,
DOMINION ENERGY, INC.,
DOMINION ENERGY KEWAUNEE, INC.,
DOMINION NUCLEAR CONNECTICUT, INC.,
DOMINION TECHNICAL SOLUTIONS, INC.,
DOMINION TRANSMISSION, INC.,
and
VIRGINIA POWER ENERGY MARKETING, INC.,

For approval of Affiliate Services Agreements and future exemptions from the filing and prior approval requirements under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On December 10, 2010, Virginia Electric and Power Company ("Dominion Virginia Power," "DVP," or the "Company"), Dominion Energy, Inc., Dominion Energy Kewaunee, Inc., Dominion Nuclear Connecticut, Inc., Dominion Technical Solutions, Inc., Dominion Transmission, Inc., and Virginia Power Energy Marketing, Inc. (excluding Dominion Virginia Power, collectively, the "Affiliates," and including Dominion Virginia Power, collectively, the "Applicants"), filed an application with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"),¹ requesting approval of separate affiliate services agreements to be entered into by Dominion Virginia Power and each of the Affiliates currently

¹ Va. Code § 56-76 *et seq.* (the "Affiliates Act").

providing services to the Company, with a proposed effective date of January 1, 2012 (the "Affiliate Services Agreements").² In addition, for affiliates not identified in the instant application ("Future Affiliates") that bill less than \$2 million per year for services provided to Dominion Virginia Power, the Company requests an exemption from future filing and prior approval requirements under the Affiliates Act of Affiliate Services Agreements, so long as the Future Affiliate executes the Affiliate Services Agreement in the form set forth in Revised Attachment I to the application (the "Form Affiliates Services Agreement").³ The Company represents that the Form Affiliates Services Agreement is identical in form to the Affiliate Services Agreements.⁴

Per Exhibit II of the Affiliate Services Agreements, the Affiliate (or "Service Provider") can select the service(s) it is willing to offer, and the Company can select the services it is willing to receive. The list of the fourteen (14) services that the Affiliates may offer DVP is as follows: accounting; information technology, electronic transmission and computer; software/hardware pooling; operations; business; corporate planning; supply chain; rates; research; customer; energy marketing; external affairs; fuel procurement and environmental commodities;⁵ and office space and equipment (collectively, the "Affiliate Services"). The respective Affiliate Services Agreements describe the specific services that will be offered to the Company by each Affiliate and how compensation for such services is to be determined, charged, and paid. Under the Affiliate Services Agreements, the Affiliate and the Company may modify the offer or receipt of the enumerated services at any time on thirty (30) days' written notice to the other party, and either party may terminate the Agreement on sixty (60) days' written notice to the other party.

The Applicants propose that, upon approval of the proposed Affiliate Services Agreements, and after the proposed effective date of January 1, 2012, the services provided by the Affiliates and any Future Affiliate will be billed directly to Dominion Virginia Power. Currently, the Affiliates provide services to DVP through DRS, and the current DRS Services Agreement approved by the Commission on December 15, 2000, in Case No. PUA-1999-00068.⁶ The instant application is a companion filing to the Company's application for a Revised DRS Services Agreement filed with the Commission in Case No. PUE-2010-00144 (the "Revised Agreement").⁷

In the Affiliate Services Agreements and Form Affiliates Services Agreement, Applicants propose that costs for the Affiliate providing services to DVP will be calculated pursuant to Exhibit III of the Affiliate Services Agreements (Rules and Methods for Determining Costs of Service Provider). The Applicants represent that pricing at cost meets the Commission's lower of cost or market standard. The Company proposes that the Affiliate Services Agreements commence on the proposed effective date of January 1, 2012, and remain in effect, unless terminated earlier pursuant to the provisions of such agreements, for a period of five (5) years.

As previously stated, for Future Affiliates that bill less than \$2 million for services per year to DVP, the Company requests an exemption from future filing and prior approval requirements under the Affiliates Act of Affiliate Services Agreements between the Future Affiliates and Dominion Virginia Power, so long as the Future Affiliate executes the Form Affiliates Services Agreement contained in Revised Attachment I to the application. The list of services available for a Future Affiliate to provide to the Company is similar to the fourteen (14) services proposed to be provided by the Affiliates in the above-described Affiliate Services Agreements. The Company proposes that, if a Future Affiliate executes the Form Affiliate Services Agreement, such agreement will be filed with the Company's next-occurring Annual Report of Affiliate Transactions ("ARAT") along with reporting of any occurring charges under the new agreement. The Company represents that approval of this exemption is in the public interest because no subsidization of affiliates will occur since the services, processes and costs for the provision of Future Affiliate services already will have been reviewed and approved by the Commission.

² In the original filing of the application on December 10, 2010, the Applicants included The East Ohio Gas Company ("EOG") as an Applicant in the current proceeding and requested approval of the proposed EOG Services Agreement between the Company and EOG. However, on January 27, 2011, the Applicants filed a letter with the Commission stating that the Company determined that it no longer has a need for previously requested services from EOG, or an anticipated need for such services from EOG in the future and, therefore, the Applicants withdrew their request for approval of the proposed EOG Services Agreement and withdrew EOG as a party to the current proceeding. The Applicants state that the remaining portions of the application, as they relate to the remaining Affiliates, are unchanged by the withdrawal of EOG from this proceeding.

³ The Applicants filed the Affiliate Services Agreements and the Form Affiliates Services Agreement with the application on December 10, 2010. On March 3, 2011, the Applicants filed Revised Affiliate Services Agreements and Form Affiliates Services Agreement. All references herein to the Affiliate Services Agreements and Form Affiliates Services Agreement refer to the Revised Affiliate Services Agreements and Form Affiliates Services Agreement filed on March 3, 2011.

⁴ On February 3, 2011, the Commission entered its Order Extending Time for Review in which this case was extended through March 10, 2011.

⁵ In recognition of recent Commission orders requiring entities to have separate Commission-approved agreements with affiliates providing services through a centralized services company, the Applicants are filing the instant application for approval of separate Affiliate Services Agreements between Dominion Virginia Power and each of the Affiliates currently providing services to the Company through the Dominion Resources Services, Inc. ("DRS"), Services Agreement with DVP ("DRS Services Agreement"). This application, however, does not impact services already provided under separate existing affiliate agreements approved by the Commission in Case Nos. PUA-1998-00037, PUA-1998-00038, PUA-1998-00039, PUA-1995-00028, PUE-2006-00067, and PUA-1997-00007.

⁶ *Joint Petition of Virginia Electric and Power Company and Virginia Natural Gas, Inc., and Dominion Resources, Inc., Dominion Resources Services, Inc., Dominion Capital, Inc., Dominion Energy, Inc., Virginia Power Services Energy Corp., Inc., CNG Transmission Corporation, CNG International Corporation, CNG Retail Services Corporation, CNG Power Services Corporation, and Consolidated Natural Gas Service Company, Inc., For certain exemptions from the requirements of § 56-77A of the Code of Virginia of 1950, as amended, and for approval and termination of agreements under Chapter 4, Title 56, Code of Virginia of 1950, as amended*, Case No. PUA-1999-00068, 2000 S.C.C. Ann. Rept. 145, Order Approving, In Part, and Denying, In Part, Petitioners' Requests (Dec. 15, 2000).

⁷ The Revised Agreement was filed pursuant to the Commission's March 11, 2010 Order Approving Stipulation and Addendum issued in Case No. PUE-2009-00019. See *Application of Virginia Electric and Power Company, For a 2009 statutory review of rates, terms and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2009-00019, Doc. Con. Cen. No. 426295, Order Approving Stipulation and Addendum (Mar. 11, 2010). The list of services available to DVP from the Affiliates and Future Affiliates is similar to those available from DRS through the Revised Agreement. The Revised Services Agreement includes two additional services, environmental compliance and executive and administrative, which are only available from DRS.

The Applicants represent that the Affiliate Services Agreements and the requested exemption are in the public interest as they allow Dominion Virginia Power to receive needed services from its affiliates in order to continue to fulfill its public service obligations in a reliable and cost-effective manner. The Applicants further represent that ratepayers in Virginia will benefit because DVP will only take services from the Affiliates on an as-needed basis and will benefit from the economies of scale associated with receiving those services from the Affiliates. In addition, the Applicants state that ratepayers will benefit because DVP will obtain those services in compliance with the lower of cost or market standard.

NOW THE COMMISSION, upon consideration of the application and representations of the Applicants and having been advised by its Staff, is of the opinion and makes the following findings. The Affiliate Services Agreements and the Form Affiliates Services Agreement will allow DVP to obtain needed services from Affiliates, thereby reducing DVP's need to provide such services internally or to go to the market to obtain individual services required. The Company will be able to obtain services directly from the Affiliate that can best provide the service to DVP. Further, the requested exemption will allow DVP to obtain services from Future Affiliates with billings for such services under \$2 million without the filing and prior approval requirement under the Affiliates Act, and the exemption will also reduce DVP's need to provide such services internally or go to the market to obtain individual services. Certain revisions have been made to the Affiliate Services Agreements and Form Affiliates Services Agreement during the course of Staff's review to improve the Affiliate Services Agreements and Form Affiliates Services Agreement from a public interest perspective. However, we do have concerns with the Affiliate Services Agreements and the requested exemption as proposed.

Our first concern is that DVP receives bills for monthly charges from DRS and affiliates in aggregate by service and books those charges in total by service. We believe that DVP should book monthly charges for each affiliate separately. Booking charges from each affiliate separately increases transparency on DVP's books because all affiliate charges will be easily distinguishable from one another and from DRS charges.

Our second concern is that, pursuant to Section VII of the Affiliate Services Agreements (Termination and Modification), the Affiliates may elect to provide, and the Company may elect to receive, additional services from the list of services in Exhibit II of the Affiliate Services Agreements, other than those services currently selected. We believe that the Company should be required to seek separate approval of any changes to the selected services under each of the Affiliate Services Agreements if billings for such services exceed \$500,000 per service per year or \$2 million in total per year. We further believe that the Company should be required to provide written notice to the Commission's Director of Public Utility Accounting within fifteen (15) days of any election of new services, other than those services specifically identified in each of the respective Affiliate Services Agreements, regardless of the cost of such services. Additionally, in the case where new services are selected, the Company should include that information in the ARAT.

The Applicants represent that, by DVP paying the Affiliates' cost, excluding a return component, for services received from the Affiliates, such pricing arrangement meets the Commission's lower of cost or market standard. We will require DVP to maintain records demonstrating that the Affiliate Services provided by the Affiliates and any Future Affiliate are cost-beneficial to ratepayers. In doing so, for Affiliate Services provided to DVP where a market may now exist or hereafter develop, DVP should be required to investigate alternative sources from which to purchase such services. If an alternative source for the provision of such services exists, DVP should be required to compare the market price to the Affiliate's cost and pay the lower of cost or market.

Finally, in Staff's review of the Revised Agreement proposed in Case No. PUE-2010-00144, concerns were raised regarding the Applicants' use of its SAP enterprise software system, which utilizes natural accounts, and the FERC Uniform System of Accounts.⁸ While we do not restate those concerns here, we believe that such concerns apply equally to charges billed by the Affiliates.

We are, hereby, of the opinion and find that the Affiliate Services Agreements and Form Affiliates Services Agreement as filed on March 3, 2011, and the requested exemption from the filing and prior approval requirement under the Affiliates Act, are in the public interest and should be approved, provided that the requirements as detailed above are met.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, the Applicants are hereby granted approval to enter into the Affiliate Services Agreements as filed herein on March 3, 2011, provided that the requirements as set forth herein are met.

(2) Pursuant to § 56-77 B of the Code, the Applicants are hereby granted the requested exemption from the filing and prior approval requirements under the Affiliates Act of Affiliate Services Agreements with any Future Affiliates that would bill less than \$2 million per year for services provided to DVP, provided that the Future Affiliate executes the Affiliate Services Agreement in the form set forth in the Form Affiliates Services Agreement as filed herein on March 3, 2011, and such transactions are reported in DVP's ARAT.

(3) The Affiliate Services Agreements shall be effective as of January 1, 2012, and the approval granted herein shall extend for five (5) years from the effective date.

(4) Should DVP wish to continue receiving from the Affiliates the specific services identified in each of the respective Affiliate Services Agreements after the five-year period, subsequent Commission approval shall be required.

(5) DVP shall monitor billings for transactions for which the exemption from the filing and prior approval requirements is hereby granted to ensure that an application is filed for prior approval prior to such billings exceeding \$2 million.

(6) The exemption granted herein shall be revoked at any time that such revocation is deemed to be in the public interest.

(7) All requirements set forth in the Commission's order in Case No. PUE-2010-00144 shall apply in this proceeding.

(8) DVP shall be required to book monthly charges for each affiliate separately, by service as described above, rather than in aggregate as is currently done.

⁸ These matters are fully discussed in the Staff Action Brief in Case No. PUE-2010-00144.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(9) Approval of the Affiliate Services Agreements shall be limited to services specifically identified in the Affiliate Services Agreements. Should DVP wish to obtain additional services from Affiliates other than those specifically approved in this case, subsequent Commission approval shall be required. Specifically, the Company shall be required to seek separate Commission approval of any changes to the selected services provided by the Affiliates to DVP under each of the respective Affiliate Services Agreements if such services are more than \$500,000 per service per year to DVP for the receipt of such services or \$2 million in total per year. The Company shall also be required to provide written notice to the Commission's Director of Public Utility Accounting within fifteen (15) days of any election, by either DVP or the Affiliates, of new services not currently selected in each of the respective Affiliate Services Agreements, regardless of the cost of such services. In the case where new services are selected, the Company shall include that information in the ARAT.

(10) Separate Commission approval shall be required for any changes in the terms and conditions of the Affiliate Services Agreements, including changes in allocation methodologies and successors and assigns.

(11) DVP shall be required to maintain records demonstrating that the Affiliate Services obtained from Affiliates are and continue to be cost-beneficial to ratepayers and, therefore, in the public interest. For Affiliate Services where a market now exists or hereafter develops, DVP shall be required to investigate alternative sources from which to purchase such services, and if such an alternative exists, DVP shall be required to compare the market price to Affiliate's cost and pay the lower of cost or market. In any rate proceeding, DVP shall bear the burden of proving that it paid the lower of cost or market for all Affiliate Services received from Affiliates.

(12) All transactions between Affiliates/Future Affiliates and DVP under the Affiliate Services Agreements and the requested exemption shall be included in the Company's ARAT submitted to the Commission's Director of Public Utility Accounting. In addition to information currently provided in the ARAT, all transactions under the Affiliate Services Agreements and the requested exemption shall be reported as follows:

- (a) By Case Number in which the transactions were approved;
- (b) Description of services provided to DVP;
- (c) FERC Account in which each transaction is booked;
- (d) Transactions by month; and
- (e) Dollar amount paid by DVP for each type of Affiliate Service, such as amount paid for Business Services, Operations Services, etc.

(13) All requirements regarding the Affiliate Services Agreements between DVP and the Affiliates shall apply to transactions between DVP and Future Affiliates to which the exemption from the filing and prior approval requirements under the Affiliates Act applies.

(14) All agreements involving Future Affiliates and DVP for which an exemption from the filing and prior approval requirement is granted shall be submitted with DVP's ARAT.

(15) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(16) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein, whether or not such affiliate is regulated by this Commission.

(17) The approval granted herein shall have no ratemaking implications. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Affiliate Services Agreements or the exemptions granted herein.

(18) In the event that any rate filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in the ARAT in such filings.

(19) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2010-00146
MARCH 4, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*

MARK A. VAN MALSSSEN

v.

VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

DISMISSAL ORDER

By letter dated November 29, 2010, Mark A. Van Malssen ("Petitioner") filed a complaint ("Petition") with the State Corporation Commission ("Commission") concerning the amount of usage for which the Petitioner has been billed by Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or the "Company"). The Petitioner also raised issues with the performance of the Company's meter at his house.

By Order Docketing Case and Establishing Procedural Schedule dated January 26, 2011, the Commission found that the matter should be docketed as a formal Petition filed pursuant to Rule 5 VAC 5-20-100 B, *Petitions in other matters*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, and found that Rule 5 VAC 5-20-100 B should be waived to the extent that the Petition did not meet its requirements. In addition, the Commission ordered that Dominion Virginia Power should file a response in this matter and assigned all further proceedings to be conducted by a Hearing Examiner, concluding with the issuance of a final report containing the Hearing Examiner's findings and recommendations.

On February 14, 2011, the Petitioner filed a letter in which he advised the Commission that he and the Company have reached a settlement of this matter; therefore, the Petitioner asks that the Petition be dismissed.

On February 16, 2011, the Hearing Examiner issued a report in which he found that the Petitioner's request to have the Petition dismissed should be granted and that this matter should be dismissed. The Hearing Examiner recommended that the Commission adopt this finding and dismiss the case. The Hearing Examiner gave the parties an opportunity to file comments on the Report, but none were filed.

NOW THE COMMISSION, upon consideration of the filings and the Hearing Examiner's Report, is of the opinion and finds that the Hearing Examiner's February 16, 2011 Report should be adopted and that the Petition should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) The finding and recommendations of the Hearing Examiner's February 16, 2011 Report are adopted.
- (2) The Petition is dismissed.
- (3) The papers submitted herein shall be sent to the file for ended causes.

**CASE NO. PUE-2010-00148
DECEMBER 13, 2011**

JOINT APPLICATION OF
POTOMAC ELECTRIC POWER COMPANY
and
VIRGINIA ELECTRIC AND POWER COMPANY

For approval and certification of electric transmission facilities under Va. Code § 56-46.1 and the Utility Facilities Act, Va. Code § 56-265.1 *et seq.*

ORDER CLOSING CASE

On December 17, 2010, Potomac Electric Power Company ("Pepco") and Virginia Electric and Power Company ("Dominion Virginia Power") (collectively, "Applicants") filed an Application with the State Corporation Commission ("Commission") for approval and certification of electric transmission facilities pursuant to the Utility Facilities Act, § 56-265.1 *et seq.* of the Code of Virginia ("Code") and § 56-46.1 of the Code.

On January 3, 2011, the Staff of the Commission ("Staff") filed in this matter a Memorandum of Incompleteness, pursuant to 5 VAC 5-20-160, *Memorandum of completeness* ("Rule 160"), of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, deeming the Application incomplete.

On May 6, 2011, the Staff filed a motion to dismiss ("Motion") the Application without prejudice, asserting that the Applicants had not filed any additional information to supplement their Application in response to the Memorandum of Incompleteness.

On May 24, 2011, Pepco filed a response opposing the Motion.¹ In its response, Pepco: (1) acknowledged that the needs analyses for the Application is not complete; (2) sought permission to supplement the Application when such analyses concluded in August 2011; (3) agreed – and, indeed, adamantly pledged to the Commission – that the one-year federal statutory time period under the 2005 Energy Policy Act has not commenced; and (4) assured the Commission that the one-year federal statutory time period "cannot" begin to run because (a) "the Application has not yet been deemed complete and therefore cannot be considered 'filed' for purposes of calculating a [one-year federal] statutory deadline," and (b) as "[the] Staff has not yet deemed the Application to be complete, it is not, under the Commission's Rules [of Practice], considered to be 'filed' and the [one-year federal] statutory time period cannot begin to run."²

On July 27, 2011, based on Pepco's affirmations above, the Commission issued an Order on Motion that, among other things: (1) accepted, and agreed with, Pepco's repeated confirmation that "the one-year period established by [the federal 2005 Energy Policy Act] has not begun to run" on the instant Application;³ (2) continued this matter so that Pepco could supplement its Application; and (3) directed the Staff subsequently to review the supplemented Application for completeness pursuant to Rule 160.

On August 19, 2011, Pepco filed a letter with the Clerk of the Commission requesting a delay in this proceeding. Pepco did not supplement its Application. Rather, Pepco requested a "delay in the proceeding for either the later of [August 19, 2012] or the issuance by [PJM Interconnection, LLC] of its 2012 [regional transmission expansion planning] analysis related to [the Application]."⁴

¹ Dominion Virginia Power took no position on either the Staff's Motion or Pepco's response. Pepco's May 24, 2011 Response at 6.

² *Id.* at 2-3. On June 8, 2011, the Staff filed a reply to Pepco's response.

³ Pepco's May 24, 2011 Response at 4. In addition, we note that Pepco has not challenged the appropriateness of Staff's Memorandum of Incompleteness and, therefore, such is not an issue in this case.

⁴ Pepco's August 19, 2011 Letter at 3.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this case shall be closed without prejudice.

Pepco represents to this Commission in pleadings duly signed by counsel that (i) its Application must be supplemented in order for this case to proceed, and (ii) the one-year federal statutory time period cannot yet begin to run. We agree, and accept Pepco's representation, that the necessary review of the Application cannot currently commence and that the federal one-year time period has not begun to run. Pepco previously suggested that it would be able to complete its Application by August 2011 or shortly thereafter. Accordingly, we kept this matter open to allow Pepco to supplement its Application.

Pepco now asserts, however, that it will not be able to complete its Application until August 2012 (at the earliest) or possibly at some undefined time thereafter. We do not find that this Application should be held open on the Commission's docket awaiting completion for such an extended period. This Order Closing Case does not represent a substantive finding regarding the Application. Rather, it is a procedural ruling, without prejudice, that we find appropriate for administering the Commission's dockets. When ready, the Applicants may submit a new, complete application seeking approval thereof.

Accordingly, IT IS ORDERED THAT this case is closed without prejudice.

**CASE NO. PUE-2011-00001
SEPTEMBER 12, 2011**

APPLICATION OF
APPALACHIAN POWER COMPANY

Pursuant to Chapters 752 and 855 of the 2009 Acts of the Virginia General Assembly, for approval of demand response programs to be offered to its retail customers

FINAL ORDER

On January 3, 2011, Appalachian Power Company ("APCo" or the "Company") filed an application, tariff sheets, and supporting testimony ("Application") with the State Corporation Commission ("Commission") requesting approval of two proposed voluntary Demand Response Riders ("DR Riders") for its Virginia tariffed non-residential retail customers. The Company's proposed DR Riders were filed pursuant to Section 3 of Chapters 752 and 855 of the 2009 Acts of the Virginia General Assembly, which require the Commission to approve "any demand response program proposed to be offered to retail customers" by a generating electric utility "that has elected to meet its capacity obligations of a regional transmission entity through a fixed capacity resource requirement as an alternative to other capacity mechanisms . . . if, following notice and the opportunity for a hearing," the Commission finds the proposed demand response program "to be effective, reliable, and verifiable as a capacity resource" and "to be in the public interest."

APCo is a wholly owned subsidiary of American Electric Power Company, Inc. ("AEP"), serves approximately 500,000 customers in Virginia, and meets its capacity obligations of regional transmission entity PJM Interconnection, LLC ("PJM"), through a fixed capacity resource requirement.¹ The Company requested the Commission's approval of two DR Riders: (i) a Peak Shaving Demand Response ("PSDR") Rider; and (ii) a Peak Shaving and Emergency Demand Response ("PSEDR") Rider. APCo asserted that these DR Riders are part of the Company's "effort to manage its peak load, its overall load shape, and its generation resource costs, and are expected to provide cost savings to both participating and non-participating customers."² According to the Application, the PSDR Rider was designed to reduce APCo's peak demand during the timeframe from December to March, the period when, for the last ten (10) years, the Company has experienced its annual peak load. APCo asserted that the PSDR Rider's target is non-residential customers that can commit to curtailing load during cold winter morning hours, when APCo's peaks typically occur, but that do not desire to be curtailed during other months. APCo stated that reducing its annual peak in turn lowers its capacity equalization obligation to other AEP-East operating companies under the AEP Interconnection Agreement.

APCo stated that the PSEDR Rider is aligned with the existing PJM Demand Response Program, which allows for curtailments by non-residential customers during system emergencies. According to the Application, demand response capability committed by such customers through the PSEDR Rider will be registered with PJM and will directly lower AEP's Fixed Resource Requirement obligation within PJM. APCo further noted that the PSEDR Rider will provide the Company the flexibility to request load curtailments for peak-shaving reasons at any time during the year, including during APCo's actual peak load on winter mornings.³

Finally, APCo has requested permission to defer DR Rider related costs, including, but not limited to, payments to participating customers until cost recovery can be addressed through a future proceeding.⁴

On February 10, 2011, the Commission issued an Order for Notice and Comment that, among other things, required the Company to provide public notice of its Application; permitted interested persons to file comments on the Application; and directed the Staff of the Commission ("Staff") to review the Application and submit a Staff Report presenting their findings and recommendations. Notices of Participation were filed by Steel Dynamics, Inc. and the Old Dominion Committee for Fair Utility Rates ("Committee"). Comments on the Application were filed by the Committee.

¹ Application at 1-2.

² *Id.* at 2.

³ *Id.* at 2-3.

⁴ *Id.* at 3.

In its comments, the Committee recommended that the DR Riders be modified to more closely resemble PJM's demand response programs. Specifically, the Committee suggested that (i) participating customers should be subject to penalties that are no more onerous than those under the analogous PJM programs, and (ii) the Commission should significantly reduce the contract term for the proposed PSEDR Rider to no more than one year.⁵

On May 12, 2011, the Staff filed its Staff Report in which it concluded that the proposed DR Riders "meet the criteria prescribed by Section 3 of Chapters 752 and 855 of the 2009 Acts of the Virginia General Assembly."⁶ The Staff stated that it is not opposed to the Company's proposed DR Riders but offered several recommendations for the Commission's consideration.

First, the Staff noted that customers electing to participate in the proposed DR Riders could not concurrently participate in similar programs offered by PJM or a Curtailment Service Provider. Accordingly, the Staff recommended that the Company include language in its PSDR Rider clarifying the availability of service.⁷

The Staff also stated that it does not object to the Company's request to defer any costs it will incur associated with the DR Riders. However, the Staff recommended that "any costs deferred should be offset by any non-compliance payments received by the Company from its customers."⁸

Finally, the Staff stated that because neither the benefits nor the costs of the proposed demand response programs have been quantified at this time, the Commission should require the Company to file an assessment of the costs and benefits of the DR Riders that includes two years of actual data gathered after their implementation. The Staff recommended this assessment be submitted to the Commission's Divisions of Energy Regulation and Economics and Finance no later than two and one-half years following the issuance of this Order. Staff further recommended that APCo be required "to provide information, on a monthly basis, to the Division of Public Utility Accounting regarding the amounts and types of DR program costs deferred and showing the recovery of such costs from both participating and non-participating customers."⁹ The Staff further recommended that Commission approval of the DR Riders be predicated on APCo's willingness to not recover program-related costs that are not passed on to program participants until such time as the Company can "definitively show that non-participants will, in fact, receive some benefits" from the DR Riders.¹⁰

On June 3, 2011, the Company filed its response to the Staff Report and comments filed by the Committee. The Company agreed to the Staff's recommendation that it file a cost-benefit analysis of the DR Riders. The Company further agreed that the filing of reports regarding the amounts and types of costs deferred and recovered is appropriate. However, the Company suggested that such reports be submitted every six months rather than every month as recommended by the Staff. The Company further stated that it is willing to work with the Staff to insert language into the PSDR Rider clarifying the availability of service and that it intends to apply any net non-compliance payments as an offset to any deferred costs of the DR Riders.¹¹ The Company also affirmed its position that customers will benefit from the DR Riders and suggested that the Staff's recommendation as to a showing of benefits by non-participants is unnecessary given that the governing cost recovery statute requires APCo "to demonstrate to the Commission's satisfaction that its programs are 'fair and effective' and 'in the public interest,' and that its costs are 'reasonable' before [the Company] can recover the costs" related to the DR Riders.¹²

Addressing the Committee's comments, APCo recommended that the Commission decline to modify the DR Riders to more closely resemble analogous PJM programs. According to APCo, "[a]s the terms of the DR Riders are reasonable, and as the Committee's suggested modifications could harm the Company's ability to achieve the goals of each program, they should not be implemented."¹³

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that subject to the requirements set forth herein, APCo's proposed DR Riders are, in accordance with Section 3 of Chapters 752 and 855 of the 2009 Acts of Assembly, effective, reliable, verifiable as a capacity resource, and in the public interest. Accordingly, we find that the DR Riders should be approved subject to the conditions set forth below. We further find that the Committee's proposed modifications to the DR Riders should not be adopted at this time. We note that the Company's Application does not seek to defer carrying costs associated with its proposed DR Riders in this proceeding, and we do not approve the recovery of any such carrying costs.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's proposed DR Riders, as modified by the requirements set forth herein, are hereby approved.
- (2) The Company may defer costs associated with the DR Riders to the extent permitted by statute. Any costs deferred shall be offset by any non-compliance payments received by the Company from customers participating in the DR riders.
- (3) The Company shall coordinate with the Staff to clarify the availability of service of the PSDR Rider as described herein.

⁵ Committee Comments at 2. The Company's Application proposes a four-year contract term for the PSEDR Rider.

⁶ Staff Report at 12.

⁷ Staff Report at 5. APCo's proposed PSEDR Rider already includes such language, stating: "This demand response program is available on a voluntary basis to non-residential customers who are taking firm Standard Service from the Company and who are not participating in a demand response program either directly through PJM or through a Curtailment Service Provider (CSP)."

⁸ Staff Report at 10.

⁹ *Id.* at 12-13.

¹⁰ *Id.* at 12.

¹¹ APCo Comments at 2-3.

¹² *Id.* at 2 (internal quotations refer to Va. Code § 56-585.1 A 5 b.).

¹³ *Id.* at 3-4.

(4) The Company shall submit to the Commission's Division of Energy Regulation for approval applicable tariffs to implement the DR Riders within thirty (30) days from the date of the entry of this Order.

(5) The Company shall, no later than two years and six months from the date of entry of this Order, submit to the Commission's Divisions of Energy Regulation and Economics and Finance, a report including, but not limited to, an assessment of the costs and benefits of the DR Riders. The Company shall consult the Staff to determine the most appropriate and useful parameters for the development of this report.

(6) The Company shall submit information to the Commission's Division of Public Utility Accounting regarding the amounts and types of costs deferred that are related to the DR Riders and indicate the recovery of such costs from both participating and non-participating customers. Such information shall initially be submitted on May 31, 2012, and shall be submitted by the Company every six months thereafter.

(7) The Commission's approval granted herein shall have no ratemaking implications. In particular, the Commission's approval shall not guarantee recovery of any costs directly or indirectly related to the DR Riders.

(8) This case is closed, and the papers filed herein shall be placed in the file for ended causes.

**CASE NO. PUE-2011-00002
SEPTEMBER 20, 2011**

PETITION OF
CAPTAIN'S COVE UTILITY COMPANY, INC.,
and
CCUC NOTE, LLC

For approval of acquisition of a public utility

ORDER GRANTING APPROVAL

On March 24, 2011, Captain's Cove Utility Company, Inc. (the "Utility Company"), and CCUC Note, LLC (together, the "Petitioners"), completed a petition ("Petition") with the State Corporation Commission ("Commission"), pursuant to Chapter 5¹ of Title 56 of the Code of Virginia ("Code"), for approval of the transfer of stock and control of the Utility Company to CCUC Note, LLC. On August 29, 2011, the Petitioners filed an Amendment to the Petition for Approval of Acquisition of a Public Utility to request further approval for CCUC Note, LLC, to distribute the stock of the Utility Company eventually to its individual owners.

The Utility Company provides water and sewer services to residents in the Captain's Cove Subdivision ("Captain's Cove") in Accomack County, Virginia. The Utility Company provides water service to 810 customers and sewer service to 252 customers. Roger Young, Robert Warfield, and Harold Glick (collectively, the "Owners") acquired the Utility Company in 2004. Their acquisition was approved by the Commission in Case No. PUE-2004-00076.² They are also the owners of Captain's Cove Group, LLC ("CCG"). Captain's Cove is being developed by CCG. In August 2008, CCG filed for bankruptcy in the United States Bankruptcy Court for the District of Maryland. CCG was unable to obtain approval from its largest secured creditor, PNC Bank, for a plan of reorganization. In December 2010, CCG Note, LLC, and CCUC Note, LLC, acquired PNC Bank's right, title, and interest to the debt and pledged collateral of CCG. Among the assets pledged to PNC Bank are the stock certificates in the Utility Company held by the Owners. CCG Note, LLC, plans to acquire the assets of CCG in a sale pursuant to § 363 of Title 11 - Bankruptcy of the U.S. Code. The Owners have agreed to convey their capital interest in the Utility Company to CCUC Note, LLC, in lieu of CCG Note, LLC, foreclosing on the pledged shares. CCUC Note, LLC, is owned by Timothy Hearn, Roger Holland, and Michael Glick.³

The Petitioners request Commission approval for the Owners to transfer stock and control of the Utility Company to CCUC Note, LLC, and for the eventual transfer of stock of the Utility Company to CCUC Note, LLC's, existing individual members ("Purchasers") in equal proportion as their current ownership in CCUC Note, LLC, before January 31, 2012.

The Petitioners state that the purpose of the proposed transfer is to allow for the continued development of Captain's Cove. They represent that PNC Bank was contemplating foreclosing on and liquidating the assets of CCG, which had the potential of causing significant disruption in service to customers.

The customers were notified of the proposed transfer. One customer responded to the notice believing there was insufficient time to comment on the Petition before the Petitioners close on the transfer. The Commission's Staff advised the customer that there was sufficient time to file comments. However, no further comments were filed.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the proposed transfer will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and, therefore, should be approved. However, we believe that the transfer of stock from CCUC Note, LLC, to the Purchasers should be completed in a reasonable amount of time. Therefore, we will place a one (1)-year

¹ Va. Code § 56-88 *et seq.*

² *Joint Petition of Captain's Cove Utility Company, Inc., First Charter Land Associates, Robert E. Warfield, Harold P. Glick, and Roger A. Young, For approval to acquire the capital stock of Captain's Cove Utility Company, Inc., pursuant to Chapter 5 of Title 56 of the Code of Virginia, Case No. PUE-2004-00076, Doc. Con. Cen. No. 347626, 2004 S.C.C. Ann. Rept. 486, Order Granting Approval (Oct. 18, 2004).*

³ Michael Glick is of no relation to Harold Glick.

time limit on our approval of the proposed transfer. If CCUC Note, LLC, has not transferred the stock of the Utility Company to the Purchasers within one (1) year of the date of this Order, and the parties wish to consummate such transfer, the parties will be required to file a subsequent application requesting Commission approval.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-88.1 of the Code, the Petitioners are hereby granted approval of the transfer of stock and control of the Utility Company to CCUC Note, LLC, and the Purchasers, as described herein.

(2) The approval granted herein shall be limited to one (1) year from the date of this Order. If CCUC Note, LLC, has not transferred the stock of the Utility Company to the Purchasers within one (1) year of the date of this Order, and the parties wish to consummate such transfer, the parties shall be required to file a subsequent application requesting Commission approval.

(3) Within thirty (30) days of completing each transfer, the Petitioners shall file a report with the Commission's Division of Public Utility Accounting to include the date of the transfer, the actual transfer price, and the actual accounting entries reflecting the transfer. Such accounting entries shall be made in accordance with the National Association of Regulatory Utility Commissioners' Uniform System of Accounts for Class C Water Utilities and Class C Sewer Utilities. A separate report shall be filed for the transfer to CCUC Note, LLC, and to the Purchasers.

(4) The approval granted herein shall have no ratemaking implications. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the transfer.

(5) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2011-00003
SEPTEMBER 1, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For approval and certification of electric facilities: Mt. Storm – Doubs 500 kV transmission line rebuild

FINAL ORDER

On January 18, 2011, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") its Application of Virginia Electric and Power Company for Approval and Certification of Electric Facilities for the Mt. Storm - Doubs 500 kV Transmission Line Rebuild and Request for Expedited Treatment ("Application"). The Company proposes to rebuild its portion of the existing 500 kilovolts ("kV") transmission line that runs for approximately 99.26 miles from Dominion Virginia Power's Mt. Storm substation in West Virginia to the Potomac Edison Company's Doubs substation in Maryland (the "Project").¹ The non-contiguous Virginia portion runs for a total of approximately 30.7 miles through Frederick, Clarke, and Loudoun counties.

According to Dominion Virginia Power, the rebuilding is necessary to maintain the reliability of the Mt. Storm - Doubs line and the Company's transmission system. After more than forty-four (44) years of operation, the line and associated facilities are approaching the end of their expected service lives and must be replaced. Dominion Virginia Power also states that rebuilding would increase the capacity of the line by approximately 66%.² The estimated cost of the Project is \$312.4 million.³ The Company proposes to complete construction by June 2015.⁴

On February 1, 2011, the Commission issued an Order for Notice and Hearing that, among other things, scheduled a public hearing in Richmond to commence on June 20, 2011; directed that local public hearings be scheduled in a subsequent order or ruling; established a procedural schedule for the filing of comments, notices of participation, and prepared testimony and exhibits; and assigned a Hearing Examiner to conduct further proceedings and to issue a report. On February 22, 2011, the Commission issued an Order Setting Public Hearings that, among other things, scheduled local public hearings on the Application in Winchester and Purcellville on April 5 and 6, 2011.

Timely notices of participation were filed by Alfred T. Ghiorzi and the Board of Supervisors of Frederick County ("Frederick County").⁵

Local public hearings on the Application were convened as scheduled. No public witnesses testified at the local hearing in Winchester on April 5, 2011. Three public witnesses testified at the local hearing in Purcellville on April 6, 2011. The public witnesses did not oppose the Project. In addition, the Commission received written comments on the Application, none of which opposed the Project.

¹ Dominion Virginia Power owns the portion of the line that runs through West Virginia and Virginia, and the Potomac Edison Company owns the approximately 2.86 miles of the line that runs through Maryland.

² Application at 2.

³ *Id.* at 2-3., Exs. 11 and 13.

⁴ *Id.* at 5-6.

⁵ Respondent Ghiorzi did not attend the hearings or otherwise participate in the formal proceeding.

The public hearing was reconvened in Richmond, Virginia on June 20, 2011. Witnesses for the Company presented testimony and exhibits on the need for the Project, construction plans and process, and impact of the project on the environment. The Commission Staff ("Staff") offered testimony and exhibits on its review of the Project and recommended that the Application be granted.

As noted in the Commission's Order for Notice and Hearing of February 1, 2011, the Staff requested the Department of Environmental Quality ("DEQ") to coordinate a review of the Project by state and local agencies and to file a report on the review. On April 6, 2011, the DEQ filed its report ("DEQ Report"), and it was admitted at the hearing in Richmond.⁶ Representatives of the Virginia Department of Health ("VDH"), the Virginia Department of Historic Resources ("DHR"), and the Virginia Outdoors Foundation provided testimony in support of the comments and recommendations their respective agencies contributed to the DEQ Report.

On July 19, 2011, Hearing Examiner A. Ann Berkebile filed a report ("Hearing Examiner's Report"). The Hearing Examiner provided a summary of the evidence offered by the Company on the need for rebuilding the line, the general plan for its reconstruction, and the Project's environmental impacts. It was undisputed in this case that there is a need to construct and operate the proposed replacement transmission line.⁷ The Hearing Examiner also addressed several issues concerning the impacts of the Project that were raised in the proceeding. Following her analysis, the Hearing Examiner made the following findings:

Dominion Virginia Power's Application to rebuild the Mt. Storm - Doubs transmission line is justified by the public convenience and necessity; and

The Commission should issue a certificate of public convenience and necessity authorizing the construction and operation of the proposed Project[.]⁸

The Hearing Examiner also considered the analysis and recommendations set out in the DEQ Report, as supplemented by the testimony of the agency representatives. As the Hearing Examiner noted, by the time the record closed, the Company did not take issue with most of the recommendations in the DEQ Report.⁹ Outstanding issues from the DEQ Report, as developed in the testimony presented at the hearing, included the Company's disagreement with the VDH recommendations on protection of drinking water and recommendations on coordination with Frederick and Loudoun counties as requested in their comments attached to the DEQ Report.

With regard to drinking water, the VDH had expressed in its comments and recommendations to the DEQ that measures be taken to protect drinking water from contamination in any karst areas. As noted in the Hearing Examiner's Report, Dominion Virginia Power was largely in compliance with the VDH recommendations on identifying karst areas and preparing for any additional measures. The Hearing Examiner recommended that the Commission condition any Project approval on the Company's continued coordination with the VDH to protect water supplies and karst topography.¹⁰

Turning to the issue of coordination with localities, Frederick and Loudoun counties requested that Dominion Virginia Power coordinate with localities on a number of local concerns including historic preservation, right-of-way management, and the establishment of a "mitigation bank" for Frederick County.¹¹ The Hearing Examiner found that implementing the measures advocated by the localities was not necessary. The record established that Dominion Virginia Power had sufficient procedures in place to coordinate with localities on construction matters. With regard to protection of historic resources, the Company presented testimony on its compliance with the DHR guidance. The Hearing Examiner agreed with Dominion Virginia Power that compliance with the statewide program and guidelines was sufficient to protect historic resources.¹²

Based on her findings, the Hearing Examiner recommended that the Commission adopt the findings and grant the Application. In the only response to the report filed, the Company generally supported the Hearing Examiner's recommendations and findings.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that Dominion Virginia Power's application to construct and operate the proposed 500 kV transmission line in Frederick, Clarke, and Loudoun counties is justified by the public convenience and necessity, and a certificate of public convenience and necessity should be issued authorizing the construction and operation of the proposed Project.

Approval

The statutory scheme governing the Company's application is found in several chapters of Title 56 of the Code of Virginia ("Code"). Section 56-265.2 A of the Code provides that "[i]t shall be unlawful for any public utility to construct . . . facilities for use in public utility service . . . without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege."

Section 56-46.1 of the Code further directs the Commission to consider several factors when reviewing the Company's application. Subsection A of the statute provides that:

⁶ Ex. 2.

⁷ Hearing Examiner's Report at 19.

⁸ *Id.* at 23.

⁹ *Id.* at 20.

¹⁰ *Id.* at 20-21.

¹¹ *Id.* at 21-22.

¹² *Id.*

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 In every proceeding under this subsection, the Commission 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 Additionally, the Commission (i) shall 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.

Section 56-46.1 B of the Code further provides that: "[a]s 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."

Finally, the Code requires the Commission to consider existing right-of-way easements when siting transmission lines. Section 56-46.1 C of the Code provides that "[i]n any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company." In addition, § 56-259 C of the Code provides that "[p]rior to acquiring any easement of right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements of rights-of-way."

Need and Service Reliability

It is uncontroverted that the existing Mt. Storm-Doubs line is physically deteriorating and must be replaced to assure reliable and safe operation. Furthermore, as noted by the Staff, PJM Interconnection, L.L.C., the regional transmission operator, considers rebuilding of the line to be a baseline reliability project within its aging infrastructure program. Finally, neither the public witnesses nor the respondents in this proceeding contested the need for the Project.

Economic Development

The evidence submitted in this proceeding also supports the conclusion that the Project will promote economic development in the Commonwealth of Virginia by maintaining the operational reliability of the Mt. Storm - Doubs line and, in turn, continuing to ensure the delivery of sufficient supplies of electrical power to relevant areas. As an added benefit, the Project will increase the transmission capacity for west-to-east power flows thereby further supporting the economic development of the region.

Routing and Right-of-Way

The Company did not consider any routing alternatives for its proposed transmission line since it will be located entirely on existing right-of-way. Thus, Dominion Virginia Power was not required, in accordance with § 56-46.1 C of the Code, to demonstrate that existing rights-of-way could not adequately serve its needs. Similarly, § 56-259 C of the Code is inapplicable to this proceeding because the Company seeks no additional easements associated with the Project.

Scenic Assets and Historic Districts

The Company's Application included assessments of architectural and historic resources that potentially could be impacted by rebuilding the line. As discussed previously, the existing line has occupied the right-of-way for over forty (40) years, and the rebuilt line proposed in this Project will be located in the existing right-of-way. Moreover, because the Project will be constructed along the same route as the existing line, adverse impact on scenic assets and historic districts in the region will be minimized as required by § 56-46.1 B of the Code. As the Hearing Examiner discussed, Dominion Virginia Power supports cooperation with the VDH. The Company pledged to undertake the measures called for in the VDH guidelines for transmission projects.¹³ Accordingly, we find that appropriate steps to protect historic and scenic assets have been taken. Moreover, since the transmission line will be built entirely on existing right-of-way, any scenic impacts of the transmission line will be minimized to the extent practicable.

Environmental Impact

Under §§ 56-46.1 A and B of the Code, the Commission is required to consider the proposed Project's impact on the environment and to establish such conditions as may be desirable or necessary to minimize adverse environmental impact. The statute further provides that the Commission shall receive and give consideration to all reports that relate to the proposed Project by state agencies concerned with environmental protection.

The DEQ filed a report of the coordinated review of the Project and, as discussed above, the Hearing Examiner addressed the report, its recommendations, and the parties' responses. We find that the Hearing Examiner's analysis properly addresses the issues, and we will adopt her recommendations.¹⁴ As a requirement of our approval herein, the Company shall comply with the recommendations from the DEQ Report as set out in the Hearing Examiner's third finding:

- a. The Company should conduct an on-site delineation of all wetlands and streams within the Project area with verification by the U.S. Army Corps of Engineers, using accepted methods and procedures, and following [the] DEQ's recommendations to avoid and minimize impacts to wetlands and streams;

¹³ Hearing Examiner's Report at 21-22.

¹⁴ Thus, as recommended by the Hearing Examiner, we find that it is unnecessary to implement the additional measures requested by Frederick and Loudoun counties.

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- b. The Company should consider [the] DEQ's recommendations, including the disposal of vegetative debris in lieu of burning as a means of protecting air quality;
- c. The Company should reduce solid waste at the source, reusing and recycling it to the maximum extent practicable, and follow [the] DEQ recommendations to manage waste;
- d. The Company should coordinate with [the Department of Conservation and Recreation] ["DCR"] regarding recommended species surveys and undocumented karst features if discovered;
- e. The Company should coordinate with [the] DCR in updating the Biotics Data System database if a significant time passes before the Project is completed;
- f. The Company should coordinate with [the Department of Game and Inland Fisheries] DGIF regarding its recommendations for protected species and other wildlife;
- g. The Company should coordinate with [the] DCR regarding recommendations for the protection of recreational resources such as trails and scenic byways;
- h. The Company should work with [the] DHR and other appropriate parties regarding recommended resource surveys, studies, and evaluations to protect applicable historic and archaeological resources;
- i. The Company should coordinate with the Department of Aviation if the proposed alignment or structure height changes;
- j. The Company should coordinate with [the] VDH regarding its recommendations to protect water supplies and karst topography, including implementation of best management practices;
- k. The Company should follow the principles and practices of pollution prevention to the maximum extent practicable; and
- l. The Company should limit the use of pesticides and herbicides to the extent practicable.¹⁵

Accordingly, IT IS ORDERED THAT:

(1) As proposed in the Application, Dominion Virginia Power is authorized to construct and operate in the counties of Frederick, Clarke, and Loudoun a 500 kV transmission line on the right-of-way now occupied by the existing Mt. Storm-Doubs 500 kV Transmission Line and to demolish those portions of the existing transmission line.

(2) Pursuant to §§ 56-46.1, 56-265.2, and related provisions of Title 56 of the Code, Dominion Virginia Power's application for a certificate of public convenience and necessity to construct and operate a new 500 kV single-circuit transmission line in the counties of Frederick, Clarke, and Loudoun is granted, as provided for herein, and subject to the requirements set forth in this Order.

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§§ 56-265.1 *et seq.*) of Title 56 of the Code, Dominion Virginia Power is issued the following certificates of public convenience and necessity:

Certificate No. ET-189a, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently certificated transmission lines and facilities in Clarke County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2011-00003, cancels Certificate No. ET-189, issued to Virginia Electric and Power Company on October 7, 2008, in Case No. PUE-2007-00031.

Certificate No. ET-19g, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently certificated transmission lines and facilities in Frederick County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2011-00003, cancels Certificate No. ET-19f, issued to Virginia Electric and Power Company on January 8, 1987, in Case No. PUE-1986-00078.

Certificate No. ET-91t, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate presently certificated transmission lines and facilities in Loudoun County, all as shown on the detailed map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2011-00003, cancels Certificate No. ET-91s, issued to Virginia Electric and Power Company on January 24, 2011, in Case No. PUE-2009-00134.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Company a copy of the certificates issued in Ordering Paragraph (3) above with the detailed maps attached.

(5) The transmission line approved herein shall be constructed and in service by July 1, 2015; however, the Company is granted leave to apply for an extension for good cause shown.

¹⁵ *Id.* at 23-24.

(6) As there is nothing further to come before the Commission, this matter is dismissed from the Commission's docket and placed in closed status in the records maintained by the Clerk of the Commission.

**CASE NO. PUE-2011-00003
SEPTEMBER 9, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For approval and certification of electric facilities: Mt. Storm – Doubs 500 kV transmission line rebuild Virginia Electric and Power Company, d/b/a Dominion Virginia Power

ERRATUM ORDER

It appearing that there are typographical errors in the State Corporation Commission's Final Order of September 1, 2011, IT IS ORDERED THAT the final two sentences appearing on page 7 of the Final Order and continuing to page 8 be revised to read as follows:

As the Hearing Examiner discussed, Dominion Virginia Power supports cooperation with DHR. The Company pledged to undertake the measures called for in the DHR guidelines for transmission projects.¹

¹ Internal footnote omitted.

**CASE NO. PUE-2011-00004
OCTOBER 5, 2011**

APPLICATION OF
SOUTHSIDE ELECTRIC COOPERATIVE

For approval of revisions to its existing terms and conditions, including a request to be allowed to implement a late fee

FINAL ORDER

On January 12, 2011, Southside Electric Cooperative ("Southside" or "Cooperative") filed with the State Corporation Commission ("Commission") an application and exhibits ("Application") requesting changes to its existing terms and conditions and to establish a one and one-half percent (1.5%) late fee for delinquent accounts. Procedurally, the Cooperative also asked the Commission to waive the requirement to file fifteen (15) copies of the Application, which the Commission granted,¹ and to waive the notice requirements for the Application.

On June 3, 2011, the Commission issued its Order for Notice and Comment ("Order for Notice").² The Commission's Order for Notice, among other things, approved Southside's requested changes to its existing terms and conditions except for the proposed late fee. The Order for Notice also denied the Cooperative's request for waiver of the notice requirement with respect to its proposed one and one-half percent (1.5%) late fee, directed the Staff of the Commission ("Staff") to investigate the reasonableness of the Cooperative's proposed late fee, and gave interested persons an opportunity to comment on the proposed late fee.³

On August 1, 2011, Southside filed proof that it had complied with the Commission's Order for Notice by publishing notice of the request to implement a late fee and by providing a copy of the Order for Notice to certain local public officials. The Commission received no comments regarding the Cooperative's proposed late fee. Because no Staff report or comments were filed regarding the Cooperative's proposed late fee, there was no need for Southside to file a reply.

NOW THE COMMISSION, having considered the Application, is of the opinion and finds that Southside's request to implement a one and one-half percent (1.5%) late fee for delinquent accounts should be approved.

Accordingly, IT IS ORDERED THAT:

(1) Southside's request to implement a one and one-half percent (1.5%) late fee for delinquent accounts is approved.

(2) Within thirty (30) days from the date of this Order, Southside shall file with the Commission's Division of Energy Regulation any necessary revised tariffs and terms and conditions of service that reflect the charge approved herein.

¹ *Application of Southside Electric Cooperative, For approval of Revisions to its existing Terms and Conditions, including a request to be allowed to implement a late fee*, Case No. PUE-2011-00004, Order Granting Waiver (Jan. 12, 2011).

² *Application of Southside Electric Cooperative, For approval of revisions to its existing terms and conditions, including a request to be allowed to implement a late fee*, Case No. PUE 2011-00004, Order for Notice and Comment (June 3, 2011).

³ *Id.* at 2-6.

(3) There being nothing further to be done, this matter is dismissed from the Commission's docket of active cases and the papers filed herein shall be placed in the Commission's file for ended cases.

**CASE NO. PUE-2011-00005
OCTOBER 5, 2011**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For an Annual Informational Filing

**ORDER ADOPTING RECOMMENDATIONS
AND DISMISSING PROCEEDING**

On May 2, 2011, Columbia Gas of Virginia, Inc. ("CGV" or "Company"), delivered its application for an Annual Informational Filing ("AIF") to the Clerk of the State Corporation Commission ("Commission"). The Company's AIF consisted of financial and operating data for the twelve months ending December 31, 2010. On June 20, 2011, CGV filed revised Earnings Test schedules.¹ On August 2, 2011, the Staff of the Commission ("Staff") filed its report on CGV's AIF ("August 2, 2011 Staff Report" or "Staff Report"). The Staff Report included both financial and accounting analyses.

In its financial review, the Staff focused on CGV's profitability; the profitability of NiSource, Inc. ("Nisource"), CGV's ultimate parent corporation; and NiSource's capital structure. The Staff noted that, with regard to CGV's profitability, the 2010 test year operating and financial performance for CGV's operations generally improved compared to the 2009 performance.² In its review of profitability of NiSource, the Staff reported that NiSource continued to deliver steady earnings from its regulated utility operating units, and overall operating performance was slightly improved from the prior years' levels.³ In its review of NiSource's capital structure, the Staff discussed several noteworthy financing activities that occurred during the test year.⁴

Additionally, the Staff noted that all three major credit rating agencies affirmed the senior unsecured credit rating for NiSource at the lowest investment grade rating, with stable outlooks for NiSource and its subsidiaries, but the Staff pointed out that any downgrade would drop NiSource debt into non-investment grade.⁵

In its accounting analysis, the Staff discussed CGV's depreciation reserve deficiency and SFAS No. 158 (Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans). With regard to the depreciation reserve deficiency, the Staff made adjustments to eliminate the effects of the amortization of a reserve deficiency that the Staff claimed should have been fully amortized by the end of 2007 but was not. In making the adjustments, the Staff eliminated the test year effects of the reserve deficiency amortization on depreciation expense, accumulated depreciation, and accumulated deferred income taxes. As a result of the adjustments, the balance of accumulated depreciation reflected in the rate base increased.⁶

In its discussion of SFAS No. 158 the Staff noted that, according to the Proposed Stipulation and Recommendation adopted by the Commission in its December 28, 2006 Order ("December 28, 2006 Order") approving CGV's performance-based ratemaking methodology ("PBR Plan"),⁷ all effects of SFAS No. 158 were to be eliminated for Earnings Test purposes during the term of CGV's PBR Plan. The Staff found that the Company complied in all regards with this requirement except in the calculation of the capital structure. As a result, the Company made revisions to its capital structure and all other affected schedules and filed the revised schedules with the Commission on June 20, 2011.⁸

¹ The revised Earnings Test schedules removed the effects of Statement of Financial Accounting Standard ("SFAS") No. 158 from the common equity component of NiSource, Inc.'s consolidated capital structure. CGV also included an additional set of Earnings Test schedules that removed the effects of the Revenue Normalization Adjustment from earnings.

² Staff Report at 3.

³ *Id.* at 4.

⁴ Specifically, in November 2010, a 7.875%, ten-year note matured and \$681 million (notional) of financial swap transaction expired and the swaps were terminated. Also near the end of 2010, NiSource extended a tender offer to investors who purchased 10.75%, seven-year notes in March 2009. Approximately \$273 million in notes were tendered at the enhanced price for cash (\$600 million in notes were initially sold). In December 2010, NiSource issued \$250 million in 6.25% notes with a maturity of thirty years. *Id.* at 5.

⁵ *Id.* at 6.

⁶ *Id.* at 7.

⁷ See *Application of Columbia Gas of Virginia, Inc., For approval of a performance based rate regulation methodology pursuant to Va. Code § 56-235.6, Case No. PUE-2005-00098, and Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In Re: Investigation of the justness and reasonableness of current rates, charges, and terms and conditions of service*, Case No. PUE-2005-00100, 2006 S.C.C. Ann. Rept. 366, Final Order (Dec. 28, 2006).

⁸ Staff Report at 8.

The August 2, 2011 Staff Report concluded that CGV earned an 11.65% return on equity ("ROE") on a regulatory basis, which is above the 10.50% ROE specified in the PBR Plan as the benchmark that would trigger sharing of excess earnings with customers.⁹ The Staff noted that the PBR Plan requires that 75% of the earnings above the 10.5% ROE benchmark must be shared with customers and the remaining 25% is retained by the Company. The Staff calculated excess earnings of \$1,927,244 and thus concluded that \$1,445,433 of CGV's excess earnings should be shared with its customers and \$481,811 should be retained by the Company.¹⁰

Additionally, the Staff recommended that the refund to customers be allocated according to the Proposed Stipulation and Recommendation adopted by the Commission in its December 28, 2006 Order and be applied to customers' bills for the twelve-month period beginning with the first billing cycle for December of each year, coincident with the Company's Actual Cost Adjustment ("ACA") period (December 1 – November 30 of each year). Finally, the Staff noted that any true-up that is required will be reflected on customers' bills with the first billing period of December 2012, coincident with the Company's subsequent ACA period.¹¹

On August 30, 2011, the Company filed its comments on the Staff Report, wherein it stated that CGV's analysis yields an inconsequential difference in the level of sharable earnings under the PBR Plan and, therefore, the Company does not dispute the Staff's calculation of sharable earnings for the purpose of this proceeding. The Company further stated that it agrees with the Staff's findings that CGV's ROE for 2010 exceeded the threshold that triggers the sharing of earnings under the PBR Plan; that the amount of earnings to be shared with customers is \$1,445,433; and that the sharable earnings credits will be reflected on customers' bills for the twelve-month period beginning with the first billing period of December 2011, coincident with the Company's ACA period.

NOW THE COMMISSION upon consideration of this matter, is of the opinion and finds that the Staff's recommendations are reasonable and should be adopted; the Company's ROE for 2010 exceeded the threshold that triggers the sharing of earnings under the PBR Plan; the earnings level experienced by the Company results in sharable earnings of \$1,927,244, of which \$1,445,433 (75%) should be shared with customers; the sharable earnings should be credited to customers' bills for the twelve-month period beginning with the first billing period of December 2011, coincident with the Company's ACA period; and the Company should perform a true-up for the twelve-month period and any amounts over- or under-credited will be combined with the ACA balance to be flowed back effective December 2012, consistent with the Proposed Stipulation and Recommendation adopted by the Commission in its December 28, 2006 Order.

Accordingly, IT IS ORDERED THAT:

(1) Consistent with the findings made herein, the Staff's recommendations in its August 2, 2011 Staff Report concerning the sharing of the Company's earnings in excess of the PBR Plan threshold are hereby adopted.

(2) The Company shall distribute shared earnings to rate classes, except LVTS and LVEDTS, based on non-gas revenues for the applicable test year and credited to customers via a non-gas rate credit consistent with the Company's ACA period. Credits shall be allocated among classes according to the methodology described in the PBR Plan and the August 2, 2011 Staff Report.

(3) The Company shall apply the credit to customers' bills, except LVTS and LVEDTS, for the twelve-month period beginning with the first billing cycle for December 2011, coincident with the Company's ACA period.

(4) The Company shall perform a true-up for the twelve-month period to ensure that the full amount of the shared earnings over the 10.50% ROE threshold is returned to customers. Any amounts over- or under-credited shall be combined with the ACA balance and shall be reflected on customers' bills with the first billing cycle for December 2012, coincident with the Company's subsequent ACA period.

(5) There being nothing further to be done herein, this case hereby is dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's files for ended causes.

⁹ *Id.* Customers taking service under the Large Volume Transportation System ("LVTS") and Large Volume Economic Development Transportation Service ("LVEDTS") rate schedules are not eligible to receive shared earnings credits under the PBR Plan. Therefore, any reference to customers in this Order does not include LVTS and LVEDTS customers. *Id.* at 9.

¹⁰ *Id.* at 8-9.

¹¹ *Id.* at 9.

**CASE NO. PUE-2011-00006
FEBRUARY 2, 2011**

APPLICATION OF
SOUTHSIDE ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On January 13, 2011, Southside Electric Cooperative ("Applicant" or "Southside"), filed an application under Chapter 3 of Title 56 of the Code of Virginia ("Code") with the State Corporation Commission ("Commission"). In its application, Southside requests authority to incur long-term indebtedness from the United States of America through the Federal Financing Bank ("FFB") in the form of a promissory note to be guaranteed by the Rural Utilities Service ("RUS"). Applicant has paid the requisite filing fee of \$250.

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Applicant requests authority to borrow up to \$18,533,000 ("Note") from the FFB. The Note will have a term of 35 years. The interest rate will be fixed based on the interest rate at the time of advance. The proceeds from the loan will be used to pay short-term debt and reimburse Southside for completed construction projects.

The Note will be secured by a Supplemental Mortgage and Security Agreement ("Security Agreement") made by and between Southside, RUS and Applicant's other secured lender, the National Rural Utilities Cooperative Finance Corporation ("CFC").

NOW THE COMMISSION, upon consideration of the application and having been advised by Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Applicant is hereby authorized to incur up to \$18,533,000 of RUS guaranteed long-term debt from FFB for the purposes, and under the terms and conditions, as set forth in its application.
- (2) Within thirty (30) days of the date of each advance of funds from FFB, Applicant shall file with the Commission's Division of Economics and Finance a report of action which shall include the amount of the advance, the interest rate, the interest rate term.
- (3) The authority granted herein shall have no implications for ratemaking purposes.
- (4) There being nothing further to be done this matter is hereby dismissed.

**CASE NO. PUE-2011-00007
JANUARY 21, 2011**

APPLICATION OF
MECKLENBURG ELECTRIC COOPERATIVE

For authority to incur indebtedness

ORDER GRANTING AUTHORITY

On January 18, 2011, Mecklenburg Electric Cooperative ("Mecklenburg" or "Cooperative") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia for authority to borrow \$3,029,935.73 through the National Rural Utilities Cooperative Financing Corporation's ("CFC") Advantage Program. Mecklenburg has paid the requisite fee of \$250.

Mecklenburg is seeking authority to borrow \$3,029,935.73 from CFC to retire, prior to maturity, three currently outstanding notes with CFC. There are no prepayment penalties associated with the early retirement of the CFC debt. The new debt will carry interest rates ranging from 4.82% to 5.55% and maturities from 10 to 15 years. The interest rates associated with the debt will be fixed over the life of the new debt. According to the analysis provided in its application, Mecklenburg expects to save over \$300,000 in interest expense as a result of this refinancing.

THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Mecklenburg is authorized to incur up to \$3,029,935.73 in debt obligations under CFC's Advantage Program, under the terms and conditions and for the purposes stated in its application.
- (2) Within thirty (30) days of the date of any advance of funds from CFC, the Cooperative shall file with the Commission's Division of Economics and Finance a report of action, which shall include the amount of the advance, the interest rate, and the interest rate term.
- (3) The authority granted herein shall have no implications for ratemaking purposes.
- (4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2011-00008
FEBRUARY 11, 2011**

APPLICATION OF
A&N ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On January 20, 2011, A&N Electric Cooperative ("ANEC" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia ("Code") for authority to borrow up to \$31.6 million in long-term debt from the Federal Financing Bank ("FFB"). Applicant has paid the requisite fee of \$250.

Applicant represents that the long-term borrowing is needed to finance ANEC's current work plan approved by the Rural Utilities Service ("RUS") that covers expenditures during the period June of 2009 through May of 2013. The FFB loan will be guaranteed by the RUS. ANEC expects the loan maturity to be up to 35 years.

Applicant states that the FFB loan can be drawn down over the next four years, and the interest rate will be determined at the time of the draw and will be the yield on a comparable maturity United States Treasury bond as determined by RUS.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

(1) Applicant is hereby authorized to borrow up to \$31.6 million from the Federal Financing Bank, under the terms and conditions and for the purposes set forth in the application.

(2) Within thirty (30) days of the date of any advance of funds from FFB, Applicant shall file with the Commission's Division of Economics and Finance a report of action which shall include the date of the drawdown, the amount of the advance, the interest rate selected, the interest rate maturity, and the amount of remaining authority available to be borrowed.

(3) Approval of this application shall have no implications for ratemaking purposes.

(4) There being nothing further to be done, this matter is hereby dismissed.

**CASE NO. PUE-2011-00011
DECEMBER 21, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For approval and certification of electric transmission facilities in Prince William County and the City of Manassas: Cannon Branch-Cloverhill 230 kV Transmission Line and Cloverhill Substation

FINAL ORDER

On February 7, 2011, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") its Application for Approval and Certification of Electric Facilities for the Cannon Branch-Cloverhill 230 kV Transmission Line and Cloverhill Substation, Application No. 250 ("Application").¹ An Appendix, direct testimony, and the Department of Environmental Quality ("DEQ") Supplement were filed with the Application.

The Company proposes to construct a new 230 kilovolt ("kV") transmission line in the City of Manassas ("City") and Prince William County. The new line would run approximately 2.3 miles from a proposed expansion of the Company's existing radially fed Cannon Branch Substation in the City to a new 230-34.5 kV Cloverhill Substation (collectively, the "Project"). The new Cloverhill Substation would be constructed on land in Prince William County owned by Unicorn Interests, LLC ("Unicorn"). The Project would provide service to Unicorn's proposed data center campus to be located in the Airport Gateway Commerce Center on the corner of Route 234 and Cloverhill Drive, adjacent to the Manassas Regional Airport.²

According to Dominion Virginia Power, the new single-circuit line would be designated 230 kV Cannon Branch-Cloverhill Line #2132 and would be built entirely in new right-of-way using single-shaft galvanized steel poles with 2-636 ACSR conductors and would have a continuous summer rating of 1047 MVA.³ The structures would be built to support two circuits in order to allow the installation of a second 230 kV circuit when required in the

¹ A correction to the Application's depiction of alternative routes and accompanying materials was filed by the Company on July 11, 2011. See Ex. 3.

² Ex. 1 (Application) at 2.

³ *Id.* at 4.

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future, subject to the Commission's approval at that time.⁴ The Company indicates that the Project is needed to meet Unicorn's requirements for service to its data center campus by July 2013 and to maintain reliable service for the overall growth in the area.⁵ The estimated cost to construct the Project is approximately \$42 million, of which approximately \$22.9 million is for transmission line construction and approximately \$19.1 million is for substation work.⁶

On March 4, 2011, the Commission entered an Order for Notice and Hearing that docketed the Application as Case No. PUE-2011-00011; established a procedural schedule; scheduled a public hearing for August 17, 2011; and assigned a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission and to file a final report.

As noted in the Commission's Order for Notice and Hearing, the Commission's Staff ("Staff") requested that DEQ coordinate a review of the Project by the appropriate agencies and file a report on the review. On April 27, 2011, DEQ filed its report ("DEQ Report"), which was admitted at the hearing. The DEQ Report contains the following recommendations regarding the Project:

- Conduct an on-site delineation of wetlands and streams within the project area with verification by the U.S. Army Corps of Engineers (Corps), using accepted methods and procedures, and follow DEQ's recommendations to avoid and minimize impacts to wetlands and streams (Environmental Impacts and Mitigation, item 1(c), pages 9-10).
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable, and follow DEQ's recommendations to manage waste, as applicable (Environmental Impacts and Mitigation, item 5(e), page 15).
- Coordinate with the Department of Conservation and Recreation (DCR) regarding updates to the Biotics Data System database (if a significant amount of time passes before the project is implemented) and its recommendations, and coordinate with DCR and the Virginia Department of Agriculture and Consumer Services (VDACS) regarding a survey for Small whorled pogonia (Environmental Impacts and Mitigation, item 6(e), page 17).
- Coordinate with the Department of Game and Inland Fisheries (DGIF) regarding its recommendations to protect mussels and other wildlife (Environmental Impacts and Mitigation, item 7(d), pages 18 through 20).
- Work with the Department of Historic Resources regarding recommended resource studies and evaluations, and associated results, to protect historic and archaeological resources, as applicable (Environmental Impacts and Mitigation, item 10(d), page 22).
- Coordinate with the Virginia Department of Transportation (VDOT) regarding work within a right-of-way (Environmental Impacts and Mitigation, item 11(c), page 23).
- Coordinate with the Manassas Regional Airport and the Federal Aviation Administration (FAA) to ensure compliance with aviation regulations and with the Department of Aviation (DOAv) regarding its recommendations to ensure safety during construction at airports (Environmental Impacts and Mitigation, item 12(c), pages 23-24).
- Follow the principles and practices of pollution prevention to the extent practicable (Environmental Impacts and Mitigation, item 14, pages 24-25).
- Limit the use of pesticides and herbicides to the extent practicable (Environmental Impacts and Mitigation, item 15, page 25).
- Coordinate with Prince William County and the City of Manassas regarding local concerns (Environmental Impacts and Mitigation, item 16, pages 25-27).⁷

On June 17, 2011, the City filed a notice of participation in this proceeding and on June 30, 2011, submitted pre-filed testimony on the Company's Application coincident with a Motion to File Testimony Out of Time ("Motion"). On July 1, 2011, the Hearing Examiner issued his Ruling permitting the parties and the Staff to file a response to the City's Motion and allowing the City to reply to any such response. On July 7, 2011, Dominion Virginia Power filed a response to the City's Motion stating that it did not object to the City's request to file testimony out of time. On July 11, 2011, the Hearing Examiner issued a Ruling granting the City's Motion and accepting the pre-filed direct testimony and exhibits of Michael C. Moon for filing in this proceeding.

In his pre-filed testimony, Mr. Moon stated that the City "does not oppose the new 230 kV high voltage line that Dominion [Virginia Power] proposes, but the City does object to having multiple electric lines criss-crossing the same area."⁸ Mr. Moon requested that the City be permitted to attach its

⁴ *Id.*

⁵ *Id.* at 3.

⁶ *Id.* at 4.

⁷ Ex. 13 (DEQ Report) at 6-7.

⁸ Ex. 10 (Moon Direct) at 2.

own existing 115 kV transmission line, which currently runs along a parallel path, to Dominion Virginia Power's new transmission poles.⁹ In particular, Mr. Moon referred to an area of the City near Godwin Drive that currently serves as a corporate park that he asserted would be "unnecessarily encircled by high voltage transmission lines" unless the City is allowed to attach its line to the Company's proposed line.¹⁰ Mr. Moon also testified that the Project will mar the viewshed at the Manassas Landing Business Park and planned development further to the south.¹¹ Mr. Moon acknowledged that the Company agreed to lower the height of its poles from 110 feet to 100 feet to mitigate the Project's impacts; however, he concluded that "two transmission lines within 200 to 300 feet of each other [] will detract from the area's overall appearance and marketability."¹² Mr. Moon requested that the Commission condition approval of the Project on:

allowing the City to access the new high voltage transmission infrastructure in order to be able to remove or relocate its own 115 kV transmission line, thereby reducing visual blight and environmental damage. The City is requesting that Dominion [Virginia Power] pay for the attachment and the required facilities to accommodate this, while the City will bear the cost of removing the existing 115 kV line that currently runs from the Cannon Branch Substation to the [Virginia Municipal Electric Association No. 1] generating plant.¹³

Mr. Moon's pre-filed testimony also included a letter from the City to Mark Gill of Dominion Virginia Power requesting that the City's Airport Substation be tied to the new 230 kV transmission line and that Dominion Virginia Power "consider paying for the cost of the transformer change out and other incidental costs to facilitate this."¹⁴

On July 8, 2011, the Staff filed its report ("Staff Report") summarizing the results of its investigation of the Company's Application. The Staff Report described the criteria of the underground pilot program established by Chapter 799 of the 2008 Virginia Acts of Assembly ("HB 1319")¹⁵ and the unsuitability of the Project for this program.¹⁶ The Staff Report found that "the Company has reasonably demonstrated the need for the proposed Cloverhill Substation and the Cannon Branch-Cloverhill 230 kV transmission line to connect the existing Cannon Branch Substation and the proposed Cloverhill Substation."¹⁷ Further, the Staff Report analyzed the Company's proposed route and routing alternatives and concluded that "the proposed routing is the best choice for this project."¹⁸

On July 29, 2011, Dominion Virginia Power filed the rebuttal testimony of Mark R. Gill, Robert J. Shevenock, II, and Jonathon-David W. Schultis. In its rebuttal testimony, the Company addressed issues raised by the City's pre-filed direct testimony and responded to certain aspects of the DEQ Report. Regarding the City's request to collocate its existing 115 kV line on Dominion Virginia Power's new 230 kV structures, Dominion Virginia Power stated that the proposed pole structures of the Project are designed to accommodate a second 230 kV line that is projected to be needed by 2015 and, thus, installing the City's line on the proposed structures is not possible.¹⁹ Dominion Virginia Power further testified that if the Company provides the City a new delivery point to its Airport Substation, as requested in the City's letter to the Company dated April 29, 2011, there will no longer be a need for the existing 115 kV line and, thus, no need to collocate the line.²⁰ The Company maintains that it does not oppose the City's request to change the Airport Substation delivery point to the Company's proposed new 230 kV transmission line, provided that it is handled and paid for under the terms of the Mutual Operating Agreement ("MOA") between Dominion Virginia Power and the Virginia Municipal Electric Association.²¹

The Company disagreed that the Project would cause the local corporate park to be encircled by high voltage transmission lines and stated that the planned Manassas Landing multi-use development project is already impacted by public infrastructure and industrial and commercial uses.²² The

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 3.

¹² *Id.* at 5.

¹³ *Id.* at 6.

¹⁴ *Id.* at MCM-5.

¹⁵ HB 1319 was subsequently amended by Chapter 244 of the 2011 Virginia Acts of Assembly to extend, from July 1, 2012, to July 1, 2014, the date for the filing of applications for transmission projects that may be selected for placement underground.

¹⁶ Ex. 11 (Staff Report) at 7-9.

¹⁷ *Id.* at 16.

¹⁸ *Id.*

¹⁹ Ex. 15 (Shevenock Rebuttal) at 3-4.

²⁰ Ex. 14 (Gill Rebuttal) at 2-3.

²¹ *Id.* at 5. Company witness Robert J. Shevenock II testified that, pursuant to the MOA, the proposed 230 kV delivery point to the Airport Substation would cost Dominion Virginia Power approximately \$343,765. Mr. Shevenock further estimated that it would cost the City approximately \$703,586 to construct the tap line necessary to receive service. *See* Ex. 15 (Shevenock Rebuttal) at 2. The Company filed the above-referenced MOA with the Commission on August 15, 2011. *See* Ex. 4.

²² Ex. 16 (Shultis Rebuttal) at 3-4.

Company further noted that the Manassas Landing area is currently impacted by a Norfolk Southern rail line, Virginia State Route 234, the Airport Substation, a soil mining operation, and a brick manufacturing facility.²³

Regarding the DEQ Report, Dominion Virginia Power stated that, with the exception of the recommendations provided by Prince William County and the City of Manassas, the Company does not object to any of the recommendations.²⁴ The Company disagreed with the following recommendations provided by Prince William County:

- Conduct a Phase I archeological survey, including a metal detector survey, for portions of Routes A B, and C north of Route 234 and portions of Routes A and C south of Harry J. Parrish Boulevard. Phase II and Phase III/Data Recovery may be required if commended by the Phase I or Phase II study.
- Conduct a viewshed study to identify and assess any adverse effects to Bristoe Station and Kettle Run Battlefields.
- Ensure that all scopes of work for the viewshed and archeological surveys are approved by the County's archeologist.²⁵

Regarding DEQ's recommendation that the Company coordinate with the City to minimize impacts to the Cannon Branch Fort and respond to the City's outstanding information requests, the Company noted: (i) its recommended Route B is farther from the Cannon Branch Fort site than alternate routes; (ii) the Company is committed to continuing with its ongoing coordination with the Department of Historic Resources to identify impacts of the line on area historical archeological resources, including the Cannon Branch Fort; and (iii) Dominion Virginia Power believes that it has responded to the information requests of the City.²⁶

An evidentiary hearing was held on August 17, 2011, before Hearing Examiner Alexander F. Skirpan, Jr. Dominion Virginia Power, the City, and the Staff participated at the hearing. No public witnesses testified.

During the hearing, counsel for the City stated "we're now focused on connecting the 230 facility at the Manassas Airport Substation. . . . And the real issue here is not what ought to be built, but who ought to pay for these costs."²⁷ The City argued that relative to the local corporate park and Manassas Landing, the Project would create "an environmental impact that needs to be mitigated"²⁸ and requested that Dominion Virginia Power pay all costs associated with connecting the Airport Substation to the proposed 230 kV transmission line, except for the cost of removing the City's existing 115 kV line.²⁹

The Staff argued that the City's request is not appropriate for the Commission to consider in this case and took the position that the MOA is a filed rate at the Federal Energy Regulatory Commission, which governs the relationship between the City and the Company concerning the installation of an additional delivery point.³⁰ The Staff further restated its conclusion that the Company demonstrated a need for the Project.

The Company agreed with the Staff's position and contended that the Commission's jurisdiction "does not extend to reforming contracts."³¹ The Company also disputed the City's assertion that there are unreasonable impacts associated with the Project. The Company noted that the proposed transmission line would be located along a railroad corridor that bisects a heavily developed area that is zoned as heavy industrial.³²

On September 30, 2011, the Hearing Examiner issued his report ("Hearing Examiner's Report") setting forth the procedural history of the case, summarizing the record, analyzing the evidence and issues in this proceeding, setting forth his findings and recommendations, and advising the case participants of their opportunity to comment on the Hearing Examiner's Report. The Hearing Examiner recommended that the Commission grant the requested certificates of public convenience and necessity to construct and operate the proposed transmission facilities based on the following findings:

1. There is a need for the Company's proposed 230 kV transmission line from its Cannon Branch Substation in the City of Manassas to the proposed Cloverhill Substation in Prince William County to serve a proposed data center campus;
2. The construction of the proposed transmission lines is required by the public convenience and necessity for the reasons discussed herein;

²³ *Id.* at 5.

²⁴ *Id.* at 7.

²⁵ *Id.* at 7-8. *See also* Ex. 13 (DEQ Report) at 26-27.

²⁶ Ex. 16 (Schultis Rebuttal) at 10.

²⁷ Tr. at 27.

²⁸ *Id.* at 115.

²⁹ *Id.* at 115-116.

³⁰ Tr. at 118.

³¹ *Id.* at 120.

³² Tr. at 120-121.

3. The Company's proposed Route B for the Cannon Branch to Cloverhill Line will reasonably minimize adverse impact on the scenic assets, historic districts, and environment of the area concerned;
4. Existing rights-of-way cannot adequately serve the needs of the Company;
5. The Commission should not condition approval on the payment by the Company of the costs requested by the City of Manassas associated with connecting its Airport Substation to the proposed line. Such costs should be assigned between Dominion Virginia Power and the City of Manassas in accordance with their MOA; and
6. Recommendations contained in the DEQ Report, with the exception of the recommendations of Prince William County and the City of Manassas discussed herein, should be adopted by the Commission as conditions of approval.³³

Dominion Virginia Power filed comments on October 21, 2011, supporting the findings and recommendations of the Hearing Examiner's Report. No other comments were filed in response to the Hearing Examiner's Report.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the public convenience and necessity require that the Cannon Branch-Cloverhill 230 kV Transmission Line and Cloverhill Substation be built as proposed in the Company's Application and that certificates of public convenience and necessity should be issued authorizing the Project.

Approval

The statutory scheme governing the Company's Application is found in several chapters of Title 56 of the Code of Virginia ("Code"). Section 56-265.2 A of the Code provides that "[i]t shall be unlawful for any public utility to construct . . . facilities for use in public utility service, . . ., without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege."

Section 56-46.1 of the Code further directs the Commission to consider several factors when reviewing the Company's Application. Subsection A of the statute provides that:

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. . . . In every proceeding under this subsection, the Commission 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 Additionally, the Commission (i) shall 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.

Section 56-46.1 B of the Code further provides that: "[a]s 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."

The Code further requires the Commission to consider existing right-of-way easements when siting transmission lines. Section 56-46.1 C of the Code provides that "[i]n any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company." In addition, § 56-259 C of the Code provides that "[p]rior to acquiring any easement of right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements of rights-of-way."

Finally, for inclusion of a project in the underground pilot program established by HB 1319, the project must satisfy the following three criteria:

- (1) An engineering analysis demonstrates that it is technically feasible to place the proposed line, in whole or in part, underground;
- (2) The estimated additional cost of placing the proposed line, in whole or in part, underground does not exceed 2.5 times the cost of placing the same line overhead, assuming accepted industry standards for undergrounding to ensure safety and reliability. If the public utility, the affected localities, and the State Corporation Commission agree, a proposed underground line whose cost exceeds 2.5 times the cost of placing the line overhead may also be accepted into the pilot program; and
- (3) The governing body of each locality in which a portion of the proposed line will be placed underground indicates, by resolution, general community support for the line to be placed underground.³⁴

³³ Hearing Examiner's Report at 24.

³⁴ 2008 Va. Acts ch. 799, Enactment Clause 1, § 4.

Need

Neither the Staff nor the City questioned the need for the Project, and we find that there is a need for the proposed 230 kV transmission line from the Company's Cannon Branch Substation in the City of Manassas to the proposed Cloverhill Substation in Prince William County to serve a proposed data center campus and to maintain reliable service for the overall growth in the area.³⁵

Economic Development and Service Reliability

The evidence submitted in this proceeding supports the conclusion that the Project will benefit economic development in the area by providing service to Unicorn's proposed data center campus and maintaining reliable service for the overall growth in the area.³⁶

Scenic Assets, Historic Districts, and Existing Rights-of-Way

We agree with the Hearing Examiner that existing rights-of-way cannot adequately serve the needs of the Company and that the proposed Route B for the Cannon Branch to Cloverhill Line will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned.³⁷ The evidence shows, among other things, that the Company considered six routes for the proposed transmission line and recommended Route B because: (i) Route B has no impact on the proposed subdivision and future development of the Glen Gery parcel on the west side of Virginia State Route 234; (ii) Route B crosses fewer feet of forested land and Resource Protection Areas; and (iii) Route B is 200 feet farther from the Cannon Branch Fort site than the two best alternative routes.³⁸ The Staff reviewed each of the Company's proposed routes and agreed that Route B "is the best choice for this project."³⁹

Environmental Impact

Sections 56-46.1 A and B of the Code require the Commission to consider the proposed Project's impact on the environment and to establish such conditions as may be desirable or necessary to minimize adverse environmental impact. The statute further provides that the Commission shall receive, and give consideration to, all reports that relate to the proposed facilities by state agencies concerned with environmental protection.

The record, which includes the DEQ Report filed by DEQ and the DEQ Supplement prepared by the Company as part of the Application, supports findings that the Company's proposed route reasonably minimizes adverse environmental impact, provided that the Company complies with the DEQ recommendations found by the Hearing Examiner to be necessary to minimize such impact.⁴⁰ Specifically, we agree with the Hearing Examiner and find that, as a condition to our approval herein, the Company must comply with all of DEQ's recommendations except for the recommendations of Prince William County and the City discussed above.

HB 1319

We find that the evidence demonstrates that the Project fails to meet the criteria set forth in HB 1319 for inclusion as a pilot program.⁴¹

Accordingly, IT IS ORDERED THAT:

(1) The Company is authorized to construct and operate the Cannon Branch to Cloverhill 230 kV transmission line on the route proposed in the Company's Application subject to the findings and conditions imposed herein. The Company is also authorized to construct and operate the proposed Cloverhill Substation to be located on Unicorn's property in Prince William County.

(2) Pursuant to §§ 56-46.1, 56-265.2, and related provisions of Title 56 of the Code, the Company's Application for a certificate of public convenience and necessity to construct and operate the proposed Cannon Branch to Cloverhill transmission line and Cloverhill Substation is granted, as provided for herein, and subject to the requirements set forth in this Final Order.

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 *et seq.*) of Title 56 of the Code, the Company is issued the following certificate of public convenience and necessity:

Certificate No. ET-105aa, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate previously certificated transmission lines and facilities in Prince William County and the City of Manassas and to construct and operate facilities as authorized in Case No. PUE-2011-00011, all as shown on the map attached to the certificate, cancels Certificate No. ET-105z, issued to Virginia Electric and Power Company on January 24, 2011, in Case No. PUE-2009-00134.

³⁵ See Hearing Examiner's Report at 19.

³⁶ *Id.* at 4; Ex. 11 (Staff Report) at 14-15.

³⁷ Hearing Examiner's Report at 24.

³⁸ Ex. 8 (Shultis Direct) at 3, 11-12.

³⁹ Ex. 11 (Staff Report) at 16.

⁴⁰ Hearing Examiner's Report at 24.

⁴¹ Ex. 11 (Staff Report) at 7-9.

(4) The Commission's Division of Energy Regulation forthwith shall provide the Company copies of the certificate issued in Ordering Paragraph (3) with the detailed map attached.

(5) The transmission line and associated substation approved herein must be constructed and in service by July 1, 2013; however, the Company is granted leave to apply for an extension for good cause shown.

(6) As there is nothing further to come before the Commission, this matter is dismissed and the papers filed herein shall be placed in the file for ended causes.

**CASE NO. PUE-2011-00013
OCTOBER 12, 2011**

APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY

For an adjustment of electric base rates

ORDER ON STIPULATION

On April 1, 2011, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP" or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") requesting authority to adjust its electric base rates pursuant to Chapter 10 of Title 56 (§ 56-232 *et seq.*) of the Code of Virginia and the Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*).

In its Application, KU/ODP requested an increase in rates in the amount of \$9.3 million, or a 13.8% increase in its total operating revenues, including fuel.¹ According to the Application, the proposed rate increase would raise the monthly bill of a typical residential customer using 1,000 kilowatt-hours ("kWh") of electricity from \$82.27 per month to \$96.73 per month, an increase of \$14.46 or 17.58%. The proposed rate increase included a \$4.00 increase from \$8.00 to \$12.00 in the monthly customer charge.²

On April 12, 2011, the Commission issued an Order for Notice and Hearing that *inter alia*, (i) suspended the Company's proposed increase in rates until the Commission's final order in this proceeding; (ii) scheduled a local hearing for May 25, 2011, in the Town of Norton to receive the testimony of public witnesses; (iii) scheduled a public hearing for September 13, 2011 in Richmond; (iv) required the Company to provide notice of its Application; and (v) assigned this matter to a Hearing Examiner.

No notice of participation was filed by any party interested in participating in the proceeding as a respondent. However, the Commission did receive comments from nine (9) KU/ODP customers and local government officials opposing the proposed rate increase. A public hearing was held in Norton, Virginia on May 25, 2011, for the purpose of receiving testimony from public witnesses. Eight (8) witnesses appeared during that public hearing to testify concerning the Company's proposed rate increase.

On August 19, 2011, the Staff of the Commission ("Staff") filed its testimony that, among other things, recommended an annual increase in rates for the Company to produce approximately \$6.3 million, as compared to the \$9.3 million requested by KU/ODP.³ The Staff's testimony also addressed issues of rate design and the Company's terms and conditions for tariffed service in Virginia.⁴

On September 1, 2011, the Staff and KU/ODP filed a Stipulation and Recommendation ("Stipulation") and Joint Motion to Accept Stipulation. The Stipulation recommended a resolution to all issues in this case, including revenue requirement, cost of equity, rate design, and tariff terms and conditions. Under the Stipulation, KU/ODP's base rates would be increased to produce additional revenues of \$7,191,830, based upon a return on common equity of 10.30%, within a recommended authorized range of 9.50% to 10.50%. Moreover, the Stipulation provided for the rate increase to become effective with service rendered on and after November 1, 2011.

On September 13, 2011, a hearing was convened to address the Stipulation and to admit all of the prefiled testimony and exhibits of the Company and the Staff. A Hearing Examiner's Ruling was issued on September 16, 2011, which directed KU/ODP to file its rebuttal testimony on or before September 29, 2011, and scheduled a hearing for October 6, 2011.

On September 21, 2011, KU/ODP filed its Motion to Certify Material Issue to the Commission ("Motion"). The Company maintained that one of the principal provisions of the Stipulation provided for revised rates to become effective on November 1, 2011, and that this provision may become moot with the passage of time required to litigate this matter.⁵ KU/ODP contended that meaningful review by the Commission of the Stipulation can take place only by certifying the Stipulation to the Commission. Accordingly, the Company asked the Senior Hearing Examiner to certify to the Commission the issue

¹ Application at 1.

² Ex. 3 (Bellar direct) at 7; Ex. 8 (Seelye direct) at 26-27; Ex. 9 (Conroy direct) at 11; Ex. 2 (Application) at Schedule 43.

³ Ex. 12 (Barrer direct) at 19.

⁴ See generally Ex. 13 (Tufaro direct).

⁵ Motion at 3.

of whether the Stipulation should be adopted. The Motion stated that the Staff supported KU/ODP's request to certify this issue to the Commission.⁶ On September 27, 2011, a Hearing Examiner's Ruling was issued by the Senior Hearing Examiner in which he found that the Motion should be granted.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Stipulation, as proposed, shall not be approved. We further conclude, however, that with the following two modifications the Stipulation – taken as a whole – is just and reasonable and satisfies the relevant statutory requirements attendant to this case.

First, the Company shall not implement the four demand side management ("DSM") and energy efficiency ("EE") programs proposed in this proceeding. The annual revenue requirement for these programs is \$542,394,⁷ which represents approximately 7.5% of the proposed revenue increase in the Stipulation. The Company is not precluded from requesting approval of DSM and EE programs in the future. At this time, however, when KU/ODP is proposing to increase customers' bills by about 13%,⁸ and in light of the potential impacts on customers that will not receive the benefits of these programs, we find that it is not reasonable to include the DSM and EE programs as part of this proceeding. Second, the monthly residential customer charge shall not be increased to \$12.00 as set forth in the Stipulation but, rather, shall be set at \$10.00. This modification lessens the burden on lower-use customers during this period of increasing rates. The residential rate elements shall be adjusted to reflect a monthly charge of \$10.00 and the annual revenue increase approved for the Stipulation, which is \$6,649,436.

We further find that the rate increase approved herein is justified by the increased costs reasonably incurred by the Company in order to provide reliable service to its Virginia customers at just and reasonable rates. For example, KU/ODP has invested over \$30 million since its most recent rate case for facilities used to provide service to its customers, including expenditures to comply with environmental requirements on various generation facilities and placing a new generation plant into service; this results in additional annual capital-related costs of approximately \$6.0 million. The additional generation assets also necessitate approximately \$380,000 of annual operation and maintenance costs. The Company also incurred \$6.0 million in necessary costs related to the December 2009 snow storm, which results in an amortized additional annual cost of approximately \$1.20 million.

Finally, we emphasize that our findings herein do not establish precedent for any specific matter addressed in the Stipulation or the Commission's approval thereof as modified.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The Stipulation is rejected.
- (2) The Stipulation, as modified herein, is approved if accepted by KU/ODP as directed below.
- (3) On or before three (3) business days from the date of this order, KU/ODP shall file a letter with the Clerk of the Commission indicating whether the Company agrees to accept and implement the Stipulation as modified herein.
- (4) If the Company timely accepts the Stipulation as modified herein:
 - (a) KU/ODP is directed to comply with the Stipulation as modified; and
 - (b) KU/ODP shall forthwith file revised tariffs and terms and conditions of service with the Commission's Division of Energy Regulation, in accordance with the Stipulation as modified, effective for service rendered on and after November 1, 2011.
- (5) If the Company does not timely accept the Stipulation as modified herein, this proceeding shall be continued before the Senior Hearing Examiner.
- (6) This matter is continued pending further order of the Commission.

⁶ *Id.* at 5.

⁷ *See, e.g.*, Ex. 12 (Barrer direct) at Sched. B and Statement 4.

⁸ *See, e.g.*, Ex. 11 (Stipulation) at Exh. 3, Page 1 of 9.

**CASE NO. PUE-2011-00013
OCTOBER 21, 2011**

APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY

For an adjustment of electric base rates

ORDER CLOSING CASE

On April 1, 2011, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP" or "Company") filed an application with the State Corporation Commission ("Commission") requesting authority to adjust its electric base rates pursuant to Chapter 10 of Title 56 (§ 56-232 *et seq.*) of the Code of Virginia and the Rules Governing Utility Rate Applications and Annual Informational Filings (20 VAC 5-201-10 *et seq.*).

On October 12, 2011, the Commission issued an Order on Stipulation that modified the Stipulation and Recommendation ("Stipulation") jointly submitted by KU/ODP and the Staff of the Commission as a resolution to all of the issues arising in this proceeding. The Commission conditioned its

approval on whether the Company would agree to accept and implement the Stipulation with the modifications set out by the Commission. On October 13, 2011, KU/ODP filed notice of the Company's election to accept and implement the Stipulation as modified by the October 12, 2011 Order on Stipulation.

NOW THE COMMISSION, upon consideration of the foregoing, finds that this case should be closed.

Accordingly, IT IS ORDERED THAT:

(1) KU/ODP shall forthwith file revised tariffs and terms and conditions of service with the Commission's Division of Energy Regulation, in accordance with the October 12, 2011 Order on Stipulation.

(2) There being nothing further to come before the Commission in this proceeding, it is hereby dismissed from the Commission's active docket and the papers filed herein placed in the Commission's file for ended causes.

**CASE NO. PUE-2011-00014
JULY 11, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval to establish an electric vehicle pilot program pursuant to § 56-234 of the Code of Virginia

ORDER GRANTING APPROVAL

On January 31, 2011, pursuant to § 56-234 of the Code of Virginia ("Code") and Rule 40 of the Rules Governing Cost/Benefit Measures Required for Demand-Side Management Programs of the State Corporation Commission ("Commission"), 20 VAC 5-304-40, Virginia Electric and Power Company ("Dominion" or "Company"), by counsel, filed an application to establish an electric vehicle pilot program ("Application"). The Company proposed to offer two (2) experimental and voluntary electric vehicle ("EV") rate options, Schedules 1EV and EV, supported by various related technology, customer interface, and data collection as part of a structured pilot program ("EV Pilot Program" or "Pilot Program") designed to shift time of use of electricity, in the furtherance of design of a future cost-effective peak-shaving program for EVs.

In support of its Application, Dominion stated that EVs are currently being introduced into the marketplace within its service territory. The Company anticipated that by 2013 more than 5,000 EVs will be on the road in Dominion's service territory; by 2020 that number may grow to more than 86,000 or approximately 4.6% of new vehicle sales; and that EVs will eventually hit penetration levels at which load and energy impacts become potential issues for electric utilities and their customers.

The Company further stated that the proposed EV Pilot Program will offer rate options to customers that are designed to work in conjunction with the adoption of new EV-related technology; address the expected market demands; and meet the Company's obligation to serve the additional load associated with EVs in a safe, reliable, and cost-effective manner, while also gauging interest in, and consumer reactions to, multiple rate options and means of customer engagement/education.

According to Dominion, EVs have the potential to impact the Company's electric infrastructure, influencing asset planning in transmission, distribution, and generation. In its Application, the Company suggested that offering new experimental rate structures would discourage customers from charging their vehicles at on-peak times when impacts to the system are highest, power is generally more expensive, and benefits to load factor are lowest. Additionally, the Company stated that, if successful in encouraging customers to charge their vehicles off-peak, such rate structures would minimize the potential adverse impacts on utility infrastructure.

Dominion's Pilot Program would be offered to residential customers who own or lease an EV. The Company proposed to offer two rate options: Rate Schedule 1EV and Rate Schedule EV. Rate Schedule 1EV is a simple time-of-use tariff with fixed daily rating periods and respective fixed pricing that provides the customer with known pricing for EV charging on a daily basis. Rate Schedule 1EV would apply to the customer's entire service, including the house and the EV, or what is often called a "whole-house" rate option and, therefore, is designed to encourage participants to shift electricity consumption to off-peak periods for charging their EVs and operating other household appliances. The second proposed rate option, Rate Schedule EV, is an end-use tariff that would be offered as a companion tariff in conjunction with Rate Schedule 1 (the existing rate schedule for standard household service). The Company stated that Rate Schedule EV would allow customers to isolate their EV charging load from their standard household service taken under Rate Schedule 1, while also incenting off-peak usage.

In its Application, Dominion stated that the proposed Pilot Program would also contain an educational component, which will offer customers information on the rate options, additional service requirements for EVs, how to manage usage for energy savings, and bill analysis.

The Company proposed a Pilot Program enrollment of up to 1,500 residential customers total, with up to 750 participants in each of the two experimental rate options. Should the Commission approve the EV Pilot Program, the Company proposed to begin the Pilot Program within ninety (90) days of such approval and offer enrollment in the Pilot Program through December 1, 2013. The Pilot Program would conclude on November 30, 2014, allowing customers who enroll in one of the experimental rate options the opportunity to participate for the one-year required term.

The Company's proposed EV Pilot Program will provide rate options that are designed to shift time-of-use of electricity away from peak periods. According to Dominion, if the Pilot Program produces results in keeping with Dominion's expectations, the Company would request approval of a Virginia service territory EV peak-shaving program, as defined by § 56-576 of the Code, and seek recovery of reasonable projected and actual costs related to the

design and operation of the program pursuant to §§ 56-585.1 A 5 and A 7 of the Code. As part of this proceeding, Dominion requested approval to begin deferring incremental costs related to the Pilot Program for future recovery in a cost recovery rate adjustment clause pursuant to § 56-585.1 A 5 of the Code.¹

On February 17, 2011, the Commission entered its Order for Notice and Hearing that, among other things, set forth a procedural schedule; allowed interested persons to participate as respondents in this proceeding; scheduled a public hearing to commence on June 8, 2011; and allowed interested persons to file written and electronic comments on Dominion's Application. The Commission received six (6) comments on the Application, and no one requested to participate as a respondent in this matter.

On May 18, 2011, the Commission Staff ("Staff") filed its testimony. The Staff generally agreed that it would be in the public interest to examine experimental rate structures through a pilot program² such as Dominion's EV Pilot Program. In addition, the Staff's recommendations included the following:

1. That Rate Schedule EV be the only EV charging option for customers already served under Rate Schedule DP-R, allowing Rate Schedule EV to serve as a companion tariff in conjunction with Rate Schedule DP-R.³

2. That the following changes be made to the tariff language for both Rate Schedule 1EV and Rate Schedule EV:

V. METER READING AND BILLING

B. The Company shall bill monthly.

C. The Company shall endeavor to read meters monthly. In the event that the Company is unable to read the meter for reasons beyond its control, it shall render the monthly bill based on estimated kWh usage.⁴

3. That all participants in the EV Pilot Program taking service under Rate Schedule 1EV be required to have a second meter and/or monitoring equipment installed at the Company's expense. The Staff felt this would be necessary in order to track shifts in existing load from peak to off-peak and super off-peak periods separately from the usage pattern of the new load from EV charging.⁵

4. That because the Company did not do a cost-benefit analysis of Rate Schedule 1EV, the Company should be required to perform a cost-benefit analysis at the conclusion of the EV Pilot Program to determine whether or not it is in the public interest to include Rate Schedule 1EV as part of a future permanent EV peak-shaving program.⁶

5. That it is imperative to establish and monitor a control group as part of the EV Pilot Program; that the control group be kept on Rate Schedule 1; and that monitoring equipment be installed at the Company's expense.⁷

On May 27, 2011, Dominion filed rebuttal testimony.

On June 8, 2011, the Commission convened the public hearing and received evidence and argument from Dominion and the Staff. In addition, during the hearing, Dominion clarified that (1) the projected cost of the Pilot Program is \$825,000⁸ and (2) the Company will not seek to recover any alleged lost revenues resulting from the Pilot Program.⁹ No public witnesses appeared to testify at the hearing.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Company's Application should be granted for the proposed period subject to the requirements set forth below.

¹ Subsequent to the filing of the Company's Application, House Bill 2105 was passed by the Virginia General Assembly and will become effective July 1, 2011. House Bill 2105 entitles qualifying public utilities to recover annually the costs of its participation in certain electric vehicle Pilot Programs "conducted by the utility on or after January 1, 2011." The Company intends to seek recovery in its 2011 subsection A5 filing based on projected costs, which will be tried up annually in subsequent filings. Ex. 20 at 2-3 (Duman Rebuttal).

² Ex. 10 (Abbott direct) at 11.

³ *Id.* at 6. The Company clarified that Rate Schedule EV is not available in conjunction with Rate Schedule DP-R. Ex.19 at 2 (Swanson Rebuttal).

⁴ *Id.* at 7. Dominion requests that, consistent with its other time-of-use schedules, estimated bills not be made mandatory for the instant Pilot Program. Ex. 19 at 2-3 (Swanson Rebuttal). We adopt Dominion's request at this time.

⁵ *Id.* at 10.

⁶ *Id.* at 17.

⁷ *Id.* In addition, the Company agreed to track EV sales, through information from the Virginia Department of Motor Vehicles, to the extent necessary for purposes of the Pilot Program. Ex. 17 at 4-5 (Corsello Rebuttal).

⁸ See, e.g., Tr. 36-37.

⁹ See, e.g., Tr. 39-40.

Accordingly, IT IS ORDERED THAT:

- (1) Dominion's Application for approval to establish an electric vehicle pilot program is hereby granted for the period proposed and subject to the requirements set forth herein.
- (2) The Company shall submit to the Division of Energy Regulation for approval applicable tariffs or tariff changes necessary to implement the Pilot Program within ninety (90) days from the entry of this Order.
- (3) Dominion shall perform a cost-benefit analysis at the conclusion of the EV Pilot Program to determine whether or not it is in the public interest to include Rate Schedule 1EV as part of a future permanent EV peak-shaving program.
- (4) Dominion shall establish and monitor a control group as part of the EV Pilot Program. The control group shall be kept on Rate Schedule 1, and monitoring equipment shall be installed at the Company's expense.
- (5) The recoverable cost of the Pilot Program shall not exceed \$825,000.
- (6) The Company shall not be permitted to recover any alleged lost revenues resulting from the Pilot Program.
- (7) The Company shall submit an annual report to the Commission each year that the Pilot Program is in effect that includes, but is not limited to, the number of participants in the Pilot Program, an assessment of the feasibility and implications on the public interest of continuing the Pilot Program, and any information relevant to the Pilot Program requested by the Staff. Such report shall initially be submitted to the Commission within thirty (30) days of the Pilot Program's first year of operation and, thereafter, shall be submitted to the Commission on an annual basis. The Company's final annual report shall include a protocol, developed with input from the Staff and other interested parties, for determining the Pilot Program's effect on customer modification of electricity consumption.
- (8) This case is continued generally until further order of the Commission.

**CASE NO. PUE-2011-00015
OCTOBER 19, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY D/B/A DOMINION VIRGINIA POWER

For approval and certification of electric facilities: Hollymead 230 kV double circuit transmission line project

FINAL ORDER

On February 18, 2011, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Dominion Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") the Application of Virginia Electric and Power Company for Approval and Certification of Electric Facilities for the Hollymead 230 kV Double Circuit Transmission Line, Application No. 251 ("Application").¹ The Company proposes to replace its existing 230 kilovolts ("kV") Line #2054 radial single circuit transmission line tap ("Hollymead Tap line"), located entirely in Albemarle County, Virginia, with a double circuit 230 kV transmission line. The existing Hollymead Tap line runs a total of approximately 8.4 miles from the Line #2054 tap point at Cismont Junction to Rappahannock Electric Cooperative's Proffit Delivery Point and on to Dominion Virginia Power's existing Hollymead Substation, where it terminates. In addition to the proposed replacement of the Hollymead Tap line, the Company proposes to expand the existing Hollymead Substation in Albemarle County within the existing property lines and to add one 230 kV breaker and associated equipment (collectively, "Project").

According to Dominion Virginia Power, the Project is necessary to assure that reliable electric service will be provided to the customers served from the Company's Hollymead Substation and from Rappahannock Electric Cooperative's Proffit Delivery Point consistent with mandatory North American Electric Reliability Corporation Reliability Standards for transmission facilities and the Company's planning criteria.² The Company initially estimated the cost of the Project as \$40.7 million, based on the original proposal to use Aluminum Conductor Composite Reinforced conductors.³ However, the estimated cost of the Project was lowered by \$6.3 million, to \$34.4 million, after the Company subsequently recommended using Aluminum Conductor Steel Reinforced conductors.⁴

On March 17, 2011, the Commission issued an Order for Notice and Hearing that, among other things, scheduled a public hearing to commence on July 14, 2011; established a procedural schedule for the filing of comments, notices of participation, and prepared testimony and exhibits; and assigned a Hearing Examiner to conduct further proceedings and to issue a report.

¹ Corrections and revisions to the Application and accompanying materials were filed by the Company on May 18, 2011, May 31, 2011, and June 13, 2011. See Ex. 2, 3, 4.

² Ex. 1 at 1-2.

³ The initial estimate included \$38.4 million for transmission and \$2.3 million for substation work. Ex. 1 at 2.

⁴ This change affected only the estimate of transmission costs and did not affect the estimated cost for substation work. Ex. 2; Ex. 14 at 12.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

As noted in the Commission's Order for Notice and Hearing, the Commission's Staff ("Staff") requested the Department of Environmental Quality ("DEQ") to coordinate a review of the Project by state and local agencies and to file a report on the review. On May 18, 2011, the DEQ filed its report ("DEQ Report"), which was admitted at the public hearing.⁵ The DEQ Report contained the following recommendations with regard to the Project:

- Conduct an on-site delineation of all wetlands and streams within the [P]roject area with verification by the U.S. Army Corps of Engineers (Corps), using accepted methods and procedures, and follow DEQ's recommendations to avoid and minimize impacts to wetlands and streams (Environmental Impacts and Mitigation, item 1(d), pages 9-10).
- Consider DEQ's recommendations, including reuse of vegetative waste in lieu of open burning, regarding air quality protection (Environmental Impacts and Mitigation, item 4(f), page 14).
- Reduce solid waste at the source, reuse it and recycle it to the maximum extent practicable, and follow DEQ's recommendations to manage waste, as applicable (Environmental Impacts and Mitigation, item 5(e), page 15).
- Coordinate with [the Department of Conservation and Recreation] for updates to the Biotics Data System database if a significant amount of time passes before the [P]roject is implemented (Environmental Impacts and Mitigation, item 6(e), page 16).
- Coordinate with the Department of Game and Inland Fisheries regarding its recommendations for protected species and other wildlife (Environmental Impacts and Mitigation, item 7(c), pages 17-18).
- Work with the Department of Historic Resources and other appropriate parties regarding its recommendations to protect historic and archaeological resources, as applicable (Environmental Impacts and Mitigation, item 9(d), pages 21 and 22).
- Coordinate with the Virginia Department of Transportation regarding its recommendations (Environmental Impacts and Mitigation, item 10(d), page 22).
- Coordinate with the Federal Aviation Administration (FAA) to ensure compliance with aviation regulations and with the Department of Aviation (DOAv) regarding its recommendations to ensure safety during construction at airports (Environmental Impacts and Mitigation, item 11(c), page 23).
- Coordinate with the Virginia Department of Health regarding its recommendations to protect water supplies, including implementation of best management practices (Environmental Impacts and Mitigation, item 12(c), page 24).
- Follow the principles and practices of pollution prevention to the maximum extent practicable (Environmental Impacts and Mitigation, item 13, page 24).
- Limit the use of pesticides and herbicides to the extent practicable (Environmental Impacts and Mitigation, item 14, page 24).⁶

Timely notices of participation were filed in this proceeding by Ronald L. Kerber ("Kerber"), G. David Phelps Hamar ("Hamar"), Leila Fiery Hamar, Marie B. LaRobardier, Scott H. Bolin, Raffaele Coscia, and Clara Coscia.⁷ Nine (9) interested persons filed written comments, which raised concerns about the need for the new line; environmental impacts; route and structure selection; use of overhead, rather than underground, construction; and rate impact.

The public hearing was convened on July 14, 2011, before Hearing Examiner Michael D. Thomas. Witnesses for the Company presented testimony and exhibits on the need for the Project, construction plans and process, and the impact of the project on the environment.

The Staff offered testimony and exhibits on its review of the Project and concluded that the Company has reasonably demonstrated the need for networking the Hollymead Tap load to comply with the Company's reliability planning criteria.⁸ The Staff testified about the criteria of the underground pilot program established by Chapter 799 of the 2008 Virginia Acts of Assembly ("HB 1319") and the unsuitability of the Project for this program.⁹ Additionally, the Staff provided analysis on nine (9) alternatives to the Project.¹⁰ Finally, the Staff analyzed the height, costs, and right-of-way requirements associated with using different structure types for the segment of the line running from Cismont Junction to Proffit Delivery Point ("Cismont-Proffit"), which traverses the Southwest Mountains Rural Historic District. The Staff's analysis focused on three structure types that would require the acquisition of no new

⁵ Ex. 12.

⁶ *Id.* at 6-7.

⁷ Respondents Leila Fiery Hamar, Marie B. LaRobardier, Scott H. Bolin, Raffaele Coscia, and Clara Coscia did not attend the hearing or otherwise participate in the formal proceeding.

⁸ Ex. 14 at 33.

⁹ *Id.* at 13-14.

¹⁰ *Id.* at 24-31, 33.

right-of-way: (1) paired poles, as proposed by the Company; (2) monopoles; and (3) an H-frame design presented by the Staff.¹¹ This comparison was illustrated by the Staff as follows:¹²

| | Double-circuit paired-pole | Double-circuit monopole | Double-circuit H-frame |
|-----------------------------|-------------------------------|----------------------------|---------------------------|
| Average height (ft.) | 80 | 105 | 80 |
| Project cost (\$M) | 34.4 | 28.6 | 31.5 |
| Incremental cost (\$M) | 5.8 | 0 | 2.9 |
| Incremental cost (\$M/mile) | 0.8 | 0 | 0.4 |

Respondent Kerber presented testimony and exhibits on the aesthetic and historic value of the Southwest Mountains Rural Historic District where he lives and in which the Hollymead Tap line is located, his involvement in a citizen advisory group convened by the Company regarding the Project, and requirements that he recommends be placed on the Company if the Project is approved. Additionally, Respondent Kerber stated his preference for an alternative route and his concerns about the collocation of transmission lines.¹³

Respondent Hamar presented testimony on recent projections of national load growth, which are lower than earlier national projections, the Southwest Mountains Rural Historic District in which he lives, and his concerns about the existing right-of-way. If the Project is approved, Respondent Hamar stated his preference for the paired-pole or H-frame design.¹⁴

One public witness, Robert Marmet, testified at the hearing on behalf of the Piedmont Environmental Council ("Piedmont"). Piedmont testified that, while it prefers to advocate non-transmission alternatives wherever they are feasible, it is not in a position to dispute the Company's need analysis on the Project. Piedmont also testified about its participation in the community advisory group on the Project and the importance of the Southwest Mountains Rural Historic District. Piedmont recommended adoption of the paired-pole or H-frame design and asserted that the incremental cost of adopting one of these two options, rather than the monopole design, is *de minimis* and justified by the location of the line.¹⁵

On August 22, 2011, the Hearing Examiner issued his report ("Hearing Examiner's Report"). The Hearing Examiner provided a summary of the evidence on the need for the Project, electric alternatives to the Project, alternative structure options for replacing the existing Hollymead Tap line with a double-circuit line, and the Project's environmental impacts. Following his analysis, the Hearing Examiner made the following findings:

- (1) The Company's load growth forecasts support the need for the proposed facilities;
- (2) The proposed facilities meet the need for reliability at the Hollymead Substation and the Proffit [Delivery Point];
- (3) The Company's [demand-side management ("DSM")] programs will not eliminate the need for the proposed facilities;
- (4) The proposed facilities have the least impact on the environment and adjoining landowners, and is the most cost-effective alternative to meet the Company's operational and reliability needs;
- (5) The proposed facilities use existing rights-of-way to the maximum extent practicable;
- (6) The proposed facilities are necessary for continued economic development in the area served by the Hollymead Substation and Proffit [Delivery Point];
- (7) The Staff's double circuit H-frame design (without cross-braces) reasonably mitigates the Project's visual impact on the Southwest Mountains Rural Historic District;
- (8) There are no adverse environmental impacts that would prevent the construction of the proposed facilities;
- (9) The 11 recommendations in the DEQ Report are desirable or necessary to minimize adverse environmental impact associated with the Project;
- (10) The proposed facilities do not represent a hazard to human health, which finding is consistent with the Virginia Department of Health's report entitled *Monitoring of Ongoing Research on the Health Effects of High Voltage Transmission Lines (Final Report)* dated October 31, 2000;
- (11) There is no benefit to "reverse phasing" the Project's transmission lines;
- (12) The proposed facilities do not represent a hazard to safe air navigation;

¹¹ *Id.* at 20-23, 33-34.

¹² *Id.* at 34 (option titles omitted).

¹³ Ex. 9; Tr. 73-102.

¹⁴ Ex. 13; Tr. 43-47.

¹⁵ Tr. 8-16.

- (13) The proposed facilities do not meet the criteria to be considered as an underground pilot project under HB 1319;
- (14) The Company's communications outreach program is adequate; and
- (15) A certificate of public convenience and necessity should be issued for the Company to construct and operate the proposed facilities.¹⁶

Based on his findings, the Hearing Examiner recommended that the Commission adopt the findings and issue a certificate of public convenience and necessity to the Company to construct and operate the proposed facilities.¹⁷ The Hearing Examiner further recommended that the Commission: (1) approve the type of conductor proposed by the Company, rather than non-reflective conductors; (2) require the Company to restore the right-of-way that crosses agricultural lands to its pre-construction condition, if requested by a landowner; and (3) require the Company to provide the services of its forester to: (i) assist the landowner in delineating the safe planting area for a visual buffer; and (ii) provide the landowner with a landscape plan of native trees and shrubs that may be safely planted next to an electric transmission right-of-way.¹⁸

In the only filed response to the Hearing Examiner's Report, the Company generally supported the Hearing Examiner's recommendations and findings but clarified that erosion and sediment control specifications may require temporary seeding with seed mix that best holds soil during construction. The Company further recommended that any Commission requirement for the Company's forester to provide services to landowners be clarified and limited to: (1) landowners whose property is actually crossed by the right-of-way for the Project and who request such assistance within six (6) months following the Project's in-service date; and (2) the Company's forester assisting any such landowners in delineating safe planting areas and providing the Company's "Suggested Species Planting List."¹⁹

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that Dominion Virginia Power's application to construct and operate the proposed double-circuit 230 kV transmission line in Albemarle County is justified by the public convenience and necessity, and a certificate of public convenience and necessity should be issued authorizing the construction and operation of the proposed Project, subject to the findings and conditions discussed below.

Approval

The statutory scheme governing the Company's application is found in several chapters of Title 56 of the Code of Virginia ("Code"). Section 56-265.2 A of the Code provides that "[i]t shall be unlawful for any public utility to construct . . . facilities for use in public utility service, . . ., without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege."

Section 56-46.1 of the Code further directs the Commission to consider several factors when reviewing the Company's application. Subsection A of the statute provides that:

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. . . . In every proceeding under this subsection, the Commission 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 Additionally, the Commission (i) shall 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.

Section 56-46.1 B of the Code further provides that: "[a]s 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."

The Code further requires the Commission to consider existing right-of-way easements when siting transmission lines. Section 56-46.1 C of the Code provides that "[i]n any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company." In addition, § 56-259 C of the Code provides that "[p]rior to acquiring any easement of right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements of rights-of-way."

Finally, for inclusion of a project in the underground pilot program established by HB 1319, the project must satisfy the following three criteria:

- (1) An engineering analysis demonstrates that it is technically feasible to place the proposed line, in whole or in part, underground;
- (2) The estimated additional cost of placing the proposed line, in whole or in part, underground does not exceed 2.5 times the cost of placing the same line overhead, assuming accepted industry standards for

¹⁶ Hearing Examiner's Report at 40-41.

¹⁷ *Id.* at 41.

¹⁸ *Id.* at 40.

¹⁹ Comments of Virginia Electric and Power Company on Hearing Examiner's Report, September 12, 2011, at 2-3.

undergrounding to ensure safety and reliability. If the public utility, the affected localities, and the State Corporation Commission agree, a proposed underground line whose cost exceeds 2.5 times the cost of placing the line overhead may also be accepted into the pilot program; and

- (3) The governing body of each locality in which a portion of the proposed line will be placed underground indicates, by resolution, general community support for the line to be placed underground.²⁰

Need

We agree with the Hearing Examiner and find that the Company's load growth forecasts support the need for the Project to ensure reliability at the Company's Hollymead Substation and at Rappahannock Electric Cooperative's Proffit Delivery Point.²¹ No party or member of the Staff has disputed evidence in the record that peak demand on the Hollymead Tap line exceeded the Company's planning criteria for radial lines in 2009 and that peak demand on the line has increased at an annual rate of 5.5% over the period from 2001 to 2011.²² The Company's peak load forecasts presented in support of the Project are consistent with this historic trend and the undisputed addition of a large block load customer.²³ We agree with the Hearing Examiner that the record does not support a finding that the Company's DSM programs, all of which are voluntary for customers, can eliminate the need for the Project.²⁴

Economic Development and Service Reliability

The evidence submitted in this proceeding supports the conclusion that the Project is necessary to serve load growth that includes a large block load of government office and data center facilities that is expected to increase significantly over the next few years.²⁵

Routing and Right-of-Way

We agree with the Hearing Examiner that "[t]he proposed facilities use existing rights-of-way to the maximum extent practicable."²⁶ The rebuilt Hollymead Tap line will be located entirely on existing right-of-way that has been occupied by the existing line for over twenty-five (25) years.²⁷ Additionally, the substation work associated with the Project will occur within the Company's existing property lines.²⁸ Thus, Dominion Virginia Power was not required, in accordance with § 56-46.1 C of the Code, to demonstrate that existing rights-of-way could not adequately serve its needs.

For the reasons provided by the Hearing Examiner, we agree that the Project, compared to other electric and routing alternatives reviewed in this proceeding, has "the least impact on the environment and adjoining landowners, and is the most cost-effective alternative to meet the Company's operational and reliability needs."²⁹

HB 1319

The Commission agrees with the Hearing Examiner that the Project does not meet the criteria necessary for consideration as a HB 1319 underground pilot project.³⁰

Scenic Assets and Historic Districts

As discussed above, the existing line has occupied the right-of-way for over twenty-five (25) years, and the rebuilt line will be located along the same route as the existing line and entirely in the existing right-of-way. Additionally, as we discuss below, the H-frame design recommended by the Hearing Examiner will reasonably minimize the impact to scenic assets and historic districts for the longest segment of the proposed line. Accordingly, adverse impact on scenic assets and historic districts in the region will be reasonably minimized consistent with § 56-46.1 B of the Code. The Company agreed with the Department of Historic Resources to continue its impact evaluation, including appropriate mitigation in accordance with the *Guidelines for Assessing Impacts of Proposed Transmission Lines and Associated Facilities on Historic Resources in the Commonwealth of Virginia* (2008).³¹ We find that appropriate steps to protect historic and scenic assets have been taken.

²⁰ 2008 Va. Acts ch. 799, Enactment Clause 1, § 4.

²¹ Hearing Examiner's Report at 31-33, 40.

²² *Id.* at 31-32; Ex. 14 at 5.

²³ Hearing Examiner's Report at 31; Ex. 1 at Appendix, Attachment I.B.3 and I.B.6.

²⁴ Hearing Examiner's Report at 33.

²⁵ Hearing Examiner's Report at 34 (citing Tr. Ex. at 115; Ex. 1, Appendix at 3; and Ex. 14).

²⁶ Hearing Examiner's Report at 41.

²⁷ Ex. 22 at 2-3.

²⁸ Ex. 7 at 2-3.

²⁹ Hearing Examiner's Report at 33-34, 41.

³⁰ *Id.* at 39 (citing Ex. 14).

³¹ Ex. 22 at 8.

Environmental Impact

Under §§ 56-46.1 A and B of the Code, the Commission is required to consider the proposed Project's impact on the environment and to establish such conditions as may be desirable or necessary to minimize adverse environmental impact. We agree with the Hearing Examiner and find that the H-frame (without cross-braces) design will reasonably minimize adverse environmental impact for construction of the Cismont-Proffit segment of the proposed line.³² As discussed by the Hearing Examiner, the H-frame design is materially shorter than the monopole design; is less expensive than, but operationally equivalent to, the paired-pole design; is not opposed by the Company; and reasonably protects the viewshed through the Southwest Mountains Rural Historic District.³³ Based on the specific facts of this case, the record supports conditioning our approval herein on construction with the H-frame (without cross-braces) design for the Cismont-Proffit segment of the Project.³⁴ This finding is strictly limited to the facts of this case and, thus, does not serve as precedent for future transmission facilities proposed by Dominion Virginia Power or others.

Section 56-46.1 A of the Code further provides that the Commission shall receive and give consideration to all reports that relate to the proposed Project by state agencies concerned with environmental protection. As a requirement of our approval herein, the Company shall also comply with the recommendations from the DEQ Report, as recommended by the Hearing Examiner.³⁵

Finally, with respect to the additional conditions recommended by the Hearing Examiner regarding right-of-way restoration on agricultural lands and the provision of the Company's forestry services, we adopt those conditions subject to the clarifications and limitations recommended by the Company and which we find to be reasonable.³⁶

Accordingly, IT IS ORDERED THAT:

(1) The Company is authorized to construct and operate the proposed 8.4 mile 230 kV double-circuit Hollymead Tap line on the route proposed in the Company's Application subject to the findings and conditions imposed herein. The Company is also authorized to expand its existing Hollymead Substation, as proposed in the Company's Application, and to operate the expanded substation.

(2) Pursuant to §§ 56-46.1, 56-265.2, and related provisions of Title 56 of the Code, the Company's Application for a certificate of public convenience and necessity to construct and operate the proposed double-circuit transmission line and associated substation work is granted as provided herein and subject to the requirements set forth in this Final Order.

(3) Pursuant to the Utility Facilities Act, Chapter 10.1 (§ 56-265.1 *et seq.*) of Title 56 of the Code, the Company is issued the following certificate of public convenience and necessity:

Certificate No. ET-58k, which authorizes Virginia Electric and Power Company under the Utility Facilities Act to operate certificated transmission lines and facilities in Albemarle County, all as shown on the map attached to the certificate, and to construct and operate facilities as authorized in Case No. PUE-2011-00015, cancels Certificate No. ET-58j, issued to Virginia Electric and Power Company on September 27, 1984, in Case No. PUE-1982-00091.

(4) The Commission's Division of Energy Regulation shall forthwith provide the Company copies of the certificate issued in Ordering Paragraph (3) above with the detailed map attached.

(5) The transmission line and associated substation work approved herein must be constructed and operational by May 2014 provided, however, the Company is granted leave to apply for an extension for good cause shown.

(6) As there is nothing further to come before the Commission, this matter is dismissed and the papers herein placed in the file for ended causes.

³² For the other segments of the proposed line, we approve the structure types proposed by the Company. Additionally, we agree with the Hearing Examiner's finding that no benefit to "reverse phasing" has been demonstrated for this Project. Hearing Examiner's Report at 38 (citing Ex. 17).

³³ Hearing Examiner's Report at 36.

³⁴ We adopt the Hearing Examiner's finding that the additional cost of installing non-reflective conductors has not been justified. Hearing Examiner's Report at 40.

³⁵ Although we agree with the Hearing Examiner that the record supports a finding that the Project does not represent a hazard to safe air navigation, we note that adoption of the DEQ Report recommendation that the Company coordinate with the Federal Aviation Administration will ensure compliance with any federal aviation regulations or guidelines applicable to the Project. Hearing Examiner's Report at 38-39.

³⁶ Comments of Virginia Electric and Power Company on Hearing Examiner's Report, September 12, 2011.

**CASE NO. PUE-2011-00016
SEPTEMBER 6, 2011**

APPLICATION OF
ATMOS ENERGY CORPORATION

For an Annual Informational Filing

**ORDER ADOPTING RECOMMENDATIONS
AND DISMISSING PROCEEDING**

On February 1, 2011, Atmos Energy Corporation ("Atmos" or "Company") delivered its application for an Annual Informational Filing ("AIF") for the twelve months ending September 30, 2010, to the Clerk of the State Corporation Commission ("Commission"). The Company's application consisted of financial and operating data for the twelve (12) months ended September 30, 2010. On July 20, 2011, the Staff of the Commission ("Staff") filed its report ("Staff Report") on Atmos's AIF. The Staff Report included both financial and accounting analyses.

In its financial review, the Staff focused on Atmos's Virginia operations and results; the profitability of Atmos on a consolidated basis; and Atmos's capital structure. The Staff noted that, with regard to operations, the 2010 test year operating and financial performance for Atmos's Virginia operations generally improved when compared to its 2009 performance. In its review of profitability of Atmos on a consolidated basis, the Staff found that the 2010 results were mostly improved compared to the 2009 results, and that as of the end of fiscal year 2010, Atmos's available liquidity was approximately \$1.2 billion. The Staff noted in its review of capital structure that no new long-term debt was issued during the test year, therefore, only minor changes to capitalization ratios occurred when compared to 2009.

In its accounting analysis, the Staff made a number of revisions to the Company's accounting adjustments. The Staff noted that Atmos used an updated rate base in its AIF, including plant in service, through March 31, 2011, but failed to make a corresponding update reflecting customer growth, thus creating a mismatch between revenues and rate base. The Staff, therefore, revised adjustments related to customer growth, depreciation expense, property tax expense, and rate base using actual growth data and rate base balances as of March 31, 2011. The Staff also corrected Atmos's adjustment relating to customer migration. After taking these differences into account, the Staff's negative adjustment to revenues resulting from customer growth and migration is \$86,038 less than the Company's corresponding adjustment. These revisions also impact Staff Adjustment No. 6 that adjusts the cost of gas service related to customer growth.¹

Regarding the Company's earnings, the Staff recommended writing off the balances of two (2) of Atmos's regulatory assets. One asset relates to a retired pipeline previously serving customers in Dublin, Virginia. The second regulatory asset consists of legal charges relating to two (2) separate incidents in Blacksburg and Wytheville, Virginia.² As a result of the write-off, the Company will no longer incur amortization related to the regulatory assets resulting in the Staff's adjustment to eliminate \$224,107 in amortization expense.³

As to Atmos's accumulated deferred income taxes, the Staff noted that the Company did not eliminate all of the related accumulated deferred income taxes ("ADIT") from rate base associated with its removal of deferred gas from rate base. The Staff eliminated a system book and tax difference titled "Deferred Gas Cost Adjustment" that had a credit balance of \$1,515,638 as of March 31, 2011. After taking into account the March 2011 actual update, the tax effect, and the jurisdictional factor, the Staff's adjustment to ADIT is \$81,183 greater than Atmos's corresponding adjustment.⁴

In discussing the Company's earnings analysis, the Staff made three (3) adjustments not made by Atmos. First, Staff Adjustment No. 2 reflects the forty-year (40) amortization of the other post-retirement transition obligation approved for regulatory purposes in accordance with the Commission's Order in Case No. PUE-1992-00003⁵ rather than the twenty (20) years on the Company's books.⁶

The second adjustment the Staff made was to revise the amortization expense related to the Blacksburg/Wytheville regulatory asset to reflect only one (1) year of amortization expense in the cost of service, as reflected in the stipulation accepted in Case No. PUE-2009-00004.⁷ The Staff noted that the test year in this AIF began on October 1, 2009; thus a full year of amortization should be reflected on the Company's books for ratemaking purposes. The Company recorded two (2) years' of amortization expense on its books during the test year in the amount of \$131,234. The Staff adjustment eliminated one-half of the book expense to reflect only one (1) year of amortization, or \$65,617.⁸

Finally, as noted previously, the Staff eliminated the ADIT account related to deferred gas. After all adjustments, the Staff's earnings test indicated a return on equity of 13.35%, which is above the top of the authorized range of return on equity of 10.50%. As a result, the Staff recommended acceleration of the amortization of the two (2) regulatory assets noted earlier herein. The Staff's Earnings Test showed the Company's earnings above the top of the authorized range of return on common equity of 10.50% was \$754,347. Atmos's Schedule 15 showed regulatory balances of \$224,107 at the end of

¹ Staff Report at 5.

² *Id.* at 6-7.

³ *Id.* at 5-6.

⁴ *Id.* at 6.

⁵ *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In re: Consideration of a rule governing Accounting for Postretirement Benefits other than Pensions*, Case No. PUE-1992-00003, 1992 S.C.C. Ann. Rept. 315, Final Order (Dec. 30, 1993).

⁶ Staff Report at 7.

⁷ *Application of Atmos Energy Corporation, For an Expedited Increase in Rates and to Revise Tariffs*, Case No. PUE-2009-00004, 2009 S.C.C. Ann. Rept. 378, Final Order (Nov. 23, 2009), Stipulation at 3.

⁸ Staff Report at 7.

the test year, as well as related ADIT balances of \$82,920. Therefore, the earnings above the top of the authorized range of return on common equity are more than enough to require a write-down of the total remaining balance of the two (2) regulatory assets and the related ADIT.⁹

In summary, the Staff's accounting review of the Company's AIF showed Atmos earning a fully adjusted test year return on common equity of 11.44%, which is above the Company's authorized return on equity range of 9.50% to 10.50% established by the Commission in Case No. PUE-2003-00507.¹⁰ The Staff concluded that an adjustment to Atmos's base rates is not necessary at this time; however, the Staff indicated that it intends to closely monitor the Company's earnings in the next AIF and, if the earning level is sustained, the Staff might recommend action at that time.

On August 19, 2011, the Company, by counsel, filed a letter advising that Atmos did not intend to file comments on the Staff Report.

NOW THE COMMISSION upon consideration of this matter, is of the opinion and finds that the Staff's recommendations and revisions to the Company's cost of service, including the Staff Report, are reasonable and should be adopted; that the Company should fully write down the total remaining balance of the two (2) regulatory assets and the related ADIT discussed herein; that no action on the Company's rates should be taken at this time; and that the captioned application should be dismissed from the Commission's docket of active cases.

Accordingly, IT IS ORDERED THAT:

(1) Consistent with the findings made herein, the Staff's recommendations in its July 20, 2011 Report concerning the Company's cost of service, including the Staff's accounting adjustments, are hereby adopted.

(2) The Company shall fully write down the total remaining balance of the two (2) regulatory assets and the related ADIT.

(3) No action shall be taken on the Company's rates at this time.

(4) There being nothing further to be done herein, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's files for ended causes.

⁹ *Id.* at 7-8.

¹⁰ *Application of Atmos Energy Corporation, For an increase in rates*, Case No. PUE-2003-00507, 2005 S.C.C. Ann. Rept. 322, Final Order (Jan. 7, 2005).

**CASE NO. PUE-2011-00017
APRIL 5, 2011**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to engage in an affiliate transaction pursuant to § 56-76 *et seq.* of the Code of Virginia

ORDER GRANTING MOTION AND CLOSING PROCEEDING

On February 4, 2011, Washington Gas Light Company ("WGL or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") requesting authority to assign its rights to purchase the base gas associated with WGL's storage capacity in the Transcontinental Gas Pipe Line Company LLC's ("Transco") Washington Storage Service ("WSS") natural gas storage field to Capitol Energy Ventures Corp. ("CEV"), an affiliated company. The Company's Application requested Commission approval of the proposed affiliate transaction, effective March 31, 2011, in conjunction with a companion application filed by the Company in Case No. PUE-2010-00138, requesting Commission approval to transfer its WSS and Eminence Storage Service Agreements with Transco and related storage gas balances to CEV.

On March 31, 2011, WGL filed a Motion for Leave to Withdraw Application ("Motion"). In support of its Motion, the Company represents that the Application in this proceeding is related to and contingent upon the Commission's approval of the Company's companion application in Case No. PUE-2010-00138. Since the Commission denied WGL's application in Case No. PUE-2010-00138,¹ the Company requests leave to withdraw, without prejudice, its Application in this proceeding.

NOW THE COMMISSION, having considered this matter, the applicable law, and the Commission's decision in Case No. PUE-2010-00138, is of the opinion and finds that the Company's Motion should be granted and that the current proceeding should be closed.

Accordingly, IT IS ORDERED THAT:

(1) WGL's Motion for Leave to Withdraw Application is granted.

(2) This proceeding is closed and the papers herein passed to the Commission's file for ended causes.

¹ *Application of Washington Gas Light Company, For approval of an affiliate transaction pursuant to § 56-76 et seq. of the Code of Virginia*, Case No. PUE-2010-00138, Doc. Con Cen. No. 444481, Order Denying Approval (March 3, 2011).

**CASE NO. PUE-2011-00018
MARCH 24, 2011**

JOINT APPLICATION OF
ATMOS ENERGY CORPORATION AND
ATMOS ENERGY MARKETING, LLC

For authority to enter into a Gas Supply and Asset Management Agreement pursuant to the Affiliates Act, Va. Code § 56-76 *et seq.*

**ORDER EXTENDING TIME FOR REVIEW
AND GRANTING INTERIM AUTHORITY**

On February 10, 2011, Atmos Energy Corporation and Atmos Energy Marketing, LLC (collectively "Applicants"), filed a joint application ("Application") with the State Corporation Commission ("Commission") requesting authority to enter into a Gas Supply and Asset Management Agreement ("Agreement") pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code of Virginia ("Code"). The Applicants further requested approval of interim authority to commence performance pursuant to the Agreement pending a final order on the Application from the Commission and represented that the current agreement for these services terminates on March 31, 2011.

Pursuant to § 56-77 of the Code, the Commission must act on the Application within sixty (60) days of the filing of the Application, or the Application will be deemed approved by operation of law. In addition, the Commission may extend this period for up to an additional thirty (30) days.

NOW THE COMMISSION, upon consideration of this matter and having been advised by the Commission Staff, is of the opinion and makes the following findings. The issues involved in the Application require additional time for review; therefore, we find it appropriate, pursuant to § 56-77 of the Code, to extend the period for review of the Application through May 11, 2011. Additionally, we are of the opinion that it is appropriate to grant the Applicants interim authority to commence performance pursuant to the Agreement upon termination of the current agreement on March 31, 2011, pending a final order on the Application.

Accordingly, IT IS ORDERED THAT:

- (1) This case is hereby docketed and assigned Case No. PUE-2011-00018.
- (2) Pursuant to § 56-77 of the Code, the period of time for the review of the issues presented by the Application is extended through May 11, 2011.
- (3) The Applicants are hereby granted interim authority to commence performance pursuant to the Agreement upon termination of the current agreement on March 31, 2011, pending further order of the Commission.
- (4) This case is continued generally pending further order of the Commission.

**CASE NO. PUE-2011-00018
MAY 9, 2011**

JOINT APPLICATION OF
ATMOS ENERGY CORPORATION AND
ATMOS ENERGY MARKETING, LLC

For authority to enter into a Gas Supply and Asset Management Agreement pursuant to the Affiliates Act, Va. Code § 56-76 *et seq.*

ORDER GRANTING AUTHORITY

On February 10, 2011, Atmos Energy Corporation ("Atmos") and Atmos Energy Marketing, LLC ("AEM"), (collectively "Applicants"), filed a joint application ("Application") with the State Corporation Commission ("Commission") requesting authority to enter into a Gas Supply and Asset Management Agreement ("GSAM Agreement") pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code of Virginia ("Code"). The Applicants further requested interim authority to commence performance under the GSAM Agreement pending a final order on the Application from the Commission. On the same day, the Applicants filed a Motion for Protective Ruling ("Motion for Protective Ruling") pursuant to Rules 10 and 170 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*, regarding confidential information included in the Application and provided to the Commission Staff ("Staff") during its review process. On March 24, 2011, the Commission issued an Order Extending Time for Review and Granting Interim Authority ("March 24, 2011 Interim Order").

Atmos,¹ headquartered in Dallas, Texas, is one of the largest natural gas distribution companies in the United States. Atmos' operations include six (6) regulated natural gas distribution business units and a regulated natural gas pipeline business unit that provide service to approximately 3.2 million residential, commercial, industrial, and public authority customers in the following twelve (12) states: Colorado, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Tennessee, Texas, and Virginia. In Virginia, Atmos provides natural gas distribution service to approximately 22,719 customers located in Abingdon, Blacksburg, Bristol, Marion, Pulaski, Radford, Wytheville, and their environs.

¹ Atmos is not a holding company. Atmos itself holds the certificate of public convenience and necessity to provide natural gas distribution service to customers in southwest Virginia.

AEM,² headquartered in Houston, Texas, provides a variety of natural gas management services to municipalities, natural gas utility systems, and industrial natural gas consumers located primarily in the Midwest and Southeast and to Atmos' Kentucky/Mid-States, Louisiana, and Mississippi regulated utility business units. AEM aggregates and purchases gas supplies, arranges transportation and storage logistics, and ultimately delivers gas to customers at competitive prices. To facilitate this process, AEM utilizes proprietary and customer-owned transportation and storage assets to provide various services its customers request, including furnishing natural gas supplies at fixed and market-based prices, contract negotiation and administration, load forecasting, gas storage acquisition and management services, transportation services, peaking sales and balancing services, capacity utilization strategies and gas price hedging through the use of financial instruments. AEM is a wholly owned subsidiary of Atmos Energy Holdings, Inc., which is a wholly owned subsidiary of Atmos.

Atmos and AEM are considered affiliated interests under § 56-76 of the Code. As such, Atmos is required to obtain prior approval from the Commission pursuant to the Affiliates Act for any agreement or arrangement between the companies for the provision of services, the exchange of property, rights, or things, or the purchase or sale of treasury bonds or stock.

The proposed GSAM Agreement represents the fourth such agreement between Atmos and AEM since 1997. From 1997 through 2004 AEM's predecessor Woodward provided bundled gas supply and asset management services to Atmos.³ In 2004, however, Atmos created a new affiliate, Atmos Energy Services, L.L.C., to provide energy administrative services and began to procure its own gas supplies from non-affiliated third-party suppliers.⁴ In 2005, Atmos and AEM entered into a three (3)-year Gas Exchange and Optimization Services Agreement in which AEM provided only asset optimization services to Atmos.⁵ In 2008, due in part to a FERC Order that encouraged local distribution companies to bundle gas procurement with capacity asset management, Atmos and AEM entered into a three (3)-year agreement in which AEM provided re-bundled gas supply, asset optimization, and functional services to Atmos.⁶

Atmos represents that it does not have the internal resources or the access to energy markets necessary to manage its pipeline and storage capacity assets ("Assets") effectively for the purpose of maximizing their economic value. Furthermore, Atmos asserts that competitively bidding the management of its Assets bundled with its commodity supply requirements produces greater value for ratepayers than what Atmos can provide on its own. Finally, Atmos represents that AEM the winning bidder of its Request for Proposal ("RFP"), is experienced in gas supply, planning, procurement, administration, and asset optimization, and was awarded the GSAM Agreement through an open and competitive bidding process.

Under the proposed GSAM Agreement, AEM will provide Atmos with bundled gas supply and asset management services from April 1, 2011, through March 31, 2014. AEM will provide Atmos' full gas requirements through city-gate delivered firm services that include index-based pricing, storage injection and withdrawal, exchange services, and delivered gas supply to facilitate deliveries from downstream storage or from supply areas where Atmos lacks sufficient firm pipeline capacity. AEM will also provide asset optimization services associated with Atmos' Assets. Finally, AEM will provide gas supply management services to coordinate Atmos' commodity supply requirements with the management of Atmos' Assets. As consideration for the right to manage and optimize Atmos' Assets, AEM will pay Atmos an upfront, fixed annual payment ("Annual Payment") due on or before April 25 of each year.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicants and having been advised by its Staff, is of the opinion and finds that the GSAM Agreement is in the public interest and should be approved, subject to certain conditions and requirements necessary to protect the public interest.

First, we are concerned with the timing of the Application. In both Case No. PUE-2008-00021 and the instant Application, Atmos requested interim authority to operate under the GSAM Agreement during the Application review process. We believe that Atmos needs to file timely affiliate applications. Therefore, we find that: (i) the approval in this case should extend through March 31, 2014, the expiration date of the GSAM Agreement; and (ii) any prospective application for renewal of the GSAM Agreement should be filed with the Commission no later than December 15, 2013.

Second, we note that Atmos did not receive any outside bids for its asset management agreement ("AMA") RFP six (6) years ago. Therefore, we issued the following directive.

- (3) On a prospective basis, Atmos shall provide any AMA RFP to Energy Regulation Staff⁷ prior to issuance and make an aggressive effort to expand Atmos' list of RFP bidders. Once the AMA RFP process is over, Atmos shall submit to Energy Regulation's Staff the AMA RFP's results, including a list of the parties that

² AEM was formerly known as Woodward Marketing, LLC ("Woodward"). In October 2003, Woodward merged with Trans Louisiana Gas Company and was renamed Atmos Energy Marketing, LLC.

³ *Application of United Cities Gas Company, For approval of transactions with an affiliate, Woodward Marketing, L. L. C.*, Case No. PUA-1996-00025, 1997 S.C.C. Ann. Rept. 144, Order Granting Approval (May 27, 1997).

⁴ *Joint Application of Atmos Energy Corporation and Atmos Energy Services, L.L.C., For authority to enter into a services agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2004-00016, 2004 S.C.C. Ann. Rept. 436, Order Granting Authority (Apr. 28, 2004).

⁵ *Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, L. L. C., For authority to enter into a gas exchange and optimization services agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2005-00003, 2005 S.C.C. Ann. Rept. 389, Order Granting Authority (July 5, 2005).

⁶ *Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, L. L. C., For authority to enter into a gas supply and asset management agreement pursuant to the Affiliates Act, Va. Code § 56-76 et seq. and request for interim authority*, Case No. PUE-2008-00021, 2008 S.C.C. Ann. Rept. 498, Order Granting Authority (June 17, 2008).

⁷ "Energy Regulation Staff" refers to the Staff of the Commission's Division of Energy Regulation.

were invited to bid, the parties that actually bid, the winning bidder, and the reason(s) for the winner's selection.⁸

In response, Atmos implemented several changes to its RFP process, which included advertising in *Plaits*, a major gas publication; expanding its RFP recipient list from eleven (11) potential suppliers to an electronic distribution of the RFP to more than 300 potential gas suppliers; and developing a web-based site for potential bidders to review and ask questions about Atmos' RFPs. The changes have increased both the number of bidders and the size of the bids. Given the significant improvement in Atmos' RFP results since 2005, we will continue the directive with one modification for this case. That modification, which recognizes Atmos' improved RFP process, consists of replacing the phrase "make an aggressive effort to expand Atmos' list of RFP bidders," with the phrase "continue to ensure that the RFP dissemination and bidding process remains robust."

Third, our prior Orders Granting Authority in Case Nos. PUE-2005-00003 and PUE-2008-00021 approving similar Atmos-AEM agreements contained specific directives that were designed to protect Atmos from paying more for pipeline substitution services and storage fill services under the agreements than what Atmos would incur if it were to procure its own gas or manage its own storage. Since the GSAM Agreement includes the same services, we believe that, with one clarifying modification, the directives remain necessary to safeguard the interests of ratepayers, and we will retain them for this case. That modification consists of replacing the phrase "procure gas for itself" with the phrase "procure gas on its own pipeline contracts."

Fourth, the GSAM Agreement allows for changes in the annual payment made by AEM to Atmos by April 25th each year of the term of the GSAM Agreement ("Annual Payment") should Atmos' portfolio of transportation and storage assets change. The Annual Payment is a key feature of AEM's winning bid and allowing a subsequent change to the Annual Payment without Commission oversight could threaten the perceived legitimacy of the RFP competitive bidding process. Therefore, we will require Atmos, thirty (30) days prior to any changes in the Annual Payment, to submit to the Commission's Director of Public Utility Accounting ("PUA Director") a report that describes the changes in the Annual Payment and the reasons for such changes. The Staff can then make a recommendation as to whether any further action is necessary. We previously included this requirement in Case No. PUE-2008-00021.⁹

Finally, we directed the Applicants in Case No. PUE-2009-00037,¹⁰ in light of the turmoil experienced in global financial markets during 2008 and 2009, to provide information in the form of a risk monitoring schedule ("Risk Monitoring Schedule") to be included with its Annual Report of Affiliate Transactions ("ARAT"), which is submitted on April 1 of each year to the Commission's PUA Director. The Risk Monitoring Schedule provided: (i) Atmos' and AEM's quarter-by-quarter borrowings under their short-term credit facilities; (ii) Atmos' and AEM's quarter-by-quarter balances of collateral required to be posted with the New York Mercantile Exchange and other brokers; (iii) Atmos' and AEM's quarter-by-quarter open positions related to their gas procurement, marketing, and trading activities; (iv) Atmos' and AEM's quarter-by-quarter credit ratings by the public rating agencies; and (v) Atmos' and AEM's quarter-by-quarter compliance relative to their loan covenants. Given the ongoing uncertainties in the global financial markets, we find that it is in the public interest for this directive to be continued in this case.

Accordingly, IT IS ORDERED THAT:

(1) The Applicants' Motion for Protective Ruling is denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion for Protective Ruling pertains, under seal.¹¹

(2) Pursuant to § 56-77 of the Code, Atmos and AEM are hereby granted authority to enter into the proposed GSAM Agreement as described herein and consistent with the findings set out above. The authority granted herein supersedes the authority granted in Case Nos. PUE-2008-00021 and PUE-2009-00037.

(3) Concurrent with the authority granted herein, the Applicants' interim authority to operate under the GSAM Agreement, which was granted in the March 24, 2011 Interim Order, is hereby terminated.

(4) The authority granted herein shall extend through March 31, 2014, the expiration date of the GSAM Agreement. Should Atmos wish to continue the GSAM Agreement with AEM beyond that date, further Commission approval shall be required. If the Applicants wish to avoid a break in service under the GSAM Agreement, any prospective application for renewal of the GSAM Agreement shall be filed no later than December 15, 2013.

(5) On a prospective basis, Atmos shall provide any AMA RFP to Energy Regulation Staff prior to issuance and continue to ensure that the RFP dissemination and bidding process remains robust. Once the AMA RFP process is over, Atmos shall submit to Energy Regulation Staff the AMA RFP's results, including a list of the parties that were invited to bid, the winning bidder, and the reason(s) for the winner's selection.

(6) Atmos' payments for pipeline substitution services shall be limited to the amount of gas cost charges that Atmos would incur if it were to procure gas on its own pipeline contracts.

(7) Atmos' payments for storage fill services shall be limited to the amount of storage charges that Atmos would incur if it were to manage its own storage.

⁸ Ordering Paragraph (3) of the July 5, 2005 Order Granting Authority in Case No. PUE-2005-00003. The Commission reiterated this directive in Case No. PUE-2008-00021.

⁹ See Ordering Paragraph (7) of the June 17, 2008 Order Granting Authority in Case No. PUE-2008-00021.

¹⁰ Joint Application of Atmos Energy Corporation and Atmos Energy Marketing, LLC, For authority to modify gas supply and asset management agreement pursuant to the Affiliates Act, Va. Code § 56-76 et seq., Case No. PUE-2009-00037, 2009 S.C.C. Ann. Rept. 460, Order Granting Authority (Aug. 6, 2009).

¹¹ The Commission held the Applicants' Motion for Protective Ruling in abeyance. We note that the Commission has received no request for leave to review the confidential information filed in this proceeding. Accordingly, we deny the Motion for Protective Ruling as moot.

(8) Thirty (30) days prior to any changes in the Annual Payment, Atmos shall submit a report to the PUA Director, which will describe the changes in the Annual Payment and the reasons for such changes. The Staff shall then advise the Commission as to whether any action is necessary pursuant to its continuing supervisory authority under § 56-80 of the Code to protect the public interest.

(9) The authority granted in this case shall have no ratemaking implications. Specifically, the authority granted herein shall not guarantee the recovery of any costs directly or indirectly related to the GSAM Agreement.

(10) Commission approval shall be required for any changes in the terms and conditions of the GSAM Agreement, including any successors or assigns.

(11) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(12) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by the Commission.

(13) Atmos shall include all transactions associated with the GSAM Agreement in its ARAT submitted to the PUA Director on or before April 1 of each year, which deadline may be extended administratively by the PUA Director. Atmos shall include with the ARAT a Risk Monitoring Schedule that contains the information set forth in our findings above.

(14) In the event that Atmos' annual informational filings or general or expedited rate case filings are not based on a calendar year, then Atmos shall include the affiliate information contained in its ARAT in such filings.

(15) There appearing nothing further to be done, this case shall be dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2011-00019
MARCH 29, 2011**

APPLICATION OF
KENTUCKY UTILITIES COMPANY D/B/A OLD DOMINION POWER COMPANY

To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia

ORDER ESTABLISHING FUEL FACTOR

On February 11, 2011, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits ("Application") requesting authority to increase its levelized fuel factor by 0.560¢ per kilowatt-hour ("kWh") from 2.482¢ per kWh to 3.042¢ per kWh, effective for service rendered on and after April 1, 2011. According to KU/ODP, the proposed fuel factor is designed to recover one-third of the Company's projected March 2011 under-recovery position of \$5.96 million¹ over a three-year period through the Company's correction factor in the April 2011 to March 2012 fuel year and thereafter in the next two consecutive fuel years. Additionally, the Company seeks to recover its projected fuel expenses of \$24,981,084 for the twelve-month period from April 1, 2011, through March 31, 2012. The Company's Application represents that the proposed fuel factor will increase a customer's monthly bill by \$5.60 for each 1,000 kWh used.

On February 25, 2011, the Commission entered an Order Establishing 2011-2012 Fuel Factor Proceeding that, among other things, established a procedural schedule for this matter, required the Company to provide public notice of its Application, and scheduled a public hearing on the Application for March 24, 2011.

On March 16, 2011, the Commission Staff ("Staff") filed its testimony in which it recommended that the Commission approve a fuel factor for KU/ODP of 3.026¢ per kWh. Staff explained that the increase was driven in large measure by the expiration of the current large correction factor credit and under-recovery of fuel expenses over the past twelve months, offset to some degree by a forecasted reduction in the Company's expenses for coal. Staff stated that while the Company's projected fuel expenses and sales forecast are reasonable, the proposed fuel factor should be adjusted to reflect the updated projection of the March 31, 2011, fuel under-recovery balance. This adjustment produces a correction factor of .208¢ per kWh, rather than the 0.224¢ per kWh proposed in the Company's Application. Staff further stated that, given the large fuel under-recovery balance resulting from the Company's fuel expense allocation error, a three-year recovery of the projected March 31, 2011, fuel under-recovery balance as proposed in the Company's Application is a reasonable rate increase mitigation measure. However, Staff provided four options for extending the recovery of all or a portion of the March 31, 2011, projected fuel under-recovery balance over four years and five years.

On March 21, 2011, the Company filed its rebuttal testimony in which it agreed with Staff's adjustment to the proposed fuel factor and recommended that the Commission approve a total fuel factor of 3.026¢ per kWh for service rendered on and after April 1, 2011. The Company argued that recovery of the March 31, 2011, projected fuel under-recovery balance should not be extended beyond three years.

The public evidentiary hearing on the Company's Application was convened on March 24, 2011. Appearances were made by counsel for KU/ODP and Staff. No public witnesses appeared at the hearing.

¹ The Company's projected March 2011 under-recovery position of \$5.96 million includes \$4.09 million of Virginia jurisdictional fuel expense that was under-recovered due to an accounting error regarding a transmission interconnection near Clinch River, Virginia. According to KU/ODP, energy flow into Virginia was inadvertently omitted from reports of energy delivered to the Company's Virginia service territory, resulting in an erroneous calculation of the jurisdictional allocation factor from December 2008 through February 2010.

NOW THE COMMISSION, upon consideration of this matter and the applicable law, is of the opinion and finds that an increase in the Company's fuel factor to 3.026¢ per kWh, with a three-year recovery as proposed by the Company, is reasonable and appropriate.

Our approval of the fuel factor, however, should not be construed as approval of KU/ODP's actual fuel expenses. The Staff conducts periodic audits and investigations which address, among other things, the appropriateness and reasonableness of KU/ODP's booked fuel expenses. The Staff's audit results are documented in a Staff Report, a copy of which is sent to KU/ODP and to each party who participated in KU/ODP's fuel factor proceedings, all of whom are provided with an opportunity to comment and request a hearing on the Staff Report.

Based on the Staff Report, and any comments or hearing thereon, the Commission enters a final order that addresses the Company's fuel factor cost recovery position. Notwithstanding any findings made by the Commission in an earlier order establishing KU/ODP's fuel factor based on estimates of future expenses and unaudited booked expenses, the final order will be the final determination of not only what are, in fact, allowable fuel expenses and credits, but also KU/ODP's over- or under-recovery position as of the end of the audit period. Should the Commission find in its final order (1) that any component of KU/ODP's actual fuel expenses or credits has been inappropriately included or excluded, or (2) that KU/ODP has failed to make every reasonable effort to minimize fuel costs or has made decisions resulting in unreasonable fuel costs, KU/ODP's recovery position will be adjusted. This adjustment will be reflected in the recovery position at the time of KU/ODP's next fuel factor proceeding. We reiterate that no finding in this Order is final, as this matter is continued generally pending Staff's audit of actual fuel expenses.

Accordingly, IT IS ORDERED THAT:

- (1) The total fuel factor of 3.026¢ per kWh, effective for service rendered on and after April 1, 2011, is hereby approved.
- (2) The Company may recover its fuel under-recovery balance as of March 31, 2011, over a three-year period, as discussed herein.
- (3) This case is continued generally.

**CASE NO. PUE-2011-00020
MARCH 11, 2011**

APPLICATION OF
SHENANDOAH VALLEY ELECTRIC COOPERATIVE

For approval to borrow long-term debt under Chapter 3 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On February 14, 2011, Shenandoah Valley Electric Cooperative ("Shenandoah" or "Applicant") filed an application with the State Corporation Commission ("Commission") for approval to borrow long-term debt from the United State Government and the National Rural Utilities Cooperative Finance Corporation ("CFC") under Chapter 3 of Title 56 of the Code of Virginia. Applicant has paid the requisite fee of \$250.

On May 14, 2010, Shenandoah received Commission approval to acquire approximately 50% of the Virginia distribution assets ("Shenandoah Portion") of The Potomac Edison Company d/b/a Allegheny Power.¹ On May 18, 2010, Shenandoah received Commission authority to issue \$175 million in bridge financing² to acquire the Shenandoah Portion, which included assets and customers in and around Winchester, Virginia, which the Rural Utilities Service ("RUS") designated as non-rural. According to reports of action filed in these cases, on June 1, 2010, the acquisition was consummated and Shenandoah issued \$175 million in bridge financing to CFC.

Applicant seeks authorization to borrow up to \$180 million in long-term debt from the Federal Financing Bank ("FFB") and guaranteed by RUS, to provide financing for the expanded service territory designated as rural by RUS. Applicant further seeks authority to borrow up to \$27 million from CFC to provide financing for the non-rural service territory. Debt issued to either FFB or CFC is expected to have a 35-year maturity. Proceeds from the initial issuance of FFB notes and CFC notes will refinance approximately \$150.3 million of remaining bridge financing. The remaining authority from each lender can be issued over the next few years and will provide permanent financing for approximately \$56.3 million of capital improvements contained in its amended 2009-2012 work plan approved by RUS.

Shenandoah anticipates issuing \$139 million to FFB and \$23 million to CFC in the second quarter of 2011, once all required approvals are obtained. According to the application, the impact of the additional debt financing will weaken several Shenandoah financial ratios over the next few years compared to historical averages and cooperative goals. However, Shenandoah officials reiterate their expectations of modest improvement to these ratios over the next few years as economies of scale become realized and as wholesale power cost changes take effect to help moderate cost increases.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

¹ *Joint Petition of Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and The Potomac Edison Company d/b/a Allegheny Power, For approval of the purchase and sale of service territory and facilities, for the issuance of and cancellation of, certificates of public convenience and necessity, and for approval of special, transitional, rate schedules*, Case No. PUE-2009-00101, Order (May 14, 2010).

² *Application of Shenandoah Valley Electric Cooperative, For authority to incur bridge financing from the National Rural Utilities Cooperative Finance Corporation under Chapter 3 of Title 56 of the Code of Virginia*, Case No. PUE-2010-00019, Order Granting Authority (May 18, 2010).

Accordingly, IT IS ORDERED THAT:

- (1) Shenandoah Valley Electric Cooperative is authorized to borrow up to \$180 million from the FFB and guaranteed by RUS, under the terms and conditions and for the purposes stated in its application.
- (2) Shenandoah Valley Electric Cooperative is authorized to borrow up to \$27 million from CFC, under the terms and conditions and for the purposes stated in its application.
- (3) Shenandoah shall submit a preliminary report of action with the Commission's Division of Economics and Finance within thirty (30) days of drawing any funds authorized herein, such report shall include the name of the lender providing the proceeds, date of drawdown, the initial rate period chosen, the initial interest rate, any floating rate index selected, and the amount of principal remaining to be borrowed from each lender authorized herein.
- (4) Approval of this application shall have no implications for ratemaking purposes.
- (5) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2011-00021
MARCH 9, 2011**

APPLICATION OF

A&N ELECTRIC COOPERATIVE, BARC ELECTRIC COOPERATIVE
COMMUNITY ELECTRIC COOPERATIVE, MECKLENBURG ELECTRIC COOPERATIVE,
NORTHERN NECK ELECTRIC COOPERATIVE, PRINCE GEORGE ELECTRIC COOPERATIVE
RAPPAHANNOCK ELECTRIC COOPERATIVE, SHENANDOAH VALLEY ELECTRIC COOPERATIVE
and SOUTHSIDE ELECTRIC COOPERATIVE

For approval for customers to participate in demand response programs

ORDER GRANTING CONDITIONAL APPROVAL

On February 11, 2011, A&N Electric Cooperative, BARC Electric Cooperative, Community Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative (collectively, the "Cooperatives"), by counsel, filed with the State Corporation Commission ("Commission") an application ("Application") for approval for its customers to participate in the PJM Interconnection, LLC ("PJM") Load Management Program and the Economic Load Response Program (collectively, the "Programs").¹ The Cooperatives are all members of the Old Dominion Electric Cooperative ("ODEC").

In seeking Commission approval, the Cooperatives cite provisions from Order No. 719 of the Federal Energy Regulatory Commission, which directed PJM to amend its market rules to accept bids for demand response resources under certain conditions.² For aggregators of retail customers of PJM utilities that distributed 4 million megawatt hours or less in the previous fiscal year – a category that includes the Cooperatives – bids for demand response resources may only be accepted with the permission of the relevant electric retail regulatory authority ("RERRA").³ The Cooperatives' application acknowledges that the Commission is a RERRA capable of providing the approval contemplated by Order No. 719.⁴

The specific approval sought by the Cooperatives is for conditional authority for their customers to participate in the Programs for the entire 2011/2012 PJM program year. As proposed by the Cooperatives, customers would be enrolled in the Programs for the program year subject to the consent of the affected Cooperative and ODEC but without individual orders from the Commission. However, customers' participation in the Programs would remain subject to the Commission's ultimate authority, with their participation limited by and subject to any future action of the Commission. The Cooperatives further propose that this case be continued for further action of the Commission for the purpose of ongoing oversight, should that be needed.

In support of the requested approval, the Cooperatives state, among other things, that: some of their customers may desire enrollment in one or more of the Programs; Cooperative customers may have the ability to benefit from participation in the Programs; and participation in the Programs would provide one incentive for customers to curtail load during periods of high-priced electricity or reliability concerns and would create financial opportunities for customers.⁵

NOW THE COMMISSION, having considered the Application, finds that this case should be docketed as Case No. PUE-2011-00021, and that we should grant approval of the Application subject to the conditions requested by the Cooperatives, which will be adopted herein. We note that the

¹ The Cooperatives indicate that the PJM Load Management Program includes the Interruptible Load for Reliability Program and the Demand Resource Program.

² *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 73 Fed. Reg. 64,100 (Oct. 28, 2008) ("Order No. 719").

³ Application at 2-3 (citing Order No. 719 and provisions of PJM's Open Access Transmission Tariff).

⁴ *Id.* 2-3. Order No. 719 defines a "relevant electric retail regulatory authority" as an "entity that establishes the retail electric prices and any retail competition policies for such customers, such as . . . the state public utility commission." *Id.* at 3, n.1.

⁵ *Id.* at 2, 4.

approval being granted herein for participation by customers who are not specifically identified is consistent with permission we recently granted to customers of Northern Virginia Electric Cooperative and is subject to the same condition that participation be limited and subject to the terms and conditions of any further action of the Commission.⁶

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed as Case No. PUE-2011-00021.

(2) The Commission grants the Cooperatives' customers, subject to the consent of the affected Cooperative and ODEC and other conditions noted above, permission to participate in the PJM Load Management Program and the Economic Load Response Program, limited by and subject to any future action of the Commission.

(3) The Cooperatives shall provide a copy of this Order to PJM.

(4) Within thirty (30) days of the date of this Order, the Cooperatives shall file with the Commission a report of action demonstrating compliance with Ordering Paragraph (3) above.

(5) This matter is continued for further order of the Commission.

⁶ *Application of Northern Virginia Electric Cooperative, For approval for customers to participate in demand response programs*, Case No. PUE-2010-00131, Doc. Con. Cen. No. 440147, Order Granting Conditional Approval (Nov. 24, 2010).

CASE NO PUE-2011-00023 JULY 20, 2011

APPLICATION OF
APPALACHIAN POWER COMPANY,
AEP GENERATING COMPANY,
and
AMERICAN ELECTRIC POWER COMPANY, INC .

For authority to enter into affiliate transactions under Title 56, Chapter 4 of the Code of Virginia

ORDER GRANTING AUTHORITY

On March 1, 2011, Appalachian Power Company ("APCo"), AEP Generating Company ("AEGCo"), and American Electric Power Company, Inc. ("AEP") (collectively, "Applicants"), filed an application ("Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"), for authority to enter into affiliate transactions. More specifically, Applicants request authority for APCo to acquire the Dresden Generating Station ("Dresden Plant"), including assignment from AEGCo to APCo of all contracts pertaining to the Dresden Plant that have been entered into by AEGCo either directly or indirectly through American Electric Service Corporation; to receive capital contributions from AEP of up to \$150 million; and any other approvals necessary under Virginia laws and regulations to accomplish the transactions described herein.

On April 22, 2011, the Commission entered an Order Extending Time for Review, pursuant to § 56-77 of the Code, extending by thirty (30) days, or through May 31, 2011, the period of review of the Application.¹

On May 23, 2011, APCo filed a Motion for Leave to Amend ("Motion"). In its Motion, APCo requested leave to amend the Application to further clarify the change in APCo's fuel and related costs if the Application is granted by the Commission; to correct APCo's member load ratio to show the effect of the proposed merger of Columbus Southern Power Company and Ohio Power Company; and to show the effects of the merger on APCo's capacity settlement expense.

On May 24, 2011, the Staff of the Commission ("Staff") filed an amended Memorandum of Completeness stating that the May 23, 2011 filing should be treated as an amendment to the Application, thereby resulting in the sixty (60)-day statutory review period being reset to begin on May 23, 2011, for consideration of the Application. By Order Granting Motion dated May 25, 2011, the Commission granted APCo's Motion and reset the period of review for the Application to run sixty (60) days from May 23, 2011, or through July 22, 2011.

APCo is a Virginia public service corporation that provides electric service in Virginia and West Virginia and is subject to regulation as to rates and services by the Commission and the Public Service Commission of West Virginia ("WVPSC"). All of APCo's stock is owned by AEP.

AEGCo is a corporation organized under the laws of Ohio. All of AEGCo's common stock is owned by AEP. Therefore, AEGCo is an affiliate of APCo within the meaning of § 56-76 of the Code.

AEP is a New York corporation and a holding company under the Public Utility Holding Company Act of 2005. AEP wholly owns the common stock of AEGCo and APCo and, therefore, is an affiliate of AEGCo and APCo within the meaning of § 56-76 of the Code.

¹ The statutory deadline for the Commission to act on the Application was May 30, 2011. However, since May 30, 2011, was Memorial Day, a legal holiday, § 1-210 of the Code extends, by operation of law, the statutory deadline to May 31, 2011.

APCo is a member of the AEP-East Pool ("Pool") established pursuant to the Federal Energy Regulatory Commission-approved AEP Interconnection Agreement ("Pool Agreement"). APCo, Columbus Southern Power Company ("CSP"), Indiana Michigan Power Company ("I&M"), Kentucky Power Company ("KPCo"), and Ohio Power Company ("OPCo") are the five AEP-East System operating companies that are current members ("Pool Members" or individually "Pool Member") of the Pool (or "AEP East Zone"). The five Pool Members are all subsidiaries of AEP. APCo is the only Pool Member expected to be involved in the transactions described in the instant Application.

Although each Pool Member owns specific generating facilities, the AEP East Zone is designed, built, and operated on an integrated basis. As described in the Application, Pool Members that do not have enough generating capacity to satisfy their obligations, referred to as deficit members, purchase capacity from Pool Members with surplus capacity, referred to as surplus members. The amount of the payments made by deficit members and received by surplus members, referred to as capacity settlements, is based on the relative deficits or surpluses of all Pool Members and the generation costs of the surplus members. Deficit members' capacity settlement charges are based on the weighted average capacity rate of the surplus members. APCo, CSP, and KPCo are currently deficit members of the Pool while I&M and OPCo are surplus members.

Applicants request authority for APCo to purchase the Dresden Plant, which is a partially constructed 580-megawatt natural gas combined cycle electric generating plant located in the vicinity of Dresden, Ohio, from AEGCo at AEGCo's current book value at the time of closing. As of January 31, 2011, that amount was approximately \$200 million. APCo will record the value of the plant on its books as construction work in progress. AEGCo, either directly or through American Electric Power Service Corporation, is party to various agreements pertaining to the Dresden Plant, which will be assigned to APCo.

AEGCo purchased the Dresden Plant facility in 2007 as a distressed asset. Construction activities and other activities on the Dresden Plant have been performed continuously since 2007. In addition to the purchase price of \$85 million, AEGCo has invested approximately \$115 million in the Dresden Plant, including accrued allowance for funds used during construction ("AFUDC").

Applicants represent that the Dresden Plant can be placed in service with an additional investment of approximately \$166 million, making the total estimated cost of the Dresden Plant approximately \$366 million, including accrued AFUDC. This equates to an installed capacity cost of approximately \$631/kilowatt ("kW") which compares favorably to the estimated cost of similar gas combined cycle plants, which is \$978/kW according to U.S. Energy Information Administration's Updated Capital Cost Estimates for Electricity Generation Plant-November 2010. APCo estimates that the Dresden Plant will be placed in service on or about February 29, 2012.

Applicants represent that, considering the impact on fuel costs, capacity equalization payments, and other related costs, the Dresden Plant acquisition will represent a net benefit to APCo's Virginia jurisdictional customers and is in the public interest. In connection with the proposed Dresden Plant acquisition, Applicants request authority for APCo to receive equity capital contributions from AEP, which will be made at AEP's discretion, in the aggregate amount of up to \$150 million from time to time through December 31, 2012, or until the time of the closing of the transaction, whichever is later.²

The proposed transfer of the Dresden Plant to APCo from AEGCo and the related assumption of rights and obligations, financing, disclosures, and notices pertaining to the Dresden Plant will require, in addition to Commission authority, approvals, permission, registration, and authorizations by other regulatory entities, including the WVPSC and the Ohio Power Siting Board.³ Due to the regulatory requirements that must precede the closing, Applicants request that the Commission grant APCo flexibility as to the timing of the transactions that will be required.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the affiliate transactions discussed herein are in the public interest and should be approved. Based on the facts of this case, and given that APCo is currently a deficit member of the AEP-East Pool, it appears that APCo's customers will benefit from APCo's ownership of the Dresden Plant.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, APCo is hereby granted authority to acquire the Dresden Plant from AEGCo at AEGCo's current book value at the time of closing, such acquisition to include assignment from AEGCo to APCo of all contracts pertaining to the Dresden Plant that have been entered into either directly or indirectly through American Electric Power Service Corporation, as described herein.
- (2) Pursuant to § 56-77 of the Code, APCo is hereby granted authority to receive up to \$150 million in equity contributions from AEP related to the acquisition of the Dresden Plant from time to time through December 31, 2012, or until the time of closing of the transaction, whichever is later.
- (3) APCo shall book its acquisition of the Dresden Plant approved herein in accordance with the Uniform System of Accounts for Electric Utilities.
- (4) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (5) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.

² In Case No. PUE-2009-00007, APCo was granted authority to receive up to \$250,000,000 of capital contributions from AEP, at AEP's discretion, from time to time through January 1, 2011. *Application of Appalachian Power Company and American Electric Power Company, Inc., for authority to receive cash capital contributions from an affiliate, Case No. PUE-2009-00007, 2009 S.C.C. Ann. Rept. 390, Order Granting Authority Nunc Pro Tunc (Apr. 15, 2009)*. APCo filed a Final Report of Action on May 5, 2009, stating that it had recorded the full \$250,000,000 from AEP as of May 1, 2009, in accordance with Commission authority. APCo now requests authority to receive contributions in furtherance of the Dresden Plant transaction.

³ The WVPSC approved the acquisition. *Appalachian Power Company, d/b/a American Electric Power, Charleston, Kanawha County, AEP Generating Company, Columbus, Ohio, and American Electric Power Company, Inc., Columbus, Ohio, Petition for consent and approval of arrangements among affiliates related to the acquisition by Appalachian Power Company of Dresden Plant from AEP Generating Company, Case No. 11-0265-E-PC, 2011 W.Va. PUC LEXIS 1546, at *104, Commission Order (W.Va. Pub. Serv. Comm'n, June 30, 2011)*.

(6) The authority granted herein shall have no ratemaking implications for biennial reviews or other rate proceedings. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the acquisition of the Dresden Plant or receipt of equity capital contributions from AEP.

(7) APCo shall file a Final Report of Action on or before March 31, 2013, to include a summary of the dates and amounts of all capital contributions made pursuant to the authority granted herein and APCo's capital structure as of December 31, 2012.

(8) APCo shall include the transactions authorized herein in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting on or before May 1 of each year, which deadline may be extended administratively by the Commission's Director of Public Utility Accounting.

(9) If biennial review and/or general rate case filings are not based on a calendar year, then APCo shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.

(10) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2011-00024
APRIL 13, 2011**

APPLICATION OF
ROANOKE GAS COMPANY

For approval of certain transactions pursuant to the Affiliates Act of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On March 1, 2011, Roanoke Gas Company ("Roanoke Gas" or "Applicant") filed an application ("Application") pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code") with the State Corporation Commission ("Commission") for approval of certain revisions and clarifications to an existing affiliate agreement between Roanoke Gas and RGC Resources, Inc. ("RGC"), which was approved in Case No. PUE-2006-00023 ("2006 Agreement").¹ The new agreement incorporating the revisions and clarifications is referred to herein as the "2011 Agreement". The 2011 Agreement and its supporting Attachment A describe the shared corporate and administrative services ("Shared Services") that Roanoke Gas will receive from RGC and that Roanoke Gas will provide to RGC, and the methodology for assigning and allocating the related costs between Roanoke Gas and RGC.

Roanoke Gas is a Virginia public service corporation engaged primarily in the sale and retail distribution of natural gas to residential, commercial, and industrial customers in southwestern Virginia. Its gas utility markets include the Cities of Roanoke and Salem, Roanoke County, and portions of the Counties of Bedford, Botetourt, Franklin, and Montgomery in Virginia. On July 1, 1999, Roanoke Gas went through a corporate reorganization and became a wholly owned subsidiary of RGC, an exempt holding company headquartered in Roanoke, Virginia.²

Roanoke Gas and RGC are considered affiliated interests under § 56-76 of the Code. As such, Roanoke Gas is required to obtain prior approval from the Commission pursuant to the Affiliates Act for any agreement or arrangement between the companies for the provision of certain services, the exchange of property, rights, or things, or the purchase or sale of treasury bonds or stock.

The revisions and clarifications that Roanoke Gas requests in the Application are found in Attachment A and Exhibit A-1 to the 2011 Agreement. Roanoke Gas specifically requests that: (i) all references to Bluefield Gas Company, a former affiliate, be removed from Attachment A; (ii) the clarification be made that allocation methods employing time studies will be used only when applicable; and (iii) the clarification be made that Account 877, City Gate Measuring and Regulating Expenses, will be directly assigned. Otherwise, the 2011 Agreement and its supporting Attachment A and Exhibit A-1 contain the same terms and conditions as the 2006 Agreement.

NOW THE COMMISSION, upon consideration of the Application, the representations of the Applicant, and having been advised by its Staff, is of the opinion and finds that the proposed 2011 Agreement is in the public interest and should be approved subject to certain requirements described below.

In Case No. PUE-2006-00023, we approved the 2006 Agreement subject to several conditions and requirements. First, we limited the duration of our approval to five years from the date of the order in that case. Second, we limited expense assignments and cost allocations between Roanoke Gas and RGC to expenses and costs specifically identified in the 2006 Agreement. Third, we required Roanoke Gas to specifically identify the Shared Services and capital costs allocated to RGC. Fourth, we directed RGC and Roanoke Gas to increase the percentage of directly charged or assigned affiliate costs under the 2006 Agreement to the extent that it was reasonably practicable. Fifth, we directed Staff to monitor RGC's use of the 2-part Factor³ for allocating certain

¹ See *Application of Roanoke Gas Company, For approval of certain transactions pursuant to the Affiliates Act of the Code of Virginia*, Case No. PUE-2006-00023, 2006 S.C.C. Ann. Rept. 397, Order Granting Approval (June 20, 2006).

² On July 12, 2004, RGC sold Diversified Energy Company (d/b/a Highland Propane Company). On October 31, 2007, RGC sold Bluefield Gas Company (See *Joint Petition of Roanoke Gas Company and Appalachian Natural Gas Distribution Company, For approval of a change in ownership of utility assets and for issuance of a certificate of public convenience and necessity pursuant to Chapter 5 of Title 56 of the Code of Virginia*, Case No. PUE-2007-00012, 2007 S.C.C. Ann. Rept. 388, Order Granting Approval (Aug. 21, 2007)).

³ The 2-part Factor is the simple arithmetic average of net plant and operating margin. RGC employs the 2-part Factor to allocate costs in Account 923.1 (Legal); Account 923.4 Accounting & Auditing); Account 923.5 (Public Relations); Account 923.98 (Outside Services-Other); Account 925.0 (Liability Insurance); Account 925.2 (Unreimbursed Liability Claim Coverage); Account 930.2 (Shareholder Expenses); and Accounts 419/431 (Interest Income/Interest Expense).

Shared Services to Roanoke Gas, in part by reviewing a schedule that Roanoke Gas would include in its Annual Report of Affiliate Transactions ("ARAT"), which would list the 2-part Factor and the net plant, operating margin, payroll, and number of customer allocation bases for the latest fiscal year. Finally, we directed Roanoke Gas to develop and maintain records to demonstrate that the provision of Shared Services by RGC to Roanoke Gas and from Roanoke Gas to RGC is cost beneficial to Virginia customers. Such market research efforts would be documented and made available to Staff upon request. Roanoke Gas would bear the burden of showing that, for Shared Services obtained from RGC where a market and market price exists, it paid the lower of cost or market, and for Shared Services provided to RGC where a market and market price exists, it charged the higher of cost or market. We find that these conditions and requirements remain applicable for the 2011 Agreement and, therefore, we will adopt them for this case.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, Roanoke Gas is hereby granted approval to enter into the proposed 2011 Agreement, consistent with the findings set out above and effective as of the date of the entry of this order.
- (2) The approval granted herein is limited to five years from the date of the entry of this Order Granting Approval. Should Roanoke Gas wish to continue the 2011 Agreement beyond that date, further Commission approval shall be required.
- (3) Shared Services, expense assignments, and cost allocations between Roanoke Gas and RGC shall be limited to the Shared Services, expense assignments, and cost allocations specifically identified in the 2011 Agreement and its supporting Attachment A and Exhibit A-1.
- (4) RGC and Roanoke Gas shall endeavor to increase the percentage of directly charged or assigned affiliate costs under the 2011 Agreement to the extent that it is reasonably practicable.
- (5) Roanoke Gas shall develop and maintain records to demonstrate that the provision of Shared Services by RGC to Roanoke Gas and from Roanoke Gas to RGC is cost beneficial to Virginia consumers in that the Commission's asymmetric pricing policy is followed. Roanoke Gas shall bear the affirmative burden to ascertain whether a local market and market price exists for services it receives or provides under the 2011 Agreement. Such market research efforts shall be documented and made available to the Commission's Staff upon request. Roanoke Gas shall bear the burden, in any rate proceeding, to show that, for Shared Services obtained from RGC where a market and a market price exist, Roanoke Gas paid the lower of cost or market. Likewise, Roanoke Gas shall bear the burden, in any rate proceeding, to show that, for Shared Services provided to RGC where a market and a market price exist, Roanoke Gas charged the higher of cost or market.
- (6) The approval granted in this case shall have no ratemaking implications. Specifically, the approval in this case shall not guarantee the recovery of any costs directly or indirectly related to the 2011 Agreement.
- (7) The approval granted herein shall not preclude the Commission from exercising its authority under the provisions of § 56-78 or § 56-80 of the Code hereafter.
- (8) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein whether or not such affiliate is regulated by this Commission.
- (9) Roanoke Gas shall include the transactions associated with the 2011 Agreement approved herein in its ARAT submitted to the Commission's Director of Public Utility Accounting ("PUA Director") on May 1st of each year, subject to administrative extension by the PUA Director.
- (10) In the event that Roanoke Gas' annual informational filings or expedited or general rate case filings are not based on a calendar year, then Roanoke Gas shall include the affiliate information contained in its ARAT for the test period in such filings.
- (11) There appearing nothing further to be done, this case shall be dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2011-00026
APRIL 11, 2011**

APPLICATION OF
GLACIAL ENERGY, INC.

For a license to conduct business as a competitive service provider for electricity

ORDER GRANTING LICENSE

On March 4, 2011, Glacial Energy, Inc. ("Glacial Energy" or "the Company") filed an application with the State Corporation Commission ("Commission") for a license to be a competitive service provider for electric service pursuant to the Commission's Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 et seq. ("Retail Access Rules"). The Company seeks authority to serve commercial and industrial customers in retail access programs in the service territories of Virginia Electric and Power Company d/b/a/ Dominion Virginia Power, Appalachian Power Company, and Kentucky Utilities Company d/b/a Old Dominion Power Company.¹ Glacial Energy attested that it would abide by all applicable regulations of the Commission as required by 20 VAC 5-312-40 B of the Retail Access Rules.

On March 14, 2011 the Commission issued an Order for Notice and Comment establishing the case; requiring that notice of the application be given to affected investor-owned electric utilities, and other interested persons; providing for the receipt of comments from the public; and requiring the

¹ The service territory for Kentucky Utilities Company is not open to retail access and customer choice, as set forth in § 56-580 G of the Code of Virginia.

Commission's Staff to analyze the reasonableness of the application and present its findings in a report ("Staff Report"). The Company filed proof of publication of its notice on March 21, 2011. No comments on Glacial Energy's application were received from the public.

The Staff Report was filed on April 4, 2011. The Staff Report summarized Glacial Energy's proposal and evaluated its financial condition and technical fitness. The Staff recommended that Glacial Energy be granted a license to conduct business as a competitive service provider for electric service to commercial and industrial customers in the service territories of the investor owned utilities designated in the report. The Company filed no comments in response to the Staff Report.

NOW UPON CONSIDERATION of the application, the Staff Report, and applicable law, the Commission finds that Glacial Energy's application for a license to conduct business in the Commonwealth as a competitive service provider of electricity should be granted, subject to the conditions set forth below.

Accordingly, IT IS ORDERED THAT:

- (1) Glacial Energy, Inc. is hereby granted License No. E-25 to be a competitive service provider for electric service to commercial and industrial customers in the service territories of Virginia Electric and Power Company and Appalachian Power Company. This license to act as a competitive service provider for electricity is granted subject to the provisions of the Retail Access Rules, this Order, and other applicable law.
- (2) This license is not valid authority for the provision of any product or service not identified within the license itself.
- (3) This case shall remain open for consideration of any subsequent amendments or modifications to this license.

**CASE NO. PUE-2011-00027
NOVEMBER 30, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For a 2011 biennial review of the rates, terms, and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.1 A of the Code of Virginia

FINAL ORDER

On March 31, 2011, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("DVP" or "Company") filed an Application with the State Corporation Commission ("Commission") for a biennial review of the Company's rates, terms, and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.1 A of the Code of Virginia ("Code") and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.* ("Rate Case Rules"). Pursuant to § 56-585.1 A 8 of the Code, "[t]he Commission's final order regarding such biennial review shall be entered not more than eight months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order."

The Company states that, as provided in the Stipulation and Addendum in Case No. PUE-2009-00019 ("Stipulation"),¹ a rate of return on common equity ("ROE") earnings band of 11.4% to 12.4%, inclusive of a sixty (60) basis point Performance Incentive, is to be used for the purpose of reviewing the Company's earnings for the first two-year biennial review period of 2009-2010. DVP asserts that it has earned within the approved ROE earnings band for the two combined test periods on its generation and distribution services. As such, the Company claims that no rate credits are required to be issued pursuant to § 56-585.1 A 8 of the Code.² In addition, the Company requests that the Commission approve a 12.50% ROE for its generation and distribution services prospectively, beginning upon the effective date of the final order in this proceeding. The requested 12.50% ROE would be inclusive of a 100 basis point Performance Incentive that the Company seeks pursuant to § 56-585.1 A 2 c of the Code.³

On April 12, 2011, the Commission issued an Order for Notice and Hearing that, among other things, established a procedural schedule for this case and directed DVP to provide public notice of this matter.

The following parties filed notices of participation: Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Fairfax County Board of Supervisors ("Fairfax County"); Chesapeake Climate Action Network, Appalachian Voices, and the Virginia Chapter of the Sierra Club (collectively, "Environmental Respondents"); Department of the Navy on behalf of all Federal Executive Agencies ("FEA"); Robert Vanderhye; Michel A. King; MeadWestvaco Corporation ("MeadWestvaco"); Apartment and Office Building Association of Metropolitan Washington ("AOBA"); Chaparral (Virginia) Inc. ("Chaparral"); and Virginia Committee for Fair Utility Rates ("Committee").

The Commission held the public evidentiary hearing on the following days: September 20, 21, 22, 23, 26, 27, and 28, 2011. The Commission received testimony from witnesses on behalf of various participants and received over 130 exhibits. The Commission also heard testimony from public witnesses, in addition to receiving written and electronic comments from the public in this case.

¹ *Application of Virginia Electric and Power Company, For a 2009 statutory review of the rates, terms, and conditions for the provision of generation, distribution, and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2009-00019, 2010 S.C.C. Ann. Rept. 301, Order Approving Stipulation and Addendum (March 11, 2010).

² Ex. 2 (Application) at 5-6.

³ *Id.* at 7-8.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On or before October 24, 2011, the following participants filed post-hearing briefs: DVP; Fairfax County; FEA; Robert Vanderhye; Environmental Respondents;⁴ MeadWestvaco; Chaparral; AOBA; Committee;⁵ Consumer Counsel; and the Commission Staff ("Staff").

NOW THE COMMISSION, upon consideration of this matter, including all applicable legal requirements, is of the opinion and finds as follows.

"EARNED" RETURN*Code of Virginia*

This is the first biennial review for DVP pursuant to § 56-585.1 A of the Code. The Commission is required to determine whether the Company "has, during the test period or periods under review, considered as a whole, earned more than 50 basis points below [or above] a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2 . . ."⁶ The parties to the Stipulation, in accordance therewith, assert that DVP's fair combined rate of return for purposes of this proceeding is 11.9%, which results in a ±50 basis points earnings band of 11.4% - 12.4%.

Accordingly, the first step of this biennial review is to determine DVP's earned return, which can lead to one of three statutory outcomes:

(1) If DVP earned below 11.4%, "the Commission shall order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair combined rate of return;"⁷

(2) If DVP earned above 12.4%, "the Commission shall . . . direct that 60 percent of the amount of such earnings . . . be credited to customers' bills;"⁸ or

(3) If DVP earned between 11.4% - 12.4%, the Commission may not order a rate increase or credits to customers.

In addition, the outcome of this case directly affects whether base rates can be reduced in the future. Specifically, § 56-585.1 A 8 of the Code does not permit the Commission to reduce rates in this biennial review. Rather, the statute permits the Commission to reduce rates if we find that DVP has earned more than 50 basis points above a fair combined rate of return in two consecutive biennial reviews.⁹

This is a first-of-its-kind proceeding before the Commission. The Commission is statutorily directed to determine what the Company earned on a regulatory basis for the direct purpose of possibly impacting customers' bills today by raising rates or issuing rate credits, and of possibly implementing a base rate decrease in the future (during the next biennial review). This also is unlike annual informational filings previously required by the Commission, which analyzed earnings for different purposes and for different potential outcomes.¹⁰ Thus, there is no direct prior precedent for this specific type of proceeding.

Motions to Strike

During the hearing, the Company made several motions to strike testimony submitted by parties to the Stipulation. The Company asserts that certain earnings adjustments proposed by participants in this case violate one or more of the provisions that such participants agreed to as part of the Stipulation. In this regard, the Stipulation contains the following provisions:

14. . . . For Earnings Test purposes in each of these biennial reviews, the earnings results of the two test periods will be netted together to determine total period earnings and each test period's rate base will be based on 13-month averages and each test period's capital structure will be based on end-of-test period. Earnings Test adjustments shall be based on the guidelines attached as Exhibit A to this Addendum. A list of all material accruals and out-of-period accounting entries will be included in each of these biennial review filings.

⁴ We grant Environmental Respondents' uncontested October 25, 2011 motion for leave to file a corrected appendix.

⁵ We deny the Committee's November 8, 2011 motion seeking to designate Exs. 88C and 134C as non-confidential. At this time, as requested by DVP, we find that "the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure." See 5 VAC 5-20-170 of the Commission's Rules of Practice and Procedure. In addition, we deny for purposes of this proceeding Respondent King's November 28, 2011 motion seeking to designate Exs. 114C and 115C as non-confidential.

⁶ Va. Code § 56-585.1 A 8 (i), (ii).

⁷ Va. Code § 56-585.1 A 8 (i).

⁸ Va. Code § 56-585.1 A 8 (ii).

⁹ Va. Code § 56-585.1 A 8 (iii).

¹⁰ See, e.g., the Staff's October 24, 2011 Post-Hearing Brief at 3.

EXHIBIT A

GUIDELINES FOR EARNINGS TEST ADJUSTMENTS

The biennial reviews, as provided for under Va. Code § 56-585.1 A 3, shall be primarily a per books evaluation of the Company's consolidated actual jurisdictional financial results for its generation and distribution services reflecting the aggregate actual costs incurred by the Company during the combined test periods under review. In general, the actual financial results of the Company will be adjusted only for differences between Generally Accepted Accounting Principles and regulatory accounting based on ratemaking practices previously established by the Commission in prior Virginia Electric and Power Company rate decisions.

We took such motions under advisement and permitted parties to introduce, cross-examine, submit rebuttal to, and brief issues related to such testimony; thus, all parties had a full opportunity to litigate the issues raised thereby. We need not grant the motions to strike. Rather, we will consider regulatory earnings proposals submitted by all participants – including the Company – under both the statute and the Stipulation.¹¹

For example, the Company was the first party – in its Application – to propose significant regulatory earnings adjustments.¹² In addition, in order to determine DVP's earned return under the statute, both the Company and the Staff have proposed over 50 adjustments for each of the 2009 and 2010 calendar years.¹³ Accordingly, for purposes of implementing the statute and determining the Company's earned return, we will look at DVP's booked earnings and make reasonable and prudent regulatory earnings adjustments thereto.¹⁴

In addition, for the signatories to the Stipulation, that document provides "guidelines" for their participation in the instant case. Those guidelines, among other things, state the signatories' agreement to treat this case in a manner: (i) that will be "primarily" a per books evaluation; and (ii) that, "[i]n general," will only include certain types of adjustments. The plain language thereof – by utilizing terms such as "guidelines," "primarily," and "[i]n general" – permits the signatories to proffer their regulatory earnings proposals as part of this case.

Moreover, the Company stated that the use of such terms in the Stipulation permits the signatories to propose "exceptions" that may not otherwise be referenced in the Stipulation. Specifically, DVP asserted that the Stipulation permits the parties thereto to propose "[s]upportable exceptions with merit."¹⁵ While the Stipulation permits the signatories to propose regulatory earnings adjustments that a signatory may deem has merit, the Commission must determine – as we do below – the merits thereof and which regulatory proposals should be approved for calculating the earned return under the statute. In addition, in calculating the earned return under the statute, the Stipulation contemplates a backward-looking analysis. In this regard, signatories may comply – and, indeed, have complied – therewith by submitting proposals that do not have their genesis in forward-looking earnings adjustments. In sum, the Company and other participants in this case have submitted, in total, over 100 regulatory earnings proposals – the vast majority of which are uncontested and accepted by the Commission.¹⁶ In the sections that immediately follow, we address specific contested proposals submitted separately by the Company and others for purposes of determining the earned return under § 56-585.1 A 8 of the Code.¹⁷

Affiliate Fuel Balances

We approve the Company's proposed regulatory earnings treatment of affiliate fuel balances. The Commission has previously approved affiliate agreements by which the Company's wholly-owned subsidiaries hold fuel inventories for DVP's use in the generation of electricity.¹⁸ While not on the Company's books, we find that it is reasonable to include such inventories in rate base and will approve the adjustment to DVP's earnings for 2009 and 2010.¹⁹ These fuel inventory balances are a reasonable cost of providing utility service and are held solely for the Company's use in the generation of electricity. This finding permits the Company to include in rate base approximately \$177 million and \$187 million of fuel inventory costs for calendar years 2009 and 2010, respectively.²⁰

¹¹ Some of the participants also discussed the application of the Rate Case Rules in determining the earned return under the statute. In that regard, we find: (1) the Rate Case Rules obviously cannot modify statutory requirements; and (2) the Rate Case Rules have been complied with herein (including any waiver provisions therein).

¹² See, e.g., discussion of Rider T and Affiliate Fuel Balances, *infra*.

¹³ See, e.g., Tr. 967; the Staff's October 24, 2011 Post-Hearing Brief at 6.

¹⁴ Moreover, although some parties discussed intent and construction of the applicable statutes, of the Stipulation, and of the Rate Case Rules, we find no ambiguity in any of the relevant provisions (except to the extent discussed below regarding the application of an RPS adder) and shall exercise our discretion under the plain meaning thereof.

¹⁵ Tr. 1808.

¹⁶ See, e.g., *id.* at 967-968; the Staff's October 24, 2011 Post-Hearing Brief at 6.

¹⁷ On the limited number of significant regulatory earnings proposals from the Company and others addressed herein, we find that the Stipulation does not prohibit our consideration thereof. Unless adopted herein, any contested adjustment is denied.

¹⁸ See, e.g., DVP's October 24, 2011 Post-Hearing Brief at 23-26.

¹⁹ We also note that, if the Stipulation prohibited regulatory earnings adjustments, the Company would not be permitted to request this proposed adjustment as approved herein.

²⁰ DVP's October 24, 2011 Post-Hearing Brief at 23.

Depreciation and Deferred Income Taxes

We approve the Company's proposed regulatory earnings treatment of accumulated depreciation and accumulated deferred income taxes, which does not reflect the depreciation rates included in a settlement approved by the Commission in 1998 (Case Nos. PUE-1996-00036 and PUE-1996-0296). Rather, we conclude that DVP's proposed accumulated depreciation and accumulated deferred income taxes are reasonable for purposes of determining the earned return in this proceeding. This finding permits the Company to include approximately \$45 million in rate base for this item for each year of the two-year biennial review period.²¹

Charitable Contributions

Based on the totality of the circumstances, including the evidence in the record and the Stipulation, we approve DVP's proposal on charitable contributions. This finding approves the Company's proposed expenses in this regard of approximately \$880,000, net of tax, over the two-year biennial period.²²

Advertising

We will exclude from expenses certain advertising costs that we find do not meet the statutory standard.²³ Specifically, DVP failed to prove that certain advertising campaigns – while laudable in many respects – are, as required by statute, "required by law or rule or regulation, or . . . solely promote the public interest, conservation or more efficient use of energy."²⁴ This finding reduces the Company's asserted expenses over the two-year biennial period by approximately \$871,000.

Incentive Plans

The Company has an Annual Incentive Plan ("AIP") and a Long-Term Incentive Plan ("LTIP"), which it includes as part of its compensation expenses. The plans are established such that if the financial goals related to AIP and performance-based LTIP are met in full, the payout ratio of the plans is 100%. If the Company's financial goals are exceeded, however, the AIP and performance-based LTIP can be paid at a level greater than 100%.²⁵ The Company's Virginia jurisdictional level of total incentive compensation in the 2009 - 2010 biennial review period was approximately \$116.3 million.²⁶

Payout Ratio

We will exclude incentive plan costs that exceed a payout ratio of 100%. As explained by the Staff, "ratepayers should not bear any portion of payouts in excess of 100% because the benefit of the Company exceeding its *financial* goals accrues to the stockholder and as such, the stockholder should bear the cost."²⁷ In addition, we note that the Company proposed a similar adjustment on a going-forward basis in its prior base rate case.²⁸ Thus, for regulatory accounting purposes and to determine the earned return under the statute, DVP should not include in its cost of service – payable by ratepayers – any AIP and performance-based LTIP costs that exceed the payout ratio of 100%. This finding reduces the Company's asserted expenses over the two-year biennial period by approximately \$20.9 million.

Cost Sharing

We adopt the Company's proposal to include the remaining AIP and LTIP expenses for regulatory earnings purposes.²⁹ We find that these remaining expenses (after excluding amounts above the 100% payout ratio discussed above) are reasonable based on the facts presented in this case. This finding authorizes, for regulatory accounting purposes and to determine the earned return under the statute, approximately \$95.3 million of incentive compensation expense for the two-year biennial review period.

Rider T

Pursuant to § 56-585.1 A 4, the Company recovers transmission-related costs pursuant to a rate adjustment clause ("RAC") (which the Company implements as "Rider T") previously approved by the Commission. Rider T is structured such that these costs are recovered dollar-for-dollar, which means that under- or over-recoveries are subsequently trued-up and collected from, or returned to, ratepayers.³⁰ In addition, the Commission has previously found –

²¹ See, e.g., *id.* at 47.

²² Ex. 133 (Schools rebuttal) at Schedule 9, pp. 5, 28.

²³ See, e.g., the Staff's October 24, 2011 Post-Hearing Brief at 35-38.

²⁴ Va. Code § 56-235.2 A.

²⁵ See, e.g., the Staff's October 24, 2011 Post-Hearing Brief at 14. Correspondingly, a failure to achieve financial goals may result in a lower than 100% payout ratio.

²⁶ Tr. 1000.

²⁷ The Staff's October 24, 2011 Post-Hearing Brief at 14 (internal quotes omitted) (emphasis in original).

²⁸ See, e.g., *id.* at 14-15.

²⁹ See, e.g., DVP's October 24, 2011 Post-Hearing Brief at 34.

³⁰ See, e.g., the Staff's October 24, 2011 Post-Hearing Brief at 38.

on two occasions – that (i) it is reasonable for DVP not to assess carrying charges (*i.e.*, earn a return) on such under- or over-recoveries, and (ii) DVP is not prevented from recovering its just and reasonable cost of transmission service if carrying costs are excluded.³¹

In its Application, however, DVP included a regulatory accounting adjustment to reflect Rider T under-recoveries in rate base as working capital costs. We reject DVP's proposal to recover carrying costs previously rejected by including such Rider T under-recoveries in rate base. Furthermore, DVP's proposed treatment is inconsistent with the plain language of the statute; the provisions of § 56-585.1 A of the Code governing biennial reviews limits such review to generation and distribution services. Thus, the only way for DVP to include Rider T costs in rate base is to re-cast and re-functionalize "these transmission-related deferrals as distribution costs."³² Our finding on this issue reduces the Company's asserted rate base by approximately \$11.8 million for calendar year 2009 and \$39.2 million for calendar year 2010.

Gains on Pre-Issuance Hedges

The Company entered into hedging contracts that "were intended to mitigate interest rate risk associated with anticipated long-term debt issuances of (i) an offering originally planned for issuance in March 2010 with an expected life of 10-years, and (ii) an originally planned offering for issuance in August 2010 with an expected life of 30-years."³³ DVP, however, did not consummate either debt offering and "settled both hedging contracts for an aggregate gain to the Company of (i) \$15.1 million in the case of the hedging contract associated with [an] unconsummated [proposed] 10 year debt offering, and (ii) \$46.7 million in the case of the hedging contract associated with [an] unconsummated [proposed] 30 year debt offering, for a total gain of \$61.8 million on both hedging contract settlements."³⁴ As a result, these gains represent a \$61.8 million cash payment to the Company in 2010.

DVP proposed to amortize the realized gains over the 10- and 30-year anticipated issuance periods for regulatory earnings purposes. We approve regulatory earnings treatment that recognizes these gains when they were received. Thus, we find that it is reasonable, for regulatory accounting purposes and to determine the earned return under the statute, to recognize these gains in 2010 - as opposed to amortizing such gains over the forecasted hypothetical lives of debt instruments that were never issued.³⁵ Since there were no actual issuances and no maturity dates, any amortization period related thereto would be unreasonably speculative. For example, it is unknown whether the debt, if it had been issued, would have actually had 10 and 30 year maturities, or whether such debt would have been recalled, retired, or refinanced over a different period.

In sum, as opposed to recognizing these gains over some necessarily fictitious period, we find that it is reasonable to recognize these gains in the year in which they were realized. This finding increases the Company's asserted 2010 Other Income by approximately \$43.8 million.³⁶

Voluntary Separation Plan

DVP and Dominion Resources Services, Inc. ("DRS") implemented a Voluntary Separation Plan ("VSP") in 2010, and both DVP and DRS incurred substantial severance, pension, and other costs associated with the VSP. In addition, "[b]ecause DRS provides services to [DVP], DRS allocated and billed to [DVP] a portion of the costs that DRS incurred for the program."³⁷ DVP's total cost for its VSP, including charges from DRS, was approximately \$199.6 million in 2010.³⁸ The Company, however, made no regulatory earnings adjustment for these expenses.

We will match costs and savings for regulatory earnings purposes. That is, we find it reasonable – for regulatory accounting purposes in this case and to determine the earned return under the statute – to match the specific costs of this severance program with the specific savings related thereto. Thus, we deny the Company's proposal to expense, for regulatory purposes, 100% of these costs in 2010. Rather, we conclude that it is appropriate for the amortization of the costs of this program to commence with – and to track – the realization of the savings related thereto in a manner that effectuates the matching of costs and savings.³⁹ Moreover, this finding provides the Company with a reasonable opportunity to recover its costs pursuant to this instant, and subsequent, biennial review proceedings.⁴⁰

³¹ See, *e.g.*, *id.* at 38-39 (citing Case Nos. PUE-2009-00018 and PUE-2011-00044). We also previously explained, in Case No. PUE-2011-00044, that the federally-approved transmission charges recovered from retail ratepayers under Rider T reflect a rate set by the Federal Energy Regulatory Commission that includes a rate of return on investment.

³² *Id.* at 41.

³³ *Id.* at 18 (emphasis removed).

³⁴ *Id.* at 18-19.

³⁵ See, *e.g.*, *id.* at 18-26.

³⁶ Ex. 75.

³⁷ Committee's October 24, 2011 Post-Hearing Brief at 50.

³⁸ See, *e.g.*, *id.*; the Staff's October 24, 2011 Post-Hearing Brief at 12.

³⁹ See, *e.g.*, the Staff's October 24, 2011 Post-Hearing Brief at 10-14; Committee's October 24, 2011 Post-Hearing Brief at 49-53; Consumer Counsel's October 24, 2011 Post-Hearing Brief at 32.

⁴⁰ See, *e.g.*, the Staff's October 24, 2011 Post-Hearing Brief at 13. We also note that in three prior DVP rate case decisions, where the Commission made findings on such issue impacting rate levels, "the Commission specifically determined that such costs should be amortized to match costs with savings." See, *e.g.*, *id.* at 10 (citing Case Nos. PUE-1989-00035, PUE-1990-00023, and PUE-1992-00041).

Based on the evidence presented, we find that the savings realized from the VSP began in 2010 and will match the costs thereof by the conclusion of 2011.⁴¹ As a result, the Company shall include 12 months of the costs for regulatory purposes in 2011. This finding reduces the Company's asserted 2010 operating costs (and, in turn increases 2011 operating costs) by approximately \$131.8 million, on a system basis.⁴²

Test Period Earnings and Earned Return

Based on our findings in this case, DVP earned, on average, 13.31% during the 2009 through 2010 biennial review test period. As noted above, the fair rate of return under the Stipulation for purposes of this proceeding is 11.9%. Thus, for the 2009 and 2010 biennial period under review, DVP had excess earnings and, pursuant to § 56-585.1 A 8 (ii) of the Code, three results must now occur:

- (1) DVP retains 50 basis points of excess earnings over 11.9% (*i.e.*, 11.9% to 12.4%), which is approximately \$71.5 million;
- (2) DVP also retains 40% of excess earnings above 12.4%, which is approximately \$52 million; and
- (3) The remaining 60% of excess earnings above 12.4%, which is approximately \$78.3 million, shall be credited to customers' bills.

CREDITS TO CUSTOMERS' BILLS

Section 56-585.1 A 8 of the Code directs in part as follows:

(ii) ... Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order, and shall be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates;

...
[A]ny revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order.

We find that such credits to customers' bills, which must total not less than \$78.3 million, shall: (1) be amortized over a period of six (6) months; (2) be based on each customer's usage during the calendar years 2009 and 2010; and (3) begin to take effect within sixty (60) days after the date of this Final Order.

In addition, such credits "shall be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates."⁴³ Based upon the limited record on cost of service and allocation, and the requirements of § 56-585.1 A 8 (ii) and the evidence presented herein, we will allocate the credits to base rates as proposed by the Committee.⁴⁴ Accordingly, the Company shall allocate the credits among customer classes such that the relationship between the specific net operating income provided by each customer class has the same relationship as that in Case No. PUE-1992-00041.

We note, however, that utilizing data and net operating income relationships nearly twenty years old may significantly distort the current relative rates of return. For example, some customers in each class join or leave the system, economic conditions vary, usage patterns change, and cost allocation methodologies change, all of which can affect the earned rate of return by class. In Case No. PUE-1992-00041, residential customers were found to be providing a return below parity; *i.e.*, below the overall return, and the Commission then designed rates to move the classes toward parity. In the current case, the cost of service study filed by the Company shows the residential class providing a return slightly *above* parity, while certain other classes are shown now to be below parity.⁴⁵ Yet, based upon the requirement of the statute as presented herein, the residential class will have its refund credit reduced (and other classes will see larger credits) below what would likely be allocated based upon current information because the allocations used herein are based on 1992 data. Additionally, we note that the relationship of the net operating income provided by each rate class may not reflect the relationship of the expenses allocated to each class and, consequently, may not fully reflect the relationship between the specific customer class rates of return to the overall target rate of return and the associated revenue requirement from each class.

RATE DESIGN

Respondent Vanderhye requested the Commission to implement – as part of the instant proceeding – either an inclining block, or a flat, rate structure.⁴⁶ Environmental Respondents assert that the Commission should implement "well-designed" inclining block rate structures for residential customers, "so long as those rate changes are done in combination with an aggressive suite of cost-effective [demand-side management] programs."⁴⁷ Moreover, both Mr. Vanderhye and Environmental Respondents assert that the Stipulation does not prevent the Commission from changing rate design as part of the instant case.

⁴¹ See, *e.g.*, *id.* at 12-13.

⁴² *Id.* at 12.

⁴³ Va. Code § 56-585.1 A 8 (ii).

⁴⁴ See, *e.g.*, Committee's October 24, 2011 Post-Hearing Brief at 75-80.

⁴⁵ See, *e.g.*, Ex. 2 (Application) at Revised Sched. 40(c).

⁴⁶ See, *e.g.*, Mr. Vanderhye's October 24, 2011 Post-Hearing Brief.

⁴⁷ Environmental Respondents' October 24, 2011 Post-Hearing Brief at 26.

We find that DVP's "currently approved Residential rate schedule rate design is the most appropriate rate design for residential customers, taken as a whole, at this time."⁴⁸ For example, (i) large numbers of residential customers could experience increased annual bills under an inclining block or flat rate design as proposed herein;⁴⁹ and (ii) DVP stated that "summer peak loads drive the Company's generation and transmission capacity needs," so "it is important that the summer-winter [rate] differential be maintained."⁵⁰ In addition, we note that both DVP and the Staff state that the Stipulation appears to prohibit rate design proposals at this time from the signatories thereto.⁵¹

COST OF CAPITAL

Motions to Strike

During the hearing, the Company made several motions to strike testimony submitted by certain participants, which testimony DVP asserts violates various statutory limitations related to determining cost of capital in this case. Fairfax County and the Committee also moved to strike specific DVP testimony as improper rebuttal. We took such motions under advisement and permitted parties to introduce, cross-examine, submit oral rebuttal to, and brief issues related to such testimony; all parties have had a full opportunity to litigate the issues raised thereby. We need not grant the motions to strike. Rather, we will determine cost of capital pursuant to the requirements in the statute and will explain our determinations below.

Capital Structure and Cost of Debt

Section 56-585.1 A 10 of the Code requires the Commission to "utiliz[e] the actual end-of-test period capital structure" in this proceeding. Section 56-585.1 A 10 of the Code also requires the Commission to "utiliz[e] the actual end-of-test period . . . cost of capital" in this proceeding, which includes (i) long-term debt, and (ii) short-term debt. We find that the Staff's testimony reflects the actual end-of-test period capital structure⁵² and cost of debt.⁵³

Return on Equity

In determining ROE under the statute, we utilize the following process. First, we determine the market cost of equity under § 56-585.1 A of the Code. We then apply the statutory peer group ROE floor pursuant to § 56-585.1 A of the Code. Next, we increase ROE by any statutory Performance Incentive under §§ 56-585.1 A 2 c or 56-585.2 C of the Code. The result is a statutorily-required ROE, which we will combine with the Company's cost of debt to produce the overall cost of capital and rate of return on rate base.

Market Cost of Equity

Section 56-585.1 A 2 states that the Commission shall determine fair rates of return on common equity and "may use any methodology to determine such return it finds consistent with the public interest"⁵⁴ We find that a market cost of equity within a range of 9.4% to 10.4% represents the actual cost of equity in capital markets for companies comparable in risk to DVP seeking to attract equity capital and results in a fair and reasonable return on common equity. Furthermore, we find, under the circumstances of this case, that using the top of the range – 10.4% – is fair and reasonable for these purposes. This return is supported by the evidence in the record.⁵⁵ Conversely, we further find that DVP's proposed cost of equity of 11.5% neither represents the actual cost of equity in the marketplace nor a reasonable return on common equity for the Company.⁵⁶

⁴⁸ The Staff's October 24, 2011 Post-Hearing Brief at 72.

⁴⁹ See *id.* at 71.

⁵⁰ DVP's October 24, 2011 Post-Hearing Brief at 116.

⁵¹ *Id.* at 115; the Staff's October 24, 2011 Post-Hearing Brief at 72 n.225.

⁵² The test period for this case ended on December 31, 2010. The Company's actual end-of-test period capital structure is as follows:

| | |
|-----------------------------|---------------|
| Short-term debt | 2.493% |
| Long-term debt | 42.567% |
| Preferred stock | 1.582% |
| Common equity | 53.250% |
| Investment tax credits | <u>0.110%</u> |
| <i>Total Capitalization</i> | <i>100%</i> |

See, e.g., Ex. 87 (Oliver direct) at Schedule 3, Page 1 of 3.

⁵³ We approve the actual end-of-test period cost of (i) long-term debt (5.418%), and (ii) short-term debt (0.404%). See, e.g., Ex. 87 (Oliver direct) at Schedule 3, Page 1 of 3.

⁵⁴ Va. Code § 56-585.1 A 2 a.

⁵⁵ See, e.g., the Staff's October 24, 2011 Post-Hearing Brief at 50-57; Fairfax County's October 24, 2011 Post-Hearing Brief at 3-8; FEA's October 24, 2011 Post-Hearing Brief at 16-31; Consumer Counsel's October 24, 2011 Post-Hearing Brief at 5-18; DVP's October 24, 2011 Post-Hearing Brief at 55-68. We also included in our analysis a broad range of economic factors addressed in the evidence.

⁵⁶ See, e.g., the Staff's October 24, 2011 Post-Hearing Brief at 51-56. Moreover, we note that the risk free rate (*i.e.*, 30-year Treasury bond yield) used in analyzing market cost of equity has decreased during the pendency of this proceeding – further supporting our findings herein. For example, Staff witness Oliver uses a three-month average 30-year Treasury rate of 4.34%. See, e.g., Ex. 87 (Oliver direct) at 20. During the hearing, however, it was shown that such rate had decreased to 3.30% for the week ending September 9, 2011. See, e.g., Ex. 34.

We find that the Staff's results, supported by respondents, utilize reasonable proxy groups, growth rates, discounted cash flow methods, and risk premium analyses. We conclude that the methodology employed by the Staff is consistent with the public interest and that the results herein satisfy constitutional standards as stated by Staff witness Oliver: "maintenance of financial integrity, the ability to attract capital on reasonable terms, and earnings commensurate with returns on investments of comparable risk."⁵⁷

Statutory Peer Group Floor

Virginia law next requires that the Commission calculate a statutory floor below which the authorized ROE cannot be set. Section 56-585.1 A 2 a of the Code states as follows:

[S]uch return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such biennial review, nor shall the Commission set such return more than 300 basis points higher than such average.

The participants contest the specific composition of the statutory peer group. In this regard, we find that DVP has not presented sufficient evidence to establish that Entergy Gulf States Louisiana's principal operations are conducted east of the Mississippi River.⁵⁸

Next, in selecting the majority of the peer group utilities to calculate the statutory ROE floor, § 56-585.1 A 2 b of the Code directs as follows:

In selecting such majority of peer group investor-owned electric utilities, the Commission shall first remove from such group the two utilities within such group that have the lowest reported returns of the group, as well as the two utilities within such group that have the highest reported returns of the group, and the Commission shall then select a majority of the utilities remaining in such peer group.

The participants differ on which utilities should comprise the "majority" to be selected by the Commission to determine the statutory floor. We select a majority that, on average, had a return on average equity closest to the ROE range found fair and reasonable herein.⁵⁹ This results in a statutory floor below the ROE of 10.4% determined above.⁶⁰

In this regard, the above statute clearly leaves the selection of this "majority" to the Commission's discretion. There is no ambiguity in the statute; thus, we do not reach questions of legislative construction or intent.⁶¹ If the General Assembly wanted the Commission to apply a particular approach or evaluation methodology in selecting a majority, it could have directed as such; it did not.⁶² We find that it is reasonable in this proceeding to select a majority that has an earned return that is close to the market cost of equity capital found fair and consistent with the public interest herein. The plain language of the statute giving the Commission the discretion to select a majority in no manner precludes such finding. Moreover, we do not, and need not, find that this is the only majority that is reasonable. We conclude that the specific majority chosen herein has a rational basis and does not violate any constitutional or statutory provision.

⁵⁷ Ex. 87 (Oliver direct) at 11.

⁵⁸ See, e.g., the Staff's October 24, 2011 Post-Hearing Brief at 49-50.

⁵⁹ We find that, on the facts before us in this case, it is reasonable to utilize returns on average equity for this purpose.

⁶⁰ The participants also differ on whether Appalachian Power Company ("APCo") should be considered part of the statutory peer group. If APCo is part of the statutory peer group, the statutory floor determined herein is 10.17%. If APCo is not part of the statutory peer group, the statutory floor determined herein is 10.33%. (For a list of utilities comprising such peer groups, see, e.g., Ex. 87 (Oliver direct) at Schedule 21; see also Consumer Counsel's October 24, 2011 Post-Hearing Brief at 15.) Thus, since both options are lower than 10.4%, we need not address whether APCo is part of the statutory peer group.

⁶¹ See, e.g., *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) ("If language is clear and unambiguous, there is no need for construction by the court; the plain meaning and intent of the enactment will be given it. . . . Therefore, when the language of an enactment is free from ambiguity, resort to legislative history and extrinsic facts is not permitted because we take the words as written to determine their meaning.") (citations omitted); *School Bd. of Chesterfield County v. School Bd. of the City of Richmond*, 219 Va. 244, 250, 247 S.E.2d 380, 384 (1978) ("Where a statute is plain and unambiguous there is no room for construction by the court and the plain meaning and intent of the statute will be given to it" (citation omitted).); *Almond v. Gilmer*, 188 Va. 1, 14, 49 S.E.2d 431, 439 (1948) ("The province of construction lies wholly within the domain of ambiguity" (citation omitted).).

⁶² Moreover, the lack of a particular evaluation methodology for selecting a "majority" directly contrasts with the very specific criteria prescribed by the General Assembly in other parts of § 56-585.1 A 2 of the Code.

Based on the evidence in this case and the statutory directive to determine fair rates of return on common equity using "any methodology to determine such return it finds consistent with the public interest,"⁶³ we have determined that a fair market cost of equity is within a range of 9.4% to 10.4%, and that 10.4% shall be used for these purposes.⁶⁴

Performance Incentive – Renewable Energy Portfolio Standard

Section 56-585.2 C of the Code provides in part:

[T]he Commission, in addition to providing recovery of incremental [renewable energy portfolio standard ("RPS")] program costs pursuant to subsection E, shall increase the fair combined rate of return on common equity for each utility participating in such program by a single Performance Incentive, as defined in subdivision A 2 of § 56-585.1, of 50 basis points whenever the utility attains an RPS Goal established in subsection D. Such Performance Incentive shall first be used in the calculation of a fair combined rate of return for the purposes of the immediately succeeding biennial review conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the utility continues to meet the RPS Goals established in this section through and including the third succeeding biennial review conducted thereafter. Any such Performance Incentive, if implemented, shall be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of return on common equity for the same time periods. However, if the utility receives any other Performance Incentive increasing its fair combined rate of return on common equity by more than 50 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance Incentive during the term of such other Performance Incentive.

DVP has met RPS Goals such that it is statutorily entitled to the RPS Performance Incentive under the above statute, which requires the Commission to increase the Company's fair combined rate of return on common equity by an additional 50 basis points.⁶⁵

Performance Incentive – Operations

Section 56-585.1 A 2 c of the Code states as follows:

The Commission may increase or decrease such combined rate of return by up to 100 basis points based on the generating plant performance, customer service, and operating efficiency of a utility, as compared to nationally recognized standards determined by the Commission to be appropriate for such purposes, such action being referred to in this section as a Performance Incentive. If the Commission adopts such Performance Incentive, it shall remain in effect without change until the next biennial review for such utility is concluded and shall not be modified pursuant to any provision of the remainder of this subsection.

The Company requests a 100 basis point Performance Incentive increase under this statute, while Consumer Counsel proposes a negative Performance Incentive (*i.e.*, a penalty).⁶⁶ We note that, unlike the RPS statute above, this statute gives the Commission discretion on two fronts. Specifically, the Commission has the discretion: (1) to apply, or not to apply, this Performance Incentive; and (2) to decrease, as well as to increase, the otherwise fair rate of return on common equity.

We decline to issue a Performance Incentive for operations under § 56-585.1 A 2 c of the Code – either positive or negative – based on the record in the current proceeding. As discussed by the Staff, Consumer Counsel, and others, some of DVP's metrics for generating plant performance and customer service were positive, and some were negative, as compared to nationally recognized standards.⁶⁷ In addition, we note that the Company did not propose any specific metrics for evaluating operating efficiency, and that the participants in this case expressed divergent views on some of the nationally recognized standards that should be applied to generating plant performance, customer service, and operating efficiency under the above statute. In this regard, we will forthwith initiate a rulemaking proceeding for further development of workable criteria for the implementation of this statute in future biennial review proceedings.

Overall Cost of Capital and Rate of Return on Rate Base

In sum, for this base rate proceeding we approve a rate of return on common equity for DVP of 10.9% (*i.e.*, 10.4% plus the 50 basis points for the RPS Performance Incentive), which results in an overall rate of return on rate base and cost of capital of approximately 8.234%, based on a December 31,

⁶³ Va. Code § 56-585.1 A 2 a.

⁶⁴ As required by statute, in setting ROE we have also considered and applied the requirements of § 56-585.1 A 2 e of the Code:

In addition to other considerations, in setting the return on equity within the range allowed by this section, the Commission shall strive to maintain costs of retail electric energy that are cost competitive with costs of retail electric energy provided by the other peer group investor-owned electric utilities.

Staff witness Stevens presented comparisons of DVP's rates to statutory peer group utilities. *See, e.g.*, Ex. 77 (Stevens direct) at 17-22 and Attachments.

⁶⁵ *See, e.g.*, the Staff's October 24, 2011 Post-Hearing Brief at 69. Based on average 2010 rate base and the capital structure found herein, this additional 50 basis points equates to approximately \$38.5 million of annual revenues for the Company.

⁶⁶ *See, e.g.*, Ex. 2 (Application) at 7-8; *see also* Consumer Counsel's October 24, 2011 Post-Hearing Brief at 19-20.

⁶⁷ *See, e.g.*, the Staff's October 24, 2011 Post-Hearing Brief at 58-70; Consumer Counsel's October 24, 2011 Post-Hearing Brief at 18-31.

2010 capital structure. We find that the ROE and overall rate of return on rate base approved herein are fair and reasonable to the Company within the meaning of the statute, permit the attraction of capital on reasonable terms, fairly compensate investors for the risks assumed, and enable the Company to maintain its financial integrity.

Applicability of ROE

Prior ROE under Stipulation

Consistent with the position of the signatories to the Stipulation, we adopt an 11.3% ROE to be, as proposed by DVP, applicable prior to the date of this Final Order, for each of its four existing RACs (which have a rate year of April 1, 2011 through March 31, 2012). Specifically, until the date of this Final Order, an ROE of 11.3% shall be applicable to Riders C1 and C2 (Case No. PUE-2010-00084 (peak shaving and demand-side management)), and an ROE of 11.3% plus a generating unit statutory adder of 100 basis points shall be applicable to Rider R (PUE-2010-00055 (Bear Garden Generating Station)) and Rider S (PUE-2010-00054 (Virginia City Hybrid Energy Center)).⁶⁸

Biennial Reviews

The 10.9% ROE determined in this proceeding (10.4% plus an RPS adder of 50 basis points) will serve as the fair combined rate of return against which DVP's earned return will be compared in its next biennial review proceeding.

Rate Adjustment Clause

The Company argues that the RPS adder of 50 basis points applies to RACs under §§ 56-585.1 A 5 and A 6 of the Code. Conversely, the Staff and Consumer Counsel assert that the RPS adder is not applicable to these RACs. We find that the Staff and Consumer Counsel offer the more accurate interpretation of the relevant statutory provisions. Thus, an ROE of 10.4% is applicable to qualifying RACs under §§ 56-585.1 A 5 and A 6 as of the date of this Final Order.

First, §§ 56-585.1 A 5 and A 6 contain explicit language on how to determine an ROE for the RACs permitted therein. Those statutory provisions, however, do not direct the Commission to include an RPS adder from § 56-585.2 C of the Code. Indeed, as explained above, the RPS adder is governed separately by § 56-585.2 C, which explicitly discusses such adder's applicability to biennial reviews – not to RACs.

Next, § 56-585.2 C of the Code explains that there are two possible adders, or "Performance Incentives," to which a utility may be entitled: (1) for attaining "RPS Goals;" and (2) for operational efficiency under subdivision A 2 of § 56-585.1. Section 56-585.2 C further directs that a utility may get one – but not both – adders. Thus, contrary to the Company's assertion, the reference in § 56-585.2 C to "as defined in subdivision A 2 of § 56-585.1" does not somehow implicitly require the Commission to treat an RPS adder as functionally equivalent to a subdivision A 2 adder. Rather, "subdivision A 2" is referenced therein as part of the explanation that the Commission may only approve a single Performance Incentive – either an RPS adder or a "subdivision A 2" adder, but not both. Furthermore, due to the very different requirements of these two adders, it is simply not possible under the statute to treat the RPS adder as the functional equivalent of a subdivision A 2 adder.⁶⁹

Finally, to the extent the statutory provisions governing this question are deemed ambiguous, we find that our above explanation of such provisions represents the most reasonable construction thereof. We find no legislative intent or purpose to apply (1) an RPS adder awarded for achieving *renewable* generation targets, to (2) RACs designed to recover costs of *non-renewable* generation (§ 56-585.1 A 6) and efficiency programs (§ 56-585.1 A 5 c). In addition, as discussed throughout this Final Order, the General Assembly has provided very specific, and explicit, directions on how the Commission is to determine the ROE and for what purposes. Those instructions, however, do not expressly state that an RPS adder shall be applied to RACs. It would take an unreasonable construction to conclude that the General Assembly, in contrast to its other express directives, implicitly mandated that the Commission must take the specific action increasing the ROE for RACs as DVP argues for herein.

SECTION 56-585.1 A 3 OF THE CODE

Section 56-585.1 A 7 of the Code states that "[a]ny petition [for a RAC] filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility." After a RAC is approved and implemented, however, § 56-585.1 A 3 of the Code directs in part as follows:

If the Commission determines that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously implemented pursuant to subdivision 4 or 5 or those related to facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues and investments only after it makes its initial determination with regard to necessary rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future biennial review proceedings.

⁶⁸ See, e.g., DVP's October 24, 2011 Post-Hearing Brief at 128-130.

⁶⁹ For example: (i) § 56-585.1 A 2 gives the Commission the discretion to reject a subdivision A 2 adder; (ii) § 56-585.2 C gives the Commission no discretion to reject an RPS adder; (iii) § 56-585.1 A 2 sets the temporal length of its adder at one biennial review; and (iv) § 56-585.2 C requires the RPS adder to exist for three biennial reviews, assuming the utility continues to meet the RPS goals established in § 56-585.2 C.

The Commission has determined that credits should be applied to customers' bills. DVP has three previously implemented RACs that fall within the above statute.⁷⁰

Thus, the above statute: (1) requires the Commission to "combine" such RACs with the utility's costs, revenues, and investments "until the amounts that are the subject of such [RACs] are fully recovered;" and (2) directs that after such RACs are combined, they "shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future biennial review proceedings." Accordingly, when DVP files revised tariffs as directed below, that filing shall also reflect such combining of existing RACs as required by the above statute. In addition, we will initiate a subsequent proceeding to address further implementation of this statute.

NEXT BIENNIAL REVIEW

Section 56-585.1 A 8 of the Code states in part as follows:

If the Commission determines as a result of such biennial review that:

...

(iii) Such biennial review is the second consecutive biennial review in which the utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matter determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9 and in addition to the actions authorized in clause (ii) of this subdivision, also order reductions to the utility's rates it finds appropriate.

We have determined, in the instant biennial review, that DVP earned more than 50 basis points above a fair combined rate of return. If we make a similar determination in DVP's next biennial review, the above statute requires the Commission to "order reductions to the utility's rates it finds appropriate."

Accordingly, since (a) the statute could require the Commission to order rate reductions in the next biennial review, and (b) the statute explicitly limits the time within which such biennial review must be concluded, we direct DVP to include information in its next biennial review application sufficient to permit the Commission to comply with the statutory directives.⁷¹ For example, we direct the Company to include – in its next biennial review application – complete rate case information and schedules as set forth in the Rate Case Rules.⁷²

Accordingly IT IS HEREBY ORDERED THAT:

- (1) The Company's Application is granted in part and denied in part as set forth in this Final Order.
- (2) The Company shall comply with the directives set forth in this Final Order.
- (3) The Company shall bear all costs incurred in effecting the credits to customers' bills set forth in this Final Order.

(4) The Company shall forthwith file revised tariffs and terms and conditions of service and supporting workpapers with the Clerk of the Commission and with the Commission's Divisions of Energy Regulation and Utility Accounting and Finance, as necessary to comply with the directives set forth in this Final Order. The credits required herein shall begin to take effect within sixty (60) days after the date of this Final Order. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.

(5) Within sixty (60) days of completing the credits to customers' bills ordered herein, the Company shall file with the Commission's Divisions of Energy Regulation and Utility Accounting and Finance a report verifying that all credits have been completed. The report shall also provide the cost incurred by the Company in effecting such credits.

- (6) This case is dismissed.

CHRISTIE, Commissioner, concurs:

Inclining Block Rates

I concur with the result in the Order declining to order the rate design changes advocated by Respondent Vanderhye in this proceeding. Since Respondent Vanderhye and Environmental Respondents have raised this issue in previous proceedings, I write separately to add some elaboration on my own reasoning.

⁷⁰ See, e.g., the Staff's August 26, 2011 Legal Memorandum at 8-9 (citing Rider T (transmission RAC, Case Nos. PUE-2009-00018, PUE-2010-00006, and PUE-2011-00044) and Riders C1 and C2 (demand-side management RACs, Case Nos. PUE-2009-00081 and PUE-2010-00084)).

⁷¹ This same information is necessary in the event a company under-earns and requests a rate increase.

⁷² Finally, in issuing this Final Order, to the extent relevant we have taken into consideration the goal of economic development in the Commonwealth as directed in § 56-596 A: "In all relevant proceedings pursuant to this Act, the Commission shall take into consideration, among other things, the goal of economic development in the Commonwealth."

Respondent Vanderhye and Environmental Respondents both advocate a change in DVP's residential rate design to incorporate what are known as "inclining block rates" in order to reduce the consumption of electricity.⁷³ Put most simply, a rate design based on inclining block rates increases the kilowatt-hour (kwh) rate charged as the consumer uses more electricity in the billing period, typically a month.

It is an economic truism that as the price for any product increases, the quantity demanded will decrease at the margin, assuming some degree of price elasticity. It is also an economic truism that the price mechanism is an effective device to affect the quantity demanded (consumption) of any product. These truisms support the premise of Respondent Vanderhye's and Environmental Respondents' basic argument, if the primary policy goal is to reduce consumption. Beyond these truisms, however, there exists a significant number of questions.

Changing the basic residential rate design for DVP from its current configuration to an inclining block rate configuration would be an exceedingly complex undertaking. Many factors would be relevant to the development of such a new rate design, including, but not limited to, the price elasticity of electricity, changes in demand by seasons of the year, effects of the new rate design on peak demand and plans to meet peak demand, differential impacts on residential consumers based on the types of home heating systems consumers have already purchased, and whether such rate design changes must achieve revenue neutrality within the residential rate class.

Undertaking such a significant change in how residential rates in Virginia are structured would represent a major shift from the ratemaking principles and rate design objectives this Commission has historically followed in base rate cases, such as, for example, the principle of cost causation and the objective of avoiding significant cost shifting between similarly situated customers. While this Commission has always designed rates as part of its ratemaking duties under applicable Virginia law,⁷⁴ implementing inclining block rates for all residential consumers in rate cases such as this one implicates many important questions that may well be considered matters of policy for the General Assembly. One obvious and important policy question is whether an inclining block rate design should be applied to the base rates of *all* public utilities, not just DVP, including electric, gas and water utilities. This Commission acts through individual rate cases when a utility – electric, gas or water – comes before the Commission for a rate case. Sometimes it is many years between base rate cases for individual utilities. The General Assembly could explicitly direct this Commission to implement inclining block rates in the base rates of all utilities in order to reduce consumption, but it has not.⁷⁵

Respondent Vanderhye argues that the General Assembly made such a policy decision when it enacted the "Energy objectives" and "Commonwealth Energy Policy" found in Chapter 1 of Title 67 of the Code of Virginia.⁷⁶ Chapters 1 and 2 of Title 67 do contain several clauses of aspirational policy goals such as "[m]anaging the rate of consumption of existing energy resources in relation to economic growth,"⁷⁷ "[u]sing energy resources more efficiently,"⁷⁸ "[f]acilitating conservation,"⁷⁹ and "[p]romot[ing] cost-effective conservation of energy and fuel supplies,"⁸⁰ but a consideration of those provisions does not lead to the conclusion that the General Assembly has directed this Commission to implement inclining block rates in all or some specific utility base rate cases in order to reduce consumption.

Given the many complex issues raised by such a change to the Commission's historical approach to rate design in base rate cases, issues that implicate major policy questions, it would be unwise for the Commission to undertake such a major change in ratemaking practice, absent clear policy direction from the General Assembly.

Charitable Contributions

I concur with the result in the Order, taking into consideration the Stipulation. Absent such, I do not think charitable contributions should be recoverable from customers for the reasons stated in my dissent in Case No. PUE 2011-00037, *Appalachian Power Company Biennial Review*, issued today.

⁷³ Environmental Respondents state: "While we do not endorse a specific [inclining block rate ('IBR')] proposal for this case, we do believe that IBR can be beneficial if it is implemented in collaboration with [demand-side management] programs." Environmental Respondents' October 24, 2011 Post-Hearing Brief at 3.

⁷⁴ See Chapter 10, Title 56, Code of Virginia.

⁷⁵ Whether rate mechanisms such as dynamic or time-of-day pricing should be included in proposals for the types of demand-side management programs referenced in Va. Code § 56-585.1 A 5 is a different issue than whether inclining block rates should be implemented in base rate cases in order to reduce consumption.

⁷⁶ See Mr. Vanderhye's October 24, 2011 Post-Hearing Brief at 1-2; and Exhibit 47 (Vanderhye direct) at 23-25. See also the "Virginia Energy Plan," found at Chapter 2 of Title 67 of the Code.

⁷⁷ Va. Code § 67-101(2).

⁷⁸ Va. Code § 67-101(4).

⁷⁹ Va. Code § 67-101(5).

⁸⁰ Va. Code § 67-102 A 4.

**CASE NO. PUE-2011-00027
DECEMBER 16, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For a 2011 biennial review of the rates, terms, and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia

ORDER GRANTING RECONSIDERATION

On November 30, 2011, the State Corporation Commission ("Commission") issued its Final Order ("Order") in this proceeding. Fifteen days later, on December 15, 2011, the Virginia Committee for Fair Utility Rates and Chaparral (Virginia) Inc. filed a joint petition for reconsideration and clarification ("Joint Petition") seeking reconsideration of the Order and requesting that the Commission clarify that, in allocating rate credits to customers, the GS-4 rate class should include any Special Contracts customers. Also on December 15, 2011, Virginia Electric and Power Company ("Dominion Virginia Power") filed a petition for rehearing or reconsideration ("Petition") of the effective date of the authorized 10.9% rate of return on common equity to Dominion Virginia Power's base rates for purposes of the 2013 biennial review.

NOW THE COMMISSION, upon consideration of these matters and for the purpose of continuing the Commission's jurisdiction over these matters, will grant reconsideration to consider the Joint Petition, the Petition and any other matters raised in timely filed petitions for reconsideration.

Accordingly, IT IS ORDERED THAT:

(1) Reconsideration is granted for the purpose of continuing the Commission's jurisdiction over these matters to consider the Joint Petition, the Petition, and any other matters raised in timely filed petitions for reconsideration.

(2) This case is continued.

**CASE NO. PUE-2011-00028
APRIL 21, 2011**

APPLICATION OF
COMMERCE ENERGY, INC

For a license to conduct business as a competitive service provider of natural gas and electric services

ORDER GRANTING LICENSES

On March 9, 2011, Commerce Energy, Inc. ("Commerce Energy" or "Company"), filed an application with the State Corporation Commission ("Commission") for a license to conduct business as a competitive service provider pursuant to §§ 56-235.8 F and 56-576 *et seq.* of the Code of Virginia ("Application"). The Company seeks authority to serve customers throughout the Commonwealth of Virginia where retail access and customer choices are available. The Company attested that it would abide by all applicable regulations as required by 20 VAC 5-312-40 B of the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules").

On March 23, 2011, the Commission issued an Order for Notice and Comment establishing the case; requiring that notice of the application should be served upon appropriate persons; providing for the receipt of comments from the public; and requiring the Commission's Staff to analyze the reasonableness of the application and present its findings in a report ("Staff Report"). The Company filed its proof of service on March 29, 2011. No comments on Commerce Energy's application were received from the public.

The Staff Report was filed on April 11, 2011. The Staff Report summarized Commerce Energy's proposals and evaluated its financial condition and technical fitness. In its Report, Staff recommended that Commerce Energy be granted a license to conduct business as a competitive service provider of competitive electricity and natural gas to commercial and industrial classes of customers within the Commonwealth of Virginia. Additionally, the Staff recommended that, if the Commission wishes to grant Commerce Energy's request to serve residential natural gas customers at this time, the Company should be required to give the Commission Staff thirty (30) days' advance notice before any marketing to residential customers is initiated in the Commonwealth. The Staff also recommended that, along with the letter of notice, the Company should be required to include examples of proposed mass marketing media, sample sales scripts or similar marketing information, as well as recent remediation steps taken to address compliance issues identified in the Staff Report. Finally, the Staff recommended that the Commission should administratively cancel License Nos. E-14A and G-22, as requested by the Company.

On April 14, 2011, Commerce filed its comments to the Staff Report wherein it stated that, although it has no current plans to market competitive natural gas services to residential customers in the Commonwealth, it will comply with the Staff's recommended notification procedures if it initiates marketing to residential customers in the Commonwealth. Commerce further respectfully requested that the Commission consider the recommendations offered by the Staff and supported by the Company.

NOW UPON CONSIDERATION of Commerce Energy's application, the Staff Report, and applicable law, the Commission finds that Commerce Energy's application for licenses to conduct business in the Commonwealth of Virginia as a competitive service provider for electricity and natural gas service should be granted, subject to the conditions set forth below.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- (1) Commerce Energy, Inc.'s existing licenses, License Nos. E-14A and G-22, are hereby terminated.
- (2) Commerce Energy, Inc., is hereby granted License No. E-26 to be a competitive service provider for electric service to commercial and industrial customers throughout the Commonwealth. This license to act as a competitive service provider for electric service is granted subject to the provisions of the Retail Access Rules, this Order, and other applicable laws.
- (3) Commerce Energy, Inc., is hereby granted License No. G-30 to be a competitive service provider for natural gas service to residential, commercial, and industrial customers throughout the Commonwealth as the Commonwealth opens to retail access and customer choice. As a condition to this license to serve residential customers, Commerce Energy, Inc., shall notify the Staff at least thirty (30) days prior to marketing to residential customers and provide examples of proposed mass marketing media, sample sales scripts or similar marketing information, as well as an updated list of remediation steps taken to address compliance issues identified in the Staff Report. This license to act as a competitive service provider for natural gas service is granted subject to the provisions of the Retail Access Rules, this Order and other applicable laws.
- (4) This license is not valid authority for the provision of any product or service not identified within the license itself.
- (5) This case shall remain open for consideration of any subsequent amendments or modifications to the license.

**CASE NO. PUE-2011-00029
MARCH 30, 2011**

APPLICATION OF
ATMOS ENERGY CORPORATION

For authority to issue common stock

ORDER GRANTING AUTHORITY

On March 10, 2011, Atmos Energy Corporation ("Atmos" or "the Company") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia seeking authority to issue common stock. Atmos has paid the \$250 requisite fee.

In its application, Atmos requests authority to issue 2,200,000 additional shares of common stock through its 1998 Long-Term Incentive Plan ("Plan").¹ Shares will be issued over a number of years with the proceeds being used to fund general corporate purposes.

According to the Company, the purpose of the Plan is to attract and retain the services of able persons as employees and non-employee directors, to provide such persons with proprietary interest in Atmos, and to motivate employees using performance-related incentives linked to longer-range performance goals. The types of awards that may be granted under the Plan include incentive stock options, non-qualified stock options, stock appreciation rights, restricted stock, restricted stock units, performance units, performance shares, bonus stock, and other stock unit awards.

THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- 1) Atmos is hereby authorized to issue 2,200,000 additional shares of common stock through its 1998 Long-Term Incentive Plan, under the terms and conditions and for the purposes set forth in the application.
- 2) There being nothing further to be done, this matter is hereby dismissed.

¹ The Commission has approved the issuance of common stock through the Plan in prior cases, most recently in Case No. PUE-2007-00015.

**CASE NO. PUE-2011-00032
JUNE 16, 2011**

JOINT APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY
and
AAET, L.P.

For authority to enter into a lease agreement pursuant to the Affiliates Act

ORDER GRANTING AUTHORITY

On March 18, 2011, Virginia-American Water Company ("VAWC") and AAET, L.P. ("AAET/ACS") (together, the "Joint Applicants"), filed a joint application ("Joint Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia

("Code"), for authority to enter into an amendment to a lease agreement under which AAET/ACS would provide VAWC with granular activated carbon ("GAC") and related services.

VAWC is a Virginia public service corporation headquartered in Alexandria, Virginia, which has a certificate of public convenience and necessity to operate public water systems in and around Alexandria, Dale City, Fort Lee, and Hopewell, Virginia. VAWC is a wholly owned subsidiary of American Water Works Company, Inc. ("AWWC").

AAET/ACS is a Delaware limited partnership headquartered in Voorhees, New Jersey. AAET/ACS supplies carbon regeneration materials to water facilities in the United States. AAET/ACS is a wholly owned subsidiary of AWWC.

Since VAWC and AAET/ACS share the same senior parent company, AWWC, the companies are considered affiliated interests under § 56-76 of the Code. As such, VAWC and AAET/ACS must obtain approval from the Commission pursuant to Chapter 4 of Title 56 of the Code (the "Affiliates Act") prior to entering into any contract or arrangement between the companies to provide or receive services.

In its Hopewell facility, VAWC uses GAC for taste and odor removal in the water treatment process. Taste and odor removal occurs as water passes through contactors filled with carbon, which adsorb odor-bearing compounds from the water. Eventually, the carbon becomes "spent" from odor removal and must be replaced. In the past, spent carbon was discarded and replaced with virgin carbon. Carbon reactivation, however, permits the reuse of spent carbon by subjecting the material to high temperatures in a rotary kiln furnace. The high temperatures destroy adsorbed compounds and reactivate the carbon's adsorption properties. Recycling the carbon reduces not only waste but also costs. Carbon reactivation also eliminates the tracking, manifesting, and liability associated with spent carbon disposal.

VAWC currently obtains its GAC from AAET/ACS under a Granular Activated Carbon Lease Agreement ("Lease Agreement") approved in Case No. PUE-2005-00066.¹ Under the Lease Agreement, VAWC has leased GAC from AAET/ACS to service three sets of filter vessels. Vessels 1D, 2A, and 2B were filled in February 2006; vessels 2C and 2D were filled in March 2006; and vessels 1A, 1B, and 1C were filled in December 2007. In June 2010, the Joint Applicants filed an application ("Purchase Application") requesting approval of an affiliate purchase/sale agreement ("Purchase Agreement") for GAC where VAWC would purchase GAC from AAET/ACS rather than leasing GAC. In June and July 2010, VAWC purchased GAC from AAET/ACS to fill filter vessels 1D, 2A, and 2B under the terms and conditions of the Purchase Agreement, which, at that point in time, was still pending before the Commission. The Joint Applicants eventually withdrew the Purchase Application when calculations comparing the cost of leasing and buying indicated that leasing would be more beneficial to VAWC. In December 2010, VAWC reversed the accounting entries for the June-July GAC purchase to convert it to an operating lease.

The Joint Applicants now request Commission authority to enter into an amended GAC lease agreement ("GAC Amendment"). The GAC Amendment is an amendment to the Lease Agreement. The GAC Amendment provides for AAET/ACS to remove, reactivate, and install GAC in VAWC's filter vessels 1D, 2A, and 2B. The Joint Applicants intend for the term of the GAC Amendment to be effective as of July 2010, or as soon thereafter as it is approved by the Commission, and to last thirty-six (36) months. Under the GAC Amendment, AAET/ACS will charge VAWC \$1.39 per pound of GAC. VAWC will pay AAET/ACS a monthly fee of \$5,421.41 for a total of \$195,170.76 to be paid over the course of the lease term. Alternatively, VAWC has the option of prepaying the lease amount in a lump-sum payment of \$166,800 upon commencement of the lease term. The Joint Applicants state that they used American Water Resources, Inc.'s ("AWR") cost of capital of 10.5% as the financing rate for the monthly payments.²

VAWC itself does not possess or own the equipment necessary to reactivate carbon. Several companies provide carbon reactivation services, including AAET/ACS. However, VAWC represents that AAET/ACS operates a carbon reactivation facility that is dedicated to processing only potable water grade carbon and selected food grade carbon, and AAET/ACS is the only carbon regenerator that will remove, process and return the same carbon initially utilized at VAWC's facility. This customized service avoids any concerns associated with the introduction of unknown contaminants from other facilities and processes. As stated above, VAWC has been obtaining its GAC through a Lease Agreement with AAET/ACS approved in an Order Granting Approval dated October 7, 2005, in Case No. PUE-2005-00066. The Commission previously approved similar GAC lease agreements between AAET/ACS and VAWC in Case Nos. PUA-2000-00061 and PUA-1997-00047.³

The Joint Applicants represent that the GAC Amendment charges are priced at the lower of cost or market. VAWC also compared the cost of leasing versus purchasing GAC from AAET/ACS. The lease/purchase analysis shows a present value benefit of \$11,910 when GAC is leased rather than purchased.

NOW THE COMMISSION, upon consideration of the Joint Application and representations of the Joint Applicants, and having been advised by its Staff ("Staff"), is of the opinion and finds that the GAC Amendment is in the public interest and, therefore, meets the test of the Affiliates Act and should be approved. The utilization of GAC to remove tastes and odors from the Hopewell facility's water supply provides a qualitative benefit to VAWC's customers. The GAC Amendment pricing methodology appears consistent with our practice of requiring utilities to pay the lower of cost or market for services received from unregulated affiliates. However, we believe that VAWC should be required to maintain records demonstrating that the GAC Amendment services provided by AAET/ACS remain cost beneficial to Virginia consumers throughout the term of the lease. Such records should be available for Staff review upon request. VAWC should bear the burden of proving, in any rate proceeding or annual informational filing, that VAWC paid AAET/ACS the lower or cost of market for all GAC Amendment services and that all components of such cost, including the financing rate, are reasonable.

¹ *Application of Virginia-American Water Company and American Water Resources, Inc., For approval of a lease agreement pursuant to the Affiliates Act, Va. Code § 56-76 et seq.*, Case No. PUE-2005-00066, 2005 S.C.C. Ann. Rept. 458, Order Granting Approval (Oct. 7, 2005).

² AWR is a Virginia corporation headquartered in Voorhees, New Jersey, that provides water and wastewater related products and services. AWR is a wholly owned subsidiary of AWWC.

³ *Application of Virginia-American Water Company, For approval of a lease agreement with its affiliate, American Water Resources, Inc., d/b/a American Carbon Services*, Case No. PUA-2000-00061, 2000 S.C.C. Ann. Rept. 224, Order Granting Approval (Oct. 24, 2000) and *Application of Virginia-American Water Company, For approval of a lease agreement with its Affiliate, American Commonwealth Management Services Company, Inc.*, Case No. PUA-1997-00047, 1997 S.C.C. Ann. Rept. 208, Order Granting Approval (Nov. 4, 1997).

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code, VAWC and AAET/ACS are hereby granted authority to enter into the GAC Amendment as described herein, consistent with the findings above.
- 2) The authority granted herein shall be effective as of the date of this Order.
- 3) When it becomes necessary for VAWC to replace the GAC serviced under the GAC Amendment, VAWC shall be required to obtain Commission authority if it obtains GAC or GAC related services from AAET/ACS or any other affiliated company.
- 4) VAWC shall be required to maintain records demonstrating that the GAC Amendment services provided by AAET/ACS remain cost beneficial to Virginia consumers throughout the term of the lease. Such records shall be available for Commission Staff review upon request. VAWC shall bear the burden of proving, in any rate proceeding or annual informational filing, that VAWC paid AAET/ACS the lower of cost or market for all GAC Amendment services and that all components of such cost, including the financing rate, are reasonable.
- 5) Commission authority shall be required for any changes in the terms and conditions of the GAC Amendment, including any successors or assigns.
- 6) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- 7) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by the Commission.
- 8) The authority granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.
- 9) VAWC shall include the transactions associated with the GAC Amendment approved herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting on or before April 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting.
- 10) If annual informational and/or general rate case filings are not based on a calendar year, then VAWC shall include the affiliate information contained in the ARAT in such filings.
- 11) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2011-00034
NOVEMBER 3, 2011**

PETITION OF
APPALACHIAN POWER COMPANY

For approval of a rate adjustment clause, RPS-RAC, to recover the incremental costs of participation in the Virginia renewable energy portfolio standard program, pursuant to Va. Code §§ 56-585.1 A 5 d and 56-585.2 E

ORDER APPROVING RATE ADJUSTMENT CLAUSE

On March 31, 2011, Appalachian Power Company ("APCo" or "Company"), pursuant to §§ 56-585.1 A 5 d and 56-585.2 E of the Code of Virginia ("Code"), filed with the State Corporation Commission ("Commission") a petition seeking to establish a rate adjustment clause, designated as Schedule R.P.S. – R.A.C. ("RPS-RAC"), to recover the incremental costs of the Company's participation in a renewable energy portfolio standard program ("RPS Program"). For the period 2008 through December 31, 2010, APCo indicates that it incurred approximately \$25 million of Virginia jurisdictional costs associated with two wind purchase power agreements, Camp Grove and Fowler Ridge.¹ Of this amount, APCo seeks to recover, through RPS-RAC rates effective February 1, 2012, approximately \$6.3 million of costs that the Company indicates are the Virginia jurisdictional incremental costs of its RPS Program. APCo also asks the Commission to provide guidance on the appropriate mechanism for the future recovery of the Company's non-incremental costs resulting from its participation in the RPS Program.

On April 12, 2011, the Commission issued an Order for Notice and Hearing that, among other things, established a procedural schedule for this case and directed APCo to provide public notice of its petition.

¹ In a prior proceeding, these two agreements were approved for inclusion in APCo's RPS Program. See Application of Appalachian Power Company, For Approval to Participate in the Virginia Renewable Energy Portfolio Standard Program, Case No. PUE-2008-00003, 2008 S.C.C. Ann. Rept. 466, Final Order (Aug. 11, 2008). In another prior proceeding, the Commission denied APCo's proposal to include in its RPS Program three additional wind purchase power agreements, the costs of which are not requested in the instant proceeding. See Application of Appalachian Power Company, For approval pursuant to Va. Code § 56-585.2 of purchase power agreements as part of its participation in the Virginia renewable energy portfolio standard program, Case No. PUE-2009-00102, 2010 S.C.C. Ann. Rept. 395, Order Denying Application (June 2, 2010).

The following parties filed notices of participation in this proceeding: VML/VACo APCo Steering Committee; Steel Dynamics, Inc.; the Old Dominion Committee for Fair Utility Rates ("Committee"); Michel A. King; and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel").² Additionally, the Honorable William Roscoe Reynolds, Member, Senate of Virginia, filed a Motion to Intervene.³

On August 23, 2011, the Committee and Consumer Counsel filed the testimony and exhibits of their expert witnesses. On September 6, 2011, the Commission Staff ("Staff") filed the testimonies and exhibits of its expert witnesses. The Company subsequently filed its rebuttal testimony.

The Commission held public hearings and received testimony from public witnesses in Abingdon (May 25, 2011), Rocky Mount (May 26, 2011), and Richmond (October 4, 2011), and received written and electronic comments in this case.⁴ The Commission convened the public evidentiary hearing on October 4, 2011.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

Code of Virginia

APCo seeks approval of its proposed RPS-RAC pursuant to Va. Code § 56-585.1 A 5 d, which allows a utility to petition the Commission for approval of a rate adjustment clause for the recovery of the following costs:

d. Projected and actual costs of participation in a renewable energy portfolio standard program pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve such a petition allowing the recovery of such costs as are provided for in a program approved pursuant to § 56-585.2; . . .

APCo also seeks approval under Va. Code § 56-585.2 E, which provides as follows:

E. A utility participating in such program shall have the right to recover all incremental costs incurred for the purpose of such participation in such program, as accrued against income, through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to, administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for funds used during construction until such time as an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1. All incremental costs of the RPS program shall be allocated to and recovered from the utility's customer classes based on the demand created by the class and within the class based on energy used by the individual customer in the class, except that the incremental costs of the RPS program shall not be allocated to or recovered from customers that are served within the large industrial rate classes of the participating utilities and that are served at primary or transmission voltage.

Calculation of Incremental Costs

We find that, based on the record, APCo's proposed methodology to calculate the incremental costs of its RPS Program is reasonable.⁵ We recognize the concerns raised regarding this methodology, including how it might apply under possible future scenarios.⁶ However, if warranted, this methodology may be revisited in future RPS-RAC proceedings based on additional experience.

2008 – 2010 Incremental Costs

We find that the \$6.3 million of costs requested by APCo are "incremental costs incurred for the purpose of . . . participation in [a RPS Program]" for which Va. Code § 56-585.2 E confers upon APCo "the right to recover."⁷ These two agreements were entered into by the Company for purposes of the

² Steel Dynamics, Inc., and Michel A. King filed Notices of Participation but did not otherwise participate in this proceeding.

³ Senator Reynolds ultimately elected to participate in this proceeding as a public witness. *See, e.g.*, Tr. at 13.

⁴ The public hearings in Abingdon and Rocky Mount were consolidated with public witness hearings for three other APCo rate proceedings: Case Nos. PUE-2011-00035, PUE-2011-00036, and PUE-2011-00037.

⁵ Most parties and the Staff supported, or did not oppose, approval of this methodology. *See, e.g.*, Tr. at 487 (Committee closing); Tr. at 506 (Staff closing); Tr. at 508-09 (APCo closing).

⁶ *See, e.g.*, Ex. 12 (Abbott) at 10-11; Ex. 9 (Norwood) at 16-18; Tr. at 286-91 (Potter).

⁷ Va. Code § 56-585.2 E. As discussed below, this finding does not eliminate APCo's ongoing obligation to prudently manage its RPS Program.

RPS Program, and their costs were previously found by the Commission to be reasonable for such purposes under the applicable statutory provisions.⁸ As such, the incremental costs of these agreements are properly recoverable through the RPS-RAC, as proposed by the Company.⁹

The \$6.3 million approved herein are the increased costs, as calculated through 2010, to APCo's Virginia retail customers resulting from the RPS Program statutes. This amount is exclusive of any additional future customer costs of the RPS Program, including from any return on equity increase directed by statute for the achievement of RPS Goals.¹⁰

Non-Incremental Costs

We find that it is reasonable to recover the non-incremental costs of the Camp Grove and Fowler Ridge purchase power agreements through APCo's fuel factor. These two agreements were entered into for purposes of the RPS Program, and these purchases were not made for reliability reasons or reserve margin requirements.¹¹ Accordingly, all demand and energy costs from these agreements – whether incremental or non-incremental – are recognized as "fuel costs" consistent with APCo's Definitional Framework for Fuel Expenses, which states, in part, that:

- c. Total energy costs associated with purchased power and charged to account 555 shall be recoverable as fuel costs. The demand component of such power purchases shall be recoverable as fuel costs except when such purchases are made for reliability reasons or the maintenance of reserve margin requirements.¹²

As discussed above, the incremental costs of the two purchase power agreements are properly calculated and allocated for recovery through the RPS-RAC, pursuant to Va. Code §§ 56-585.1 A 5 d and 56-585.2 E. The non-incremental costs for these agreements are now eligible for recovery through the Company's fuel factor upon the filing of a proper application.¹³

Renewable Energy Certificate Management

We do not determine, at this time, whether APCo acted imprudently in its treatment of 2008 and 2009 unsold renewable energy certificates ("RECs"). Rather, the Company has an affirmative obligation to manage the treatment of these RECs for the benefit of its Virginia customers – and shall demonstrate in its next RPS-RAC proceeding why its decision to sell, or not to sell, such RECs was prudent.¹⁴ Indeed, while we do not herein reach the question of prudence, the Company has not shown at this time that it has made every reasonable effort to maximize the value of these assets for the benefit of its customers.¹⁵ The Company similarly has the obligation to manage the treatment of RECs from 2010 or later, from generation that does not qualify as renewable under the Virginia statutes, or from amounts above the statutory goals, for the benefit of its Virginia customers – and shall likewise demonstrate in future proceedings why its decision to sell, or not to sell, such RECs was prudent.¹⁶

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The RPS-RAC is approved as requested by the Company and subject to the findings set forth herein.

(2) The Company forthwith shall file with the Clerk of the Commission and the Commission's Divisions of Energy Regulation and Public Utility Accounting a revised Schedule R.P.S. - R.A.C., which shall reflect the findings and requirements set forth herein.

⁸ See, e.g., Tr. at 305-06 (Baron); Tr. at 284 (Potter); *Application of Appalachian Power Company, For Approval to Participate in the Virginia Renewable Energy Portfolio Standard Program*, Case No. PUE-2008-00003, 2008 S.C.C. Ann. Rept. 466, Final Order (Aug. 11, 2008).

⁹ Several public witnesses questioned recovery through the RPS-RAC of costs for renewable energy produced outside of Virginia. See, e.g., Tr. at 11-12, 140. The statute, however, does not permit the Commission to deny cost recovery on such grounds. Rather, to achieve the statutory Virginia RPS Goals, Va. Code § 56-585.2 allows the use of "[r]enewable energy," which the Code specifically defines to include such energy "generated or purchased in the Commonwealth or in the interconnection region of the regional transmission entity of which the participating utility is a member, as it may change from time to time; . . ." Va. Code § 56-585.2 A.

¹⁰ See Va. Code § 56-585.2 C ("[T]he Commission, in addition to providing recovery of incremental RPS program costs pursuant to subsection E, shall increase the fair combined rate of return on common equity for each utility participating in such program by a single Performance Incentive, as defined in subdivision A 2 of § 56-585.1, of 50 basis points whenever the utility attains an RPS Goal established in subsection D. . .").

¹¹ See, e.g., Ex. 6 (Pearce) at 9; Tr. at 305-06 (Baron); Tr. at 284 (Potter).

¹² Ex. 4. See also Ex. 9 (Norwood) at 20-21. We find that these purchased power costs do not fall under the exception "for reliability reasons or the maintenance of reserve margin requirements."

¹³ In Case No. PUE-2009-00038, we denied fuel factor recovery of any Camp Grove and Fowler Ridge purchase power costs based on evidentiary deficiencies in that proceeding that have since been addressed by the Company in the instant proceeding. See *Application of Appalachian Power Company, To revise its fuel factor pursuant to Va. Code § 56-249.6*, Case No. PUE-2009-00038, 2009 S.C.C. Ann. Rept. 462, 466-67, Order Establishing Fuel Factor (Aug. 3, 2009).

¹⁴ See, e.g., Va. Code §§ 56-249.6 D 2, 56-585.1 D.

¹⁵ See, e.g., Ex. 12 (Abbott) at 14-15; Tr. at 456-57 (Potter). In addition, the evidence did not show that these RECs are currently without value. See, e.g., Tr. at 313 (Norwood); Tr. at 388 (Carr).

¹⁶ APCo also asks for direction regarding the applicability of our decision in Case No. PUE-2010-00132 ("*Covanta*"). See, e.g., Tr. at 518 (APCo closing). We provide no declaratory ruling herein; however, we note that the *Covanta* decision was based on a specific controversy between Covanta and Virginia Electric and Power Company, and that the decision therein was limited to the specific facts of that proceeding. See *Petition of Virginia Electric and Power Company, For a declaratory judgment*, Case No. PUE-2010-00132, Doc. Con. Cen. No. 448904, Order on Petition at 8, n.21 (June 17, 2011).

- (3) The RPS-RAC, as approved herein, shall become effective for service rendered on and after February 1, 2012.
- (4) The Company shall file its next RPS-RAC application on or before September 30, 2012.
- (5) This matter is continued.

**CASE NO. PUE-2011-00035
NOVEMBER 30, 2011**

PETITION OF
APPALACHIAN POWER COMPANY

For approval of a rate adjustment clause, E-RAC, to recover costs incurred in complying with state and federal environmental laws and regulations, pursuant to Va. Code § 56-585.1 A 5 e

ORDER APPROVING RATE ADJUSTMENT CLAUSE

On March 31, 2011, Appalachian Power Company ("APCo" or "Company"), pursuant to § 56-585.1 A 5 e of the Code of Virginia ("Code"), filed with the State Corporation Commission ("Commission") a petition seeking to establish a rate adjustment clause, designated as Schedule E-R.A.C. ("E-RAC"), to recover from its Virginia retail customers approximately \$77 million that the Company indicates are Virginia jurisdictional environmental costs that it incurred in 2009 and 2010.¹ The Company requests that this amount be collected through the proposed rate adjustment clause over a two-year period, with two annual amounts of \$38.5 million proposed for recovery beginning February 1, 2012.²

On April 12, 2011, the Commission issued an Order for Notice and Hearing that, among other things: established a procedural schedule for this case; directed APCo to provide public notice of its petition; and assigned, pursuant to § 12.1-31 of the Code, a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission.

The following parties filed notices of participation in this proceeding: VML/VACo APCo Steering Committee ("Steering Committee"); Steel Dynamics, Inc.; the Old Dominion Committee for Fair Utility Rates ("Committee"); and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel").³ Additionally, the Honorable William Roscoe Reynolds, Member, Senate of Virginia, filed a Motion to Intervene.⁴

On July 29, 2011, Consumer Counsel filed the testimony and exhibits of its expert witness. On August 12, 2011, the Commission Staff ("Staff") filed the testimonies and exhibits of its expert witnesses. The Company subsequently filed its rebuttal testimony.

The Commission held public hearings and received testimony from public witnesses in Abingdon (May 25, 2011), Rocky Mount (May 26, 2011), and Richmond (August 31, 2011), Virginia, and received written and electronic comments in this case.⁵ The Hearing Examiner convened the public evidentiary hearing on August 31, 2011. The parties and the Staff filed post-hearing briefs on September 30, 2011.

On October 14, 2011, the Hearing Examiner issued a report ("Hearing Examiner's Report") that explained the procedural history of this case, summarized the record, analyzed the evidence and issues in this proceeding, and made certain findings and recommendations. APCo, the Steering Committee, Consumer Counsel and the Staff subsequently filed comments on the Hearing Examiner's Report.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows.

Code of Virginia

APCo seeks approval of its proposed E-RAC pursuant to Va. Code § 56-585.1 A 5 e, which allows a utility to petition the Commission for approval of a rate adjustment clause for the recovery of the following costs:

- e. Projected and actual costs of projects that the Commission finds to be necessary to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations. The Commission shall approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations....

¹ Ex. 2 (Petition) at 2.

² *Id.*

³ Steel Dynamics, Inc., filed a Notice of Participation but did not otherwise participate in this proceeding.

⁴ Senator Reynolds ultimately elected to participate in this proceeding as a public witness. *See, e.g.*, Tr. at 13.

⁵ The public hearings in Abingdon and Rocky Mount, Virginia, were consolidated with public witness hearings for three other APCo rate proceedings: Case Nos. PUE-2011-00034, PUE-2011-00036, and PUE-2011-00037.

Ratemaking Methodology For APCo's Environmental Projects

For certain environmental projects undertaken by APCo, the Company proposes rate adjustment clause treatment pursuant to Va. Code § 56-585.1 A 5 e. The establishment of this type of rate is a choice by the Company that is subject to our review under the statute. APCo has previously sought – and received Commission approval – to recover the costs of certain environmental projects through its base rates.⁶ These also were choices by the Company that were subject to our review under separate provisions of the Code.⁷ It is undisputed that the rate adjustment clause recovery now proposed by the Company involves a "true-up" of certain costs that have already been included in the Company's base rates.⁸

Having already granted APCo base rate recovery for certain environmental costs, Va. Code § 56-585.1 A 5 e does not require us to later supplement those approvals – which we granted by final order – or to transfer recovery of base rate costs to a rate adjustment clause.⁹ The plain language of the statute simply does not reach the result sought by APCo.¹⁰ Indeed, for costs incurred following the expiration of APCo's capped retail rates on December 31, 2008, the Company has not cited any provision of the Code that requires the recovery of an environmental project's costs in two places (*i.e.*, through both base rates and adjustment clause rates) in the manner the Company proposes.¹¹ Nor does the Code suggest that our base rate decisions regarding environmental costs are mere placeholders subject to further modification through Va. Code § 56-585.1 A 5 e.

The recovery of environmental project costs through adjustment clause rates is an opportunity that is available separately from base rate recovery of such costs, as evidenced by the fact that they exist under separate statutory provisions involving different rate mechanisms. Blurring the statutory separation between these two opportunities, without statutory direction for such a result, is not required; nor is it reasonable under these circumstances when the choice between these options is with the Company and the adequacy of APCo's base rates is required, by statute, to be reviewed every two years.¹²

For the foregoing reasons, we adopt the Staff's ratemaking methodology for the recovery of actual costs for environmental projects undertaken by APCo.

Capacity Equalization Charges

By proposing the recovery of capacity equalization charges, APCo is not "simply trying to collect actual costs it has already incurred to meet state and federal environmental requirements" applicable to the Company.¹³ APCo's capacity equalization charges are costs incurred by the Company's affiliates and billed to APCo pursuant to the terms of an Interconnection Agreement between the Company and its affiliates.¹⁴ These charges are properly recovered through base rates and, in fact, have been a significant component of recent base rate increases that we have approved for the Company.¹⁵ However, for the reasons provided below, the additional recovery of capacity equalization charges through rate adjustment clause treatment is unsupported by the record and not required by Va. Code § 56-585.1 A 5 e.

In this case, APCo and the Staff have presented differing "estimate[s]" of the portion of capacity equalization expense that may be attributed to environmental projects undertaken by APCo's affiliates.¹⁶ These estimates are insufficient for purposes of determining the "actual" costs for compliance "projects" that are recoverable under Va. Code § 56-585.1 A 5 e or for ensuring that double-recovery would not occur if the recovery of capacity

⁶ *See, e.g.*, Ex. 11 (Carr) at 9-10. In addition to recoveries through prior and existing base rates, the base rates proposed by APCo in its pending biennial review proceeding, Case No. PUE-2011-00037, would continue to include the costs of environmental projects. *See, e.g.*, Tr. at 356-57 (Carr); Ex. 3 (Bosta direct) at Sch. 1.

⁷ *See, e.g.*, Va. Code §§ 56-582 C, 56-585.1 A, A 1.

⁸ *See, e.g.*, Ex. 11 (Carr) at 5-7.

⁹ To the contrary, the Code requires, under certain circumstances, the Commission to combine rate adjustment clauses approved under Va. Code § 56-585.1 A 5 e with the utility's other costs, revenues, and investments. Va. Code § 56-585.1 A 3.

¹⁰ As recognized by the Staff, Va. Code § 56-585.1 A 5 e "is silent on the relationship between the 'costs of projects' that are recoverable through this type of clause and the costs of environmental projects that are already embedded in base rates." Staff's Brief at 6.

¹¹ Va. Code § 56-582 B (vi) does not apply to any costs proposed for recovery in this case. The separate provisions of that statute provided for the recovery of "incremental" costs incurred during the "capped rate period," which expired, by operation of law, on December 31, 2008. The General Assembly supplanted capped retail electric rates with rates that are now subject to the electric "re-regulation" statutory framework, which includes Va. Code § 56-585.1 A 5 e. *See, e.g.*, Staff's Brief at 6-7, 11-13; Steering Committee's Comments at 8; Committee's Brief at 11.

¹² *See, e.g.*, Staff's Brief at 8-9; Committee's Brief at 11.

¹³ Ex. 15 (Bosta rebuttal) at 7.

¹⁴ Ex. 16 (Interconnection Agreement).

¹⁵ *See, e.g.*, *Application of Appalachian Power Company, For a statutory review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2009-00030, 2010 S.C.C. Ann. Rept. 308, 313, Final Order (July 15, 2010) (approving base rates that include an annual Virginia jurisdictional capacity equalization expense of \$154.6 million); Hearing Examiner's Report at 28.

¹⁶ *See, e.g.*, Ex. 17 (Allen rebuttal) at 5. APCo's proposal necessarily relies on additional calculations and assumptions regarding affiliate environmental projects because the Interconnection Agreement does not identify, much less provide for the calculation of, "environmental-related capacity equalization charges." *Compare* Ex. 15 (Bosta rebuttal) at 9 with Tr. at 347, 357 (Carr); Ex. 16 (Interconnection Agreement).

equalization charges, which do not specify an environmental component, were to be expanded beyond the base rate recovery currently afforded these charges.¹⁷

These estimates also do not justify recovery under Va. Code § 56-585.1 A 5 e because they fail to show that the proposed costs for facilities that APCo does not own accurately reflect actual "costs of projects" used to serve the Company's native load customers. Indeed, the Company's proposal would allow, as incremental environmental costs, the recovery of additional capacity equalization charges from its Virginia customers in scenarios without actual additional environmental investment.¹⁸ Moreover, to the extent investment by APCo's affiliates does occur, but is in anticipation of future compliance periods,¹⁹ the Commission is without jurisdiction to ensure such compliance projects will *ever* be used to serve the Company's native load customers.²⁰

We emphasize that our findings herein have no bearing on APCo's base rate recoveries of capacity equalization expense. The appropriate level of this expense remains recoverable through the Company's base rates.

Labor Costs

We remove labor costs from the proposed E-RAC, as recommended by the Hearing Examiner and unopposed in this case.²¹ Based on the record, we share the concerns expressed by Consumer Counsel and the Staff regarding the potential for double-recovery of labor costs through both base rates and adjustment clause rates.²²

Factoring Costs

We find that the Company has not established that the factoring costs at issue are "actual costs of projects ... necessary to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations" as set forth in § 56-585.1 A 5 e of the Code.²³

Continuous Mercury Monitoring Systems

We adopt the Hearing Examiner's recommendation to limit adjustment clause recovery of Continuous Mercury Monitoring System ("CMMS") projects to the costs incurred by APCo during the three months of 2009 for which a compliance requirement was in effect.²⁴

Cost of Capital and Capital Structure

We adopt the Hearing Examiner's cost of capital and capital structure recommendations. We find that the Staff's proposal reasonably calculates APCo's actual cost of capital for the relevant periods.²⁵

Revenue Allocation and Rate Design

We adopt the Hearing Examiner's recommendation that the revenue allocation and rate design for the E-RAC should be based on our findings made in the Company's Biennial Review, Case No. PUE-2011-00037, which we find to be reasonable.²⁶

¹⁷ As we deny recovery of capacity equalization charges through the proposed rate adjustment clause, several issues raised regarding the calculation or components of those charges are moot. *See, e.g.*, Ex. 9 (Norwood) at 15-18; Ex. 11 (Carr) at 21-24.

¹⁸ *See, e.g.*, Tr. at 319 (Carr).

¹⁹ *See, e.g.*, Ex. 4 (McManus) at 18 ("While [APCo's parent American Electric Power Company] has only begun its analysis of the proposed [Maximum Achievable Control Technology] rule, our current thinking is that the installed [Continuous Mercury Monitoring Systems] should be capable of meeting the mercury monitoring requirements of the rule with minor modifications.").

²⁰ We note that the Interconnection Agreement contains a termination clause that was recently invoked by APCo and its affiliates that are signatories to the Interconnection Agreement. *See, e.g.*, Ex. 16 (Interconnection Agreement) at 32.

²¹ *See, e.g.*, APCo's Brief at 20.

²² *See, e.g.*, Hearing Examiner's Report at 33-34.

²³ We note that treatment of factoring costs under this statute is consistent with the Commission's historical treatment of APCo's factoring costs associated with its fuel adjustment clause; that is, factoring costs associated with fuel recovery are not included in the fuel adjustment clause but, rather, are recovered through base rates.

²⁴ We further require future petitions filed under Va. Code § 56-585.1 A 5 e to identify, with specificity, all statutes and regulations on which such petitions rely. Hearing Examiner's Report at 43. We grant the clarification requested by APCo that physical copies of such statutes and regulations need not be filed. APCo Comments at 5.

²⁵ Hearing Examiner's Report at 38-39, 43 (citations omitted).

²⁶ *Id.* at 40-43 (citations omitted).

Revenue Requirement

We approve APCo's recovery of \$30 million, over a one-year period, through the Company's proposed E-RAC.²⁷

Accordingly, IT IS ORDERED THAT:

(1) The Company's petition is granted in part as set forth in this Order.

(2) The Company shall forthwith file a revised Schedule E-R.A.C. with the Clerk of the Commission and with the Commission's Division of Energy Regulation, in accordance with this Order, effective for bills rendered on and after sixty (60) days from the date of this Order. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This matter is dismissed.

²⁷ Consistent with our findings herein, this amount is derived by removing capacity equalization expenses from the Staff's proposed revenue requirement and adding those specific CMMS project costs allowed by the Hearing Examiner. See Ex. 11 (Carr) at Sch. 1, lines 6, 10, 12; Hearing Examiner's Report at 42.

**CASE NO. PUE-2011-00037
NOVEMBER 30, 2011**

APPLICATION OF
APPALACHIAN POWER COMPANY

For a 2011 biennial review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia

FINAL ORDER

On March 31, 2011, Appalachian Power Company ("APCo" or "Company") filed an Application¹ with the State Corporation Commission ("Commission") for a biennial review of the Company's rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia ("Code") and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.* Pursuant to § 56-585.1 A 8 of the Code, "[t]he Commission's final order regarding such biennial review shall be entered not more than eight months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order."

The Application requested a \$126,364,310 increase in base rates based on the Company's operations for the test year ended December 31, 2010. The Company stated that \$51 million of this amount is attributable to the inclusion of new depreciation rates on January 1, 2012. APCo requested to postpone the implementation of the new depreciation rates and to address the issue in its next biennial proceeding - which would reduce its requested rate increase to approximately \$75 million.² The Company subsequently revised its requested rate increase to approximately (i) \$117 million, or (ii) \$68.5 million if the Commission postpones implementation of new depreciation rates.³

The Application includes additional proposals, such as: (1) a Capacity Cost Tracker for the Company's capacity equalization costs; (2) a new residential rate design methodology; and (3) a commitment that, if the Company's jurisdictional earnings exceed the base return on common equity ("ROE") approved by the Commission, APCo will use the net funds available that were not otherwise credited to customers pursuant to § 56-585.1 A 8 to offset future rate increases or invest in improved reliability.⁴ The Application is based on a return on rate base of 8.14%, an ROE of 11.65 %, and the Company's proposed capital structure as of December 31, 2010. The Company's proposed 11.65% ROE includes a 0.50% Performance Incentive for meeting the first goal of the Renewable Energy Portfolio Standard ("RPS") Program, as provided in § 56-585.2 C of the Code.⁵

On April 12, 2011, the Commission issued an Order for Notice and Hearing that, among other things, established a procedural schedule for this case and directed APCo to provide public notice of this matter.

The following parties filed notices of participation: Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"); Steel Dynamics, Inc. ("SDI"); The Kroger Co. ("Kroger"); VML/VACo APCo Steering Committee ("VMLNACO"); Wal-Mart Stores East, LP, and Sam's East, Inc. (collectively, "Wal-Mart"); Roanoke Gas Company Roanoke Gas"); Chesapeake Climate Action Network, Appalachian Voices, and the Virginia Chapter of the Sierra Club (collectively, "Environmental Respondents"); Michel A. King; and the Old Dominion Committee for Fair Utility Rates ("Committee").

¹ Subsequent to March 31, 2011, the Company submitted to the Commission errata filings to address errors and omissions from the March 31, 2011 filing. References herein to the "Application" are inclusive of those errata filings.

² Application at 3. The Company also estimated, in response to a Commission Staff ("Staff") interrogatory, that approximately 49% or more of this \$75 million requested rate increase is attributable to environmental compliance costs. See Ex. 38 (Carr direct) at 9.

³ See, e.g., Ex. 11; APCo's October 14, 2011 Post-Hearing Brief at 1.

⁴ Application at 4-5.

⁵ *Id.* at 3.

The Commission held public hearings and received testimony from public witnesses in Abingdon (May 25, 2011) and Rocky Mount (May 26, 2011), and also received written and electronic comments from the public in this case. The Commission held the public evidentiary hearing in Richmond on September 13, 14, 15, and 16, 2011, where additional public witness testimony was received. The Commission also heard testimony from witnesses on behalf of the participants in this case and admitted more than 90 exhibits into the record.

On or before October 14, 2011, the following participants filed post-hearing briefs: APCo; VMLNACO; Wal-Mart; SDI; Kroger; Roanoke Gas; Environmental Respondents; Committee; Consumer Counsel; and Staff.

NOW THE COMMISSION, upon consideration of this matter, including all applicable legal requirements, is of the opinion and finds as follows.

"EARNED" RETURN

Section 56-585.1 A 8 of the Code provides in part as follows:

8. If the Commission determines as a result of such biennial review that:

(i) The utility has, during the test period or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair combined rate of return, using the most recently ended 12-month test period as the basis for determining the amount of the rate increase necessary. However, the Commission may not order such rate increase unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate increase under the standards of this sentence, and the amount thereof, . . .

The Company's existing fair rate of return on common equity during the test periods under review is 10.53 %.⁶ We find, as concluded by APCo and Staff, that the Company earned more than 50 basis points below such fair combined rate of return during the test periods under review herein.⁷ Thus, as directed by the above statute, "the Commission shall order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair combined rate of return."⁸

COST OF CAPITAL

Capital Structure and Cost of Debt

Section 56-585.1 A 10 of the Code requires the Commission to "utiliz[e] the actual end-of-test period capital structure" in this proceeding. Section 56-585.1 A 10 of the Code also requires the Commission to "utiliz[e] the actual end-of-test period . . . cost of capital" in this proceeding, which includes (i) long-term debt, and (ii) short-term debt. We find that Staff's testimony reflects the actual end-of-test period capital structure⁹ and cost of debt.¹⁰

Return on Equity

In determining ROE under the statute, we utilize the following process. First, we determine the market cost of equity under § 56-585.1 A of the Code. We then apply the statutory peer group ROE floor pursuant to § 56-585.1 A of the Code. Next, we increase ROE by any statutory Performance

⁶ *Application of Appalachian Power Company, For a statutory review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2009-00030, 2010 S.C.C. Ann. Rept. 308, Final Order (July 15, 2010) ("APCo 2009 Rate Case").

⁷ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 4-5.

⁸ Va. Code § 56-585.1 A 8 (i).

⁹ The test period for this case ended on December 31, 2010. The Company's actual end-of-test year capital structure is as follows:

| | |
|------------------------|---------|
| Short-term debt | 3.764% |
| Long-term debt | 53.248% |
| Preferred stock | 0.266% |
| Common equity | 42.693% |
| Investment tax credits | 0.029% |
| Total Capitalization | 100% |

See Ex. 35 (Maddox direct) at Schedule 1; Staff's October 14, 2011 Post-Hearing Brief at 73-74.

¹⁰ We approve the actual end-of-test period cost of (i) long-term debt (5.903%), and (ii) short-term debt (0.327%).

Incentive under §§ 56-585.1 A 2 c or 56-585.2 C of the Code. The result is a statutorily-required ROE, which we will combine with the Company's cost of debt to produce the overall cost of capital and rate of return on rate base.

Market Cost of Equity

Section 56-585.1 A 2 of the Code states that the Commission shall determine fair rates of return on common equity and "may use any methodology to determine such return it finds consistent with the public interest. . . ."¹¹ We find that a market cost of equity within a range of 9.4% to 10.4% represents the actual cost of equity in capital markets for companies comparable in risk to APCo seeking to attract equity capital and results in a fair and reasonable return on common equity. Furthermore, we find, under the circumstances of this case, that using the top of the range - 10.4% - is fair and reasonable for these purposes. This return is supported by the evidence in the record.¹² Conversely, we further find that APCo's proposed cost of equity of 11.15% neither represents the market cost of equity nor a reasonable return on common equity for the Company.¹³

We find that Staffs results, supported by the Committee, utilize reasonable proxy groups, growth rates, discounted cash flow methods, and risk premium analyses.¹⁴ We conclude that the methodologies employed by these witnesses are consistent with the public interest and that the results herein satisfy constitutional standards as stated by Mr. Oliver: "maintenance of financial integrity, the ability to attract capital on reasonable terms, and earnings commensurate with returns on investments of comparable risk."¹⁵

Statutory Peer Group Floor

Virginia law next requires that the Commission calculate a statutory floor below which the authorized ROE cannot be set. Section 56-585.1 A 2 a of the Code states as follows:

[S]uch return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such biennial review, nor shall the Commission set such return more than 300 basis points higher than such average.

In selecting the majority of the peer group utilities to calculate the statutory ROE floor, § 56-585.1 A 2 b of the Code directs as follows:

In selecting such majority of peer group investor-owned electric utilities, the Commission shall first remove from such group the two utilities within such group that have the lowest reported returns of the group, as well as the two utilities within such group that have the highest reported returns of the group, and the Commission shall then select a majority of the utilities remaining in such peer group.

No party contested the composition of the statutory peer group - which in this case is comprised of seven utilities after removing the companies with the two highest, and the two lowest, reported returns as required by the above statute.¹⁶ The participants, however, differ on which utilities should comprise the "majority" to be selected by the Commission to determine the statutory floor. We select a majority consisting of four statutory peer group utilities that, on average, had a return on average equity of 10.33%.¹⁷

In this regard, the above statute clearly leaves the selection of this "majority" to the Commission's discretion. There is no ambiguity in the statute; thus, we do not reach questions of legislative construction or intent.¹⁸ If the General Assembly wanted the Commission to apply a particular approach or evaluation methodology in selecting a majority, it could have directed as such; it did not.¹⁹ We find that it is reasonable in this proceeding to select a majority that has an earned return that is close to the market cost of equity capital found fair and consistent with the public interest herein. The plain

¹¹ Va. Code § 56-585.1 A 2 a.

¹² See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 74-84; Committee's October 14, 2011 Post-Hearing Brief at 7-23; APCo's October 14, 2011 Post-Hearing Brief at 72-80. We also included in our analysis a broad range of economic factors addressed in the evidence.

¹³ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 75-83; Committee's October 14, 2011 Post-Hearing Brief at 19-23. In addition, we find that APCo has not established that a flotation cost adjustment has actually been incurred, or that such is either reasonable or required in this proceeding. See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 83; Committee's October 14, 2011 Post-Hearing Brief at 22-23.

¹⁴ Moreover, we note that the risk free rate (i.e., 30-year Treasury bond yield used in analyzing market cost of equity has decreased

¹⁵ Ex. 68 (Oliver direct) at 5.

¹⁶ See, e.g., Tr. at 837 (Avera); Committee's October 14, 2011 Post-Hearing Brief at 24; Staff's October 14, 2011 Post-Hearing Brief at 84.

¹⁷ For a list of utilities comprising such peer group, see, e.g., Ex. 68 (Oliver direct) at Schedule 17. We find that, based on the facts before us in this case, it is reasonable to utilize returns on average equity for this purpose.

¹⁸ See, e.g., *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) ("If language is clear and unambiguous, there is no need for construction by the court; the plain meaning and intent of the enactment will be given it. . . .Therefore, when the language of an enactment is free from ambiguity, resort to legislative history and extrinsic facts is not permitted because we take the words as written to determine their meaning." (citations omitted)); *School Bd. of Chesterfield County v. School Bd. of the City of Richmond*, 219 Va. 244, 250, 247 S.E.2d 380, 384 (1978) ("Where a statute is plain and unambiguous there is no room for construction by the court and the plain meaning and particular approach or evaluation methodology in selecting a majority, it intent of the statute will be given to it" (citation omitted).); (1948) ("The province of construction lies wholly within the domain of ambiguity ... (citation omitted)).

¹⁹ Moreover, the lack of a particular evaluation methodology for selecting a "majority" directly contrasts with the very specific criteria prescribed by the General Assembly in other parts of § 56-585.1 A 2 of the Code.

language of the statute giving the Commission the discretion to select a majority in no manner precludes such finding. Moreover, we do not, and need not, find that this is the only majority that is reasonable. We conclude that the specific majority chosen herein has a rational basis and does not violate any constitutional or statutory provision.

Based on the evidence in this case and the statutory directive to determine fair rates of return on common equity using "any methodology to determine such return it finds consistent with the public interest,"²⁰ we have determined that a fair market cost of equity is within a range of 9.4% to 10.4%, and that 10.4% shall be used for these purposes.²¹

Performance Incentive - Renewable Energy Portfolio Standard (RPS)

Section 56-585 .2 C of the Code provides in part:

[T]he Commission, in addition to providing recovery of incremental RPS program costs pursuant to subsection E, shall increase the fair combined rate of return on common equity for each utility participating in such program by a single Performance Incentive, as defined in subdivision A 2 of § 56-585 .1, of 50 basis 11.4 points whenever the utility attains an RPS Goal established in subsection D. Such Performance Incentive shall first be used in the calculation of a fair combined rate of return for the purposes of the immediately succeeding biennial review conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the utility continues to meet the RPS Goals established in this section through and including the third succeeding biennial review conducted thereafter. Any such Performance Incentive, if implemented, shall be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of return on common equity for the same time periods. However, if the utility receives any other Performance Incentive increasing its fair combined rate of return on common equity by more than 50 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance Incentive during the term of such other Performance Incentive.

APCo has met RPS Goals such that it is entitled to the RPS Performance Incentive under the above statute, which requires the Commission to increase the Company's fair rate of return on common equity by an additional 50 basis points.²² The statutorily-required addition of 50 basis points for meeting RPS Goals increases the Company's rates by an additional amount of approximately \$7.75 million annually.

Overall Cost of Capital and Rate of Return on Rate Base

In sum, for this base rate proceeding we approve a rate of return on common equity for APCo of 10.9% (*i.e.*, 10.4% plus the 50 basis points for the RPS Performance Incentive), which results in an overall rate of return on rate base and cost of capital of approximately 7.823%. We find that the ROE and overall rate of return on rate base approved herein are fair and reasonable to the Company within the meaning of the statute, permit the attraction of capital on reasonable terms, fairly compensate investors for the risks assumed, and enable the Company to maintain its financial integrity. This finding reduces the Company's requested rate increase, which is based upon an overall cost of capital of 8.14%, including an ROE of 11.65%, by approximately \$11.77 million.

EXPENSES

Depreciation Expense

The Company's rates reflect its net investment in plant necessary to serve customers. This investment is included in rate base and incorporates an appropriate depreciation reserve related thereto. Thus, depreciation rates are periodically revised to reflect new plant, to update service lives, and to true-up reserve balances. Prior to the instant case, APCo's most recent depreciation study was based on plant as of December 31, 2005. We continue to find, as we have in prior proceedings, that it is important to implement new depreciation rates on a timely basis in order to correct imbalances in existing rates and to minimize future imbalances.²³

Implementation of the new depreciation rates increases the Company's expenses and reduces its rate base. Until new depreciation rates are implemented and expenses are recovered, these amounts remain in APCo's rate base and, as a result, customers must pay carrying costs (*i.e.*, the

²⁰ Section 56-585.1 A 2 a of the Code.

²¹ As required by statute, in setting ROE we have also considered and applied the requirements of § 56-585.1 A 2 e of the Code:

in addition to other considerations, in setting the return on equity within the range allowed by this section, the Commission shall strive to maintain costs of retail electric energy that are cost competitive with costs of retail electric energy provided by the other peer group investor-owned electric utilities.

See, *e.g.*, Staffs October 14, 2011 Post-Hearing Brief at 87-88. In addition, Staff witness Walker presented comparisons of APCo's rates to statutory peer group utilities. See, *e.g.*, Ex. 40 (Walker direct) at 16-22 and Attachments.

²² See, *e.g.*, APCo's October 14, 2011 Post-Hearing Brief at 72; Staff's October 14, 2011 Post-Hearing Brief at 87; Committee's October 14, 2011 Post-Hearing Brief at 30. In addition, Environmental Respondents note that the Commission has the authority to decrease APCo's return by up to 100 basis points for poor performance under § 56-585.1 A 2 c of the Code. No participant herein recommended such a performance penalty. Environmental Respondents, however, raised issues that it believes are relevant to such an evaluation (and which may be considered by the Commission in subsequent performance evaluations under that statute), including generation diversity, environmental compliance planning, and development of cost-effective demand-side management resources. Environmental Respondents' October 14, 2011 Post-Hearing Brief at 14-17.

²³ See, *e.g.*, Staff's October 14, 2011 Post-Hearing Brief at 14-16; Environmental Respondents' October 14, 2011 Post-Hearing Brief at 9-14.

Commission-approved overall cost of capital) on this investment. Thus, in the current circumstances, the longer new depreciation rates are delayed, the greater the total amount that customers may be required to pay over time.

Based on the particular circumstances presented in this proceeding, we find that the following is reasonable: (1) new depreciation rates should be based on the Company's depreciation study utilizing depreciable plant balances as of December 31, 2010 ("2010 Study") (not on the 2011 Technical Update as requested by APCo); and (2) new depreciation rates should be implemented as of the effective date of the rates approved herein (not on January 1, 2011 as requested by Staff). This finding increases rates by approximately \$39.5 million.²⁴

Capacity Equalization Charges

The Company is a member of the AEP East Power Pool, which is governed by an Interconnection Agreement approved by the Federal Energy Regulatory Commission ("FERC"). Under the Interconnection Agreement, a generating capacity obligation is calculated for each American Electric Power Company ("AEP") East company, and those companies that do not own enough capacity to satisfy their calculated obligation must make payments to those with surplus capacity. As explained by Consumer Counsel, "members pay their member load ratio ("MLR") share of the total AEP East system capacity," and "[t]his means that a member that has a capacity deficit position, compared to the overall pool, purchases capacity from the capacity surplus members."²⁵ Moreover, "[for] the last 30 years APCo has been, and continues to be, the most capacity deficit member of the AEP East pool."²⁶

We reject APCo's proposed estimated rate year capacity equalization charges, which are based on the Company's forecasts of its own capacity during the rate year, forecasts of the total AEP East capacity during the rate year, forecasts of the Capacity Equalization Rate paid by deficit members during the rate year, and APCo's projected MLR during the rate year.²⁷ Based on the uncertain and/or volatile nature of these items, we do not find that the Company's projections thereof "reasonably can be predicted to occur during the rate year."²⁸ Rather, we find that it is reasonable - as the Commission has found in prior APCo proceedings - to utilize actual cost data and a five-year average MLR for these purposes.²⁹ This finding increases the Company's rate request by approximately \$1.81 million.³⁰

Dresden Generating Facility

The Commission previously approved APCo's acquisition of the Dresden Generating Facility, a 580 MW natural gas-fired combined cycle generating plant located near Dresden, Ohio.³¹ The acquisition of the Dresden Generating Facility will reduce the Company's capacity equalization charges once the facility is placed in service. Based on specific facts presented in this case, we find that the commercial operation of the Dresden Generating Facility reasonably can be predicted to occur on or before March 2012. For example: (1) APCo has received all necessary approvals for the facility; (2) the facility has been transferred to APCo and is reflected on the Company's books; (3) the Company is ahead of schedule to commence commercial operation by February 29, 2012; (4) pre-commercial operations testing is scheduled for October 2011; and (5) the facility is not deploying new, risky, or unusual technology but, rather, is a conventional natural gas-fired plant.³² This finding reduces the Company's rate request by approximately \$27.53 million.³³

²⁴ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 12; Ex. 38 (Carr direct) at 75. This amount represents an impact of (1) \$38.6 million from using the 2010 Study, and (2) \$848,752 from implementing on the effective date of the rates approved herein.

²⁵ Consumer Counsel's October 14, 2011 Post-Hearing Brief at 4.

²⁶ *Id.*

²⁷ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 23. Staff further explains that the Capacity Equalization Rate is the price charged for APCo's capacity deficiency and consists of (i) the Capacity Investment Rate, which is based on the gross installed cost of the surplus members' generating units and a FERC-approved annual carrying charge of 16.49%, and (ii) the Fixed Operating Rate, which is based on the operating costs and one-half of the maintenance costs of the surplus members' units. *Id.* at n.58. In addition, the Company's MLR is the relationship between its peak demand and the total non-coincident peak demand of the AEP East system, all measured over the preceding twelve months, and each member's capacity obligation is determined on a monthly basis by multiplying the total AEP East capacity by its MLR. See, e.g., *APCo 2009 Rate Case* at 313, n.46.

²⁸ Section 56-235.2 A of the Code permits "annualized adjustments for future costs as the Commission finds reasonably can be predicted to occur during the rate year." See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 22-26.

²⁹ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 22-26. We likewise find that it is reasonable (a) to adjust for the loss of Century Aluminum's load in West Virginia, (b) to adjust for the additional load served by competitive retail electric service providers in Ohio that contribute to the MLR peaks of Columbus Southern Power Company ("Columbus Southern") and Ohio Power Company ("Ohio Power"), and (c) not to remove any wind capacity when calculating rate year capacity equalization charges. See, e.g., *id.* at 24-26. We further conclude that the Interconnection Agreement requires the use of non-coincident peaks, as opposed to SDI's recommendation of coincident peaks, for this purpose. See, e.g., APCo's October 14, 2011 Post-Hearing Brief at 24.

³⁰ See Staff's October 14, 2011 Post-Hearing Brief at Attachment A.

³¹ *Application of Appalachian Power Company, AEP Generating Company, and American Electric Power Company, Inc., For authority to enter into affiliate transactions under Title 56, Chapter 4 of the Code of Virginia*, Case No. PUE-2011-00023, Doc. Con. Cen. No 110720091, Order Granting Authority (July 20, 2011).

³² See, e.g., Consumer Counsel's October 14, 2011 Post-Hearing Brief at 17-18; Committee's October 14, 2011 Post-Hearing Brief at 32-35; Staff's October 14, 2011 Post-Hearing Brief at 26-28.

³³ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 28.

Sporn Unit 5

Ohio Power has requested authority from the Public Utility Commission of Ohio ("PUCO") for approval to retire Sporn Unit 5, a 450 MW unit in New Haven, West Virginia.³⁴ The retirement of Sporn Unit 5 will decrease APCo's capacity equalization charges. Based on specific information presented in this case, we find that the removal of Sporn Unit 5 from APCo's capacity equalization charges reasonably can be predicted to occur during the rate year, which begins in 2012. For example: (1) AEP has slated the unit for retirement in 2011; (2) PJM Interconnection LLC ("PJM") has already approved such retirement; (3) this retirement is included in APCo's 2009 Integrated Resource Plan; (4) no party has opposed this retirement in the proceeding before the PUCO; and (5) the Company asserts that it has taken positive, effective steps that will necessarily remove the gross investment cost of this unit from the calculation of APCo's capacity equalization charges as of December 31, 2011.³⁵ This finding reduces the Company's rate request by approximately \$6.33 million.³⁶

Ohio Merger

Ohio Power and Columbus Southern requested merger approval from the FERC and PUCO. The completed merger of these two companies will likely decrease APCo's capacity equalization charges. We do not find, however, that the proposed merger of these affiliates of APCo is sufficiently progressed to where such merger reasonably can be predicted to occur during the rate year.

Interconnection Agreement

Consumer Counsel asserts that APCo has acted imprudently and unreasonably under the Interconnection Agreement by, among other things, not making non-affiliate capacity purchases - and, thus, Consumer Counsel requests that the Commission disallow certain costs incurred under the Interconnection Agreement.³⁷ In APCo's prior rate case, the Commission explained that it was "concerned that the decision making over recent years regarding capacity changes has had a significant adverse effect on APCo and its ratepayers."³⁸ We also noted that the "Commission, however, is limited in its jurisdiction regarding APCo's capacity equalization expense under the Interconnection Agreement, which is a wholesale power pooling agreement that has been approved by FERC. . . ."³⁹ In this instance, the overall facts, as well as the legal authority supporting the action requested by Consumer Counsel, have not been sufficiently established on this record.

Capacity Cost Tracker

We deny the Company's request for a Capacity Cost Tracker ("CCT"). We find that a CCT is not necessary in order for APCo to have an opportunity to recover the capacity equalization charges found reasonable herein.

Off-System Sales

Section 56-249.6 D I of the Code provides in part as follows:

Energy revenues associated with off-system sales of power shall be credited against fuel factor expenses in an amount equal to the total incremental fuel factor costs incurred in the production and delivery of such sales. In addition, 75 percent of the total annual margins from off-system sales shall be credited against fuel factor expenses; however, the Commission, upon application and after notice and opportunity for hearing, may require that a smaller percentage of such margins be so credited if it finds by clear and convincing evidence that such requirement is in the public interest. The remaining margins from off-system sales shall not be considered in the biennial reviews of electric utilities conducted pursuant to § 56-585.1. In the event such margins result in a net loss to the electric utility, (i) no charges shall be applied to fuel factor expenses and (ii) any such net losses shall not be considered in the biennial reviews of electric utilities conducted pursuant to § 56-58.1. For purposes of this subsection, "margins from off-system sales" shall mean the total revenues received from off-system sales transactions less the total incremental costs incurred;

....

We reject Consumer Counsel's and Staffs request to reduce base rates by 100% of revenues from off-system sales of capacity.⁴⁰ Neither participant established that the Commission has the legal authority to take such action. To the contrary, the above statute (i) does not distinguish between off-system "energy" sales and off-system "capacity" sales, and (ii) directs that a maximum of 75% of "total revenues" received from off-system sales transactions may be credited against expenses for the benefit of customers.

³⁴ *In the Matter of the Application of Ohio Power Company for Approval of the Shutdown of Unit 5 of the Philip Sporn Generating Station and to Establish a Plant Shutdown Rider*, PUCO Case No. 10-1454-EL-RDR. See also Staff's October 14, 2011 Post-Hearing Brief at 28-29; Consumer Counsel's October 14, 2011 Post-Hearing Brief at 19-20.

³⁵ See, e.g., Consumer Counsel's October 14, 2011 Post-Hearing Brief at 19-20; APCo's October 14, 2011 Post-Hearing Brief at 28.

³⁶ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 29.

³⁷ See, e.g., Consumer Counsel's October 14, 2011 Post-Hearing Brief at 4-16.

³⁸ APCo 2009 Rate Case at 313.

³⁹ *Id.*

⁴⁰ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 71; Consumer Counsel's October 14, 2011 Post-Hearing Brief at 16.

Cook Accidental Outage Insurance Proceeds

The Cook Nuclear Power Station ("Cook") is located in Bridgman, Michigan, and is owned by Indiana and Michigan Power Company ("I&M"). Cook Unit 1 experienced an accident on September 20, 2008, and remained out of service until December 18, 2009.⁴¹ I&M maintains property damage and accidental outage insurance on Cook and, thus, has received proceeds under both its property damage and accidental outage insurance policies.⁴² Staff proposes to allocate to APCo a share of I&M's accidental outage insurance policy proceeds. We find that it is reasonable not to deem these specific insurance proceeds received by I&M to be allocable for rate setting purposes in Virginia, and we do not have jurisdiction to direct I&M to share insurance proceeds with its affiliates. We note, however, that this issue presents another example of how APCo's customers have not been appropriately protected by decisions at the holding company level; while APCo's affiliate receives insurance proceeds pursuant to its insurance contract, the Company must pay for replacement power while it also continues to pay a share of Cook's fixed capacity costs.

2010 Employee Severance Program

In 2010, AEP implemented cost reduction initiatives associated primarily with workforce reductions.⁴³ The final cost of the workforce reduction was \$299 million at a total AEP level. The Company's "share of those costs was approximately \$26.7 million, of which \$16.7 million of such costs was directly related to [APCo's] workforce reductions and approximately \$10 million of such costs was for the Company's share of [American Electric Power Service Corporation's ("AEPSC")] workforce reductions.⁴⁴ We reject the Company's request to defer and amortize the costs of the workforce reduction program over four years beginning with the effective date of the rates approved in this case, which would "cause customers to pay the full amount of the workforce reduction costs over that period of time."⁴⁵

We find that it is reasonable - for regulatory accounting purposes in this case - to match the specific costs of this severance program with the specific savings related thereto. We deny the Company's proposal to evaluate earnings to determine whether these 2010 costs should be deferred, amortized, and collected in full from ratepayers in the future. Rather, we conclude that it is appropriate for the amortization of the costs of this program to commence with - and to track - the realization of the savings related thereto in a manner that effectuates the matching of costs and savings. Moreover, this finding provides the Company with a reasonable opportunity to recover its severance costs.

In this regard, based on the evidence presented, we find that the savings realized from this cost reduction initiative exceed the costs thereof prior to the start of the rate year in this case.⁴⁶ As a result, these severance costs will be completely amortized before the beginning of the rate year, and, thus, no such costs shall be included in rates prospectively. This finding reduces the Company's rate request by approximately \$6.03 million.⁴⁷

Employee Incentive Compensation Plans

AEP has an Annual Incentive Plan ("AIP") and a Long-Term Incentive Plan (collectively, "Incentive Plans"). Award calculations for the Incentive Plans are based on AEP's earnings and shareholder returns, and AEP's earnings performance ultimately determines the AIP payouts in any given year.⁴⁸ In APCo's prior rate case, we found that the Company had not yet shown that 100% of the Incentive Plan expenses should be approved; rather, we approved only 50% of such Costs.⁴⁹ In this proceeding, however, APCo has established that 100% of these Incentive Plan costs should be approved. The Company has established that its total compensation costs - which include Incentive Plan costs - are reasonable for purposes of this proceeding. That is, the Company's total compensation package, including Incentive Plan compensation, "results in compensation that is not higher than and is comparable to the market competitive level of compensation."⁵⁰ Indeed, as stated by APCo, the "reasonableness of the Company's total compensation to employees is uncontroverted in this record."⁵¹ We approve APCo's Incentive Plan expenses as normalized by the Company.⁵²

⁴¹ See, e.g., APCo's October 14, 2011 Post-Hearing Brief at 32.

⁴² See *id.*

⁴³ See, e.g., APCo's October 14, 2011 Post-Hearing Brief at 61; Staff's October 14, 2011 Post-Hearing Brief at 36.

⁴⁴ Staff's October 14, 2011 Post-Hearing Brief at 36.

⁴⁵ *Id.* at 36-37.

⁴⁶ See, e.g., *id.* at 36-39.

⁴⁷ *Id.* at 39.

⁴⁸ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 33-36.

⁴⁹ See APCo 2009 Rate Case at 315-316.

⁵⁰ APCo's October 14, 2011 Post-Hearing Brief at 58.

⁵¹ *Id.* at 57.

⁵² *Id.* at 57-60. In addition, we find that ratepayers should not bear Incentive Plan expenses that exceed a payout ratio of 100%, the benefits of which accrue to shareholders. See, e.g., Ex. 38 (Carr direct) at 50-51. We note, however, that APCo's normalized Incentive Plan expenses approximate such result and, thus, are approved herein. See *Id.*

Environmental Consumable Expenses

We reject APCo's use of forecasts and projections for environmental consumable expenses. As explained by Staff:

[APCo] incurs expenses to operate its environmental control equipment. These expenses include the handling and disposal of gypsum, a by-product of the [flue gas desulfurization] process, and the consumption of urea, limestone, trona, polymer, and lime hydrate. The Company also incurs additional expenses to consume emission allowances, which are used to offset emissions of regulated pollutants.⁵³

The Company's proposed adjustments for its environmental consumables are based on its forecasts of these costs, which "depend on numerous inputs and variables, including the generation output of the Company's fossil-fuel units with and without environmental controls and the market prices of the consumables."⁵⁴ Moreover, the "market prices of consumables, in turn, depend on their supply and the utility and other industries' demand for the environmental consumables," and the "demand for environmental consumables, in turn, depends on the installation of environmental controls by other utilities and national economic conditions."⁵⁵ We do not find that the Company's overall projections of future expenses in this regard, given all of the unknown variables and inputs that may affect the Company's use and cost of environmental consumables, "reasonably can be predicted to occur during the rate year."⁵⁶ Rather, we find that, based on the unique circumstances here, these environmental expenses should reflect an analysis of actual data audited by Staff and then increased to an annualized amount. We conclude that it is reasonable to annualize these expenses using the March 2011 actual data audited by Staff, and that utilizing this level of environmental expenses provides the Company with a reasonable opportunity to recover its costs. This finding reduces APCo's rate request by approximately \$1.44 million, but increases the level of consumables over Staff's recommendation by approximately \$2.9 million.⁵⁷

PJM Ancillary Fees and Emission Allowance Gains

We reject APCo's use of forecasts and projections for PJM ancillary fees and emission allowance gains. As stated by Staff:

PJM ancillary fees, for example, depend on the amount of hours that AEP's generating plants run and the market prices of electricity. The number of hours AEP generating plants will run during the rate year and the rate year market prices for electricity are also notoriously difficult to reasonably predict. . . . Factors influencing [emission allowance] gains include the total amount of allowances available to APCo, the amount of allowances used to offset emissions (influenced in turn by customer usage and corresponding generation output, as well as output for [off system sales] which depends in large part on market prices for electricity, APCo's generation source mix which can depend on unpredictable variables such as fuel prices and unplanned outages, and the Company's installation of environmental controls) and the market prices for allowances (influenced in turn by national economic conditions, total U.S. emissions, the generation output and installation of environmental controls by all other U.S. utilities, and the generation source mix of all other U.S. utilities).⁵⁸

We do not find that the Company's projections of PJM ancillary fees and emission allowance gains "reasonably can be predicted to occur during the rate year."⁵⁹

Rather, we continue to find, as we did in APCo's prior rate case, that PJM ancillary fees and emission allowance gains should reflect an analysis of actual data provided in the record. In this regard, we conclude that it is reasonable to use the actual 12-month period ending March 31, 2011, and that such level of fees provides the Company with a reasonable opportunity to recover its costs. This finding, which increases rates by approximately \$2.86 million, plus a \$4 million increase due to a technical correction identified by Staff, increases APCo's rate request by approximately \$6.86 million.⁶⁰

Office of the Chairman

We approve APCo's proportional share of the costs associated with AEPSC's Office of the Chairman department.

⁵³ Staff's October 14, 2011 Post-Hearing Brief at 44.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Va. Code § 56-235.2 A.

⁵⁷ In addition, we note that these environmental consumables are not the only environmental-related costs included in the Company's base rate request herein. For example, Staff witness Carr estimated that "environmental compliance costs included in [Staff's] recommended revenue requirement have increased by at least \$35.6 million from the level included in base rates approved in Case No. PUE-2009-00030 to an approximate annual amount of \$225.2 million." Ex. 38 (Carr direct) at 9.

⁵⁸ Staff's October 14, 2011 Post-Hearing Brief at 48 (citations and internal quotes omitted). Moreover, Staff notes that "the year-to-year variation in the emission allowance gains is further evidence of their unpredictability, with [APCo's] gains, on a Virginia-jurisdictional basis, ranging from as low as \$2.8 million in 2003 to as high as \$17 million in 2010." *Id.* at 49.

⁵⁹ Va. Code § 56-235.2 A.

⁶⁰ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 50. This represents an increase for PJM ancillary fees of approximately \$4.29 million, and an increase for emission allowance gains of approximately \$2.57 million (which includes the \$4 million correction).

Amortization Period for 2009 Deferred Storm Damage Costs

In APCo's prior rate case, the Commission allowed the Company to defer on its books the costs of major storms that occurred in December 2009. We find that it is reasonable to amortize and recover these storm costs over a six-year period, beginning with the effective date of the rates approved in this case. This treatment, as recommended by Staff, permits full recovery of these costs and coincides with the Company's biennial review schedule.⁶¹ This finding reduces the Company's rate request by approximately \$813,740.⁶²

Software Licensing Expense

We adopt the Company's alternative proposal on how to address the multi-year nature of its software licensing costs, which are incurred on a three-year cycle. Specifically, we find that it is reasonable to defer and amortize these costs over the three-year term of the software license agreement, which results in an annual amortization level of \$307,837.⁶³ This finding reduces the Company's rate request by approximately \$615,674.⁶⁴

Asset Retirement Obligations

We find that it is reasonable - as recommended by APCo and Staff and as previously approved by the Commission - to permit recovery of asset retirement obligation plant assets through depreciation expense.⁶⁵

Obsolete Inventory

We find that it is reasonable - as recommended by APCo and Staff - to adjust obsolete inventory expense to reflect a five-year average.⁶⁶

Charitable Contributions

We reject the Company's proposed level of charitable contribution expense, which is higher than APCo's proposed budgeted amount for 2011. Rather, as recommended by Consumer Counsel, we find that such expense should be limited to APCo's budget for this item - the expenditure of which is within the Company's control. This in no manner limits additional contributions to charity by APCo but, rather, establishes the level that will be shared by ratepayers in this case. Thus, we conclude that such expense should (i) exclude AEP Foundation contributions (as proposed by the Company), and (ii) include only 50% (consistent with Commission precedent) of APCo's budget for charitable contributions. This finding reduces the Company's rate request by approximately \$106,000.⁶⁷

Lobbying Expenses

Lobbying expenses are not included in cost of service and are not recovered from ratepayers. Six employees of AEPSC work in the Washington, D.C. office. We find that it is reasonable to allocate 90% of the Virginia portion of the expenses of this office to lobbying activities (not in cost of service) and 10% to non-lobbying activities (included in cost of service).⁶⁸ This reduces the Company's rate request by approximately \$57,872.

Central Machine Shop

We find that APCo's share of salary expenses for employees of AEPSC's Central Machine Shop are approved.⁶⁹

Medicare Part D - Tax Law Change

Changes in federal law that became effective in 2010 "repealed the rule permitting deduction of the portion of prescription drug coverage expense that is offset by the Medicare Part D subsidy. With the change in the law, [APCo's] expected tax deductions after 2012 will be reduced by drug coverage expenses allocable to the Medicare Part D subsidy."⁷⁰ As further explained by Staff: "The increase in deferred income tax expense that occurs with the reduction in deferred tax assets relates to prior years during which Medicare Part D subsidies were netted against accrued [Other Post Retirement

⁶¹ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 52-53.

⁶² *Id.* at 53.

⁶³ See, e.g., APCo's October 14, 2011 Post-Hearing Brief at 64. Such deferral does not create a rate base asset, and the Company shall not earn a return on such deferral.

⁶⁴ *Id.*

⁶⁵ *Id.* at 64-66.

⁶⁶ *Id.* at 67.

⁶⁷ See, e.g., Consumer Counsel's October 14, 2011 Post-Hearing Brief at 40-41.

⁶⁸ See, e.g. Staff's October 14, 2011 Post-Hearing Brief at 68-70.

⁶⁹ See, e.g., APCo's October 14, 2011 Post-Hearing Brief at 69.

⁷⁰ Staff's October 14, 2011 Post-Hearing Brief at 56.

Employment Benefits] Costs."⁷¹ We agree with Staff that "[t]hese deferred income taxes are appropriately recognized in 2010 with the change in the law, and should not be deferred to future periods."⁷²

Thus, we reject the Company's deferral and creation of a "regulatory asset that offsets the otherwise unfavorable effect on income resulting from the tax change."⁷³ This results in two changes to APCo's proposed rate treatment: (1) it eliminates the Company's amortization of the proposed regulatory asset; and (2) it increases the Company's rates in the instant case by approximately \$1.42 million.⁷⁴

Staff's Miscellaneous Accounting Adjustments

Staff states that it "proposed several miscellaneous accounting adjustments in its direct case that were not addressed in the Company's rebuttal testimony or during the hearing," and that, "since the Company failed to produce any evidence whatsoever showing its proposed adjustments were just and reasonable, the Staff's miscellaneous adjustments, shown below, should also be approved."⁷⁵ We find that Staff's miscellaneous adjustments, as listed below, are reasonable and shall be approved. Some of the adjustments increase rates, while most of the adjustments serve to decrease rates. The largest adjustment, which reduces rates by over \$15 million, corrects a jurisdictional allocation error. In sum, our approval of Staff's proposed miscellaneous adjustments decreases rates by approximately \$18.5 million.⁷⁶

| <u>Description</u> | <u>Revenue Requirement</u> |
|------------------------------------------------------------|----------------------------|
| Fuel Growth and Annualization | \$9,856 |
| Jurisdictional Allocation of Other Revenues | (15,011,191) |
| Non-Deferred Storm Damage Expense | 570,327 |
| Postage Expense | (25,551) |
| OPEB Expense | (586,496) |
| Pension Expense | (861,043) |
| Group Insurance Expense | (243,348) |
| AEPSC Aviation, Umbrella Trust, and Severance Deferral | (16,931) |
| AEPSC Payroll Expense | (489,108) |
| AEPSC Pension Expense | (584,499) |
| AEPSC OPEB Expense | (282,889) |
| AEPSC Group Insurance Expense | (99,363) |
| AEPSC June 2011 Update | (1,191,555) |
| Base Payroll Expense as of 3/31/11 | (57,131) |
| Base Payroll Expense in Rate Year | 125,015 |
| Overtime Payroll Expense | 866,947 |
| Employee Savings Plan Expense | (55,404) |
| Depreciation Expense - 12/10 Plant and 2005 Study Rates | (1,032,039) |
| Taxes Other - Payroll Taxes | (105,411) |
| Taxes Other - Property Taxes | (572,339) |
| Taxes Other - OH Commercial Activities Tax | 10,288 |
| Cash Working Capital | 550,697 |
| Accumulated Depreciation - Virginia- Approved Rates | 577,874 |
| Accumulated Depreciation - Expense Contra | (226,986) |
| <u>Accumulated Depreciation - Remove ARO</u> | <u>240,486</u> |
| Total | (\$18,489,794) |

Income Tax Expense

Staff accepted, and we find reasonable, APCo's correction to Staff's State Income Tax ("SIT") expense to adjust for bonus-related tax depreciation that is not flowed through for Virginia.⁷⁷ This increases Staff's SIT expense by \$1.51 million and decreases Staff's Federal Income Tax expense by approximately \$529,000. Thus, we approve the Company's proposed income tax expense for this purpose.

⁷¹ *Id.* at 57 (emphasis in original).

⁷² *Id.*

⁷³ *Id.* at 56.

⁷⁴ *Id.* at 57-58.

⁷⁵ *Id.* at 72.

⁷⁶ *Id.* at 72-73.

⁷⁷ APCo's October 14, 2011 Post-Hearing Brief at 71.

Property Taxes

We find that Staff's and Consumer Counsel's property tax adjustments based on actual plant information through March 31, 2011, are reasonable, and, as noted by APCo, "there is only a slight numerical difference between using [Staff's and Consumer Counsel's] adjustments rather than the Company's property tax adjustments."⁷⁸

RATE BASE

We reject the Company's forecasted rate year projections used to develop adjustments to rate base, which include projected future costs for items such as plant in service, construction work in progress, accumulated depreciation, and accumulated deferred income taxes ("ADIT"). We do not find that the Company's overall forecasted projections of these "future costs . . . reasonably can be predicted to occur during the rate year."⁷⁹ Although APCo testified that its forecasting models are widely used in the utility industry, the Company has not established that the results of these general forecasting models are necessarily reasonable for ratemaking purposes herein and, as required by Virginia statute, that the results of these models reasonably can be predicted to occur during the rate year.⁸⁰ Rather, we conclude - as we did in APCo's prior rate case - that more item-specific information should be used to establish the Company's rate base projections.

Specifically, we find that it is reasonable to utilize Staff's proposed rate base, which is based on actual, audited amounts through March 31, 2011. As opposed to general forecasting models, Staff uses actual, audited data, along with specific normalized or annualized adjustments. The approved rate base, including any adjustments discussed below, reflects known costs and future costs that we conclude reasonably can be predicted to occur during the rate year.⁸¹ We find that this approach satisfies statutory requirements and provides the Company with a reasonable opportunity to recover its costs.

Pre-Paid Pension Asset

We reject the Company's request to include in rate base its pre-paid pension asset of approximately \$56.9 million. Although the Commission has previously approved rate base treatment of this asset, we find that Consumer Counsel has established - based on the record in this proceeding - that rate base treatment places unreasonable and unnecessary costs on ratepayers. As explained by Consumer Counsel, (1) AEP's executive management can, and does, make discretionary decisions to pre-fund pension obligations at debt rates, and (2) the "record shows that the AEP management/board made the last large pension prefunding contribution in September 2010 on the basis that would produce net cost savings because it was being funded with low cost commercial paper."⁸² Including this asset in rate base, however, requires customers to pay a much higher rate (*i.e.*, the Company's full cost of capital) on this asset. Thus, as concluded by Consumer Counsel, "the entire economics of the AEP board's decision to pre-fund pensions is turned upside down, and it becomes an additional cost to ratepayers."⁸³

As a result, as opposed to full cost of capital recovery on this asset, we find that it is reasonable for ratepayers to pay - and the Company to earn - a debt-based return on pre-paid pension assets. Specifically, we adopt Consumer Counsel's option that: (i) removes the pre-paid pension asset from rate base (net of ADIT); and (ii) increases operating expenses by reflecting interest on this asset at a short-term commercial paper debt rate.⁸⁴ This finding, which reduces rate base by \$33.61 million and adds \$161,000 to operating expense, decreases the Company's requested rates by approximately \$3.67 million.

Coal Inventory

We find that, consistent with Commission precedent and as recommended by Staff and Consumer Counsel, it is reasonable for coal inventory included in rate base to reflect average burn rates - as opposed to maximum burn rates - and a thirty-five-day supply of coal.⁸⁵ We further conclude, as recommended by Consumer Counsel, that it is reasonable to adjust average coal consumption upward in this instance "to remove the unusually low monthly burns that occurred in September, October and November of 2010."⁸⁶ We find that it is reasonable for this purpose to utilize (i) Consumer Counsel's thirty-five-day average coal consumption over the thirteen-month test period, as adjusted, of 1,025,955 tons, and (ii) an average cost of consumed coal

⁷⁸ *Id.*

⁷⁹ Va. Code § 56-235.2 A.

⁸⁰ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 18-22; VML/VACO's October 14, 2011 Post-Hearing Brief at 2-5; Consumer Counsel's October 14, 2011 Post-Hearing Brief at 21-23; Committee's October 14, 2011 Post-Hearing Brief at 31-32. Staff further notes that the economic uncertainty which complicates the Company's forecasts and increases the likelihood of both significant errors in the forecasts, along with the exercise of management's discretion to alter its spending plans, also caused "a delay in the approval of [APCo's] 2012 budget - a budget that was still not approved and finalized before the hearing on the Company's application was adjourned." Staff's October 14, 2011 Post-Hearing Brief at 21.

⁸¹ We likewise reject APCo's proposed forecast of its deferred fuel balance. In this regard, Staff states that the "deferred fuel balance depends on fuel costs and fuel consumption, two notoriously unpredictable cost of service items. Indeed, if fuel costs were reasonably predictable, there would be no need for a fuel factor." Staff's October 14, 2011 Post-Hearing Brief at 21. Consistent with our adoption of actual, audited rate base as of March 31, 2011, we adopt Staff's proposed revenue growth adjustment. In addition, unless adopted in this Final Order, any other rate base or expense adjustments to the Company's Application proposed by participants herein are denied.

⁸² Consumer Counsel's October 14, 2011 Post-Hearing Brief at 31-32.

⁸³ *Id.* at 32.

⁸⁴ See, e.g., *id.* at 31-36.

⁸⁵ See, e.g. Consumer Counsel's October 14, 2011 Post-Hearing Brief at 28. Staff's October 14, 2011 Post-Hearing Brief at 64-66.

⁸⁶ Consumer Counsel's October 14, 2011 Post-Hearing Brief at 28.

(updated through March 2011) of \$67.357 per ton, which results in a total rate base coal inventory value of \$69,105,251.⁸⁷ APCo has not established that such treatment has previously, or will in the future, expose the Company or its customers to risks of plant curtailments or shut downs due to a lack of coal, and we expect that the Company shall continue to meet its public service obligations in this regard.⁸⁸ This finding decreases the Company's rate request by approximately \$516,000.

Accounts Receivable Factoring

The Company sells its accounts receivable - at face value less a discount rate - to AEP Credit. The discount rate consists of a carrying charge, an estimate for bad debts, an agency fee, and bank fees. AEP Credit then uses these receivables for securitized financing from banks. As explained by Staff: (1) the "percentage of [APCo's] receivables that AEP Credit is able to use for securitized financing has declined recently as the credit quality of [APCo's] receivables has weakened;" and (2) as "a result of the decline in the credit quality of [APCo's] receivables, AEP Credit incurs greater than normal costs to finance the un-securitized receivables itself."⁸⁹ In order to compensate AEP Credit for the additional costs it incurs under the factoring program, APCo proposed to increase the working capital component of rate base by \$45.7 million, but revised this amount to \$12.6 million at the hearing.

We reject this proposed rate base adjustment. The Commission previously granted authority for the Company's accounts receivable factoring program, and such authority specifically approved a discount rate of 95% debt and 5% equity for this program.⁹⁰ The Company's proposal, however, would apply a different capital structure with a higher overall cost of capital to a portion of those accounts receivable in contrast to that prior approval. This finding reduces the Company's original rate request by approximately \$4.64 million, or its revised request by approximately \$1.4 million.⁹¹

Vegetation Management

We deny the Company's request to increase rate base by \$11.8 million for additional capital expenditures for reliability improvements, including vegetation management. While we support efforts to increase reliability in a cost-effective manner, APCo did not include this proposal as part of its Application. Rather, this proposal was presented as part of the Company's rebuttal testimony - and was based on significant cost projections as opposed to actually incurred costs.⁹² We find that the Company has not established the reasonableness of this request at this time.

Next, we direct APCo to develop - in consultation with and as recommended by Staff - a four-year cycle-based vegetation management pilot program to determine the cost effectiveness of implementing such a program on a system-wide basis.⁹³

Finally, during the hearing, the Company's discussion of its vegetation management practices may suggest that APCo cut back on reliability measures based on its earnings.⁹⁴ In this regard, we remind the Company that we expect it to, and that it shall, fulfill its public service obligation to take all necessary actions, including right-of-way clearing and vegetation management activities, to provide reliable service to its customers at the just and reasonable rates set forth herein.

FEED Study

In APCo's prior rate case, the Commission disallowed recovery of the costs associated with the Company's pilot project for carbon capture and sequestration ("CCS") at its Mountaineer Generating Facility.⁹⁵ Accordingly, APCo does not seek to recover any costs associated with the pilot project in its rate year cost of service in this proceeding. The Company, however, seeks to include costs in rate base for its Front-End Engineering and Design ("FEED") study for the commercial-scale phase of CCS at its Mountaineer plant.

We find that APCo has not shown that it is reasonable to recover FEED study costs from Virginia ratepayers at this time. For example: (i) APCo has not shown how its ratepayers have or will benefit from this study; (ii) there are no existing laws or regulations requiring CCS at this time; (iii) as stated by Consumer Counsel, APCo has acknowledged that AEP is no longer "moving forward with the development of the commercial scale carbon capture project;" and (iv) the outcome of potential future carbon legislation, the success of any commercial scale project at Mountaineer, and the value of collecting and sequestering CO₂ are all unknown at the present time.⁹⁶ This finding decreases the Company's rate request by approximately \$76,699.⁹⁷

⁸⁷ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 64-66; APCo's October 14, 2011 Post-Hearing Brief at 48-49.

⁸⁸ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 64-66; Consumer Counsel's October 14, 2011 Post-Hearing Brief at 28-30.

⁸⁹ Staff's October 14, 2011 Post-Hearing Brief at 58.

⁹⁰ See, e.g., *id.* at 59-60; Consumer Counsel's October 14, 2011 Post-Hearing Brief at 30-31.

⁹¹ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 60.

⁹² See, e.g., *id.* at 66-67.

⁹³ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 67. The Company is not precluded from seeking cost recovery on this matter in the future.

⁹⁴ See, e.g., Tr. at 374.

⁹⁵ APCo 2009 Rate Case at 315.

⁹⁶ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 62-63; Consumer Counsel's October 14, 2011 Post-Hearing Brief at 51.

⁹⁷ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 63. We also adopt Staff's recommendations that: (a) the Company record the FEED study costs in Account 183, Preliminary Survey and Investigation Charges, until the project is either abandoned or its development re-started; and (b) it is not necessary for the Company to write-off the FEED study costs at this time. *Id.*

2009 Deferred Storm Damage Costs

As explained above, the Commission previously allowed the Company to defer on its books the costs of major storms that occurred in December 2009 – *i.e.*, to create a regulatory asset for these costs. In the instant proceeding, we have permitted APCo to commence recovery of these costs over a six-year period beginning with the effective date of the rates approved herein. In addition, based on the facts in this case, we find that the Company shall be permitted to maintain this regulatory asset and reflect the unamortized balance of these costs in rate base.

REVENUE ALLOCATION AND RATE DESIGN*Cost of Service Studies*

We find that APCo's proposed jurisdictional and class cost of service studies are just and reasonable.⁹⁸ We further find that it is reasonable for the Company to continue to use the six (6) coincident peak method for allocating production costs in the class cost of service studies.⁹⁹

Revenue Allocation

We herein approve an annual revenue requirement increase for APCo of \$55,071,025. We find that APCo's proposed revenue apportionment, which is consistent with Commission precedent and "continues to gradually move the customer classes toward parity," is just and reasonable.¹⁰⁰ In addition, since the Commission "approves a revenue requirement [herein] that is less than the rate increase proposed by the Company, . . . the individual class increases [shall] be adjusted proportionally, in accordance with the Company's proposed revenue apportionment and rate design methodologies" also approved herein.¹⁰¹

Residential and Sanctuary Worship Service Rate Design

We deny the Company's request to implement a new, seasonal rate design for residential and sanctuary worship service ("SWS") customers. The Company asserts that the goal of its proposed rate design is to help these customers mitigate the effects of rate increases by managing their bills and leveling their payments throughout the year.¹⁰²

We agree that it is reasonable and desirable to give customers the ability to levelize their monthly payments and to avoid large swings in monthly bills. Indeed, we have previously approved, and APCo currently offers, two voluntary rate options that do just that: (i) an Average Monthly Payment ("AMP") Plan, which adjusts each month to levelize the "peaks and valleys" of residential customers' electric consumption; and (ii) a Budget Billing Plan, which charges customers a set amount each month and uses a true-up mechanism at the end of the 12-month period to reconcile the amount paid with the amount owed.¹⁰³ We find that the current Staff's residential and SWS rate design, and the voluntary AMP and Budget Billing Plans, remain just and reasonable.¹⁰⁴

In addition, APCo has not established that its newly proposed rate design, which would be mandatory for residential and SWS customers, is reasonable. For example, questions were raised as to whether this new rate design would, among other things, unreasonably (a) shift costs to non-electric heating customers, (b) increase winter consumption and, thus, increase capacity costs borne by customers, (c) lead to customer confusion as a result of rate

⁹⁸ See, e.g., APCo's October 14, 2011 Post-Hearing Brief at 80-83; Staff's October 14, 2011 Post-Hearing Brief at 90-91.

⁹⁹ *Id.*

¹⁰⁰ Staff's October 14, 2011 Post-Hearing Brief at 92 (citation and internal quotes omitted); see also APCo's October 14, 2011 Post-Hearing Brief at 83-84.

¹⁰¹ Staff's October 14, 2011 Post-Hearing Brief at 92. This results in a specific revenue increase for each customer class as follows:

| <u>Customer Class</u> | <u>Revenue Increase</u> |
|---------------------------------|-------------------------|
| Residential | \$ 32,093,098 |
| Small General Service (SGS) | \$ 1,975,754 |
| Medium General Service (MGS) | \$ 2,924,587 |
| Large General Service (LGS) | \$ 7,818,348 |
| Large Power Service (LPS) | \$ 9,711,815 |
| Sanctuary Worship Service (SWS) | \$ 547,423 |
| Outdoor Lighting (OL) | \$ --- |
| | \$ 55,071,025 |

¹⁰² See, e.g., APCo's October 14, 2011 Post-Hearing Brief at 84-85.

¹⁰³ See, e.g., Roanoke Gas 'October 14, 2011 Post-Hearing Brief at 6-7; Staff's October 14, 2011 Post-Hearing Brief at 93.

¹⁰⁴ In addition, consistent Staff's recommendation, we find that for the rate increase approved in this Final Order, the portion allocated to the residential and SWS rate schedules shall be recovered through each schedule's usage charge. See Ex. 40 (Walker Direct) at 12-13.

changes every quarter (in addition to other rate changes throughout the year resulting from APCo's rate cases), and (d) lead to undesirable price-responsive customer behavior.¹⁰⁵

LGS Rate Design

The Company's proposed Large General Service ("LGS") rate design recovers "70% of the demand-related costs of both the generation and distribution function through demand charges; the remaining demand-related costs are recovered in generation and distribution energy charges."¹⁰⁶ This rate design was approved in APCo's prior rate case and is embedded in the Company's current rates.¹⁰⁷ We find that this rate design remains just and reasonable.

We reject at this time rate design changes proposed by Wal-Mart and Kroger in this case. Among other things, questions were raised regarding the following issues: (a) such changes could have a disproportionate, negative impact on almost 90% of LGS customers; (b) such changes could have a disproportionate, negative impact on low load factor LGS customers; (c) such changes could be impacted by the fact that there is no direct link between how an individual LGS customer is billed for demand and how demand costs are allocated to the class; and (d) such changes may fail to recognize that the timing of a customer's load, and not simply load factor, is an important element in considering relative rate of return of the LGS class.¹⁰⁸

Differentiated Fuel Charges

We deny SDI's request to "order APCo to incorporate, in the Company's retail tariffs, differentiated fuel charges according to service level, which include secondary, primary, sub-transmission, and transmission."¹⁰⁹ We find that retaining the currently approved non-differentiated fuel charges remains just and reasonable.

Factoring Costs Recovery Mechanism

As discussed above, the Company sells its accounts receivable - at face value less a discount rate - to AEP Credit. We find that all of APCo's factoring costs should be included as part of base rates and, accordingly, that factoring costs related to specific revenue streams should not be included in the associated rate adjustment clauses ("RAC"). This result comports with Virginia statutes and provides the Company with a reasonable opportunity to recover all of its factoring costs.¹¹⁰ This finding increases the Company's rate request by approximately \$2.05 million.¹¹¹

Section 56-585.1 A 3 of the Code

Section 56-585.1 A 3 of the Code requires in part as follows:

If the Commission determines that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously implemented pursuant to subdivision 4 or 5 or those related to facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues and investments only after it makes its initial determination with regard to necessary rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future biennial review proceedings.

The Commission has determined that rates should be revised in this proceeding. APCo has one previously implemented RAC that falls within the above statute - *i.e.*, APCo's Transmission Rider (designated "T-RAC" by the Company), which was approved under § 56-585.1 A 4 of the Code (referenced as "subdivision 4" in the above statute).¹¹²

Thus, the above statute: (1) requires the Commission to "combine" such RAC with the utility's costs, revenues, and investments "until the amounts that are the subject of such [RAC] are fully recovered;" and (2) directs that after such RAC is combined, it "shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future biennial review proceedings." Accordingly, when APCo files revised tariffs as directed

¹⁰⁵ See, e.g., Roanoke Gas' October 14, 2011 Post-Hearing Brief at 2-5; Environmental Respondent's October 14, 2011 Post-Hearing Brief at 3-7; Staff's October 14, 2011 Post-Hearing Brief at 92-95.

¹⁰⁶ See, e.g., APCo's October 14, 2011 Post-Hearing Brief at 85-86; Staff's October 14, 2011 Post-Hearing Brief at 95.

¹⁰⁷ See, e.g., *id.*

¹⁰⁸ See, e.g., APCo's October 14, 2011 Post-Hearing Brief at 85-87; Staff's October 14, 2011 Post-Hearing Brief at 95-97.

¹⁰⁹ SDI's October 14, 2011 Post-Hearing Brief at 14.

¹¹⁰ See, e.g., Staff's October 14, 2011 Post-Hearing Brief at 60-62. In addition, we note that such treatment of factoring costs under this statute is consistent with the Commission's historical treatment of APCo's factoring costs associated with its fuel adjustment clause; that is, factoring costs associated with fuel recovery are not included in the fuel adjustment clause but, rather, are recovered through base rates. See, e.g., *Id.* at 62.

¹¹¹ See, e.g., *id.* at Attachment A.

¹¹² See, e.g., Staff's August 26, 2011 Legal Memorandum at 9-11; *Petition of Appalachian Power Company, For approval of rate adjustment clause pursuant to §56-585.1 A 4 of the Code of Virginia*, Case No. PUE-2009-00031, 2009 S.C.C. Ann. Rept. 450, Final Order (Oct. 6, 2009).

below, that filing shall also reflect such combining of the T-RAC as required by the above statute.¹¹³ In addition, we will initiate a subsequent proceeding to address further implementation of this statute.

Accordingly, IT IS ORDERED THAT:

(1) The Company's Application is granted in part and denied in part as set forth in this Final Order.

(2) The Company shall forthwith file revised tariffs and terms and conditions of service, and workpapers supporting the total revenue requirement and rates, with the Clerk of the Commission and with the Commission's Divisions of Energy Regulation and Utility Accounting and Finance, in accordance with this Final Order, effective for service rendered on and after sixty (60) days from the date of this Final Order. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This case is dismissed.

CHRISTIE, Commissioner, dissenting:

I respectfully dissent from the Final Order's provision allowing the Company to recover 50% of its charitable contributions from its customers. The majority's decision is in accordance with past precedents of this Commission in which recovery of charitable contributions was allowed. I do not believe, however, that ratepayers should be charged for any of the Company's charitable contributions.

Expenses for charitable contributions have nothing to do with the reason APCo received from the state an exclusive service territory. The Company holds its monopoly franchise in order to provide the public with electricity service - a necessity of modern life - that is reliable and is at prices that are in accordance with law. APCo's monopoly does not include a mission of collecting money from captive customers and spending it on charitable causes of the Company's choosing. Many of the charities to which APCo gives are no doubt highly meritorious, do valuable work for the people they serve, and are worthy of continued support. The Company is free to continue its support of those charities with stockholders' funds if it wishes. APCo's customers, however, can choose their own charitable causes to which to donate and should not have to pay for the Company's choices as part of their monthly bills for electricity service.

¹¹³ Finally, in issuing this Final Order, to the extent relevant, we have taken into consideration the goal of economic development in the Commonwealth as directed in § 56-596 A: "in all relevant proceedings pursuant to this Act, the Commission shall take into consideration, among other things, the goal of economic development in the Commonwealth."

CASE NO. PUE-2011-00038 JULY 8, 2011

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval to provide billing and billing related services to NiSource Retail Services, Inc., pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On April 12, 2011, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application ("Application") with the State Corporation Commission ("Commission") requesting: (i) approval to provide billing and billing related services to NiSource Retail Services, Inc. ("NiSource Retail"), at the rates and fees described in a Billing and Bill Services Agreement dated April 11, 2011 ("Billing Agreement"); (ii) approval to book the billing and billing related services transactions to below-the-line accounts; (iii) approval of the request without the necessity of a public hearing; and (iv) such further relief as may be necessary and appropriate, pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code").

CGV is a Virginia public service corporation and natural gas local distribution company, which serves approximately 240,000 residential, commercial, and industrial customers located in Central and Southern Virginia, the Piedmont region, the Shenandoah Valley, portions of Northern and Western Virginia, and the Hampton Roads region. CGV is a wholly owned subsidiary of the Columbia Energy Group, which is a wholly owned subsidiary of NiSource Inc. ("NiSource").

NiSource Retail is a Delaware company incorporated in November 2003 and headquartered in Portsmouth, New Hampshire, which provides certain extended warranty service plans and related services ("Value Added Services") to residential and small commercial customers for heating and cooling systems, water heaters, household appliances, and inside gas, electric, and water lines. NiSource Retail operates in the states of Ohio, Pennsylvania, Indiana, and New Hampshire, and will begin marketing in Kentucky in 2011. NiSource Retail has no direct employees of its own but is supported by fifty (50) dedicated employees of its affiliate, NiSource Corporate Services Company ("NCSC"). NiSource Retail is a direct subsidiary of NiSource.

CGV and NiSource Retail are considered affiliated interests under § 56-76 of the Code. As such, CGV is required to obtain prior approval from the Commission pursuant to the Affiliates Act for any agreement or arrangement between the companies for the provision of services, the exchange of property, rights, or things, or the purchase or sale of treasury bonds or treasury capital stock.

The proposed Billing Agreement calls for CGV to provide to NiSource Retail the following billing and billing related services: (i) to place bill inserts advertising NiSource Retail's Value Added Services in the natural gas utility bills sent to CGV's customers; (ii) to include NiSource Retail's charges for the Value Added Services in the natural gas utility bills sent to CGV's customers who receive such services; and (iii) to provide accounting, administrative, and related services as necessary to facilitate the related transactions.

The Value Added Services that NiSource Retail proposes to offer in Virginia include extended warranty service plans for kitchen and laundry appliances, furnaces and boilers, water heaters, electric central air conditioners, and inside electric lines. NiSource Retail also plans to offer leases for high-efficiency natural gas heating systems and water heaters. Over time, NiSource Retail expects to develop and offer additional Value Added Services.

CGV's service company affiliate, NCSC, provides CGV with corporate and administrative services under a service agreement ("Service Agreement") approved by the Commission in Case No. PUE-2009-00063.¹ The billing and billing related services that CGV proposes to provide to NiSource Retail will actually be performed by NCSC on CGV's behalf pursuant to the Service Agreement. CGV represents that it is prepared to offer to non-affiliated providers of comparable Value Added Services the same access, on a non-discriminatory basis, to the same billing and billing related services, on the same terms and conditions, which it will provide to NiSource Retail.

CGV represents that it will charge five separate fees and rates for the billing and billing related services provided to NiSource Retail. According to CGV, the proposed fees and rates approximate or exceed the fully distributed cost of each of the billing and billing related services and reflect the pricing for the billing and billing related services that CGV and NCSC are prepared to offer, on a non-discriminatory basis, to non-affiliated providers of comparable Value Added Services. CGV proposes to book the revenues and the costs associated with the billing and billing related services to below-the-line operating accounts to ensure that any net costs from these activities are not passed on to CGV customers.

NOW THE COMMISSION, upon consideration of the Application and representations of the Applicant and having been advised by Commission Staff ("Staff"), is of the opinion and makes the following finding. CGV represents that the proposed relationship with NiSource Retail will provide its customers with increased access to an array of energy and utility related services while leading to a more efficient utilization of existing CGV facilities. CGV also states that it will bill NiSource Retail rates and fees for the billing and billing related services that approximate or exceed the fully distributed cost of each service. Finally, CGV asserts that it is prepared to offer non-affiliated providers of comparable Value Added Services the same access, on a non-discriminatory basis, to the same billing and billing related services, on the same terms and conditions, which it will provide to NiSource Retail. Based upon these representations, we find that the proposed Billing Agreement is in the public interest and should be approved, subject to certain requirements necessary to protect the public interest.

First, we note that the proposed relationship is new for CGV. The coordination of policies, procedures and operations between CGV, NCSC, and NiSource Retail is untested, and the actual revenues and costs of providing billing and billing related services to NiSource Retail are unknown. Therefore, we will limit the duration of our initial approval of the proposed Billing Agreement to five (5) years.

Second, CGV acknowledges that its proposed rates and fees for the billing and billing related services are higher than its initial estimates of the costs to provide the services and to develop and maintain the related information technology systems. CGV states that its pricing has a dual purpose: (i) to approximate the fully distributed cost of providing billing and billing related services to NiSource Retail; and (ii) to reflect the pricing for billing and billing related services that CGV and NCSC are willing to offer, on a non-discriminatory basis, to non-affiliated providers of comparable Value Added Services. CGV states that it did not structure its proposed rates to include a profit component. Since CGV's proposed rates exceed its estimated costs, however, an implicit equity return component may exist. CGV also represents that it is not aware of any readily available market or market rate for the proposed billing and billing related services.

Given these representations, we will require CGV to employ the following pricing model to ensure that the billing and billing related service pricing is advantageous for CGV and its ratepayers throughout the duration of the Billing Agreement. CGV will be permitted to charge the proposed rates and fees while it develops actual fully distributed cost ("Cost") data and actively investigates to see whether a market exists and if a market price is available for any of the billing and billing related services. Once the Cost data is available and the market investigation is complete, CGV will compare each of its proposed rates and fees to the Cost data and the market prices, if any, and charge NiSource Retail the highest of the three alternatives. Should this analysis cause any change in the rates and fees charged for the billing and billing related services, we will not require CGV to seek new approval of the Billing Agreement, but we will require CGV to file an executed addendum that contains the revised rates and fees.

Third, we do not object to CGV's proposal to book the billing and billing related service transactions to below-the-line accounts at this time. However, the Commission reserves the right to determine the ratemaking treatment for the billing and billing related transactions in a future annual informational filing ("AIF") or rate proceeding. To clarify this point, our approval of the Billing Agreement will have no ratemaking implications. Specifically, the approval granted in this case will not have any effect on the determination of the ratemaking treatment of the revenues and costs generated by the Billing Agreement in future AIFs or rate proceedings.

Finally, we direct that the revenues and costs associated with the billing and billing related services provided by NCSC to NiSource Retail on CGV's behalf be tracked, recorded, and maintained in separate sub-accounts and made available for the Staff's review upon request, and that an annual schedule summarizing the revenues, costs, and earnings (losses) from these transactions be included in CGV's Annual Report of Affiliate Transactions ("ARAT").

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, CGV is hereby granted approval to enter into the proposed Billing Agreement, consistent with the findings set out above and effective as of the date of the entry of this Order Granting Approval.

(2) The approval granted herein is limited to five (5) years from the date of the entry of the Order Granting Approval in this case. Should CGV wish to continue the Billing Agreement beyond that date, further Commission approval shall be required.

(3) CGV is granted approval to charge its proposed rates and fees while it develops Cost data and actively investigates to see if a market and a market price exist for any of the billing and billing related services. Once the Cost data is available and the market investigation is complete, CGV shall compare each of the proposed rates to the Cost data and the market prices, if any, and charge NiSource Retail the highest of the three alternatives. Should

¹ *Application of Columbia Gas of Virginia, Inc., For approval of a Service Agreement, as amended, between Columbia Gas of Virginia, Inc., and NiSource Corporate Services Company pursuant to Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2009-00063, 2009 S.C.C. Ann. Rept. 495, 497, Order Granting Approval (Sept. 25, 2009).*

this analysis cause any change in the rates and fees charged, CGV shall file with the Commission an executed addendum containing the revised rates and fees. If no change in the rates and fees charged is warranted, CGV shall file a notice with the Commission so stating.

(4) The approval granted in this case shall have no ratemaking implications. Specifically, the approval granted herein shall not have any effect on the determination of the ratemaking treatment of the revenues and costs generated by the Billing Agreement in future AIFs or rate proceedings.

(5) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(6) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by the Commission.

(7) CGV shall track, record, and maintain the revenues and costs associated with the billing and billing related services in separate sub-accounts, which will be made available for the Staff's review upon request, and an annual schedule summarizing the revenues, costs, and earnings (losses) from these transactions shall be included in CGV's ARAT submitted to the Commission's Director of Public Utility Accounting ("PUA Director") on or before May 1 of each year, which deadline may be extended administratively by the PUA Director.

(8) In the event that CGV's annual informational filings or general or expedited rate case filings are not based on a calendar year, then CGV shall include the affiliate information contained in its ARAT in such filings.

(9) This case shall remain open for the purpose of receiving from CGV an addendum of revised rates, should such addendum become necessary, or a notice that no change in rates is necessary.

**CASE NO. PUE-2011-00040
JUNE 8, 2011**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of accounting transactions with NiSource, Inc., pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On April 14, 2011, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application ("Application") with the State Corporation Commission ("Commission") seeking approval of certain accounting transactions ("Transactions") with NiSource, Inc. ("NiSource"), pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code"). CGV also requests such approval without the necessity of a public hearing and seeks further relief as may be necessary and appropriate.

CGV is a Virginia public service corporation and natural gas local distribution company, which serves approximately 240,000 residential, commercial, and industrial customers located in Central and Southern Virginia, the Piedmont region, the Shenandoah Valley, portions of Northern and Western Virginia, and the Hampton Roads region. CGV is a wholly owned subsidiary of the Columbia Energy Group, which is a wholly -owned subsidiary of NiSource.

NiSource is an energy holding company organized pursuant to the Energy Policy Act of 2005, whose subsidiaries provide natural gas transmission, storage and distribution, electric generation, transmission and distribution, and other products and services to approximately 3.8 million customers located within a corridor that runs from the Gulf Coast through the Midwest to New England. For the twelve months ending December 31, 2010, NiSource reported consolidated revenues of approximately \$6.42 billion and net income of \$292 million. NiSource employs 7,604 individuals and has a current market capitalization of approximately \$5.6 billion.

CGV and NiSource are considered affiliated interests under § 56-76 of the Code. As such, CGV is required to obtain prior approval from the Commission pursuant to the Affiliates Act for any agreement or arrangement between the companies for the provision of services; the exchange of property, rights, or things; or the purchase or sale of treasury bonds or stock.

CGV offers a variety of compensation and benefit plans ("Plan(s)") to its employees. These Plans include, but are not limited to, an employee stock purchase plan ("ESPP"), a 401(k) retirement savings plan ("RSP"), a supplemental savings restoration plan, short-term and long-term incentive plans ("Incentive Plans"), deferred compensation plans ("DCP"), and pension ("Pension") and other post-retirement benefit ("OPEB") plans. In order to administer these Plans for its employees, CGV enters into a series of transactions¹ to reimburse NiSource for such costs as: (i) the 10% discount on NiSource common stock purchased under the ESPP; (ii) the employer match, profit sharing, and non-elective employer contributions payable under the RSP; (iii) the benefits accruing to CGV employees under the RSP; (iv) the discretionary employee cash and equity awards under the Incentive Plans; (v) the value of stock acquired by or awarded to CGV employees under the long-term Incentive Plans; (vi) the earnings accruing to CGV employees under the DCP; (vii) the

¹ CGV does not have its own accounting or treasury staff. CGV contracts with NiSource Corporate Services Company to keep its books and records and to manage its daily finances pursuant to a corporate services agreement approved in *Application of Columbia Gas of Virginia, Inc., For approval of a Service Agreement, as amended, between Columbia Gas of Virginia, Inc., and NiSource Corporate Services Company pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2009-00063, 2009 S.C.C. Ann. Rept. 495, 497, Order Granting Approval (Sept. 25, 2009).

annual NiSource adjustments to Pension and OPEB obligations allocated to each NiSource affiliate;² and (viii) the payroll and gross receipts taxes associated with CGV's and NiSource's compensation and benefit programs. CGV represents that, while it could conduct some of the compensation and benefit Plan Transactions through direct purchases of NiSource common stock on the open market, securities laws would make the Plans more complex and transaction and administration costs would increase.

CGV states that it was not aware of the need for Affiliates Act approval of the proposed compensation and benefit Transactions until it recently discovered a Commission Order regarding similar transactions by another utility.³ CGV represents that the proposed Transactions facilitate the administration of CGV's employee compensation and benefit programs, which are designed to attract, motivate, and retain qualified utility workers. CGV further asserts that its compensation and benefit programs are regularly subject to Commission review in the context of rate cases and annual informational filings. Finally, CGV notes that financial information regarding the compensation and benefit programs appears in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission Staff ("Staff") each year.

NOW THE COMMISSION, upon consideration of this matter and having been advised by its Staff, is of the opinion and finds that the proposed compensation and benefit Plan Transactions are in the public interest and should be approved, subject to certain requirements necessary to protect the public interest.

First, we believe that the generic term used in the Application to describe the proposed Transactions is a misnomer. The term "accounting transactions" would seem to imply that the proposed compensation and benefit Plan Transactions are simply accounting entries without a legal or economic basis in fact. That is not the case. Each of the proposed Transactions involves cash, stock, or a right, or creates a benefit or an obligation, which is conveyed from one party to another. When § 56-77 of the Code states that "no contract or arrangement for the purchase, sale, lease or exchange of any property, right or thing . . . shall be valid or effective unless . . . filed with and approved by the Commission," it clearly encompasses transactions such as those proposed in the Application, and we duly note that fact in the instant proceeding and for future cases.

Second, the Applicant acknowledges that future competitive, legal, and tax changes in the marketplace will inevitably require changes in its compensation and benefit programs and the associated Transactions. Rather than requiring a new Affiliates Act filing for every change in a Plan, its associated Transactions, and the accounting for said Transactions, we will require CGV to: (i) provide notice to the Staff if the accounting for an existing Plan Transaction changes or if a new type of Plan Transaction is created; and (ii) provide the associated accounting entries in CGV's next ARAT filing.

Third, we find that our approval in this case should have no ratemaking implications. Specifically, the approval granted in this case should not guarantee the recovery of any costs directly or indirectly related to the compensation and benefit Transactions described above.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, CGV is granted approval of the proposed compensation and benefit Plan Transactions as described and set forth herein. The approval granted herein shall not be deemed to include any approvals other than for the Plan Transactions as described herein.

(2) On a prospective basis, CGV shall be required: (i) to provide notice to the Commission's Director of the Division of Public Utility Accounting ("PUA Director") if the accounting for an existing Plan Transaction changes or if a new type of Plan Transaction is created; and (ii) provide the associated accounting entries in CGV's next ARAT filing.

(3) The approval granted in this case shall have no ratemaking implications. Specifically, the approval granted herein shall not guarantee the recovery of any costs directly or indirectly related to the compensation and benefit Plan Transactions.

(4) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(5) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by the Commission.

(6) CGV shall include all transactions associated with the approved Plan Transactions in its ARAT submitted to the PUA Director on or before May 1 of each year, which deadline may be extended administratively by the PUA Director.

(7) In the event that CGV's annual informational filings or general or expedited rate case filings are not based on a calendar year, then CGV shall include the affiliate information contained in its ARAT in such filings.

(8) There appearing nothing further to be done, this case is dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

² NiSource and its affiliates maintain multiple Pension and OPEB plans. Some NiSource companies participate in multiple plans. At year-end, third party actuaries provide NiSource's Accounting Research Department with an actuarial re-measurement of the plans, which provides the updated Pension and OPEB plan balances for each NiSource subsidiary as of December 31. NiSource and its affiliates, including CGV, then make re-allocation entries to reflect the updated Pension and OPEB plan balances on each affiliate's books. CGV settles any changes in the Pension and OPEB plans through adjustments in its inter-company receivables/payables account with NiSource.

³ See *Application of Virginia Electric and Power Company and Dominion Resources, Inc., Petition for declaratory judgment, or alternatively, for exemption from approval, or approval of accounting transactions under Chapter 4, Title 56 of the Code of Virginia, and expedited consideration*, Case No. PUE-2005-00011, 2005 S.C.C. Ann. Rept. 403, Order Granting Approval (May 29, 2005) (denying Virginia Electric and Power Company's request for a declaratory judgment or an exemption, but approving its request to engage in such accounting transactions).

CASE NO. PUE-2011-00043
JUNE 3, 2011

APPLICATION OF
 DALE SERVICE CORPORATION
 and
 INTERSTATE MANAGEMENT, INC., FOR AND ON BEHALF OF
 MAPLEDALE PLAZA, LLC

For extension of authority for lease agreement between affiliates

ORDER GRANTING AUTHORITY

On April 18, 2011, Dale Service Corporation ("Dale Service") and Interstate Management, Inc. ("Interstate"), for and on behalf of Mapledale Plaza, LLC, Successor to the Trustees of the Irene V. Hylton Charitable Lead Trust, in turn, Successor to the Trustees of the Irene V. Hylton Marital Trust "B" (Share 2), U/W/O Cecil D. Hylton ("Hylton Trust") (collectively, the "Applicants") filed an application ("Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"), for authority to enter into a lease agreement ("Proposed Lease Agreement") between Dale Service and Interstate.

Dale Service is a Virginia public service corporation that provides wastewater treatment services in Dale City and Prince William County, Virginia. Dale Service was initially owned by Cecil D. Hylton ("Mr. Hylton"). Since Mr. Hylton's demise, ownership has been transferred to Mr. Hylton's children and their heirs.

Interstate, with its office at 5533 Mapledale Plaza located in the Mapledale Plaza Shopping Center ("Mapledale Plaza") in Woodbridge, Virginia, manages shopping centers owned by the Hylton Trust. Interstate was incorporated in 1996 and is a Subchapter S corporation. Interstate is owned by Mr. Hylton's children and their heirs.

The Hylton Trust, located at 5533 Mapledale Plaza in Woodbridge, Virginia, owns the shopping centers that are managed by Interstate. The beneficiaries of the Hylton Trust are Mr. Hylton's children and their heirs.

Since Dale Service, Interstate, and the Hylton Trust share common ownership by the children of Mr. Hylton and their heirs, the Applicants are considered affiliated interests under § 56-76 of the Code. As such, any contract or arrangement between the Applicants to provide or receive services must be approved by the Commission pursuant to Chapter 4 of Title 56 of the Code (the "Affiliates Act") prior to the Applicants entering into such contract or arrangement.

Dale Service currently rents office space from Interstate in the Mapledale Plaza under a lease agreement ("Current Extension") approved by the Commission in Case No. PUE-2010-00023. Dale Service pays a base rental rate of \$14.00 per square foot ("PSF") plus an additional \$4.24 PSF for its pro rata share of Common Area Maintenance ("CAM") costs and Interstate's costs of taxes, trash, and insurance. The Current Extension has a term of one year and expires on May 31, 2011. The Current Extension is an extension of a lease agreement approved by the Commission in 2004 ("Original Agreement") in Case No. PUE-2004-00093.

Interstate, which is acting as agent on behalf of the Hylton Trust, and Dale Service request authority to enter into the Proposed Lease Agreement wherein Dale Service would continue leasing 2,431 square feet ("SF") of space located at 5609 Mapledale Plaza, Woodbridge, Virginia (the "Premises"), from the Hylton Trust. The Proposed Lease Agreement has a term of one year with a right of renewal by Dale Service for four additional one-year terms. The base rental rate for the first year is \$14.00 PSF with a monthly payment of \$2,836. The additional lease year options have a two percent escalator. Dale Service will also continue to pay its pro rata share of CAM costs as well as Interstate's cost of taxes, trash, and insurance.

The purpose of the Proposed Lease Agreement is to allow Dale Service to continue operating from its current location. The Applicants state that this space allows Dale Service to house all of its administrative operations, including customer service and storage for company and customer-related files, in one location. The Applicants represent that the terms and conditions of the Proposed Lease Agreement are substantially similar to the Original Agreement.

NOW THE COMMISSION, upon consideration of this matter and having been advised by the Commission Staff ("Staff"), is of the opinion and finds that the Proposed Lease Agreement is in the public interest and should be approved pursuant to the Affiliates Act.

The Applicants represent that the Proposed Lease Agreement offers both tangible and intangible benefits to Dale Service and its customers. The Premises is situated within Dale Service's service territory and is conveniently located for its customers. Dale Service's office has been at this location for the past six years. Prior to that time, Dale Service's office was in the same shopping area. Customers should be familiar with its location. Also, by allowing Dale Service to continue leasing its current office space, Dale Service will avoid the cost of moving to a different location.

Based on information provided to Staff, the \$14.00 per SF base rental rate for the first year appears to satisfy the Commission's policy of requiring regulated utilities to pay the lower of cost or market when obtaining services from an unregulated affiliate. However, the Proposed Lease Agreement contains annual rent escalators that culminate in a base rent payment in year five that exceeds the year one payment by eight percent. We find that it is premature to determine how the escalating rent payments will compare to the Premises' cost and market rates in the future. Further, we find that this is not the appropriate proceeding to make such a determination. Rather, the determination of whether the future rent payments continue to be at the lower of cost or market should be considered in other proceedings, such as annual informational filings or rate cases, which specifically address the reasonableness of Dale Service's cost of service.

Therefore, while we approve the proposed Lease Agreement, the reasonableness of the escalating rent payments will be addressed in future annual informational filings or rate proceedings. We will require Dale Service to maintain certain data to allow for an assessment of the reasonableness of the future rent payments. Specifically, Dale Service should develop and maintain records that support an annual calculation of Interstate's fully distributed cost of owning and leasing the Premises to Dale Service and a schedule of updated comparable rental rates such as provided in Attachment B, Exhibit 1 to

the Application, showing comparable properties by property name, square footage available, the base rent rate, and any additional rates that are charged. Such records should be made available for Staff's review upon request. Dale Service should bear the burden of proving, in any annual informational filing or rate proceeding, that it paid the lower of cost or market under the Proposed Lease Agreement.

Accordingly, IT IS ORDERED THAT:

- 1) Pursuant to § 56-77 of the Code, Dale Service Corporation is hereby granted authority to enter into the Proposed Lease Agreement with Interstate Management, Inc., acting as agent for and on behalf of Mapledale Plaza, LLC, Successor to the Trustees of the Hylton Trust, consistent with the findings above.
- 2) The authority granted herein shall be limited to five (5) years from the date of the execution of the Proposed Lease Agreement.
- 3) Dale Service shall bear the burden of proving, in any annual informational filing or rate case proceeding, that it paid the lower of cost or market under the Proposed Lease Agreement.
- 4) Dale Service shall develop and maintain records to demonstrate that the Proposed Lease Agreement with Interstate and Mapledale Plaza, LLC, Successor to the Trustees of the Hylton Trust, remains cost beneficial to Virginia ratepayers through the term of the Proposed Lease Agreement. Such records shall support an annual calculation of Interstate's fully distributed cost of owning and leasing the Premises to Dale Service and a schedule of updated comparable rental rates such as provided in Attachment B, Exhibit 1 to the Application, which shall list comparable properties by property name, square footage available, the base rent rate, and any additional rates that are charged. Such records shall be made available for Staff's review upon request.
- 5) Commission approval shall be required for any changes in the terms and conditions of the Proposed Lease Agreement approved herein, including any successors or assigns.
- 6) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- 7) The authority granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings.
- 8) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- 9) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2011-00044
JULY 19, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval of rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia

FINAL ORDER

On May 2, 2011, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company"), pursuant to § 56-585.1 A 4 of the Code of Virginia ("Code"), filed an application ("Application") with the State Corporation Commission ("Commission") for approval of a rate adjustment clause ("RAC") designated as Rider T. Section 56-585.1 A 4 of the Code allows an investor-owned electric utility to recover, with Commission approval, certain costs through a RAC and deems to be prudent the "costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member" and "costs charged to the utility that are associated with demand response programs approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity of which the utility is a member."

By Final Order entered in Case No. PUE-2009-00018, the Commission approved Dominion Virginia Power's proposal to establish Rider T, which was placed into effect on September 1, 2009.¹ In Case No. PUE-2010-00006, the Company made its first revised Rider T filing, which proposed an increase to Rider T rates for service rendered on and after September 1, 2010.² The Company, in the instant proceeding, has proposed an increase to its current Rider T rates to be effective for usage during the rate year of September 1, 2011, through August 31, 2012 ("2011 rate year"). The rates proposed in the Company's Application in this case produce an annual revenue requirement of approximately \$480.7 million, which represents an annual increase of \$143.7 million above the revenues projected to be generated under existing Rider T rates.³

¹ *Application of Virginia Electric and Power Company, For approval of rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia*, Case No. PUE-2009-00018, 2009 S.C.C. Ann. Rept. 422, Final Order (June 29, 2009).

² *Application of Virginia Electric and Power Company, For approval to revise its Rider T rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia*, Case No. PUE-2010-00006, 2010 S.C.C. Ann. Rept. 449, Final Order (June 29, 2010). Those current rates were designed to recover an annual revenue requirement of \$337.9 million for costs projected to be incurred during the period September 1, 2010, through August 31, 2011.

³ Exhibit 2 at 8. Dominion Virginia Power states that the revenue requirement formula in this case is consistent with Commission Orders in previous Rider T cases, with three exceptions. First, consistent with the Commission's March 11, 2010 Order Approving Stipulation and Addendum in Case No. PUE-2009-00018, deferred regional transmission organization costs have been excluded from the revenue requirement. Second, the 2009 true-up has been adjusted to reflect a recalculation of the 2008 and 2009 demand allocation factors. Third, in its Application in the present proceeding the Company proposed to recover carrying costs on the cumulative monthly over- or under-recovered deferral balance for the period of January 1, 2009, through August 31, 2012. *Id.* at 8-9.

Dominion Virginia Power's proposed revenue requirement is comprised of five components. The first component of the revenue requirement is current Rider T costs for the 2011 rate year. According to the Company, these costs amount to \$365.2 million.⁴ The second component is the true-up of the difference between the actual Rider T costs incurred during the 2010 calendar year and the actual revenues received to recover 2010 calendar year costs. This true-up amounts to \$19.5 million.⁵ The third component is an update of Rider T costs for the period of January 1, 2011, through August 31, 2011, based upon known rates, terms and conditions applied to known billing determinants in effect during the period. This component amounts to \$83.8 million.⁶ The fourth component corrects the jurisdictional allocation factors used to calculate the true-up component of the revenue requirement in Case No. PUE-2010-00006. This correction decreases the revenue requirement by \$2.2 million.⁷ Finally, the Company proposed to recover carrying costs on the cumulative over- or under-recovery of the monthly deferred balance from January 1, 2009, through August 31, 2012. Therefore, the final component of the total revenue requirement proposes to recover carrying costs on under-recoveries incurred between January 1, 2009, and August 31, 2011.⁸ This component totals \$14.4 million.⁹

Finally, Dominion Virginia Power has requested approval of a rate of return on common equity ("ROE") for the purpose of calculating carrying costs. For carrying costs incurred between January 1, 2009, and November 30, 2011, the Company has proposed to use an 11.9% ROE, which is based on an ROE set in the Commission's March 11, 2010 Order Approving Stipulation and Addendum in Case No. PUE-2009-00018.¹⁰ For carrying costs incurred between December 1, 2011, and August 31, 2012, the Company has proposed to use the ROE that will be set by the Commission in Case No. PUE-2011-00027 ("2011 Biennial Review proceeding"). Dominion Virginia Power has proposed a 12.5% ROE in its 2011 Biennial Review proceeding,¹¹ and the Company has suggested that 12.5% serve as a placeholder until the Commission enters an order setting the ROE in the 2011 Biennial Review proceeding.¹²

On May 6, 2011, the Commission issued an Order for Notice and Hearing that directed Dominion Virginia Power to provide notice of its Application, permitted interested persons to file written or electronic comments on the Application or to participate in this proceeding as a respondent, scheduled a public hearing for June 23, 2011, directed the Commission's Staff ("Staff") to investigate the Application and present its findings and testimony to the Commission, and permitted the Company to file testimony in rebuttal to testimony filed by respondents or the Staff.¹³

Notices of participation were filed by the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"), the Virginia Committee for Fair Utility Rates ("Committee"), and MeadWestvaco Corporation ("MeadWestvaco"). No respondent testimony was received.

On June 13, 2011, the Staff filed testimony recommending a revenue requirement of \$466.4 million, or approximately \$14.4 million less than the Company originally requested. While the Staff agreed with the first four components of the Company's proposed total revenue requirement, it objected to the recovery of carrying costs in this case.¹⁴ However, the Staff stated that if the Commission were to grant carrying costs in this case, the ROE determined by the Commission in the 2011 Biennial Review proceeding should be the ROE applied in this case for the purpose of calculating all carrying costs incurred between January 1, 2009, and August 31, 2012.¹⁵ The Staff also recommended that the proper treatment of \$60 million in gains the Company received as a result of the settlement of certain hedges be further examined by the Commission in the 2011 Biennial Review proceeding and, if carrying costs were approved in this case, a placeholder overall cost of capital of 9.087% be used, which could be true-up at a later date.¹⁶

⁴ Ex. 3 (Givens Direct) at 13.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 44-45.

⁸ Any carrying costs on the cumulative over- or under-recovery of the monthly deferred balance from September 1, 2011, through August 31, 2012, would be examined in a future proceeding.

⁹ Ex. 3 (Givens Direct) at 45-50.

¹⁰ *Application of Virginia Electric and Power Company, For approval of a rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia*, Case No. PUE-2009-00018, 2010 S.C.C. Ann. Rept. 301, Order Approving Stipulation and Addendum (Mar. 11, 2010).

¹¹ *Application of Virginia Electric and Power Company, For a 2011 biennial review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia*, Case No. PUE-2011-00027, Application (Mar. 31, 2011). The 12.5% ROE is inclusive of a 100 basis point performance incentive the Company is seeking pursuant to § 56-585.1 A 2 c of the Code. *See id.* at 7-8.

¹² Ex. 3 (Givens Direct) at 48-49.

¹³ The May 6, 2011 Order for Notice and Hearing also granted the Company's requested waiver of Rules 20 VAC 5-201-60 and 20 VAC 5-201-90 of the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings while allowing the opportunity for interested persons to file objections to the Commission's grant of waiver. No objections to the Commission's grant of waiver were filed.

¹⁴ Ex. 10 (Pate Direct) at 4.

¹⁵ Ex. 11 (Oliver Direct) at 6.

¹⁶ *Id.* at 4-5.

On June 17, 2011, Dominion Virginia Power filed rebuttal testimony. In its rebuttal testimony, the Company objected to the Staff's proposed revenue requirement, reiterated that the use of an 11.9% ROE for carrying costs incurred between January 1, 2009, and November 30, 2011, was appropriate, and recalculated its December 31, 2010 cost of capital to account for the gains of over \$60 million it recorded in 2010.¹⁷

The Commission held a public evidentiary hearing on June 23, 2011. Dominion Virginia Power, Consumer Counsel, the Committee and the Staff participated at the hearing. One public witness offered testimony at the hearing.¹⁸ At the start of the hearing, the Company withdrew its request to receive carrying costs for the 2009 calendar year.¹⁹ The Company's application, filing schedules, and all supporting and rebuttal testimony, as well as the testimony of all Staff witnesses, were admitted into the record without cross-examination.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds as follows. The Commission previously denied the Company's request to accrue and recover carrying costs on the deferred balances for Rider T,²⁰ and we likewise deny the Company's repeated request in this proceeding. Section 56-585.1 A 4 of the Code deems, by law, that certain FERC-approved transmission costs charged to the utility – for which FERC sets the rate, including a rate of return – are "reasonable and prudent" and shall be recovered by the utility under a rate adjustment clause (*i.e.*, Rider T). Neither the plain language of § 56-585.1 A 4 of the Code, nor Commission precedent, requires recovery of any carrying costs on deferred balances for Rider T. Accordingly, we find, as we did in Case No. PUE-2009-00018, that it is reasonable not to include carrying costs as part of Rider T and that the Company is not prevented from recovering its just and reasonable cost of service.²¹ The recovery of carrying costs is not necessary in this proceeding based on the circumstances appearing here.

We therefore exclude the \$14.4 million for carrying costs included in the annual revenue requirement set forth in the Company's Application and approve the Rider T revenue requirement of \$466.4 million recommended by the Staff.

Finally, we approve the Company's proposed rate design and allocation of costs and direct the lower revenue requirement approved herein to be allocated consistently with the revenue apportionment and rate design methodology proposed by the Company in this case.²²

Accordingly, IT IS ORDERED THAT:

- (1) The Company's Application is granted in part and denied in part as set forth herein.
- (2) Within thirty (30) days from the date of this Final Order, the Company shall file with the Commission's Division of Energy Regulation a revised Rider T, with supporting workpapers, which reflects the findings and requirements set forth herein.
- (3) The modifications to Rider T as approved herein shall become effective for service rendered on and after September 1, 2011.
- (4) This matter is dismissed.

¹⁷ Ex. 8 (Wilkinson Rebuttal) at 2-10; Ex. 7 (Givens Rebuttal) at 2-4.

¹⁸ Transcript at 8-11 (hereafter, Transcript shall be designated as Tr. at ____).

¹⁹ Tr. at 7-8, 36-38.

²⁰ See *Application of Virginia Electric and Power Company, For approval of rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia*, Case No. PUE-2009-00018, 2009 S.C.C. Ann. Rept. 422, 423, Final Order (June 29, 2009).

²¹ Given our finding related to carrying costs, we will not address arguments made by the Company, Consumer Counsel and the Staff concerning what ROE should be utilized. Nor will we address the treatment to be afforded the \$60 million in gains received by the Company as a result of certain hedges in this proceeding.

²² In doing so, we acknowledge ongoing efforts between the Company, MeadWestvaco, and other interested parties to investigate potential alternative rate designs for the GS-4 rate class. The Commission will review in future proceedings any proposed rate design, regardless of whether a collaborative proposal is reached.

**CASE NO. PUE-2011-00045
JUNE 27, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

To revise its fuel factor pursuant to § 56-249.6 of the Code of Virginia

ORDER ESTABLISHING FUEL FACTOR

On, May 2, 2011, Virginia Electric and Power Company ("Virginia Power" or "Company") filed with the State Corporation Commission ("Commission") its application, written testimony, and exhibits requesting to increase its fuel factor from 2.803¢ per kilowatt-hour ("kWh") to 3.620¢ per kWh, effective for usage on and after July 1, 2011. According to the Company's application, Virginia Power experienced a significant under-recovery (approximately \$311 million as of March 31, 2011)¹ during the July 1, 2010 – June 30, 2011 fuel period ("prior period"), influenced heavily by extreme

¹ Ex. 8, SMF Schedule 1 (Foust Direct).

weather conditions.² The Company thus also advanced an alternative proposal ("Mitigation Proposal"), offering to recover its projected June 30, 2011 deferral balance (\$433.5 million)³ over the two fuel periods, July 1, 2011 – June 30, 2012 and July 1, 2012 – June 30, 2013. The Mitigation Proposal would increase the Company's fuel factor to 3.289¢ per kWh, reflecting an approximately 41% reduction in the fuel factor increase compared to the full recovery rate during the current period.⁴ Further, the Company represented that the incremental costs associated with financing the deferral balance over twenty-four (24) months rather than twelve (12) months, if granted by the Commission, would be borne by the Company.⁵

The Company's proposed total fuel factor, Fuel Charge Rider A, consists of both a current and prior period factor. According to the application, Fuel Charge Rider A's proposed current period factor of 2.959¢ per kWh is designed to recover the Company's estimated Virginia jurisdictional fuel expenses of approximately \$1.9 billion for the period July 1, 2011 – June 30, 2012. Fuel Charge Rider A's proposed prior period factor of 0.661¢ per kWh is designed to recover approximately \$433.5 million in fuel expenses that have been deferred for the period July 1, 2010 – June 30, 2011.⁶

Under the Company's Mitigation Proposal, Fuel Charge Rider A's proposed current period factor would remain unchanged. However, the Fuel Charge Rider A's proposed prior period factor would decrease to 0.330¢ per kWh for the current period.⁷

The Company did not propose any modifications to the Commission's Definitional Framework of Fuel Expenses for Virginia Power in its application.

Further, the Company requested to allocate in base rate margins – as opposed to the fuel factor – certain gains in 2010 and 2011 resulting from the Company's sale of coal purchased under the terms of a settlement agreement entered into with one of its coal suppliers ("PBS Settlement contract").⁸

On May 6, 2011, the Commission entered an Order Establishing 2011-2012 Fuel Factor Proceeding that, among other things: (1) established a procedural schedule for this matter; (2) required the Company to provide public notice of its application; and (3) scheduled a public hearing for June 21, 2011.

The following parties filed notices of participation in this case: MeadWestvaco Corporation ("MeadWestvaco"); Airgas Merchant Gases, LLC ("Airgas"); Wal-Mart Stores East, LP and Sam's East, Inc. ("Wal-Mart"); the Virginia Committee for Fair Utility Rates ("Committee"); and the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"). The Commission received twenty-five (25) written comments on the application.

The Commission convened a public evidentiary hearing in Richmond on June 21, 2011. The following parties participated at the hearing: Virginia Power; MeadWestvaco; Airgas; Wal-Mart; the Committee; Consumer Counsel; and the Commission's Staff ("Staff"). The Commission received into evidence the prefiled testimony from witnesses for the Company; MeadWestvaco; Airgas; Wal-Mart; the Committee; and the Staff. Consumer Counsel did not submit prefiled testimony. Three public witnesses appeared at the hearing in support of the Company's Mitigation Proposal. The Commission heard closing arguments at the conclusion of the hearing.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that Virginia Power's fuel factor approved herein shall be 3.289¢ per kWh for service rendered on and after July 1, 2011.

Pursuant to § 56-249.6 of the Code of Virginia ("Code"), Virginia Power is statutorily entitled to recover its prudently incurred fuel costs. Indeed, in describing this statutory provision over twenty (20) years ago, the Commission explained that the fuel factor permits *dollar for dollar* recovery of prudently incurred fuel costs.⁹ As also explained in prior fuel cases, approval of a fuel factor herein does not represent ultimate approval of the Company's actual fuel expenses. An audit and investigation of the Company's actual booked fuel expenses, among other things, is conducted by the Staff after the close of the fuel year. The Commission subsequently determines what are, in fact, reasonable, prudent and, therefore, allowable fuel expenses and credits, as well as the Company's recovery position as of the end of the audit period. For example, the Commission has previously described this review as follows:

Should the Commission find in its Final Audit Order (1) that any component of the Company's actual fuel expenses or credits has been inappropriately included or excluded, or (2) that the Company has failed to make every reasonable effort to minimize fuel cost or has made decisions resulting in unreasonable fuel cost, the Company's recovery position will be adjusted. This adjustment will be reflected in the recovery position of the

² Application at 2.

³ Company witness Kelly testified that the Company now projects a June 30, 2011 fuel deferral balance of approximately \$459.5 million.

⁴ Application at 3.

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ For a discussion of this issue, see Ex. 15-C (Pate Direct) and Ex. 19-C at 3-9 (Foust Rebuttal).

⁹ *Commonwealth of Virginia, ex rel. State Corp. Comm'n, Ex Parte: In the matter of establishing Commission policy regarding rate treatment of purchased power capacity charges by electric utilities and cooperatives*, Case No. PUE-1988-00052, 1988 S.C.C. Ann. Rept. 346, 347 (Nov. 10, 1988) (describing the "fuel factor" as "a statutory adjustment mechanism through which all prudently incurred energy costs are recovered, *dollar for dollar*" (emphasis added)). See also *Application of Kentucky Utils. Co., t/a Old Dominion Power Co., To revise its fuel factor pursuant to Virginia Code § 56-249.6*, Case No. PUE-1994-00043, 1995 S.C.C. Ann. Rept. 309, 310 (Jan. 6, 1995) ("*Kentucky Utils.*") (explaining that the "fuel factor mechanism . . . gives the Company *dollar for dollar* recovery for allowable fuel expenses" (emphasis added)).

Company's next fuel factor. We reiterate that no finding in this order is final, as this matter is continued generally, pending Staff's audit of actual fuel expenses.¹⁰

Likewise, while we find that the fuel factor approved herein shall be implemented for usage on and after July 1, 2011, no finding in this Order Establishing Fuel Factor is final, as this matter is continued generally, pending audit and investigation of the Company's actual fuel expenses.

We approve the Company's Mitigation Proposal for the \$433.5 million deferred fuel balance over twenty-four (24) months, resulting in a prior period factor of 0.330¢ per kWh. Accordingly, we find that the fuel factor approved herein is reasonably comprised of (1) a current period factor of 2.959¢ per kWh, and (2) a prior period factor (*i.e.*, a correction factor) of 0.330¢ per kWh – resulting in a total fuel factor of 3.289¢ per kWh. As requested by Wal-Mart and agreed to by Virginia Power, the Company shall be prepared to establish in future proceedings that any incremental financing costs associated with its Mitigation Proposal have not been charged to ratepayers.¹¹ In addition, we reject MeadWestvaco's request to implement a separate, modified mitigation plan for a limited subset of customers having 10 megawatts or greater of demand at a single meter.¹² Finally, as proposed by Virginia Power in response to a request from MeadWestvaco, the Company shall post on-line (quarterly) a publicly available, non-confidential schedule showing summary totals of actual monthly and cumulative deferred fuel balances.

We reject the Company's request to allocate to base rate margins – as opposed to the fuel factor – certain gains in 2010 and 2011 resulting from the Company's sale of coal purchased under the PBS Settlement contract. The coal purchased under the agreement with PBS Coals, Inc. ("PBS"), is part of the Company's overall fuel procurement plan, which includes purchases under other coal contracts as well. In this instance, the Company exercised its rights under the agreement with PBS and, further, "minimize[d] fuel costs," which is the Company's statutory duty as set forth in § 56-249.6 D 2 of the Code, by selling such coal for a gain. Accordingly, we find that it is appropriate for 100% of the gains in 2010 and 2011 resulting from the Company's sale of coal purchased under the PBS Settlement contract to be reflected in the fuel factor. We further note that, likewise, (i) 100% of the cost of the PBS Settlement contract replacement coal also is included in the fuel factor, and (ii) 100% of losses and gains from the sale of coal under other agreements have previously been included in the fuel factor.¹³

Finally, we reject Airgas' request to modify the allocation of the prior period under-recovery. Rather, we find that it is appropriate to continue the Commission's long-standing uniform fuel factor based on average costs over the fuel period. Airgas' proposal would modify the allocation of fuel costs associated with a generating unit – thus likely shifting these variable costs to other customers – without analyzing whether there should be symmetrical allocation changes (*i.e.*, cost-shifting) associated with the fixed capacity costs of such unit.¹⁴ Similarly, we are not persuaded to order the Company, as requested by the Committee, to prepare new fuel factor analyses on a disaggregated hourly basis. The purpose of such analyses appears to be to evaluate the possible reallocation of fuel costs among customer classes. If any such analysis were to be required in the future, such evaluation should not be initiated in a vacuum but, rather, would likely include consideration of symmetrical changes to the allocation of fixed capacity costs.¹⁵

Accordingly, IT IS ORDERED THAT:

- (1) The Company's fuel factor shall be 3.289¢ per kWh for service rendered on and after July 1, 2011.
- (2) The Company's Fuel Charge Rider A, as approved herein, is accepted for filing and shall become effective for service rendered on and after July 1, 2011.
- (3) The Company shall comply with the requirements set forth herein.
- (4) This case is continued generally.

¹⁰ *Kentucky Utils.*, 1995 S.C.C. Ann. Rept. at 311.

¹¹ The Company also shall provide to the Staff, upon request, updates of its tracking and calculation of such incremental financing costs.

¹² The Mitigation Proposal approved herein takes reasonable steps to help consumers by deferring partial recovery of the deferred fuel balance until the next fuel rate period. We also continue to find that it is appropriate to assign uniform fuel rates to all customers within a reasonably defined rate class. Moreover, MeadWestvaco's proposal does not address issues related to potential cost-shifting among customers and classes that may arise attendant to the creation of a separate deferred fuel balance for its proposed limited subset of customers.

¹³ *See, e.g.*, Ex. 15 at 8 (Pate Direct).

¹⁴ *See, e.g.*, Ex. 18 at 2-5 (Evans Rebuttal).

¹⁵ In addition, to the extent these requests raise issues related to customer responses to dynamic pricing signals, we note that the Commission has approved a dynamic pricing pilot program for the Company. On April 8, 2011, in Case No. PUE-2010-00135, the Commission issued an Order establishing a dynamic rate pilot program for the Company that extends to November 30, 2013. Such Order also requires the Company to file detailed annual reports on such pilot program.

**CASE NO. PUE-2011-00049
NOVEMBER 28, 2011**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of a SAVE plan and rider as provided by Virginia Code § 56-604

ORDER APPROVING SAVE PLAN AND RIDER

On June 1, 2011, Columbia Gas of Virginia, Inc. ("CGV" or "Company"), filed with the State Corporation Commission ("Commission") its application ("Application") for approval to implement a plan and rider pursuant to Chapter 26 of Title 56 of the Code of Virginia ("Code"), §§ 56-603 *et seq.* - Steps to Advance Virginia's Energy Plan ("SAVE") Act.¹ Accompanying the Application were the Direct Testimony and Exhibits of Danny G. Cote ("Cote") and Robert E. Horner ("Horner"). The Company proposes to recover costs associated with the replacement of approximately \$100 million of infrastructure during the five (5) year term (2012-2016) of its plan ("SAVE Plan").² The Company also proposes to recover costs associated with approximately \$2.9 million of incremental infrastructure replacements occurring in 2011.³ The Company intends to spend approximately \$20 million annually and requests the flexibility to spend up to 5% above or below the projected annual level of investment.⁴ Recovery would be through a rider ("SAVE Rider") on customers' bills authorized by the SAVE Act.

As CGV discusses in its Application, the SAVE Act provides for the recovery of the costs of replacing gas utility infrastructure to enhance system safety and reliability and reduce or have the potential to reduce greenhouse gas emissions. The Company represents that the SAVE eligible infrastructure projects will not increase revenues by directly connecting such infrastructure replacements to new customers and notes that the replacement projects commenced after January 1, 2011. Further, according to the Company, current base non-gas rates do not include costs of the SAVE eligible infrastructure projects.⁵ The projects proposed in the Company's Application are the replacement of bare steel mains, cast iron mains, pre-1971 coated steel mains and services, certain first generation plastic pipe, isolated bare steel services, and certain risers that are prone to failure.⁶

The monthly SAVE Rider would take effect with the first billing unit for January 2012, which the Company states is scheduled to be billed on December 30, 2011.⁷ The Company's proposed SAVE Rider would be billed as a fixed monthly charge.⁸ The Company projects that the SAVE Rider would add \$0.36 per month to a typical residential customer's bill in 2012 and would add \$2.86 per month in the final year of the Company's SAVE Plan, 2016.⁹

The Company states that the SAVE Rider would consist of two components: (1) an Infrastructure Replacement Current Rate ("IRCR"); and (2) an Infrastructure Replacement Reconciliation Rate ("IRRR").¹⁰ The Company explains that:

The IRCR to be applicable during 2012 . . . is based on the \$20 million annual expenditures in 2012 plus the \$2.9 million incurred in 2011, while the IRCR for subsequent years (2013 - 2016) are based on the cumulative impact of the \$20 million annual investments to be made through each subsequent year. The IRCR effective with meter readings applicable on the first billing unit for January 2016 would remain in effect until such time as base non-gas rates were reset pursuant to a Commission order in a rate case, a performance based regulation plan or an extended SAVE Plan.¹¹

The IRRR is the Company's annual true-up of its SAVE Plan costs and will be calculated annually based on the prior year's actual cost of service.¹² The Company states that it "will file the calculations of the IRRR applicable to the previous calendar year, supporting materials and associated rate sheets with the Commission no later than March 31 of the following year commencing in 2013."¹³

¹ 2010 Va. Acts ch. 142, ch. 514. As provided by § 56-604 B of the Code, the Commission shall approve or deny the Company's Application within 180 days.

² Application at 1, 4; Direct Testimony of Cote ("Cote Direct") at 4.

³ Application at 4; Cote Direct at 6.

⁴ Application at 5; Cote Direct at 16.

⁵ Application at 3-4.

⁶ *Id.* at 3.

⁷ *Id.* at 4.

⁸ *Id.* at 6; Direct Testimony of Horner ("Horner Direct") at 9.

⁹ Horner Direct at 19.

¹⁰ Application at 6.

¹¹ *Id.*

¹² Horner Direct at 13.

¹³ Application at 6.

On June 17, 2011, the Commission issued an Order for Notice and Hearing that, among other things: (1) docketed this proceeding; (2) required public notice of the Application; (3) established procedures for participation in this matter; (4) scheduled a public hearing on the Application; and (5) appointed a Hearing Examiner to conduct all further proceedings in this matter on behalf of the Commission and to file a final report.

On September 7, 2011, a public hearing was held on the Application. The Commission did not receive any notices of participation in this matter. In addition, no public witnesses appeared at the hearing and no written comments were filed. On September 21, 2011, CGV and the Commission Staff ("Staff") filed post-hearing briefs.

On October 6, 2011, the Report of Michael D. Thomas, Hearing Examiner ("Hearing Examiner's Report" or "Report") was filed. In the Report, the Hearing Examiner summarized the history and the record in this case and recommended that the Commission enter an order that: (1) adopts the findings and recommendations contained in the Report; (2) approves the Company's proposed SAVE Plan as modified in the Report; and (3) passes the papers in the record to the file for ended causes.¹⁴ Specifically, the Hearing Examiner made the following findings:

- (1) The Company's proposed infrastructure replacements satisfy the definition of "eligible infrastructure replacement" in Va. Code § 56-603;
- (2) The Company's proposed SAVE Plan meets the statutory requirements of Va. Code §§ 56-603 and 56-604 A;
- (3) The Company's approximately \$2.9 million in 2011 SAVE eligible infrastructure improvements may be recovered prospectively under the Company's SAVE Plan;
- (4) The Commission should treat the Company's annual SAVE Rider and true-up filings as administrative compliance filings and dispose of them accordingly;
- (5) The Company's SAVE Plan should end on December 31, 2016, the end of the fifth calendar year after its proposed effective date, absent an extension of the SAVE Plan approved by the Commission; and
- (6) The Staff's recommendations, as set forth in CGV's Post-Hearing Brief at Appendix A, are reasonable and should be incorporated in the Company's SAVE Plan.¹⁵

On October 27, 2011, the Company and the Staff filed comments on the Hearing Examiner's Report.

The Company asserts, among other things, as follows: (1) "Customers have not paid for the incremental \$2.9 million of SAVE eligible investments made in 2011 and therefore the Company is permitted to recover those costs through its SAVE Rider as a matter of law"; (2) "The Company agrees with the Hearing Examiner's recommendation to treat the Company's annual SAVE Rider and true-up filings as administrative compliance filings without a formal proceeding"; and (3) "The SAVE Rider should continue to recover SAVE eligible costs until the next rate case, PBR Plan [performance-based regulation], or SAVE Plan extension."¹⁶

The Staff takes exception to two of the Hearing Examiner's findings and recommendations. The Staff argues that CGV should not be able to collect costs associated with the \$2.9 million of investments made in 2011 through the SAVE Rider because these projects were included in the Company's rate base in its last general rate case.¹⁷ Additionally, the Staff argues that the Commission should allow for the possibility of more formal proceedings than would generally be given an administrative compliance filing. The Staff argues that this will help ensure that the Company's filings and calculation of its SAVE Rider rates are as accurate as possible in order to minimize the need to true-up the Company collection of SAVE Rider rates.¹⁸

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the Company's SAVE Plan and SAVE Rider, as modified in accordance with the findings of the Hearing Examiner adopted herein and subject to the requirements in this Order, satisfy the statutory provisions of the SAVE Act and are therefore approved.

We specifically adopt the following findings made by the Hearing Examiner:

- (1) The Company's proposed infrastructure replacements satisfy the definition of "eligible infrastructure replacement" in Va. Code § 56-603;
- (2) The Company's proposed SAVE Plan meets the statutory requirements of Va. Code §§ 56-603 and 56-604 A;

¹⁴ Report at 29.

¹⁵ *Id.*

¹⁶ CGV's October 27, 2011 Comments on the Hearing Examiner's Report at 4, 11, and 13 (case and typeface modified).

¹⁷ October 27, 2011 Staff Response to the Hearing Examiner's Report at 2-7.

¹⁸ *Id.* at 7-10.

(3) The Company's approximately \$2.9 million in 2011 SAVE eligible infrastructure improvements may be recovered prospectively under the Company's SAVE Plan;¹⁹

...

(5) The Company's SAVE Plan should end on December 31, 2016, the end of the fifth calendar year after its proposed effective date, absent an extension of the SAVE Plan approved by the Commission;²⁰ and

(6) The Staff's recommendations, as set forth in CGV's Post-Hearing Brief at Appendix A, are reasonable and should be incorporated in the Company's SAVE Plan.²¹

SAVE Rider Filings

We do not adopt Finding (4) in the Hearing Examiner's Report regarding the procedure for the annual filings to be made by CGV related to its SAVE Plan and SAVE Rider. We find that CGV's annual SAVE Rider and true-up filings shall be treated as we require for Washington Gas Light Company's SAVE Rider.²² Specifically, such filings shall be treated as SAVE Rider adjustment filings under § 56-604 E of the Code and shall be docketed at the Commission. The annual filings should be consistent with the Staff's recommendations as agreed to by the Company.²³ Upon filing thereof, the Commission will determine—on a case-by-case basis—the specific formal procedures to be employed in the evaluation of such filing.

Accordingly, CGV shall make the following SAVE Rider adjustment filings. First, on or before August 15, 2012,²⁴ the Company shall file its proposed SAVE Rider rates based on projected SAVE Plan expenditures for calendar year 2013, and the rates approved in such case will be effective for the Company's first billing unit of January 2013 through the final billing unit of December 2013. Second, on or before August 15, 2013, the Company shall file its proposed SAVE Rider rates based on: (a) projected SAVE Plan expenditures for calendar year 2014, and (b) its proposed reconciliation adjustment for the 12-month period ending December 31, 2012; the rates approved therein will be effective for the first billing unit of January 2014 through the final billing unit of December 2014. CGV shall make similar filings on or before August 15, 2014, and August 15, 2015.

Finally, as previously stated, the SAVE Plan approved herein concludes on December 31, 2016. Thus, absent an extension of the SAVE Plan approved by the Commission: (1) on or before August 15, 2016, CGV shall file proposed SAVE Rider rates based on its proposed reconciliation adjustment for the 12-month period ending December 31, 2015; (2) the SAVE Rider shall terminate on January 1, 2017; and (3) on or before April 1, 2017, CGV shall file a final proposed reconciliation adjustment and a proposed method for recovery or refund thereof.

SAVE Plan Limits

We approve a SAVE Plan totaling \$100,000,000 commencing January 2012 and ending on December 31, 2016, and recovery of costs associated with an additional \$2,900,000 of SAVE eligible investment during 2011 subject to certain requirements. The Company has proposed spending \$20 million each year and has requested the flexibility to vary this amount up to 5% above or below the projected level of SAVE Plan investment in any year. We find that the requested flexibility is reasonable and will permit flexibility in implementation of the infrastructure replacement projects approved by the Commission. The Company has stated that it will apply to amend its SAVE Plan if it anticipates spending greater than 5% above or below the \$20 million in authorized annual expenditures.²⁵ As part of the annual SAVE Rider adjustment filings for the SAVE Plan approved herein, the Commission may approve a request for modification of the SAVE Plan limits for good cause shown.²⁶

Accordingly, IT IS ORDERED THAT:

(1) A SAVE Plan, as permitted by § 56-603 *et seq.* of the Code, is approved as set forth in this Order Approving SAVE Plan and SAVE Rider.

(2) A SAVE Rider, as permitted by § 56-603 *et seq.* of the Code, is approved as set forth in this Order Approving SAVE Plan and SAVE Rider and shall become effective commencing with the first billing unit of January 2012.

¹⁹ We note that the Hearing Examiner's and Commission's determination herein is consistent with our April 21, 2011 Order Approving SAVE Plan and SAVE Rider for Washington Gas Light Company in Case No. PUE-2010-00087. *Application of Washington Gas Light Company, For approval of a SAVE plan and rider as provided by Va. Code § 56-604*, Case No. PUE-2010-00087, Doc. Con. Cen. No. 446676, Order Approving SAVE Plan and SAVE Rider (Apr. 21, 2011) ("WGL SAVE Order").

²⁰ While the SAVE Plan and SAVE Rider end on December 31, 2016, the Company is not precluded from recovering any reasonable costs incurred thereunder through, among other possibilities, a final true-up, a subsequent or extended SAVE Rider, and/or a subsequent base rate proceeding.

²¹ Report at 29.

²² WGL SAVE Order at 10-12.

²³ Report at 27-28.

²⁴ We hereby accept CGV's proposal that the annual SAVE Rider adjustment filings be made on or before August 15 of each year of the SAVE Plan as reflected in the Hearing Examiner's Report. Report at 28.

²⁵ Horner Direct at 15-16.

²⁶ The ability to request such modifications is part of the SAVE Plan approved herein and, thus, does not constitute an amendment to the SAVE Plan under § 56-604 of the Code.

(3) CGV shall forthwith file with the Clerk of the Commission and with the Commission's Divisions of Energy Regulation and Public Utility Accounting, in accordance with this Order, revised tariffs and terms and conditions of service for the SAVE Rider, with workpapers supporting the total revenue requirement and rates, all of which shall reflect the findings and requirements set forth in this Order Approving SAVE Plan and SAVE Rider. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.

(4) At least 30 days prior to the specific filings required as part of the SAVE Plan, as approved by the Commission in this Order Approving SAVE Plan and SAVE Rider, the Company shall provide information related to such filings to the Staff upon request.

(5) This matter is dismissed.

**CASE NO. PUE-2011-00050
JULY 28, 2011**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY

For approval of a Tax Sharing Policy pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On May 2, 2011, Virginia-American Water Company ("Virginia American" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission") requesting approval of a Tax Sharing Policy arrangement ("Tax Policy") with American Water Works Company, Inc. ("American Water" or "Parent"),¹ and its affiliates pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code").² In the alternative, Virginia American requests that the Commission grant it a waiver or exemption from the filing and prior approval requirements of the Affiliates Act with regard to the Tax Policy.

Virginia American is a Virginia public service corporation that provides water service to approximately 54,000 customers in and around the communities of Alexandria, Dale City, and Hopewell, and to portions of Prince William County, Prince George County, and the Fort Lee military installation. Virginia American is a wholly owned subsidiary of American Water.

The Tax Policy states that its purpose is to establish a method: (i) for allocating consolidated or combined federal tax liabilities of the Tax Group among its Members;³ (ii) for reimbursing the Parent for payment of such liability; (iii) for compensating any Member for use of its losses or tax credits;⁴ and (iv) for the allocation and payment of any addition to tax, refund arising from a carryback of losses, or tax credits from subsequent tax years.⁵

The Applicant represents that an exemption from the filing and prior approval requirements of the Affiliates Act is appropriate for the Tax Policy for several reasons. First, Virginia American represents that the Tax Policy is a corporate policy pertaining to the accounting procedure applicable to annual tax returns and, as such, is distinguishable from the types of contracts and arrangements regulated by the Affiliates Act.⁶ Virginia American also notes that the furnishing of such affiliated services is separately provided for in the current services agreement between Virginia American and American Water.⁷ Second, Virginia American represents that the Tax Policy applies to all American Water subsidiaries and does not require approval in any other jurisdiction. Third, Virginia American represents that an Affiliates Act approval of the Tax Policy will have no ratemaking impact.⁸ Finally, Virginia American represents that separate reporting and evaluation approaches will continue to be applied in its rate cases pursuant to § 56-235.2 B of the Code.

¹ The Tax Policy filed in the Application is not dated or signed. It is titled "Thames Water Aqua US Holdings, Inc. & Subsidiaries Tax Sharing Policy." Thames Water Aqua US Holdings, Inc., was the holding company for American Water before American Water was spun off as a separate legal entity. The Applicant represents that the filed Tax Policy represents the current tax sharing arrangement, which is in the process of being updated to reflect American Water as the parent company. According to Virginia American, there will be no significant differences between the two documents.

² Va. Code §§ 56-76 *et seq.* ("Affiliates Act").

³ American Water has fifty-four (54) members ("Members") in its affiliated consolidated tax group ("Tax Group"), including Virginia American.

⁴ Virginia American is eligible to receive the Alternative Minimum Tax credit and the Research & Development Tax credit.

⁵ Virginia American is not subject to state income taxes in Virginia. Virginia American pays Virginia license and special regulatory revenue (gross receipts) taxes ("Virginia GRT") pursuant to §§ 58.1-2620 through -2650 and § 58.1-2660 of the Code, which are not allocated to jurisdictions outside of Virginia. Therefore, the Tax Policy does not deal with Virginia American's Virginia GRT.

⁶ Section 56-77 A of the Code.

⁷ *Application of Virginia-American Water Company, For authority to enter into services agreement with affiliates*, Case No. PUA-1988-00055, 1989 S.C.C. Ann. Rept. 157, Order Granting Authority (May 8, 1989).

⁸ See *Joint Application of Alpha Water Corporation, Aqua Utility-Virginia, Inc., Aqua Lake Holiday Utilities, Inc., Land'Or Utility Company, Inc., Caroline Utilities, Inc., Aqua/SL, Inc., Mayfore Water Company, Inc., Ellerson Wells, Inc., Blue Ridge Water Company, Mountainview Water Company, Inc., James River Service Corporation, Earlysville Forest Water Company, Rainbow Forest Water Corporation, Powhatan Water Works, Inc., Heritage Homes of Virginia, Inc., Sydnor Hydrodynamics, Inc., Sydnor Water Corporation, Indian River Water Company, Water Distributors, Inc., Reston/Lake Anne Air Conditioning Corp., Aqua Virginia, Inc., Aqua Utilities, Inc., and Aqua America, Inc., For authority to enter into a Tax Allocation Agreement pursuant to the Affiliates Act, § 56-76 et seq. of the Code of Virginia*, Case No. PUE-2008-00013, 2008 S.C.C. Ann. Rept. 487, Order Granting Authority (May 28, 2008).

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Applicant's request for an exemption from the filing and prior approval requirements of the Affiliates Act should be denied. These requirements of the Affiliates Act are applicable to and necessary for consolidated tax agreements or arrangements such as the Tax Policy, contrary to Applicant's representation.

The Applicant represents that the proposed Tax Policy provides for each Member of the Tax Group, including Virginia American, to be allocated and pay federal tax liabilities or receive federal tax benefits on a separate return basis as if each Member were a stand-alone company. Therefore, we find that the Tax Policy is in the public interest and should be approved subject to the requirements recommended in the Commission Staff's Action Brief filed contemporaneously with this Order. These requirements are intended to clarify the nature and extent of our Affiliates Act approval in this case and to permit the Commission Staff to monitor Virginia American's separate return tax representations on an ongoing basis.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 B of the Code, Virginia American's request for an exemption from the filing and prior approval requirements of the Affiliates Act for the Tax Policy is hereby denied.
- (2) Pursuant to § 56-77 of the Code, Virginia American is granted approval of the proposed Tax Policy as described herein and subject to the findings and requirements set forth in this Order, including the requirements recommended in the Commission Staff's Action Brief concerning this case, effective as of the date of the entry of this Order.
- (3) Virginia American shall file with the Commission a revised and executed copy of the Tax Policy listing American Water as the Parent of the consolidated Tax Group within ninety (90) days of the entry of this Order, subject to administrative extension by the Commission's Director of Public Utility Accounting ("PUA Director").
- (4) The approval granted herein shall have no ratemaking implications and does not guarantee the recovery of any costs directly or indirectly related to the Tax Policy.
- (5) The Commission reserves the right to reflect ratemaking adjustments to Virginia American's income taxes in the course of any Commission review and analysis of Virginia American's cost of service in the future.
- (6) Commission approval shall be required for any changes in the terms and conditions of the Tax Policy.
- (7) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (8) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein whether or not such affiliate is regulated by this Commission.
- (9) Virginia American shall include the transactions associated with the Tax Policy approved herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the PUA Director by May 1 of each year, subject to administrative extension by the PUA Director.
- (10) Virginia American shall prepare an annual detailed reconciliation of any differences between its allocation of actual federal and state tax liabilities and what such liabilities are on a separate return basis. Beginning May 1, 2012, this reconciliation shall be included with Virginia American's ARAT submitted to the PUA Director each year. If there are no differences between Virginia American's allocated and separate return tax liabilities, then Virginia American shall prepare a verified legal representation to that effect to be included as an addendum to its ARAT each year.
- (11) In the event that any annual informational or rate case filings are not based on a calendar year, then Virginia American shall include the affiliate information contained in its ARAT in such filings.
- (12) This case is continued.

**CASE NO. PUE-2011-00053
AUGUST 2, 2011**

JOINT APPLICATION OF
PO RIVER WATER AND SEWER COMPANY
and
THE CARLYLE GROUP, INC.

For approval of agreement pursuant to the Affiliates Act, Va. Code §§ 56-76 *et seq.*

ORDER GRANTING APPROVAL

On May 4, 2011, Po River Water and Sewer Company ("Po River") and The Carlyle Group, Inc. ("Parent") ("Joint Applicants"), filed a Joint Application with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 ("Affiliates Act")¹ of the Code of Virginia ("Code"), for approval of an agreement ("Agreement") by which Parent will provide personnel and services to Po River.

¹ Va. Code § 56-76 *et seq.*

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Po River is a Virginia public utility that provides water and sewer service to the Indian Acres Campground in Spotsylvania County, Virginia. Parent is a California corporation and the parent company of Po River.

Since acquiring Po River in 1990, Parent has provided Po River with personnel and support services to aid Po River in its operations. This relationship did not require approval under the Affiliates Act because Po River had gross annual revenues of less than \$500,000 and, therefore, was exempt from the provisions of the Affiliates Act pursuant to § 56-265.13:7 of the Code. However, with the conclusion of Po River's most recent rate case, Case No. PUE-2009-00136, Po River's gross annual revenues will exceed the \$500,000 threshold, making all of Po River's affiliate arrangements subject to the Affiliates Act pursuant to § 56-265.13:3 of the Code. As such, the Commission's April 4, 2011 Final Order in Case No. PUE-2009-00136 ordered Po River to file for approval "of all affiliate arrangements or contracts pursuant to the Affiliates Act, § 56-76 *et seq.* of the Code."²

Under the proposed Agreement, Parent will provide all personnel, including on-site workers, personnel to perform local management of Po River and to supervise the on-site workers, and its own corporate personnel to provide certain services to Po River. The proposed Agreement allows Parent to provide Po River with the following services: administration; accounting and financial; billing and collection; communications; corporate secretary; engineering; human resources; information systems; operations; rates and regulatory compliance; risk management; legal; and purchasing, contracts, and sales. The proposed Agreement is essentially a formal written contract for the affiliate arrangement Po River and Parent are currently operating under. The proposed Agreement has a perpetual term; however, it may be terminated by either party upon sixty (60) days' notice.

The cost of the personnel and services will be based upon the actual costs to Parent. All costs that can be attributed exclusively to Po River will be directly charged. Costs that are rendered for Po River and other Parent subsidiaries that cannot be identified and related exclusively as rendered to a particular company will be allocated to Po River based upon the ratio of the relative percentage of Po River's on-site payroll to the total of the on-site payroll of all of Parent's subsidiaries.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the proposed Agreement is in the public interest and, therefore, should be approved subject to the following conditions. First, we will limit the duration of our approval of the proposed Agreement to five (5) years from the date of this Order Granting Approval. Affiliate agreements dealing with the provision of centralized administrative services require periodic review because they typically involve a wide range of services and substantial transactions and are subject to significant change over time. If Po River wishes to continue the proposed Agreement after our initial approval ends, further approval will be required.

The proposed Agreement pricing methodology appears consistent with our practice of requiring utilities to pay the lower of cost or market for services received from unregulated affiliates. We will require Po River to maintain records demonstrating that the services provided by Parent remain cost beneficial to Virginia consumers and that Po River is paying Parent the lower of cost or market. Such records should be available for Commission Staff review upon request.

Further, to ensure that the proposed Agreement continues to be in the public interest, the Joint Applicants should review indirect costs in terms of cost causation and evaluate different allocation factors to ensure that the most appropriate allocation factor(s) continue to be used. An effort should be made to ensure that costs of providing services are tied to the appropriate cost causative factors.

The approval granted herein does not include affiliates other than Parent and Po River. Should Parent wish to utilize affiliated third parties to provide services to Po River, separate Commission approval will be required.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, Po River and Parent are hereby granted approval to enter into the Agreement as described herein, consistent with the findings above.

(2) The approval granted herein is limited to five (5) years from the date of the entry of this Order. Should Po River wish to continue the Agreement beyond that date, further Commission approval shall be required.

(3) Po River shall maintain records demonstrating that the services provided by Parent remain cost beneficial to Virginia consumers and that Po River is paying the lower of cost or market. Such records shall be available for Commission Staff review upon request. Po River shall bear the burden of proving, in any annual informational filing or rate case proceeding, that it paid the lower of cost or market under the Agreement.

(4) The Joint Applicants shall review indirect costs in terms of cost causation to ensure that the most appropriate allocation factor(s) continue to be used. The results of such review shall be made available to Commission Staff upon request.

(5) Approval does not include affiliates other than Parent and Po River. Should Parent desire to utilize other affiliates in the provision of services to Po River, separate Commission approval shall be required.

(6) Commission approval shall be required for any changes in the terms and conditions of the Agreement, including any successors or assigns.

(7) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(8) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by the Commission.

(9) The approval granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Agreement.

² Commonwealth of Virginia, *ex rel.*, State Corporation Commission, *In re: Po River Water and Sewer Company's proposed revised rates, rules, and regulations*, Case No. PUE-2009-00136, Doc. Con. Cen. No. 445752, Final Order (Apr. 4, 2011) at 10.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(10) Po River shall submit an Annual Report of Affiliate Transactions ("ARAT") with the Commission's Director of Public Utility Accounting no later than May 1 of each year, such date subject to administrative extension by the Director of Public Utility Accounting. Such report shall include the name of the affiliate, a description of each affiliate arrangement or agreement, description of services provided, transactions conducted, the dates covered by such arrangement or agreement, and the total dollar amount for each service provided or transaction conducted. The report, the first of which shall be due on or before May 1, 2012, shall include all agreements with affiliates regardless of the amount involved.

(11) If annual informational and/or general rate case filings are not based on a calendar year, then Po River shall include the affiliate information contained in the ARAT in such filings.

(12) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2011-00056
AUGUST 5, 2011**

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY
and
AMERICAN WATER WORKS SERVICE COMPANY

For approval of a services agreement under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On May 10, 2011, Virginia-American Water Company ("VAWC") and American Water Works Service Company ("Service Company") (together with VAWC, the "Applicants") filed an application with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 ("Affiliates Act")¹ of the Code of Virginia ("Code"), requesting approval for VAWC to continue participation in a services agreement ("Service Agreement") with Service Company. In the alternative, the Applicants request an exemption from the filing and prior approval requirements of the Affiliates Act for the Service Agreement.

VAWC is a Virginia public service corporation headquartered in Alexandria, Virginia, that has a certificate of public convenience and necessity to operate public water systems in and around Alexandria, Dale City, Fort Lee, and Hopewell, Virginia, as well as portions of Westmoreland, Northumberland, Lancaster, King William, and Essex counties in Virginia. VAWC is a wholly owned subsidiary of American Water Works Company, Inc. ("AWWC").

Service Company provides support services to AWWC's subsidiaries including VAWC. Service Company also is a wholly owned subsidiary of AWWC.

Service Company has been providing services to VAWC under a service agreement dated January 1, 1989, approved by the Commission in Case No. PUA-1988-00055.² In its course of reviewing VAWC's most recent rate case, Case No. PUE-2010-00001,³ Staff recommended that VAWC file for approval of its services agreement because the agreement was over 20 years old and had not been reviewed by the Commission in a formal proceeding to determine whether it is still adequate in the current business environment.

Under the Service Agreement, Service Company will provide VAWC with the following services: accounting, administration, communications, corporate secretarial [legal], engineering, financial, human resources, information systems, operation, rates and revenue, risk management, and water quality. The Service Agreement has a perpetual term until either party terminates ninety (90) days after providing written notice, or until either party ceases to be an affiliate of AWWC.

The services rendered to VAWC by Service Company will be charged to VAWC at Service Company's cost. There will be no mark up, margin, or profit added to costs. All costs of service rendered by Service Company personnel for VAWC or in common with other AWWC water companies will be charged to VAWC based on actual time spent by those personnel. Costs of service that can be identified and related exclusively to VAWC will be charged directly. Costs incurred in rendering services to VAWC in common with similar services to other AWWC water companies, which cannot be identified and related exclusively to services rendered to a particular company, will be allocated among all companies served based on the number of customers served at the immediately preceding calendar year-end. General overhead will be allocated based on the ratio of the total general overhead of Service Company for the month to the total salaries of the employees for whose service charges are to be made to VAWC.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that exemption from the filing and prior approval requirements of the Affiliates Act is not in the public interest and should be denied. We further find the proposed Service Agreement is in the public interest and, therefore, should be approved subject to the following conditions. First, we will limit the duration of our approval of the proposed Service Agreement to five (5) years from the date of this Order Granting Approval. Affiliate agreements dealing with the provision of centralized administrative services

¹ Va. Code § 56-76 *et seq.*

² *Application of Virginia-American Water Company, For authority to enter into service agreement with affiliate*, Case No. PUA-1988-00055, 1989 S.C.C. Ann. Rept. 157, *Order Granting Authority* (May 8, 1989), *modified*, 1989 S.C.C. Ann. Rept. 158, *Amending Order* (May 26, 1989), *modified sub nom.*, *Application of Virginia-American Water Company, Request to amend previously approved Service Agreement*, Case No. PUA-1988-00055, 1989 S.C.C. Ann. Rept. 159, *Amending Order* (Sept. 20, 1989).

³ For the most recent order in that case, see *Application of Virginia-American Water Company, For an increase in rates*, Case No. PUE-2010-00001, Doc. Con. Cen. No. 45056 1, *Order* (July 29, 2011).

require periodic review because they typically involve a wide range of services and substantial transactions and are subject to significant change over time. If VAWC wishes to continue the proposed Service Agreement after our initial approval ends, further approval will be required.

The proposed Service Agreement pricing methodology appears consistent with our practice of requiring utilities to pay the lower of cost or market for services received from unregulated affiliates. We will require VAWC to maintain records demonstrating that the services provided by Service Company remain cost beneficial to Virginia consumers and that VAWC is paying Service Company the lower of cost or market. Such records should be available for Commission Staff review upon request.

Further, to ensure that the proposed Service Agreement continues to be in the public interest, VAWC will work with Service Company to review indirect costs in terms of cost causation and determine whether there are other allocation factors that more accurately reflect the cost causative characteristics and, therefore, should be used. VAWC will submit to the Commission's Director of Public Utility Accounting the results of such review within one (1) year of the date of this Order Granting Approval.

Service Company's use of American Water Enterprise's Applied Water Management ("AWM") for engineering services to provide services to VAWC is in the public interest and should be approved. However, if Service Company wishes to utilize additional affiliates to provide services to VAWC, separate Commission approval is required.

Accordingly, IT IS ORDERED THAT:

(1) The Applicants' request for exemption from the filing and prior approval requirements of the Affiliates Act for the proposed Service Agreement is hereby denied.

(2) Pursuant to § 56-77 of the Code, VAWC and Service Company are hereby granted approval to enter into the Service Agreement as described herein, consistent with the findings above.

(3) The approval granted herein is limited to five (5) years from the date of this Order Granting Approval. Should VAWC wish to continue the Service Agreement beyond that date, further Commission approval shall be required.

(4) VAWC shall maintain records demonstrating that the services provided by Service Company remain cost beneficial to Virginia consumers and that VAWC is paying Service Company the lower of cost or market. Such records shall be available for Commission Staff review upon request. VAWC shall bear the burden of proving, in any annual informational filing or rate case proceeding, that it paid the lower of cost or market under the Service Agreement.

(5) VAWC shall work with Service Company to review indirect costs in terms of cost causation and determine whether there are other allocation factors that more accurately reflect the cost causative characteristics and, therefore, should be used. VAWC shall submit to the Commission's Director of Public Utility Accounting the results of such review within one (1) year of the date of this Order Granting Approval.

(6) Service Company is granted approval to use AWM for engineering services that will be used to provide service to VAWC. However, if Service Company wishes to utilize additional affiliates to provide services to VAWC, separate Commission approval shall be required.

(7) Commission approval shall be required for any changes in the terms and conditions of the Service Agreement, including any successors or assigns.

(8) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(9) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein, whether or not such affiliate is regulated by the Commission.

(10) The approval granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Service Agreement.

(11) VAWC shall include the transactions associated with the Service Agreement approved herein in its Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting on or before April 1 of each year, which deadline may be extended administratively by the Director of Public Utility Accounting.

(12) If annual informational and/or general rate case filings are not based on a calendar year, then VAWC shall include the affiliate information contained in the ARAT in such filings.

(13) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2011-00058
AUGUST 3, 2011**

APPLICATION OF
APPALACHIAN POWER COMPANY

For consent to and approval of an extension and modification of an existing Amended and Restated Inter-Company Power Agreement with Ohio Valley Electric Corporation and other affiliates pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On May 11, 2011, Appalachian Power Company ("APCo" or "Company") filed an Application with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code")¹ requesting approval of an extension and modification of an existing Amended and Restated Inter-Company Power Agreement ("Power Agreement") with Ohio Valley Electric Corporation ("OVEC") and other affiliates. By Commission Order Extending Time for Review entered July 1, 2011, the Commission extended its review period through August 9, 2011.

As described in the Application, OVEC is an Ohio corporation that provides low cost power to APCo through an agreement ("Agreement") approved by Commission Order entered November 17, 2004 ("Order"), in Case No. PUE-2004-00095.² In the Order, the Commission approved an Amended Agreement, Modification No. 1 to the Amended Agreement, and Termination Agreement ("Amended Agreement"), which terminated and restated in their entirety the terms and conditions of the existing Agreement with OVEC, extended the term of the existing Agreement to 2026, and made other changes intended to modernize and clarify the rights, duties, and obligations of the parties to the Amended Agreement. According to the Amended Agreement, power purchases by APCo are priced based on OVEC's cost.

APCo now requests approval of the Power Agreement. The Power Agreement extends the term of the Amended Agreement until June 30, 2040, and makes certain non-substantive administrative changes to the Amended Agreement's terms and conditions. An extension of the term of the Amended Agreement is requested to allow OVEC the flexibility to refinance all or part of its long-term debt with maturities expiring after the current term of the Amended Agreement. APCo represents that, without the approval requested herein, OVEC may not be able to take advantage of favorable interest rates that would allow it to provide lower cost energy to APCo and its affiliates.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described Power Agreement is in the public interest and should be approved provided that any power and energy purchases made by the Company from OVEC to serve its Virginia jurisdictional customers are priced at the lower of OVEC's cost or the market price of non-affiliated power. For cost recovery purposes during any rate proceeding, the Company bears the burden to prove that, for any purchases made from OVEC to serve APCo's Virginia jurisdictional customers, APCo paid the lower of OVEC's cost or the market price of non-affiliated power. Such records of cost and market comparisons should be available for Commission Staff review upon request. This finding is consistent with our ruling in Case No. PUE-2004-00095.³

Accordingly, IT IS ORDERED THAT:

(1) to § 56-77 of the Code, APCo is hereby granted approval of the Power Agreement, as described herein, provided that any purchases made by APCo from OVEC under the Power Agreement to serve its Virginia jurisdictional customers are at the lower of OVEC's cost or the market price of non-affiliated power.

(2) For cost recovery purposes during any rate proceeding, APCo shall maintain records, to be made available to the Commission Staff upon request, showing that, for any purchases made by APCo from OVEC pursuant to the Power Agreement, APCo paid the lower of OVEC's cost or the market price for non-affiliated power.

(3) The approval granted herein shall have no ratemaking implications for biennial reviews or future rate proceedings. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Power Agreement.

(4) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(5) The Commission reserves the authority to examine the books and records of any affiliate in connection with the approval granted herein whether or not the Commission regulates such affiliate.

(6) The Company shall include the transactions reflected in the Power Agreement in its Annual Report of Affiliate Transactions to be submitted to the Director of Public Utility Accounting of the Commission no later than May 1 of each year for the preceding calendar year, subject to administrative extension by the Director of Public Utility Accounting.

¹ Va. Code § 56-76 *et seq.*

² *Application of Appalachian Power Company, For consent to and approval of an Extension and Modification of an existing Inter-Company Power Agreement, Modification No. 1 to an Extension and Modification of an existing Inter-Company Power Agreement, and Termination of First Supplementary Transmission Agreement with Ohio Valley Electric Corporation and other affiliates pursuant to Title 56, Chapter 4 of the Code of Virginia*, Case No. PUE-2004-00095, 2004 S.C.C. Ann. Rept. 508, Order Granting Approval (Nov. 17, 2004), *modified*, 2004 S.C.C. Ann. Rept. 510, Order Granting in Part Petition for Reconsideration (Dec. 23, 2004).

³ *Application of Appalachian Power Company, For consent to and approval of an Extension and Modification of an existing Inter-Company Power Agreement, Modification No. 1 to an Extension and Modification of an existing Inter-Company Power Agreement, and Termination of First Supplementary Transmission Agreement with Ohio Valley Electric Corporation and other affiliates pursuant to Title 56, Chapter 4 of the Code of Virginia*, Case No. PUE-2004-00095, 2004 S.C.C. Ann. Rept. 510, Order Granting in Part Petition for Reconsideration (Dec. 23, 2004).

(7) If biennial review and/or general rate case filings are not based on a calendar year, then APCo shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.

(8) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2011-00059
OCTOBER 28, 2011**

PETITION OF
LAKE FOREST HOMEOWNERS' WATER COMPANY,
LAKE FOREST HOMEOWNERS' ASSOCIATION,
and
BEDFORD COUNTY PUBLIC SERVICE AUTHORITY

For approval of a transfer of a public utility pursuant to Chapter 5 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On May 27, 2011, Lake Forest Homeowners' Water Company ("Utility"), Lake Forest Homeowners' Association ("Association"), and Bedford County Public Service Authority ("Authority") (collectively "Petitioners") filed a completed petition ("Petition") with the State Corporation Commission ("Commission") seeking approval of an agreement ("Agreement") allowing the Utility to transfer the Lake Forest water system, well(s), land, and related appurtenances (collectively, the "Water System") to the Authority pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code").¹

The Utility is a Virginia corporation and a private water company that serves twenty-nine (29) residential customers in the Lake Forest subdivision located along Smith Mountain Lake in Bedford County, Virginia. The Utility is owned by the Association and its members.

The Authority is a state-chartered public service authority that provides utility service to 8,472 water customers and 1,492 sewer customers in the Forest, Smith Mountain Lake, and Stewartsville service areas located in Bedford County, Virginia.

The proposed transfer will not involve the exchange of any consideration between the Utility and the Authority. The Authority agrees to operate and maintain the Water System and provide public drinking water to the property owners of the Lake Forest subdivision at the Authority's published rates in accordance with the applicable local, state, and federal regulations upon execution and recordation of a deed and bill of sale ("Deed") effecting the transfer of the Water System, which should occur within thirty (30) days of approval of the proposed transfer by the Commission. On March 20, 2011, the property owners voted to approve the transfer, and the Authority took over operation of the Utility pending the legal transfer.

The Agreement also provides for the Utility to transfer the Water System's well lot to Earl Jacquot for \$12,000 once the Authority no longer requires the well to operate the Water System. Accordingly, the Authority agrees to transfer the well lot to Mr. Jacquot, his successor, and/or its heirs at such time, with the well lot proceeds distributed equally among the Lake Forest property owners. In addition, the Agreement provides for the Authority to remove all equipment, tanks, building structures, and unnecessary appurtenances from the Water System well sites within twelve (12) months of connecting the Water System to the Authority's central water system, and abandoning the wells in accordance with the requirements of the Virginia Department of Health.

Lake Forest customers will owe a \$50 meter deposit fee, a \$25 application fee, and a \$250 meter fee to the Authority when it takes over the Water System. In a March 25, 2011, letter to the Lake Forest property owners, the Utility's President stated that the Utility will pay to the Authority on the property owners' behalf the \$325 charge to hook up and establish each customer's account. After one year, the Authority will refund the \$50 security deposit to each property owner.²

On August 30, 2011, the Authority sent a revised notice letter to all Lake Forest Utility customers that described the proposed change in ownership, the proposed change in rates, and the proposed change in services. The notice also provided Commission contact information for any customer comments or complaints. No customer comments or complaints were received.

NOW THE COMMISSION, upon consideration of the Petition and representations of the Petitioners and having been advised by its Staff, is of the opinion and finds that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the Petition and, therefore, finds that the Petition should be approved. The proposed transaction will transfer oversight and operational, regulatory, and liability issues with the Water System from the Utility to the Authority.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-88 *et seq.* of the Code, the Utility is hereby granted approval to transfer the Water System to the Authority as described in the Agreement discussed herein.

(2) The Utility shall provide all records related to the Water System to the Authority at closing.

¹ Va. Code § 56-88 *et seq.*

² The \$50 security deposit will be refunded to the individual customers because the Association plans to dissolve the Utility as a separate corporate entity once the transfer is complete.

(3) The Petitioners shall submit to the Commission's Director of the Division of Public Utility Accounting documentation verifying that: a) the \$50 meter deposit fee, \$25 application fee, and \$250 meter fee owed by each Lake Forest property owner to the Authority has been paid by the Utility; b) the \$50 refund due to each Lake Forest property owner has been paid by the Authority; c) the \$12,000 in proceeds from the sale of the well lot has been distributed equally among the Lake Forest property owners; and d) the Utility has been dissolved, as soon as such documentation becomes available.

(4) The Petitioners shall file a Report of Action ("Report") with the Commission within thirty (30) days of completing the transfer, subject to administrative extension by the Commission's Director of the Division of Public Utility Accounting. The Report shall include the date of the transfer, the actual sales price, a copy of the settlement sheet, and a copy of the recorded Deed.

(5) There appearing nothing further to be done, this case hereby is dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2011-00060
OCTOBER 18, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In re: Establishing rules providing limitations on disconnection of electric and water service for persons with serious medical conditions

ORDER ADOPTING REGULATIONS

On July 11, 2011, the State Corporation Commission ("Commission") initiated a rulemaking required by Chapters 500, 662, and 673 of the 2011 Acts of Assembly ("Acts"). Through these Acts, the Virginia General Assembly directed the Commission to conduct a proceeding for the purpose of establishing limitations on the authority of an investor-owned electric utility, electric cooperative, or public utility providing water service to terminate electric service or water service to the residence of any customer who provides the certification of a licensed physician that the customer, or a family member who resides with the customer, has a serious medical condition. The Acts, *inter alia*, directed the Commission to: (i) establish limitations that are consistent with the public interest; (ii) establish a cost recovery mechanism under which electric and water utilities shall be authorized to recover any losses on customer accounts that are written off or otherwise determined to be uncollectible as a result of these regulations; and (iii) make these regulations effective no later than October 31, 2011. Finally, the Acts provided that in the proceeding establishing these regulations, the Commission was to consult with the Commissioner of Health, the Commissioner of Social Services, the Virginia Poverty Law Center, the Virginia League of Social Services Executives, electric utilities, water utilities, and other persons the Commission deems appropriate ("Designated Entities").

The Commission's July 11, 2011 Order for Notice and Comment ("July 11, 2011 Order"), set out proposed rules ("Proposed Rules") that had been prepared by the Staff of the Commission ("Staff") after consulting with the Designated Entities and other interested parties. The July 11, 2011 Order also provided that public notice of the Proposed Rules be given so as to afford any persons or entities, including the Designated Entities, an opportunity to comment formally on the Proposed Rules, to request a hearing thereon, or to propose modifications or supplements to the Proposed Rules.

Notice of the proceeding was published in the Virginia Register on August 1, 2011, and in newspapers of general circulation throughout the Commonwealth.¹ Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before August 16, 2011.

Comments in this proceeding were submitted by: Delegate Ward L. Armstrong, Delegate Gregory D. Habeeb, Delegate Salvatore R. Iaquinto, The Virginia Poverty Law Center, David M. Debiasi for AARP Virginia, Jean Duggan for Bay Aging, Virginia Electric and Power Company, Appalachian Power Company, Kentucky Utilities Company d/b/a Old Dominion Power, the Virginia Electric Cooperatives,² Bluefield Valley Waterworks Company, Aqua Virginia, Inc., Virginia American Water Company, Sarah R. Ebbett, Mehdi Nabavi, Bobbie Henley, Becky J. Smith, Mary S. Martin, Avi Dey, Gwendolyn D. Cook, and Lennis J. Harris. The Commission did not receive a request for a hearing on the Proposed Rules.

As directed by the July 11, 2011 Order, the Staff filed a report ("Staff Report") on August 30, 2011, in which the Staff, in part, reviewed the comments on the Proposed Rules. The Staff also presented revisions to the Proposed Rules to the Commission after consideration of the comments filed in this proceeding.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that, except as described below, the proposed regulations as revised and set forth in the Staff Report should be adopted as Chapter 330 of the Virginia Administrative Code ("VAC").

With regard to the definition of "serious Medical condition" set forth in 20 VAC 5-330-20, we find that, upon review of the Acts directing that we undertake this rulemaking, a definition more closely following the language initially proposed by the Virginia Department of Health should be adopted at this juncture.³

¹ See Memoranda from Laura S. Martin of the Commission's Division of Information Resources, filed in this docket on August 3, 2011, and August 15, 2011.

² The Virginia Electric Cooperatives include A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative and their statewide service organization, the Virginia, Maryland, and Delaware Association of Electric Cooperatives.

³ Staff Report at Attachment 2.

Furthermore, we find that language added in 20 VAC 5-330-40 B, which provides that a customer is entitled to only one 10-day delay in a 12-month period for purposes of securing a completed Serious Medical Condition Certification Form, should be revised as set forth herein.⁴

These regulations will be titled "Limitations on Disconnection of Electric and Water Service" and will be made effective October 31, 2011.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's regulations regarding Limitations on Disconnection of Electric and Water Service, 20 VAC 5-330-10 *et seq.*, are hereby adopted as shown in Appendix A to this Order, and shall become effective as of October 31, 2011.

(2) A copy of these regulations as set out in Appendix A of this Order shall be forwarded to the Registrar of Regulations for publication in the Virginia Register.

(3) There being nothing further to come before the Commission, this case hereby is dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

NOTE: A copy of Attachment A entitled "Limitations on Disconnection of Electric and Water Service" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

⁴ With this revision we clarify that while this 10-day delay under this subsection is required only once in a 12-month period, 20 VAC 5-330-40 A, C, and D provide that a 30-day delay in service termination may be exercised twice in a 12-month period once a completed Serious Medical Condition Certification Form is filed.

**CASE NO. PUE-2011-00062
AUGUST 30, 2011**

APPLICATION OF
NORTHERN VIRGINIA ELECTRIC COOPERATIVE
and
SOUTH BOSTON ENERGY, LLC,

For approval of a Power Purchase Agreement between Affiliated Interests, pursuant to Va. Code § 56-76 *et seq.*

ORDER GRANTING APPROVAL

On June 1, 2011, Northern Virginia Electric Cooperative ("NOVEC") and South Boston Energy, LLC ("SBE"), (collectively, "Applicants"), filed an application ("Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"),¹ 20 VAC 5-203-10 *et seq.* ("Chapter 203"),² and Ordering Paragraph (7) of the Commission's Order on Application issued on April 28, 2011, in Case No. PUE-2010-00126 ("CPCN Order")³ for approval of a Power Purchase Agreement ("PPA") between NOVEC and SBE.

In its CPCN Order, the Commission granted a certificate of public convenience and necessity ("CPCN") for the construction and operation of a 49.9 megawatt ("MW") biomass electric generation facility in Halifax County, Virginia (the "Facility") to SBE, an indirect wholly owned subsidiary of NOVEC. As one condition to the CPCN grant, the Commission required that NOVEC and SBE submit a PPA for the certificated unit's generation. Specifically, Ordering Paragraph (7) of the CPCN Order states:

On or before June 1, 2011, NOVEC shall file for approval of a PPA with SBE, pursuant to [the Affiliates Act], and such PPA should specify that the output of the Facility will be dedicated to benefit the native load of NOVEC customers at cost, subject to the Commission's determination that such PPA satisfies the requirements of [the Affiliates Act] and any other applicable provisions of law.

In compliance with Ordering Paragraph (7) of the Commission's CPCN Order, the Applicants filed the instant Application requesting Commission approval, pursuant to the Affiliates Act and Chapter 203, of the provisional PPA between NOVEC and SBE, through which SBE will sell and NOVEC will purchase contract capacity, energy and environmental credits of the Facility. The Applicants also request that the Commission postpone closing this proceeding to allow the Applicants to make any necessary changes to the PPA, which will not take effect until the commencement of operations at the Facility in or around 2013. In addition, the Applicants request a waiver of § 56-79 of the Code because the Applicants state that no proof of costs is currently available this far in advance of commencement of operations at the Facility.

¹ Va. Code § 56-76 *et seq.* (the "Affiliates Act")

² Rules 20 VAC 5-203-10 through -50 are the Regulations Governing the Separation of Regulated and Unregulated Businesses of Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives.

³ *Application of South Boston Energy, LLC, For approval to construct, own and operate a nominal 49.9 MW biomass electric generating facility in Halifax County pursuant to Va. Code § 56-580 D*, Case No. PUE-2010-00126, Doc. Con. Cen. No. 446904, Order on Application (Apr. 28, 2011) at 17-18.

The PPA sets forth the terms and conditions pursuant to which SBE will sell and NOVEC will purchase contract capacity, energy and environmental credits of the Facility. The term of the PPA is thirty-five (35) years starting from the commencement of commercial operations of the Facility, which the Applicants state is scheduled to occur in or around the end of calendar year 2013. Pursuant to the PPA, the entirety of SBE's generation output from the Facility will be sold to NOVEC at cost in accordance with Ordering Paragraph (7) of the Commission's CPCN Order and in recognition that the Facility is, in essence, self-built generation by NOVEC. SBE will directly charge NOVEC all costs of operating the Facility on a monthly basis, which will be invoiced to NOVEC as four (4) separate charges : a capacity charge, an energy charge, a start-up charge, and an operation and maintenance fee. The Applicants state that the level of these charges will depend on certain pricing factors, such as the cost of financing and final design characteristics of the Facility's operating criteria, which have not yet been determined but which, once they have been validated, will be inserted into the PPA's contract terms prior to its execution.⁴

As represented in the Application, NOVEC, as a load serving entity within the PJM Interconnection, LLC, footprint, is required to provide capacity resources in sufficient quantity to meet its peak load contributions plus additional capacity to meet the forecast pool obligation. The Applicants represent that, within its current portfolio, NOVEC does not have sufficient owned or contracted resources to meet this requirement. Therefore, as was found in the Commission's CPCN Order,⁵ it appears that NOVEC needs the electric generation that will be provided by the Facility in order to meet its future capacity requirements. The Applicants state that the Facility represents a favorable cost alternative of combined energy and capacity products available to NOVEC and is cost-competitive as compared to limited capacity and energy products available to NOVEC. In addition, SBE is eligible to receive a significant grant in lieu of tax credits for the Facility, which eligibility is not available to NOVEC as a not-for-profit entity.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described PPA is in the public interest and should, therefore, be approved subject to the requirements below. These requirements are intended to clarify the nature and extent of our Affiliates Act approval in this case. As requested by the Applicants, we will postpone closing this matter until such time as the PPA becomes effective, which will occur simultaneously with the commencement of operations at the Facility in or around 2013, to allow the Applicants to make any necessary changes to the PPA in advance of execution.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, the Applicants are hereby granted approval of the PPA, as described herein, subject to the requirements set forth herein.

(2) Once operations have commenced at the Facility and the PPA is in effect, separate Commission approval shall be required for any changes in the terms and conditions of the PPA approved herein, including successors and assigns.

(3) The Applicants shall file a report with the Commission advising that construction of the Facility has been completed and providing the date of commencement of operations at the Facility within thirty (30) days of commencement, subject to administrative extension by the Commission's Director of Public Utility Accounting.

(4) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(5) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.

(6) The approval granted herein shall have no ratemaking implications. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the PPA.

(7) Upon commencement of operations at the Facility, all transactions between NOVEC and SBE under the PPA shall be included in NOVEC's Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting on or before April 1 of each year, which deadline may be extended administratively by the Commission's Director of Public Utility Accounting. In addition to information currently provided in the ARAT, all transactions under the PPA shall be reported in the ARAT as follows:

(a) By case number in which the transactions were approved;

(b) Description of services provided to NOVEC by SBE;

(c) Transactions by month; and

(d) Dollar amount paid by NOVEC for each type of charge (*i.e.*, monthly capacity charge, energy charge, start-up charge, and operation and maintenance fee).

(8) In the event that any rate case filings are not based on a calendar year, then NOVEC shall include the affiliate information contained in the ARAT in such filings.

(9) This matter is continued.

⁴ In response to a Commission Staff ("Staff") data request, the Applicants stated that the final design characteristics of the operating criteria are currently under review with the Engineering, Procurement and Construction contractor and the owner's engineer and should be completed in the fall of 2011. Interim construction financing plans are underway and are expected to be finalized by September 2011. The expected rate for interim construction financing for each draw of funds is LIBOR (London Interbank Offered Rate) plus approximately 200 basis points. The Applicants stated that the cost of the permanent financing will not be known until the funds are fully drawn from the Rural Utilities Service ("RUS," an agency of the United States Department of Agriculture). The current practice for RUS permanent financing is a Treasury rate plus an eighth of a point.

⁵ CPCN Order at 10.

**CASE NO. PUE-2011-00063
AUGUST 30, 2011**

APPLICATION OF
NORTHERN VIRGINIA ELECTRIC COOPERATIVE
and
SOUTH BOSTON ENERGY, LLC,

For approval of a Services Agreement under Chapter 4 of Title 56 of the Code of Virginia, § 56-76 *et seq.*

ORDER GRANTING APPROVAL

On June 1, 2011, Northern Virginia Electric Cooperative ("NOVEC") and South Boston Energy, LLC ("SBE"), (collectively, "Applicants"), filed an application ("Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"),¹ 20 VAC 5-203-10 *et seq.* ("Chapter 203"),² and Ordering Paragraph (6) of the Commission's Order on Application issued on April 28, 2011, in Case No. PUE-2010-00126 ("CPCN Order"),³ for approval of a Services Agreement with an effective date of June 1, 2011, between NOVEC and SBE ("Services Agreement")

In its CPCN Order, the Commission granted a certificate of public convenience and necessity ("CPCN") for the construction and operation of a 49.9 megawatt ("MW") biomass electric generation facility in Halifax County, Virginia (the "Facility") to SBE, an indirect wholly owned subsidiary of NOVEC. As one condition to the CPCN grant, the Commission, in Ordering Paragraph (6) of the CPCN Order, required NOVEC to file on or before June 1, 2011, "for approval of any existing contracts or arrangements (written or otherwise) between NOVEC and SBE."

In compliance with Ordering Paragraph (6) of the Commission's CPCN Order, the Applicants filed the instant Application requesting Commission approval, pursuant to the Affiliates Act and Chapter 203, of the Services Agreement between NOVEC and SBE. Pursuant to the Services Agreement, NOVEC will provide the following services to SBE: administrative functions, timekeeping, recordkeeping, transportation, leasing, telephone equipment, information technology, intercompany billing, and generation support (collectively, the "Services"). Specifically, in support of SBE's generation operations, NOVEC will, among other things, manage and supervise performance under construction contracts; manage and operate the Facility; provide local engineering resources to manage day-to-day operations issues affecting unit reliability, availability, and equipment performance; and coordinate optimization, testing and tuning for power generation and environmental control equipment and systems.

The Services Agreement sets forth the terms and conditions pursuant to which NOVEC will provide the Services to SBE. The Services Agreement will become effective upon approval by the Commission and will remain in effect until NOVEC or SBE terminates the Services Agreement by providing sixty (60) days' advance written notice of such termination to the other party. Pursuant to the Services Agreement, NOVEC will provide the Services to SBE by utilizing the services of such executives, accountants, financial advisers, technical advisers, analysts, attorneys, engineers, and other persons employed by NOVEC having the necessary qualifications. If necessary, however, NOVEC, after consultation with SBE, may also arrange for the services of non-affiliated experts, consultants, attorneys, and others in connection with the performance of any of the Services supplied under the Services Agreement. NOVEC also may serve as administrative agent, arranging and monitoring services provided by third parties for SBE, where such services are billed directly to SBE.

Concerning the cost determination and allocation of the Services provided by NOVEC to SBE, the Services Agreement states that NOVEC will provide the Services to SBE at cost as ordered in the Commission's CPCN Order. The description of the Services to be performed by NOVEC for SBE, the methods for determining and allocating the costs, and the terms and conditions for the provision of the Services are set forth in Exhibit 1 of the Services Agreement ("Exhibit 1"). Pursuant to Exhibit 1, the primary basis for charges from NOVEC to SBE will be the direct-charge method. For all other costs, the allocation methods set forth in Exhibit 1 will be used. The Applicants represent that, since SBE currently does not have any management or administrative staff, it would be cost-prohibitive and inefficient to hire staff to provide the limited operational and administrative support services that SBE can acquire at cost from NOVEC through the Services Agreement.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described Services Agreement is in the public interest and should, therefore, be approved subject to the requirements recommended in the Commission Staff's Action Brief filed contemporaneously with this Order and noted below.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to § 56-77 of the Code, the Applicants are hereby granted approval of the Services Agreement, as described herein and subject to the requirements set forth herein.

(2) The approval granted herein shall not include the provision by NOVEC of services to SBE through the use of NOVEC affiliates. Should NOVEC desire to use its affiliates in providing services to SBE, NOVEC shall be required to file a separate application for approval pursuant to the Affiliates Act.

¹ Va. Code § 56-76 *et seq.* (the "Affiliates Act")

² Rules 20 VAC 5-203-10 through -50 are the Regulations Governing the Separation of Regulated and Unregulated Businesses of Utility Consumer Services Cooperatives and Utility Aggregation Cooperatives.

³ Application of South Boston Energy, LLC, For approval to construct, own and operate a nominal 49.9 MW biomass electric generating facility in Halifax County pursuant to Va. Code § 56-580 D, Case No. PUE-2010-00126, Doc. Con. Cen. No. 446904, Order on Application (Apr 28, 2011) at 17.

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(3) Approval of the Services Agreement shall be limited to the services specifically identified in the Description of Services in Exhibit 1 of the Services Agreement. Should NOVEC wish to provide additional services to SBE, other than those specifically approved in this case, subsequent Commission approval shall be required.

(4) Separate Commission approval shall be required for any changes in the terms and conditions of the Services Agreement approved herein, including changes in allocation methodologies, the description of the Services, and successors and assigns.

(5) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

(6) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein, whether or not such affiliate is regulated by this Commission.

(7) The approval granted herein shall have no ratemaking implications. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Services Agreement.

(8) All transactions between NOVEC and SBE under the Services Agreement shall be included in NOVEC's Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's Director of Public Utility Accounting on or before April 1 of each year, which deadline may be extended administratively by the Commission's Director of Public Utility Accounting. In addition to information currently provided in the ARAT, all transactions under the Services Agreement shall be reported in the ARAT as follows:

(a) By case number in which the transactions were approved;

(b) Description of services provided by NOVEC to SBE;

(c) Transactions by month; and

(d) Dollar amount charged by NOVEC to SBE for each of the Services, such as amount paid for administrative functions, timekeeping, recordkeeping, etc.

(9) In the event that any rate case filings are not based on a calendar year, then NOVEC shall include the affiliate information contained in the ARAT in such filings.

(10) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2011-00064
JULY 27, 2011**

APPLICATION OF
GATEWAY COGENERATION 1

For approval to construct, own, and operate an electric generating facility in Prince George County pursuant to Va. Code § 56-580 D

ORDER

On June 3, 2011, Gateway Cogeneration I ("Gateway"), a subsidiary of Gateway Green Energy, LLC, filed with the State Corporation Commission ("Commission") a Motion For Interim Authority seeking conditional approval to commence limited construction activities on a 46 square-foot foundation in Prince George County, Virginia. The Motion For Interim Authority indicated that the foundation would be for a fire pump engine to a combined cycle combustion turbine electric generating facility that Gateway plans to construct on property within the Rolls-Royce Crosspointe campus, east of the city of Petersburg. Gateway requested that the Commission conditionally authorize the commencement of limited construction activities in advance of any grant of a certificate of public convenience and necessity ("CPCN"), which Gateway anticipated seeking by an application to be filed on or about July 29, 2011. Gateway sought to commence construction of the fire pump engine foundation before July 1, 2011, "to avail itself of the phasing-in provisions of the final 'Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule' . . . under the Clean Air Act, issued by the [United States] Environmental Protection Agency . . . on May 13, 2010."¹

On June 14, 2011, the Commission entered an Order on Motion that granted Gateway's Motion For Interim Authority subject to the condition that Gateway file, on or before July 29, 2011, an application seeking all requisite Commission approvals for the construction, ownership, and operation of the planned generating facility in Prince George County.

On July 25, 2011, Gateway filed a Motion ("Suspension Motion") requesting the indefinite suspension of the July 29, 2011, deadline for filing an application seeking Commission approval for the construction, ownership, and operation of its planned generation facility. In support of its Suspension Motion, Gateway indicates that:

Despite the Commission's expeditious [Order] on Motion, [Gateway] was not able to obtain all requisite authorizations to proceed with the construction of the 46 square foot foundation in advance of the July 1, 2011 deadline. Therefore, there is no need at this time for [Gateway] to commence construction in advance of filing a CPCN application.²

¹ Motion For Interim Authority at 2. At page 3, the Motion For Interim Authority cites to the referenced rule at 75 Fed. Reg. 31514, 31592.

² Suspension Motion at 1.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that our June 14, 2011, Order on Motion should be vacated and this case dismissed.³ Because the interim authority granted to Gateway is no longer needed,⁴ both our prior approval and the filing condition on which such approval was granted are likewise no longer necessary.

Accordingly, IT IS ORDERED THAT:

- (1) The Order on Motion issued in this proceeding on June 14, 2011, is hereby vacated.
- (2) This case is dismissed.

³ Gateway indicates that the planning process for a generation facility in Prince George County is ongoing. *Id.* Our dismissal of the instant case is without prejudice to any future filing seeking Commission approval associated with such a facility.

⁴ *Id.*

**CASE NO. PUE-2011-00065
SEPTEMBER 12, 2011**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For authorization to amend and extend its gas cost hedging program

FINAL ORDER

On May 20, 2011, Columbia Gas of Virginia, Inc. ("CGV" or "Company") filed an application ("Application") with the State Corporation Commission ("Commission") for authorization to amend and extend its Gas Cost Hedging Plan program ("Hedging Plan") originally approved and modified in Case No. PUE-2005-00087 and reauthorized and amended by Final Order of the Commission in Case No. PUE-2009-00044 dated September 24, 2009.¹

In its Application, the Company requests that the Commission approve an amendment whereby the volumes of gas to be hedged under CGV's Hedging Plan be reduced from 50% to 30% of CGV's forecasted non-storage demand of its sales customers for a Winter Season,² commencing with the 2013-2014 Winter Season; approve the reduction of the annual Winter Season from November through March to December through February, commencing with the 2013-2014 Winter Season; and authorize CGV to extend its Hedging Plan, as amended, through the 2015-2016 Winter Season. The Company also proposed that the language in Section 17.1 of its General Terms and Conditions be revised to reflect the changes proposed to the Hedging Plan.

On June 13, 2011, the Commission entered its Order Prescribing Notice and Inviting Comments and Requests for Hearing on the Company's Application wherein it, among other things, directed the Company to publish notice of the Application; provided for participation by respondents; directed the Staff to review the Application and file a report ("Report") on its findings; and permitted the Company to respond to the Staff Report and other documents filed in the case. On July 25, 2011, the Company filed its proof of publication of notice as ordered.

On August 25, 2011, the Staff filed confidential and public versions of its Report, and on August 30, 2011, the Company filed its response to the Staff's Report.

No comments, notices of participation by respondents, or requests for hearing were received.

The Staff noted in its Report that as gas commodity prices are established through the forces of supply and demand in competitive markets, natural gas wholesale prices become considerably volatile with gas markets operating nationally, and factors affecting prices in one part of the country are reflected in prices paid elsewhere. The Staff cited the example of colder weather forecasts for the Midwest causing an increase in prices for gas purchasers across the country.³ The Staff reported that while a local distribution company ("LDC"), such as CGV, has no control over competitive wholesale market prices, they have some limited control over costs arising from choices made in conducting their gas supply policies.⁴

¹ This authority allows CGV to engage in financial hedging activities as part of its gas purchasing strategy through the 2013-2014 winter season and to recover the associated transaction costs as well as any of the financial gains and losses that result from the purchase and sale of future contracts as part of such financial hedging through the Company's Purchased Gas Adjustment/Actual Cost Adjustment ("PGA/ACA") mechanism. CGV's gas tariff reflects the inclusion of such costs in the PGA/ACA mechanism.

² "Winter Season" is used to determine the months for which natural gas volumes will be hedged and is currently defined as November through March of each year.

³ Staff Report at 9.

⁴ *Id.* Gas supply policies include purchases of short-term spot market gas and base gas purchased under fixed price contracts (priced at a premium), gas purchased for storage in spring and summer months to be used during winter when prices have historically risen, and the use of certain types of hedging instruments.

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In its Report, the Staff also noted that there have been recent developments in the natural gas market over the past several years that have resulted in reduced market volatility and a steady downward trend of natural gas prices. The Staff suggested that one reason for these changes is the substantial change in the outlook of domestic U.S. natural gas reserves, primarily shale gas.

The Staff concluded its analysis of CGV's Hedging Plan by stating that, given the changes that have occurred in the U.S. natural gas markets over the last three years, which are likely to continue for the foreseeable future, the Staff believes that CGV's Application for a reduction in its Hedging Plan is prudent and reasonable. Therefore, the Staff recommended that the Commission approve the Company's Application. The Staff also recommended that, at the completion of each period, CGV continue to file with the Commission a hedging report that shows the Company's financial hedging activity and clearly indicates and differentiates the various component costs, such as margin financing costs, costs related to purchases and sales of futures contracts, and any other transactions costs.

On August 30, 2011, the Company filed its response to the Staff Report wherein it noted its support of the Staff's recommendations. The Company further respectfully requested that the Commission approve its Application by September 23, 2011, in order to permit CGV to adjust its hedging practices applicable to the full twenty-four month purchasing period for the 2013-2014 Winter Season.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that CGV's Application to amend and extend its Hedging Plan should be granted; the Company's proposal to amend the volumes of gas to be hedged under CGV's Hedging Plan from 50% to 30% of CGV's forecasted non-storage demand of its retail sales customers for a Winter Season, commencing with the 2014-2015 Winter Season should be granted; the Company's proposed reduction of the annual Winter Season from November through March to December through February, commencing with the 2013-2014 Winter Season should be approved; and CGV's request to extend its Hedging Plan, as amended, through the 2015-2016 Winter Season should be approved. Further, the Commission finds that the Company's revised tariffs reflecting the amendments should be approved.

Additionally, the Commission finds that approval of CGV's application should be subject to the Company's full compliance with all reporting requirements recommended by the Staff. The Company may file its attachments to CGV's annual hedging reports confidentially under seal with the Directors of the Divisions of Economics and Finance; Energy Regulation; and Public Utility Accounting.

The Company should be required to file on or before May 15, 2014, its pleading requesting authority to continue, amend, or terminate the Hedging Plan. The Company's Hedging Plan will not lapse prior to its May 15, 2014 filing, and the Company will have authorization through the 2015-2016 Winter Season.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's May 20, 2011 Application for authorization to amend and extend its gas cost hedging program through the 2015-2016 Winter Season is hereby approved subject to the Company's full compliance with all of the Staff's reporting recommendations, which are hereby accepted and approved.
- (2) The Company shall file with the Division of Energy Regulation revised tariffs reflecting the extension and amendments granted herein within thirty (30) days of the entry of this Final Order.
- (3) On or before May 15, 2014, the Company shall file its pleading requesting authority to continue, amend, or terminate the Hedging Plan.
- (4) There being nothing further to be done herein, this case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's files for ended causes.

**CASE NO. PUE-2011-00069
JULY 7, 2011**

APPLICATION OF
A&N ELECTRIC COOPERATIVE

For authority to incur indebtedness under a line of credit

ORDER GRANTING AUTHORITY

On June 13, 2011, A&N Electric Cooperative ("ANEC" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia ("Code") for authority to incur additional indebtedness up to \$ 100,000 under a five-year line of credit ("LOC") with the National Rural Utilities Cooperative Finance Corporation ("CFC"). Applicant has paid the requisite fee of \$250.

Applicant represents that the additional borrowings under the LOC may occur from time to time when its ongoing construction program enters the rights-of-way of the Virginia Department of Transportation ("VDOT"). When this occurs, VDOT requires ANEC to obtain permits from VDOT to work in such areas. An additional requirement of VDOT is that ANEC provide a LOC in favor of VDOT for the estimated cost of the work ANEC is performing within the rights-of-way. ANEC would only be required to borrow under the LOC in the unlikely event that it did not restore the VDOT rights-of-way to the preconstruction condition.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Applicant is hereby authorized to incur additional indebtedness through a five-year CFC LOC with a \$100,000 limit, under the terms and conditions and for the purposes set forth in the application.
- (2) Approval of this application shall have no implications for ratemaking purposes.
- (3) There being nothing further to be done, this matter is hereby dismissed.

**CASE NO. PUE-2011-00070
SEPTEMBER 1, 2011**

APPLICATION OF
ZTA LLC d/b/a ENERGY-TEL, LLC

For a license to conduct business as an electric and natural gas aggregator

ORDER GRANTING LICENSE

On July 19, 2011, ZTA LLC d/b/a Energy-Tel, LLC ("Energy-Tel" or "Company"), completed an application with the State Corporation Commission ("Commission") for a license to provide electric and natural gas aggregation services pursuant to the Commission's Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 *et seq.* ("Retail Access Rules"). The Company seeks authority to serve residential, commercial and industrial customers in retail access programs throughout the Commonwealth of Virginia. Energy-Tel attested that it would abide by all applicable regulations of the Commission as required by 20 VAC 5-312-40 B of the Retail Access Rules.

On July 26, 2011, the Commission issued an Order for Notice and Comment docketing the case; requiring that notice of the application be given to investor-owned electric utilities, electric cooperatives, natural gas distribution utilities, and other interested persons; providing for the receipt of comments from the public; and requiring the Commission's Staff to analyze the reasonableness of the application and present its findings in a report ("Staff Report"). The Company filed proof of notice on August 9, 2011. No comments on Energy-Tel's application were received from the public.

The Staff Report was filed on August 22, 2011. The Staff Report summarized Energy-Tel's proposals and evaluated its financial condition and technical fitness. The Staff recommended Energy-Tel be granted a license to conduct business as an aggregator of electric and natural gas services to residential, commercial and industrial customers throughout the Commonwealth. The Company filed no comments in response to the Staff Report.

NOW THE COMMISSION, upon consideration of the application, the Staff Report, and applicable law, finds that Energy-Tel's application for a license to conduct business in the Commonwealth of Virginia as an aggregator of electric and natural gas services should be granted, subject to the conditions set forth below.

Accordingly, IT IS ORDERED THAT:

- (1) ZTA LLC d/b/a Energy-Tel, LLC, is hereby granted License No. A-33 to be an aggregator for natural gas and electricity to residential, commercial, and industrial customers throughout the Commonwealth of Virginia. This license to act as an aggregator for natural gas and electricity is granted subject to the provisions of the Retail Access Rules, this Order, and other applicable law.
- (2) These licenses are not valid authority for the provision of any product or service not identified within the license itself.
- (3) This case shall remain open for consideration of any subsequent amendments or modifications to these licenses.

**CASE NO. PUE-2011-00071
SEPTEMBER 14, 2011**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to engage in affiliate transactions pursuant to §§ 56-76, *et seq.* of the Code of Virginia

ORDER DENYING APPROVAL

On June 16, 2011, Washington Gas Light Company ("WGL" or "Applicant") filed an application ("Application") with the State Corporation Commission ("Commission") requesting approval of three affiliate transactions with its affiliate, Capitol Energy Ventures ("CEV")¹: (i) the transfer to CEV of the remainder of the term of two WGL agreements ("Agreements") for natural gas storage service at the Washington Storage Service ("WSS") and Eminence Storage Service ("ESS") storage fields; (ii) the sale to CEV of any storage gas balances associated with the WSS and ESS agreements; and (iii) the assignment to CEV of WGL's rights to buy base gas in the WSS storage field. The specific terms and conditions of the proposed transfer, sale, and assignment are summarized in a draft letter agreement between WGL and CEV, which is included in the Application. WGL proposes to effect these affiliate

¹ CEV is the WGL affiliate previously known as Washington Gas Credit Corporation.

transactions by September 30, 2011, coincident with the expiration of its performance-based rate regulation plan ("PBR Plan") approved by the Commission in Case No. PUE-2006-00059.² WGL previously sought approval of these transactions in Case Nos. PUE-2010-00138 and PUE-2011-00017.³

WGL is a regulated public utility headquartered in Washington, D.C., which provides natural gas service to more than one million residential, commercial and industrial customers located in the Commonwealth of Virginia, the District of Columbia, and Maryland. In Virginia, WGL provides natural gas distribution service to approximately 486,000 customers. WGL is a wholly owned subsidiary of WGL Holdings, Inc. ("Holdings"). CEV⁴ is a Delaware corporation that engages in natural gas energy marketing with an independent portfolio of capacity resources. CEV is a wholly owned subsidiary of Washington Gas Resources Corporation, which is a wholly owned subsidiary of Holdings.

In addition to seeking the approval described above, WGL states that the Application is intended to address the concerns cited by the Commission in the Denying Order in Case No. PUE-2010-00138. WGL represents that the WSS and ESS Agreements are not used to provide service to WGL ratepayers, and their costs have not been included in the utility's purchased gas costs for several years; therefore, it is appropriate to remove them from the books and records of the regulated utility. Furthermore, WGL asserts that the proposed transfers of the WSS and ESS Agreements will provide financial benefits to ratepayers because it has certain financial hedges against its inventory positions in the WSS and ESS assets. Upon completion of the proposed transfer, WGL represents that the value of these financial forward positions, estimated at the time of the Application at \$3.4 million (system-wide), will be shared with Virginia ratepayers. In addition, WGL states that the proposed assignment to CEV of the base gas in the WSS storage field could provide Virginia ratepayers with another \$ 1.1 million in proceeds. WGL also represents that the proposed transactions are governed by and will be made in accordance with the Federal Energy Regulatory Commission's ("FERC") regulations, which require that such transfers can be made at no greater than the maximum FERC tariff rate and do not permit the payment of additional consideration. Finally, WGL included additional data in the Application regarding the uses of and payments made for WSS from 1993 to 2011 and for ESS from 2007 to 2011.

NOW THE COMMISSION, upon consideration of the Application, the representations of the Applicant, the September 9, 2011 Comments of WGL to the Commission Staff's September 7, 2011 Draft Action Brief, and the Commission Staff's Action Brief, is of the opinion and finds that the Applicant's request should be denied. In the Denying Order in Case No. PUE-2010-00138, we discussed two issues that WGL needed to develop further for our consideration in determining whether to approve the proposed transactions. First, WGL must demonstrate that the proposed affiliate transactions serve the public interest. Second, WGL had not developed the record of the past and current uses of the WSS and ESS Agreements, as well as any payments made for the Agreements, to explain why it is in the public interest to authorize the assignment of the Agreements for no consideration. We again find, however, that the Application is not in the public interest.

First, WGL has not proven that ratepayers are better off without the WSS and ESS Agreements. For three decades, the WSS Agreement has provided diversity for WGL's system supply. Ratepayers paid all of the costs for the WSS asset and retained all of its benefits, including asset optimization revenues, until 2007. At that time, the Commission approved a Stipulation reached in Case No. PUE-2006-00059 whereby the parties agreed, as part of a settlement, that WGL shareholders would bear the full costs of the WSS and ESS⁵ Agreements while sharing the WSS and ESS asset optimization revenues with ratepayers.⁶ During this period, the WSS asset remained a versatile, reliable, and highly valuable asset for ratepayers and shareholders; and the ESS asset, despite operational issues, nevertheless covered its operating and asset optimization costs. While the WSS and ESS assets were not used to provide utility service, they were available if necessary, and ratepayers benefitted from them.

Accordingly, we disagree with the characterization of the Application that the proposed transactions "contemplate the transfer of resources which have not been, and will not be, used to provide service to ratepayers, and for which the demand and other costs have not been included in ratepayers' purchased gas charges . . . for several years."⁷ The fact that shareholders, not ratepayers, paid for these assets after approval of the Stipulation is simply a result of a bargained-for agreement between parties that the Commission found to be in the public interest. We do not interpret this Stipulation to have transacted a fundamental change in the nature of these assets such that they no longer provide benefit to ratepayers and are, in effect, shareholder-only assets.

² *Application of Washington Gas Light Company, For a general increase in rates, fees, charges and revisions to the terms and conditions of service as well as approval of a performance-based rate regulation methodology under Va. Code § 56-235.6*, Case No. PUE-2006-00059, 2007 S.C.C. Ann. Rept. 315, Final Order (Sept. 19, 2007).

³ *Application of Washington Gas Light Company, For authority to engage in affiliate transactions pursuant to § 56-76 et seq. of the Code of Virginia*, Case No. PUE-2010-00138, Doc. Con. Cen. No. 444481, Order Denying Approval (Mar. 3, 2011) (hereafter referred to as "Denying Order"); and *Application of Washington Gas Light Company, For authority to engage in an affiliate transaction pursuant to § 56-76 et seq. of the Code of Virginia*, Case No. PUE-2011-00017, Doc. Con. Cen. No. 445922, Order Granting Motion and Closing Proceeding (Apr. 5, 2011).

⁴ On December 17, 2009, Washington Gas Credit Corporation changed its corporate name to CEV.

⁵ The ESS asset, which was purchased in March 2007, never became part of WGL's system supply. Nevertheless, it was specifically included as an asset from which WGL ratepayers would benefit under the Stipulation. See item 8 of Attachment A of the Final Order in Case No. PUE-2006-00059, *supra* note 2.

⁶ The agreement on this issue was part of WGL's asset management arrangements under the PBR Plan. The Hearing Examiner in this case explained this feature of the Stipulation as follows:

Asset Management - During the PBR Plan, demand costs for the Transco Eminence and Washington Storage Service storage resources will be removed from the PGC, but revenues earned from self-optimization of these resources will be included in the determination of overall asset management margins for each PBR period. During the PBR Plan period, the Company will credit Virginia sales customers with the Virginia allocated portion of \$6 million of anticipated asset management revenues. The credit will be applied to the customers' [Purchased Gas Charge] PGC regardless of the level of asset management revenues produced. The Virginia portion of net asset management revenues earned in excess of \$6 million shall be recorded as other operating revenues, and retained by the Company's shareholders. *Application of Washington Gas Light Company, For a general increase in rates, fees, charges and revisions to the terms and conditions of service as well as approval of a performance-based rate regulation methodology under Va. Code § 56-235.6*, Case No. PUE-2006-00059, Doc. Con. Cen. No. 386037, Report of Alexander F. Skirpan, Jr., Hearing Examiner (Sept. 17, 2007) (internal footnotes omitted).

⁷ Application at 3.

We note that the Stipulation specified that the shareholder-pay arrangement was limited in time "from the date of the Final Order issued in this proceeding [Case No. PUE-2006-00059] and for each of the four years of the revised PBR plan"⁸ and therefore was not intended to be permanent. As of the expiration of the PBR Plan, WGL may decide to return to its pre-2007 method of payment for these assets.

The Applicants' PBR Plan, including its current asset management plan, expires on September 30, 2011. As part of its application for a general increase in base rates in Case No. PUE-2010-00139,⁹ WGL has proposed a new asset management plan that anticipates the transfer of the WSS and ESS Agreements to CEV by removing their asset optimization margins, which are estimated at \$1.5 to \$2.0 million annually,¹⁰ from the revenue sharing mechanism. We do not find any public interest benefit in transferring such a revenue stream from the utility and its ratepayers to a non-regulated affiliate without any consideration.

We also believe the operational and financial risks ascribed to WSS and ESS are overstated. WGL has several natural gas storage contracts in its utility portfolio that are used for system supply and asset optimization purposes. The Applicant has not established that the risks associated with the WSS and ESS Agreements differ from those attendant to any such contract or program.

Further, we find the record of WSS and ESS costs and usage to be incomplete. Due to data retention policies, WGL has no record of WSS costs prior to 1992. Furthermore, WGL acknowledges that, despite its repeated assertions that supply disruptions caused the removal of the WSS asset from utility supply and kept the ESS asset out of utility supply, it does not maintain a log or any other records on supply disruptions at either the WSS or the ESS fields.

Finally, we find that, as discussed in the Staff Action Brief, the financial benefits to ratepayers, of settling the financial hedge transactions as described in the Application, appear to be speculative at this time.

Accordingly, IT IS ORDERED THAT:

(1) Washington Gas Light Company's Application is hereby denied.

(2) There appearing nothing further to be done, this case is dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

⁸ See item 8 of Attachment A of the Final Order in Case No. PUE-2006-00059, supra note 2.

⁹ *Application of Washington Gas Light Company, For a general increase in rates and charges and to revise its terms and conditions for gas service*, Case No. PUE-2010-00139. The Staff's prepared testimony in this case is due on September 30, 2011. The evidentiary hearing in this matter is scheduled to begin on November 16, 2011.

¹⁰ Prefiled Direct Testimony of WGL Witness Paul Buckley filed January 31, 2011, at 7, in Case No. PUE-20 10-00139, supra note 9.

**CASE NO. PUE-2011-00071
OCTOBER 5, 2011**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to engage in an affiliate transaction pursuant to § 56-76 *et seq.* of the Code of Virginia

ORDER GRANTING RECONSIDERATION

On September 14, 2011, the State Corporation Commission ("Commission") issued its Order Denying Approval ("Order") in this proceeding. Twenty (20) days later, on October 4, 2011, Washington Gas Light Company ("Company") filed its Petition for Reconsideration of Washington Gas Light Company ("Petition") seeking reconsideration of the Order and requesting the Commission to reverse its decision in this proceeding and to approve the Company's proposed affiliate transactions.

NOW THE COMMISSION, upon consideration of this matter, will grant reconsideration for the purpose of continuing the Commission's jurisdiction over this matter to consider the Petition.

Accordingly, IT IS ORDERED THAT:

(1) Reconsideration is granted for the purpose of continuing the Commission's jurisdiction over this matter to consider the Petition.

(2) This matter is continued.

**CASE NO. PUE-2011-00072
DECEMBER 1, 2011**

PETITION OF
C & P ISLE OF WIGHT WATER CO.

For approval of the disposition of the water supply facilities serving the subdivisions known as Ashby, Carrollton Forest, Brewers Creek, Cedar Grove, Quail Meadows, Ballard Creek, Smithneck, Poplar Harbor, and Rushmere Shores to Isle of Wight County and approval to amend C & P Isle of Wight Water Co.'s certificate of public convenience and necessity

ORDER GRANTING APPROVAL

On June 17, 2011, C & P Isle of Wight Water Co. ("C&P" or "Company") filed a petition with the State Corporation Commission ("Commission"), pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ requesting approval of the disposition of utility assets and approval to amend C&P's certificate of public convenience and necessity to reflect such disposition. C&P and Isle of Wight County ("County") have entered into a Water System Purchase Agreement wherein the County will purchase from C&P the water systems serving the subdivisions known as Ashby, Carrollton Forest, Brewers Creek, Cedar Grove, Quail Meadows, Ballard Creek, Smithneck, Poplar Harbor, and Rushmere Shores (collectively, the "Subdivisions") located in Isle of Wight County, Virginia. The County will purchase the water systems from C&P for \$1,500,000. The purchase price was negotiated at arm's length by the parties. C&P represents that the original cost for the combined systems is \$426,315.

C&P is a Virginia public service corporation that provides water in southeastern Virginia to 705 customers. C&P owns and operates the water systems that serve the Subdivisions, which serve 413 customers. The Company, which is headquartered in Smithfield, Virginia, is jointly owned and operated by Ted W. Christian and David D. Pugh. The County operates as a public service authority and provides water service to customers in and around the County.

The Company represents that the proposed transfer is the result of Ted Christian's inability to continue adequately operating and maintaining the systems due to health issues. The assets involved in the proposed transfer consist of all the rights, title, and interest currently held by the Company in the water distribution systems serving the Subdivisions including water mains, valves, hydrants, wells, pumps, tanks, and meters.

The purpose of the transfer for C&P is to dispose of water systems to an entity that is more capable of providing adequate management oversight. The purpose of the proposed transfer for the County is to acquire water systems within its operating territory in an effort to provide its citizens with a dependable supply of drinking water. The County plans to abandon the systems' wells and connect the systems to a treated water source from the Western Tidewater Water Authority.

After the proposed transfer, C&P customers will be served by the County and will fall under the County's rates. Depending on where the customers live and their usage, they may see an increase in their rates. Customers have been notified of the proposed transfer and the resulting potential rate increase. No customer responded to or commented on the notice.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the proposed transfer will neither impair nor jeopardize the provision of adequate service to the public at just and reasonable rates and, therefore, should be approved.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to §§ 56-89 and 56-90 of the Code, C&P is hereby granted approval of the disposition of the water systems serving the Subdivisions, as described herein.
- (2) C&P's Certificate No. W-283(g) is hereby cancelled.
- (3) C&P shall be granted a certificate of public convenience and necessity, Certificate No. W-283(h), to provide water service to the subdivisions previously authorized in Certificate No. W-283(g) that are not covered by our approval in this matter.
- (4) Within sixty (60) days from the date of this Order Granting Approval, C&P shall submit to the Commission's Division of Energy Regulation a new tariff that reflects the changes to C&P's service area.
- (5) Within ninety (90) days of completing the transfer, C&P shall file a report with the Commission that includes the date of the transfer, the actual transfer price, and the actual accounting entries reflecting the transfer.
- (6) There appearing nothing further to be done in this matter, it hereby is dismissed.

¹ Va Code § 56-88 *et seq.*

**CASE NO. PUE-2011-00076
JULY 21, 2011**

APPLICATION OF
CRAIG-BOTETOURT ELECTRIC COOPERATIVE

For authority to incur additional long-term debt

ORDER GRANTING AUTHORITY

On June 27, 2011, Craig-Botetourt Electric Cooperative ("CBEC" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia ("Code") for authority to borrow up to \$4,400,000 in long-term debt from the Federal Financing Bank ("FFB"). Applicant has paid the requisite fee of \$25.

Applicant represents that the long-term borrowing is needed to finance CBEC's Rural Utilities Service ("RUS")-approved four-year construction work plan that began in July of 2010. The FFB loan will be guaranteed by the RUS. CBEC expects the loan maturity to be thirty-four (34) years.

The Applicant states that the FFB loan can be drawn down over the next four years, and the interest rate will be determined at the time of the draw and will be the yield on a comparable maturity United States Treasury bond plus 1/8% per annum.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) The Applicant is hereby authorized to borrow up to \$4,400,000 in long-term debt from the Federal Financing Bank, all in the manner, under the terms and conditions, and for the purposes as set forth in the application.
- (2) Within thirty (30) days of the date of any advance of funds from FFB, the Applicant shall file with the Commission's Division of Economics and Finance a Report that shall include the date of the drawdown, the amount of the advance, the interest rate selected, the interest rate maturity, and the amount of remaining authority available to be borrowed.
- (3) Approval of this application shall have no implications for ratemaking purposes.
- (4) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2011-00077
JULY 22, 2011**

APPLICATION OF
JAMES RIVER GENCO, LLC

To amend and reissue certificate

FINAL ORDER

On July 1, 2011, James River Genco, LLC ("James River Genco" or "Applicant"), filed an application ("Application") with the State Corporation Commission ("Commission") requesting that the Commission amend and reissue James River Cogeneration Company's ("JRCC") Certificate of Public Convenience and Necessity ("Certificate") in the name of James River Genco, LLC.

Since 2008, JRCC has been authorized to operate an electric generation facility ("Facility") in the City of Hopewell, Virginia, pursuant to Certificate No. ET-179 issued by the Commission in Case No. PUE-2007-00092.¹ Recently, JRCC converted from a North Carolina general partnership to a limited liability company organized under the laws of the State of Delaware and changed its name to James River Genco, LLC.²

The Applicant states that James River Genco sells electric energy and capacity from the Facility solely at wholesale and thus its rates and services are regulated by the Federal Energy Regulatory Commission and not the Commission.³ The Applicant also states that James River Genco, like its predecessor, JRCC, remains a wholly owned, indirect subsidiary of Cogentrix Energy, LLC.⁴ Further, the Applicant states that none of James River Genco's

¹ *Application of James River Cogeneration Company, For a Certificate to Operate as an Electric Generating Facility Pursuant to Virginia Code § 56-580 D*, Case No. PUE-2007-00092, 2008 S.C.C. Ann. Rept. 430, Final Order (Jan. 9, 2008).

² Application at 1. The Applicant submitted copies of the Commission's certificate of registration to transact business in Virginia and the Delaware certificates of good standing, conversion (reflecting the conversion and name change), and formation for James River Genco in support of its Application.

³ *Id.* at 2.

⁴ *Id.* at 1-2.

direct and indirect owners and transferees of equity interests in JRCC and James River Genco are affiliated with an incumbent electric utility as defined in § 56-576 of the Code of Virginia.⁵

NOW THE COMMISSION, having considered the Application, is of the opinion and finds that this matter should be docketed and that the Applicant's Certificate should be cancelled, amended, and reissued to reflect the Applicant's new name.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUE-2011-00077.
- (2) Certificate No. ET-179 authorizing James River Cogeneration Company to operate an electric generation facility in the City of Hopewell, Virginia, is hereby cancelled and shall be reissued as amended Certificate No. ET-179a in the name of James River Genco, LLC.
- (3) There being nothing further to be done, this matter is dismissed from the Commission's docket of active cases and the papers filed herein shall be placed in the Commission's file for ended cases.

⁵ *Id* at 2.

CASE NO. PUE-2011-00078
JULY 22, 2011

APPLICATION OF
PORTSMOUTH GENCO, LLC

To amend and reissue certificate

FINAL ORDER

On July 1, 2011, Portsmouth Genco, LLC ("Portsmouth Genco" or "Applicant"), filed an application ("Application") with the State Corporation Commission ("Commission") requesting that the Commission amend and reissue Cogentrix Virginia Leasing Corporation's ("CVLC") Certificate of Public Convenience and Necessity ("Certificate") in the name of Portsmouth Genco, LLC.

Since 2007, CVLC has been authorized to operate an electric generation facility ("Facility") in the City of Portsmouth, Virginia, pursuant to Certificate No. ET-176 issued by the Commission in Case No. PUE-2007-00057.¹ Recently, CVLC converted from a North Carolina corporation to a limited liability company organized under the laws of the State of Delaware and changed its name to Portsmouth Genco, LLC.²

The Applicant states that Portsmouth Genco sells electric energy and capacity from the Facility solely at wholesale and thus its rates and services are regulated by the Federal Energy Regulatory Commission and not the Commission.³ The Applicant also states that Portsmouth Genco, like its predecessor, CVLC, remains a wholly owned, indirect subsidiary of Cogentrix Energy, LLC.⁴ Further, the Applicant states that none of Portsmouth Genco's direct and indirect owners and transferees of equity interests in CVLC and Portsmouth Genco are affiliated with an incumbent electric utility as defined in § 56-576 of the Code of Virginia.⁵

NOW THE COMMISSION, having considered the Application, is of the opinion and finds that this matter should be docketed and that the Applicant's Certificate should be cancelled, amended, and reissued to reflect the Applicant's new name.

Accordingly, IT IS ORDERED THAT:

- (1) This matter is docketed and assigned Case No. PUE-2011-00078.
- (2) Certificate No. ET-176 authorizing Cogentrix Virginia Leasing Corporation to operate an electric generation facility in the City of Portsmouth, Virginia, is hereby cancelled and shall be reissued as amended Certificate No. ET-176a in the name of Portsmouth Genco, LLC.

¹ *Application of Cogentrix Virginia Leasing Corporation, For a Certificate to Operate as an Electric Generating Facility Pursuant to Virginia Code § 56-580 D*, Case No. PUE-2007-00057, 2007 S.C.C. Ann. Rept. 456, Final Order (Oct. 5, 2007). *Modified*, 2007 S.C.C. Ann. Rept. 458, Order *Nunc Pro Tunc* (Oct. 16, 2007) (revising Ordering Paragraph (1) of the Final Order to issue the Certificate to Cogentrix Virginia Leasing Corporation rather than Cogentrix Land Leasing Corporation).

² Application at 1. The Applicant submitted copies of the Commission's certificate of registration to transact business in Virginia and the Delaware certificates of good standing, conversion, and formation as well as the articles of conversion (reflecting the conversion and name change) for Portsmouth Genco in support of its Application.

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.*

(3) There being nothing further to be done, this matter is dismissed from the Commission's docket of active cases and the papers filed herein shall be placed in the Commission's file for ended cases.

**CASE NO. PUE-2011-00079
NOVEMBER 1, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER ADOPTING REGULATIONS

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 *et seq.* ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Code of Virginia, establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth of Virginia. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

On July 12, 2011, the Commission entered an Order Establishing Proceeding ("Order") to consider revisions to the Net Energy Metering Rules to reflect statutory changes enacted by Chapter 239 of the 2011 Acts of Assembly ("Chapter 239"), which amended § 56-594 of the Code of Virginia to: (1) increase, from 10 to 20 kilowatts, the maximum capacity of an electrical generation facility of a residential customer that qualifies for participation in a net energy metering program; and (2) require that a residential customer-generator whose generating facility has a capacity that exceeds 10 kilowatts shall pay a monthly standby charge that allows the supplier to recover that portion of its infrastructure costs that are properly associated with serving the eligible customer-generator. Chapter 239 requires the Commission to approve of any such standby charges proposed by an electric utility upon finding that the standby charges are properly associated with serving the eligible customer-generator.

The Commission appended to its Order proposed amendments ("Proposed Rules") revising the Net Energy Metering Rules, which were prepared by the Staff of the Commission to reflect the permitted increase in residential capacity and to require residential customer-generators with an installed capacity of more than 10 kilowatts to pay a tariffed monthly standby charge to their respective suppliers.

Notice of the proceeding and the Proposed Rules were published in the Virginia Register of Regulations on August 1, 2011. Additionally, each Virginia electric distribution company was directed to serve a copy of the Order upon each of their respective net metering customers. Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before September 26, 2011.¹

The Virginia Electric Cooperatives ("Cooperatives")² and Virginia Power as well as several other persons and entities filed comments. No one requested a hearing on the Proposed Rules.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the regulations attached hereto as Appendix A should be adopted as final rules. To the extent parties have requested changes to the Proposed Rules that go beyond the scope of such rules, we will not expand the scope of this proceeding to consider issues beyond those required to implement the amendments to § 56-594 of the Code of Virginia.

Virginia Power and the Cooperatives both generally stated that they support the Proposed Rules and that the Proposed Rules accurately and closely reflect the statutory requirements. The Cooperatives also expressed a concern that net metering customers are subsidized by non-net metering customers, an issue that the Cooperatives believe will be partially remedied by implementing the proposed standby charge.

The other comments filed relevant to the Proposed Rules generally stated that, while the increase in the capacity limit to 20 kilowatts is welcome, the statutory standby charge is not desirable since it will discourage residential net metering development, particularly for installations exceeding 10 kilowatts. Some commenters also believe that the standby charge would cause reductions in small-scale generation deployment, job growth, and use of renewable energy.

The Commission believes that the Proposed Rules are consistent with Chapter 239 and the Commission's statutory authority; therefore, the Proposed Rules should be adopted as final rules.

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Net Energy Metering, as shown in Appendix A to this Order, are hereby adopted and are effective as of November 16, 2011.

¹ The Commission's Order originally specified that comments were to be filed on or before August 22, 2011. On August 11, 2011, Virginia Electric and Power Company ("Virginia Power") filed a motion for additional time to complete service on its net metering customers and to extend the public comment period, citing an administrative problem in mailing the Order to its net metering customers. On August 19, 2011, the Commission entered an Order Extending Procedural Schedule granting Virginia Power's motion and providing interested persons until September 26, 2011, to file comments and requests for hearing.

² The filing entitled "Comments of the Virginia Electric Cooperatives" was submitted jointly on behalf of: A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative, as well as the Virginia, Maryland & Delaware Association of Electric Cooperatives.

(2) A copy of this Order with Appendix A including the Regulations Governing Net Energy Metering shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before January 11, 2012, each electric utility in the Commonwealth subject to Chapter 10 (§ 56-232 *et seq.*) of Title 56 of the Code of Virginia shall file with the Clerk of the Commission, in this docket, one (1) original document containing any revised tariff provisions necessary to implement the regulations adopted herein, excluding any tariff provisions implementing standby charges, and shall also file a copy of the document containing the revised tariff provisions with the Commission's Division of Energy Regulation. The Clerk of the Commission need not distribute copies but shall make such filings available for public inspection in the Clerk's Office and post them on the Commission's website at: <http://www.scc.virginia.gov/case>.

(4) All electric utilities in the Commonwealth subject to Chapter 10 (§ 56-232 *et seq.*) of Title 56 of the Code of Virginia desiring to implement standby charges as contemplated by the regulations adopted herein shall file with the Commission, for consideration in separate dockets, applications for approval of the proposed methodologies for such charges.

(5) This docket shall remain open to receive the filings from electric utilities pursuant to Ordering Paragraph (3).

NOTE: A copy of Attachment A entitled "Rules Governing Net Energy Metering" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. PUE-2011-00080
JULY 20, 2011**

APPLICATION OF
ROANOKE GAS COMPANY

For authority to incur short-term debt

ORDER GRANTING AUTHORITY

On July 5, 2011, Roanoke Gas Company ("Roanoke" or "Company") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia for authority to incur short-term debt. The proposed amount of short-term debt exceeds the twelve percent of capitalization as defined in § 56-65.1 of the Code of Virginia. The Company has paid the requisite fee of \$250.

Roanoke requests authority to incur short-term debt in an aggregate amount not to exceed \$30,000,000 through September 30, 2014. The indebtedness will be either in the form of unsecured promissory notes or draws on the credit line(s) under its Cash Management Services Contract. The borrowing rate will vary with market conditions, the form of indebtedness, and the related term to maturity. Applicant states that borrowings under its line of credit are currently priced at the 30-day London Interbank Offered Rate (LIBOR) plus 100 basis points. Short-term notes will be issued with a maturity of either 30, 60, or 90 days and draws under the line of credit could have maturities of one day.

The proceeds from the short-term borrowings will be used mainly to fund Roanoke's gas inventory purchases. In addition, Applicant states that it may use its short-term borrowings to fund capital expenditures temporarily until permanent financing can be obtained.

THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest. Accordingly,

IT IS ORDERED THAT:

(1) Roanoke is hereby authorized to incur up to \$30,000,000 in short-term debt through September 30, 2014, under the terms and conditions and for the purposes set forth in the application.

(2) On or before January 31 and July 31 of each year, beginning 2012 and ending 2015, Applicant shall file a Report of Action. Such report shall include the daily balance of short-term debt outstanding during the semi-annual periods ending in June and December, respectively, and a schedule of issuances including the type, lending institution, amount, date of issuance, interest rate, maturity, average daily balance and maximum outstanding balance for each month, and any commissions or bank line of credit fees paid in connection with the short-term borrowings.

(3) The authority granted herein shall have no implications for ratemaking purposes.

(4) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

**CASE NO. PUE-2011-00081
OCTOBER 17, 2011**

APPLICATION OF
ROANOKE GAS COMPANY

For an expedited increase in rates

ORDER FOR NOTICE AND HEARING

On September 23, 2011, Roanoke Gas Company ("Roanoke Gas" or "Company") filed a completed application with the State Corporation Commission ("Commission") for an expedited increase in rates ("Application") and direct testimony, exhibits, and schedules as prescribed by the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.* ("Rate Case Rules"). Roanoke Gas seeks to increase its annual revenues by \$1,088,806 or approximately 1.87%.¹ According to the Company, base non-gas rates will increase by approximately 4.5%, spread proportionally to each class of customer.² As provided by 20 VAC 5-201-20-D of the Rate Case Rules, Roanoke Gas proposes that its increase in rates take effect, on an expedited basis and subject to refund, for service on and after November 1, 2011.³

The Commission last granted the Company an increase in rates in April 2011.⁴ In support of its current Application, Roanoke Gas states that its operations have not materially changed since its last rate case, but operating costs have increased.⁵ The proposed increase in rates is based on a return on equity of 10%.⁶

On October 11, 2011, the Commission Staff ("Staff") filed an interim report on its preliminary review of the Application and supporting testimony, exhibits, and schedules as required by the Commission's Rate Case Rules. The Staff concluded that the proposed adjustments are consistent with those approved in the previous rate case for Roanoke Gas. The Staff stated that it believes it is appropriate that the Company's rate request be put into effect on an interim basis for service rendered on and after November 1, 2011, subject to refund.⁷

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Company filed a completed Application on September 23, 2011. The Commission further finds that public notice and an opportunity for participation in this proceeding should be given; that a hearing should be scheduled on the Application; and that a Hearing Examiner should be assigned to conduct all further proceedings on behalf of the Commission, concluding with the filing of a final report containing the Hearing Examiner's findings and recommendations.

As noted, Roanoke Gas proposes that its rates take effect, subject to refund, on November 1, 2011. The Company advises the Commission that it has not experienced a substantial change in its circumstances. In this proceeding, Roanoke Gas proposes to use a return on equity of 10.1%, as approved by the Commission in the Company's last rate proceeding.⁸ In its October 11, 2011 Report, the Staff made a preliminary determination that the proposed adjustments in this proceeding are consistent with those approved in the previous rate proceeding for Roanoke Gas.⁹ Therefore, the Commission finds that Roanoke Gas has satisfied the specific requirements of Rate Case Rule 20 VAC 5-201-20-D for putting its proposed rates into effect, subject to refund, as provided by Rate Case Rule 20 VAC 5-201-20 E.

Accordingly, IT IS ORDERED THAT:

- (1) The Company's Application for an expedited increase in rates is docketed and assigned Case No. PUE-2011-00081.
- (2) Roanoke Gas may put its proposed rates into effect on an interim basis, subject to modification and refund with interest, for service provided on and after November 1, 2011.
- (3) As provided by § 12.1-31 of the Code of Virginia and 5 VAC 5-20-120, *Procedure before Hearing Examiners*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules of Practice"), a Hearing Examiner shall be appointed to conduct all further proceedings in this matter on behalf of the Commission and to file a final report herein.
- (4) A public hearing on the Application shall be held at 10:00 a.m. on March 27, 2012, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive into the record the testimony of public witnesses and the evidence of Roanoke Gas, any respondents, and the Staff. Public witnesses desiring to testify at the hearing concerning this Application need only appear in the Commission's Second Floor Courtroom in the Tyler Building at the address set forth above fifteen (15) minutes prior to the starting time on the day of the hearing and contact the Commission's Bailiff.

¹ Application at 1.

² Direct Testimony of Dale P. Lee at 1-2.

³ Application at 2.

⁴ *Application of Roanoke Gas Company, For an expedited rate increase*, Doc. Con. Cen. No. 445978, Case No. PUE-2010-00077, Final Order (Apr. 6, 2011).

⁵ Direct Testimony of John B. Williamson III, at 2-3.

⁶ Application at 1.

⁷ Staff Interim Report of October 11, 2011 ("October 11, 2011 Report") at 3.

⁸ Direct Testimony of John B. Williamson III, at 7.

⁹ October 11, 2011 Report at 3.

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(5) Roanoke Gas shall forthwith make a copy of its Application; a copy of the public versions of all testimony, exhibits, and schedules filed with the Application; and a copy of this Order for Notice and Hearing available for public inspection during regular business hours at its business office at 519 Kimball Avenue, N.E., Roanoke, Virginia 24016. The Company shall also provide, at no charge, a copy of the Application and the public versions of all testimony, exhibits, and schedules filed with the Application upon written request to Dale P. Lee, Vice President and Corporate Secretary, Roanoke Gas Company, P.O. Box 13007, Roanoke, Virginia 24030. If acceptable to the requesting individual, the Company may provide the Application, with or without attachments, by electronic means. In addition, interested persons may review copies of the Application and related documents in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5:00 p.m. on regular business days, or download unofficial copies from the Commission's website at: <http://www.scc.virginia.gov/case>.

(6) On or before October 31, 2011, the Company shall publish once as display advertising (not classified) the following notice in newspapers of general circulation throughout its Virginia service territory:

NOTICE TO THE PUBLIC OF AN
APPLICATION BY ROANOKE GAS COMPANY
FOR AN EXPEDITED INCREASE IN RATES
CASE NO. PUE-2011-00081

On September 23, 2011, Roanoke Gas Company ("Roanoke Gas" or "Company") filed with the State Corporation Commission ("Commission") an application for an expedited increase in rates ("Application"). Roanoke Gas seeks to increase its annual revenues by \$1,088,806 or approximately 1.87%. According to the Company, base non-gas rates will increase by approximately 4.5%, spread proportionally to each class of customer. Roanoke Gas proposes that its increase in rates take effect, on an expedited basis and subject to refund, for service on and after November 1, 2011.

Interested persons are encouraged to review the Application and supporting documents for the details of these and other proposals. While the total revenue that may be approved by the Commission is limited to the amount produced by the Company's proposed rates, TAKE NOTICE that the Commission may approve revenues and adopt rates, fees, charges, tariff revisions, and terms and conditions of service that differ from those appearing in the Company's Application and supporting documents and may apportion revenues among customer classes and/or design rates in a manner differing from that shown in the Company's Application and supporting documents.

The Commission last granted the Company an increase in rates in April 2011. Roanoke Gas states that its operations have not materially changed since its last rate case, but operating costs have increased. The proposed increase in rates reflects application of a return on equity of 10.1%.

The Commission has entered an Order for Notice and Hearing that, among other things, schedules a hearing on the Company's Application, assigns a Hearing Examiner to this proceeding, and permits Roanoke Gas to implement its proposed rate increase on an interim basis, subject to modification and refund, effective for service provided on and after November 1, 2011.

A public hearing on the Company's Application shall be held at 10:00 a.m. on March 27, 2012, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive into the record the testimony of public witnesses and the evidence of Roanoke Gas, any respondents, and the Commission Staff. Any person desiring to testify as a public witness should appear at the hearing location fifteen (15) minutes before the starting time on the day of the hearing and contact the Commission's Bailiff. Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing date at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

A copy of the Application; a copy of all testimony, exhibits, and schedules filed with the Application; and a copy of the Order for Notice and Hearing are available for public inspection during regular business hours at the Company's business office, 519 Kimball Avenue, N.E., Roanoke, Virginia 24016. A copy of the Application may be obtained at no cost through written request to Dale P. Lee, Vice President and Corporate Secretary, Roanoke Gas Company, P.O. Box 13007, Roanoke, Virginia 24030. In addition, interested persons may review the Application and related documents in the Commission's Document Control Center, Office of the Clerk of the Commission, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5:00 p.m. on regular business days, or download unofficial copies from the Commission's website at: <http://www.scc.virginia.gov/case>.

Any interested person may participate as a respondent in this proceeding by filing, on or before December 19, 2011, a notice of participation. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to the Clerk of the Commission at the address set forth above. Interested parties should obtain a copy of the Commission's Order for Notice and Hearing for further details on participation as a respondent. All filings shall refer to Case No. PUE-2011-00081.

On or before March 20, 2012, any interested person may file written comments on the Application with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons desiring to submit comments electronically may do so on

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or before March 20, 2012, by following the instructions found on the Commission's website at: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. PUE-2011-00081.

ROANOKE GAS COMPANY

(7) On or before October 31, 2011, Roanoke Gas shall serve a copy of this Order for Notice and Hearing on the chairman of the board of supervisors and county attorney of each county and upon the mayor or manager (or equivalent official) of every city and town in which the Company provides service in the Commonwealth of Virginia. Service shall be made by first class mail to the customary place of business or residence of the person served.

(8) On or before October 31, 2011, Roanoke Gas shall file proof of publication of the notice prescribed in Ordering Paragraph (6) and proof of service of copies of this Order for Notice and Hearing as prescribed by Ordering Paragraph (7), including the name, title, and address of each official served.

(9) On or before March 20, 2012, any interested person may file written comments on the Application with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to submit comments electronically may do so on or before March 20, 2012, by following the instructions found on the Commission's website at: <http://www.scc.virginia.gov/case>. Interested persons shall refer in their comments to Case No. PUE-2011-00081.

(10) Any interested person may participate as a respondent in this proceeding by filing, on or before December 19, 2011, a notice of participation. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (9). A copy of the notice of participation simultaneously shall be served on counsel to the Company, Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, 951 East Byrd Street, Richmond, Virginia 23219. Pursuant to 5 VAC 5-20-80 B, Participation as a respondent, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by Rule 5 VAC 5-20-30, Counsel, of the Rules of Practice. All filings shall refer to Case No. PUE-2011-00081.

(11) Within five (5) business days of receipt of a notice of participation as a respondent as required by Ordering Paragraph (10), the Company shall serve upon the respondent a copy of this Order for Notice and Hearing, a copy of the Application, and all materials filed with the Commission unless these materials have already been provided to the respondent.

(12) On or before December 19, 2011, each respondent may file with the Clerk of the Commission and serve on the Staff, the Company, and all other respondents, any testimony and exhibits by which the respondent expects to establish its case. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be submitted to the Clerk of the Commission at the address in Ordering Paragraph (9). The respondent shall comply with the Commission's Rules of Practice, including 5 VAC 5-20-140, *Filing and service*, 5 VAC 5-20-150, *Copies and format*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*.

(13) On or before February 28, 2012, the Staff shall investigate the Company's Application for an expedited increase in rates and shall file with the Clerk of the Commission an original and fifteen (15) copies of testimony and exhibits regarding its investigation of the Application.

(14) On or before March 13, 2012, the Company may file with the Clerk of the Commission any rebuttal testimony and exhibits that it expects to offer and simultaneously shall serve a copy on the Staff and all respondents. If not filed electronically, an original and fifteen (15) copies of such rebuttal testimony and exhibits shall be submitted to the Clerk of the Commission at the address in Ordering Paragraph (9).

(15) The Company shall respond to interrogatories and requests for data within seven (7) calendar days after the receipt of same. Except as so modified, discovery shall be in accordance with Part IV of the Rules of Practice, 5 VAC 5-20-240 *et seq.*

(16) This matter is continued generally.

**CASE NO. PUE-2011-00086
SEPTEMBER 9, 2011**

APPLICATION OF
NORTHERN VIRGINIA ELECTRIC COOPERATIVE

For authority to incur debt

ORDER GRANTING AUTHORITY

On July 12, 2011, Northern Virginia Electric Cooperative ("NOVEC" or "Cooperative") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia for authority to issue debt in the form of a construction loan. The Cooperative has paid the requisite fee of \$250.

NOVEC is seeking approval of a \$130 million construction loan to partially fund the construction of its South Boston Virginia Biomass Electric Generation Plant being constructed by NOVEC's wholly-owned subsidiary, South Boston Energy LLC ("SBE").¹ The plant is projected to cost approximately \$180 million. The Cooperative expects to invest up to \$50 million in equity into SBE to supplement the \$130 million loan.²

The construction loan will be with either the National Rural Utilities Cooperative Financing Cooperative or CoBank. The construction loan will have a 36 month term. The interest rate will be variable and will re-price monthly based on the one-month LIBOR rate plus 200 basis points. Interest expense is payable quarterly.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

(1) NOVEC is hereby authorized to borrow up to \$130 million, under the terms and conditions and for the purposes set forth in the application, contingent upon (i) NOVEC seeking and receiving Commission approval under Chapter 4 to invest these proceeds in SBE, and (ii) NOVEC fulfilling the requirements and conditions set forth in our April 28, 2011 Order on Application in Case No. PUE-2010-00126.

(2) On or before January 31 of 2012, 2013 and 2014, NOVEC shall file a Report of Action with the Commission. Such report shall include the end of month balances of debt incurred under the construction loan, and a corresponding interest rate in effect during each month during the reporting period.

(3) The authority granted herein shall have no implications for ratemaking purposes.

(4) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

¹ By Commission Order dated April 28, 2011 in Case No. PUE-2010-00126, the Commission granted SBE a CPCN to construct, own and operate a 49.9 MW (gross) biomass electric generating facility in Halifax County, Virginia.

² We note that Staff advised in its Action Brief that NOVEC intends to seek approval to invest the borrowed funds approved in this Order in SBE, pursuant to Chapter 4 of Title 56 of the Code of Virginia.

**CASE NO. PUE-2011-00087
AUGUST 8, 2011**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For authority to issue securities

ORDER GRANTING AUTHORITY

On July 18, 2011, Washington Gas Light Company ("WGL" or "Company") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia for authority to issue short-term debt, long-term debt and/or preferred securities, and to enter into hedging transactions. WGL has paid the requisite fee of \$250.

The Company requests authority to issue up to \$490 million in long-term securities in any combination of preferred stock, bonds, notes and other long-term debt instruments ("Long-Term Securities") and up to \$450 million in short-term debt ("Short-Term Securities") from October 1, 2011, through September 30, 2014. The amount of short-term indebtedness requested is in excess of 12% of total capitalization as defined in § 56-65.1 of the Code of Virginia. In addition, the Company requests authority to enter into one or more interest rate hedging transactions in association with the issuance of new Long-Term Securities requested herein. WGL states that the proceeds from the issuance of any Long-Term Securities will be used to refund maturing long-term debt, to retire, prior to maturity, higher cost long-term debt as market conditions permit, and for general corporate purposes such as the acquisition of property, working capital requirements and the retirement of short-term debt. The Short-Term Securities will be used to fund the Company's temporary and seasonal needs for cash and may also be used as bridge financing of permanent capital requirements.

The Long-Term Securities will be issued in one or more public offerings or may be issued in one or more private placements depending on market conditions at the time of issuance. The maturity date on any Long-Term Securities will not be less than one year. The effective cost is not expected to be more than 600 basis points above the most comparable maturity U.S. Treasury Security, excluding underwriters' compensation and other expenses. WGL's existing Commission authority to issue up to \$356.5 million in Long-Term Securities expires on September 30, 2011.

The Short-Term Securities will be issued in the form of notes to financial institutions and/or commercial paper. The notes and commercial paper will have maturities of less than one year. The proposed Short-Term Securities are supported by a revolving credit agreement for up to \$400 million with a syndicate of financial institutions and which is set to expire on August 3, 2012. WGL intends to replace the expiring agreement with a new larger amount before it expires. There will be no underwriting charges or finder's fees associated with the issuance of the notes and commercial paper. However, WGL will pay fees on the associated revolving credit agreement and will also pay commission on the sale of commercial paper. WGL's existing Commission authority to issue up to \$400 million in Short-Term Securities expires on September 30, 2011.

WGL will only enter into interest rate hedging transactions in conjunction with the issuance of long-term debt. According to the Company, these transactions will be used for the purpose of controlling the cost of long-term debt securities. A hedging transaction could take the form of a forward starting swap, a treasury lock hedge, or other financial instruments, and the structure of each transaction will have the following characteristics: (1) the transaction will be initiated before the issuance of any long-term debt; (2) the amount of the hedging transaction will be comparable to the amount of the long-term debt;

(3) the term of the hedging transaction will not exceed twelve months; and (4) the hedging transaction would only be initiated during the effective period of the Commission's Order authorizing the issuance of long-term debt.

THE COMMISSION, upon consideration of the application, and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

(1) WGL is authorized to issue up to \$490 million in Long-Term Securities, from the period October 1, 2011, through September 30, 2014, under the terms and conditions and for the purposes stated in its application.

(2) WGL is hereby authorized to issue short-term indebtedness in excess of 12% of total capitalization, provided that such indebtedness does not exceed \$450 million, from the period October 1, 2011, through September 30, 2014, under the terms and conditions and for the purposes set forth in the application.

(3) WGL is hereby authorized to enter into interest rate hedging agreements, from the period October 1, 2011, through September 30, 2014, under the terms and conditions and for the purposes stated in the application.

(4) WGL shall file reports of action within ten days of the execution of the new revolving credit agreement and the filing of a new shelf registration statement with the Securities and Exchange Commission.

(5) WGL shall file a report of action on or before December 31 of 2012, 2013 and 2014 concerning WGL's daily short-term debt activity for the preceding year ended September 30 of 2012, 2013 and 2014, respectively. Such reports shall include the type, amount, issuance date, maturity, and interest rate on each borrowing, the average daily balance and maximum outstanding balance for each month, and any commissions or bank line of credit fees paid in connection with the short-term borrowings.

(6) WGL shall submit a preliminary report of action within ten days after the issuance of any Long-Term Securities pursuant to this Order to include the type of security, the date of issuance, the amount of issuance, the applicable interest rate or dividend rate, the maturity date, and net proceeds to WGL.

(7) Within 60 days of the end of the calendar quarter in which any Long-Term Securities are issued, WGL shall file a more detailed report to include the information required in Ordering Paragraph (6), as well as an itemized list of actual expenses to date associated with the issuance(s), a comparison of the effective rate of Securities issued and any refinanced securities, use of proceeds, and an detailed description of any hedging activity (gains or losses) associated with the issuance.

(8) On or before December 31, 2014, WGL shall file a final report of action to include all information required in Ordering Paragraph (7) which incorporates then-current actual expenses and fees paid for the proposed Securities issuances.

(9) The authority granted herein shall have no implications for ratemaking purposes.

(10) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

**CASE NO. PUE-2011-00088
NOVEMBER 23, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval of a standby charge and methodology and revisions to its tariff and terms and conditions of service pursuant to § 56-594 F of the Code of Virginia

FINAL ORDER

On July 29, 2011, Virginia Electric and Power Company ("Dominion" or "Company"), filed with the State Corporation Commission ("Commission") an application pursuant to § 56-594 F of the Code of Virginia ("Code") for approval of a standby charge and methodology applicable to residential eligible customer-generators who own and operate, or contract with other persons to own, operate, or both, an electric generating facility with a capacity that exceeds 10 kilowatts but not greater than 20 kilowatts and for corresponding revisions to its tariff and terms and conditions of service ("Application").

In its Application, Dominion states that its infrastructure costs are generally categorized within three broad areas: distribution, transmission, and generation.¹ The Company further states that the proposed standby charge methodology is comprised of the same three components and that the distribution- and transmission-related components are proposed to be calculated based on the monthly peak demand of the eligible customer-generator on the Company's system. The Company states that it believes a generation component of the standby methodology is proper, but it has insufficient information at this time to determine properly the appropriate generation-related standby component and, therefore, is proposing a "placeholder" for the generation-related component.²

¹ Ex. 2 at 3-4.

² *Id.* at 4.

The Company seeks approval of a standby charge consisting of a \$2.79 per kilowatt distribution-related component, a \$1.40 per kilowatt transmission-related component,³ and a \$0.00 per kilowatt generation-related "placeholder" component.⁴ The Company asserts that the proposed standby charge will result in a more appropriate apportionment of cost responsibility among residential customers and reduce the cross-subsidization of net metered customers by non-net metered customers.⁵

On August 16, 2011, the Commission entered an Order for Notice and Comment in this proceeding which, among other things, directed Dominion to provide notice of its request for approval of a standby charge and methodology to each of its net metered customers and afforded interested persons an opportunity to file comments or request a hearing on the Company's Application.

On September 12, 2011, the MD DC VA Solar Energy Industries Association ("MDV-SEIA"), by counsel, filed a notice of participation and a request for hearing. On September 19, 2011, the Commission entered an Order Scheduling Hearing wherein it, among other things, set forth a schedule for the filing of testimony and scheduled a hearing for November 3, 2011.

The Company filed its testimony in support of the Application on October 3, 2011, MDV-SEIA filed its testimony on October 11, 2011, and the Commission Staff ("Staff") filed its testimony on October 18, 2011. The Company subsequently filed its rebuttal testimony.

On November 3, 2011, the Commission convened a hearing on this matter, as scheduled, in which it received the testimony of public witnesses, the Company, MDV-SEIA, and the Staff.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Company's Application is granted as set forth herein.

Dominion seeks approval of its proposed standby charge and methodology pursuant to § 56-594 F of the Code, which provides that:

Any residential eligible customer-generator who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount of the standby charge and the terms and conditions under which it is assessed shall be in accordance with a methodology developed by the supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby charges collected from all such eligible customer-generators allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with serving such eligible customer-generators. Such an eligible customer-generator shall not be liable for a standby charge until the date specified in an order of the Commission approving its supplier's methodology.

We approve a standby charge methodology that includes the transmission and distribution components as proposed by the Company and supported by the Staff. The evidence in the record indicates that customer-generators who engage in net metering still make use of the transmission and distribution grid. The grid must be available to deliver power to them when their own solar or other forms of generation are not producing electricity and to return any excess power produced by eligible customer-generators' facilities. Further, the evidence in this record indicates that any avoided cost benefits provided by customer-generators, at least in terms of the transmission and distribution grid, are insufficient to pay for their proportionate share of the grid.⁶

The Company, however, has not presented sufficient data on its still-to-be-determined generation component for us to conclude that it satisfies the statutory requirements for any generation component of such rate. Thus, we do not approve a generation component as part of this case. Before Dominion can modify the standby charge to include any generation component, the Company must file with the Commission a formal application under § 56-594 F of the Code (which evaluates both the generation costs and benefits attendant to serving eligible customer-generators), and the Company must receive approval thereof for its total standby charge.

We note that, pursuant to § 56-594 F of the Code, the standby charge approved herein does not apply to residential eligible customer-generators whose electrical generating facilities are 10 kilowatts or less. In addition, we emphasize that our Final Order herein does not preclude the consideration and adoption in subsequent proceedings of alternative methodologies for standby charges based on the specific record developed in such proceedings. For example, although we have not found – based on the current record – quantifiable benefits provided by eligible customer-generators to apply to the methodology approved herein, we are in no manner precluded from applying the concept of such benefits to future standby charge methodologies if future records so warrant.⁷

Accordingly, IT IS ORDERED THAT:

- (1) The Company's Application is granted in part and denied in part as set forth in this Final Order.

³ *Id.* at 6.

⁴ *Id.*

⁵ *Id.*

⁶ Ex. 10 (Walker direct) at 2; Tr. at 200-202.

⁷ Finally, we note that there was discussion at the hearing regarding the possible use by customer-generators of Dominion's Schedule 19 to receive compensation for energy and capacity sold back into the Company's system and as a basis for evaluating potential avoided costs and benefits. We direct the Company, when it subsequently files to include a generation component in the standby charge, to address the efficacy of Schedule 19 for such purposes.

(2) The Company shall forthwith file revised tariffs removing the generation "placeholder" and terms and conditions of service with the Clerk of the Commission and with the Commission's Division of Energy Regulation, in accordance with this Final Order, effective for bills rendered on and after April 1, 2012. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.

(3) This matter is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2011-00088
DECEMBER 14, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY

For approval of a standby charge and methodology and revisions to its tariff and terms and conditions of service pursuant to § 56-594 F of the Code of Virginia

ORDER GRANTING RECONSIDERATION

On November 23, 2011, the State Corporation Commission ("Commission") issued its Final Order ("Order") in this proceeding. Twenty (20) days later, on December 13, 2011, MD DC VA Solar Energy Industries Association filed its Petition for Reconsideration ("Petition") seeking reconsideration of the Order and requesting the Commission to: (1) clarify the Order such that the standby charges will be implemented after Virginia Electric and Power Company has evaluated the generation component of the charge and presented such evidence to the Commission for its approval; (2) amend the Order to delay the effectiveness of any standby charge until such a generation component application has been filed, evaluating both the generation costs and benefits attendant to serving eligible customer-generators.

NOW THE COMMISSION, upon consideration of this matter, will grant reconsideration for the purpose of continuing the Commission's jurisdiction over this matter to consider the Petition.

Accordingly, IT IS ORDERED THAT:

- (1) Reconsideration is granted for the purpose of continuing the Commission's jurisdiction over this matter to consider the Petition.
- (2) This matter is continued.

**CASE NO. PUE-2011-00089
OCTOBER 25, 2011**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.,
and
SEQUENT ENERGY MANAGEMENT, L.P.

For approval of an asset management agreement under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On July 28, 2011, Virginia Natural Gas, Inc. ("VNG"), and Sequent Energy Management, L.P. ("Sequent") (collectively "Applicants"), filed an application ("Application") with the State Corporation Commission ("Commission") requesting approval of a revised Asset Management and Agency Agreement ("AMAA") and revised Gas Purchase and Sale Agreement ("GPSA") (collectively "2012 Agreements") under Chapter 4 of Title 56 of the Code of Virginia ("Code").¹ Concurrent with the filing of the Application, the Applicants jointly filed a Motion for the Entry of a Protective Order ("Motion for Protective Ruling") together with a proposed Protective Order setting forth procedures for the treatment of confidential or proprietary information and documents, as well as extraordinarily sensitive information and documents that may require a higher level of protection from disclosure, in this proceeding.

VNG is a Virginia public service corporation headquartered in Virginia Beach, Virginia, which provides natural gas local distribution service to approximately 276,012 residential, commercial, and industrial customers in southeastern Virginia. VNG is a wholly owned subsidiary of AGL Resources ("AGLR"), an energy holding company headquartered in Atlanta, Georgia.

Sequent Energy Management, L.P. ("Sequent"), is a Georgia limited partnership headquartered in Houston, Texas, which purchases and sells natural gas in the wholesale market and provides gas and energy-related services to customers throughout the United States. Sequent is a wholly owned subsidiary of AGLR.

Under the proposed 2012 Agreements, Sequent will provide gas supply and asset management services to VNG. Specifically, Sequent will procure and deliver gas for VNG and manage VNG's portfolio of gas supply, transportation, and storage assets. The 2012 Agreements represent a continuation of the current GPSA and AMAA with certain changes, which are highlighted below. First, the Applicants propose to lengthen the term of the

¹ Va. Code § 56-76 *et seq.*

2012 Agreements from three to four years (April 1, 2012 to March 31, 2016) in order to achieve more storage arbitrage opportunities. Second, the Applicants propose to increase the minimum annual guaranteed payment to VNG and to re-align the sharing brackets to reflect this change. Third, the Applicants propose to increase VNG's portion of the last sharing bracket. Fourth, the Applicants propose new language in the 2012 Agreements that will require any incremental VNG compression costs resulting from Sequent's activities to be charged to Sequent. Finally, the Applicants propose new language in the 2012 Agreements to align the physical and financial values from the same storage arbitrage transaction to the same value sharing period, or contract year.²

NOW THE COMMISSION, upon consideration of this matter and having been advised by the Commission Staff ("Staff"), is of the opinion and finds that the proposed 2012 Agreements are in the public interest and should be approved. The arrangement permits VNG to outsource much of its gas procurement process while receiving revenues from the optimization of its unused pipeline and storage assets. The Applicants have had an energy services arrangement with each other since November 2000.³ We approved a revised AMAA and GPSA for VNG and Sequent in October 2005, which included numerous regulatory, pricing, and reporting requirements.⁴ We approved another revision of the AMAA and GPSA for VNG and Sequent in March 2009 while supplementing the prior regulatory, pricing, and reporting requirements with additional reporting, filing, and monitoring requirements.⁵ We believe that these existing requirements, with one exception, are necessary to protect the public interest, so we will continue to impose them for the 2012 Agreements that are the subject of this case. Concerning the exception, we find that the current requirement for a clear explanation of the computational logic in Work Sheet C and the Work Sheet on Storage Fill Pricing (see Staff Action Brief Requirement No. (5)(iii)(6)) is no longer necessary because gas purchase costs charged to VNG by Sequent are governed by the virtual dispatch method; accordingly, we will no longer impose this requirement.

Based on the Applicants' representations, we will allow the proposed new language in the 2012 Agreements that will align the physical and financial values from the same storage arbitrage transaction to the same value sharing period, or contract year. However, we will also adopt the Staff's recommendation that the Applicants be directed to work with the Staff to develop, within ninety (90) days of this Order Granting Approval, new data tests and reports for inclusion in the quarterly reports that meet the Staff's expectations for the monitoring of the long-term storage arbitrage transactions.

Accordingly, IT IS ORDERED THAT:

(1) The Applicants' Motion for Protective Ruling is denied; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion for Protective Ruling pertains, under seal.⁶

(2) Pursuant to § 56-77 of the Code, VNG and Sequent are hereby granted approval to enter into the 2012 Agreements, consistent with the findings set forth above and effective as of April 1, 2012. Within thirty (30) days of this Order Granting Approval, VNG and Sequent shall file with the Commission's Director of the Division of Public Utility Accounting ("PUA Director") executed copies of the 2012 Agreements approved herein.

(3) The approval granted herein is limited to four (4) years, from April 1, 2012 through March 31, 2016. Should VNG desire to continue the 2012 Agreements beyond that date, further Commission approval shall be required.

(4) The regulatory, pricing, reporting, filing, and monitoring requirements for the current GPSA and AMAA are, with one exception, re-adopted for the 2012 Agreements. That exception is the requirement for a clear explanation of the computational logic in Work Sheet C and the Work Sheet on Storage Fill Pricing, which is no longer imposed.

(5) The Applicants shall work with the Staff to develop, within ninety (90) days of this Order Granting Approval, new data tests and reports for inclusion in the quarterly reports that meet the Staff's expectations for the monitoring of the long-term storage arbitrage transactions.

(6) Commission approval shall be required for any changes in the terms and conditions of the 2012 Agreements, including successors or assigns.

(7) The approval granted herein shall have no ratemaking implications. Specifically, the approval granted herein shall not guarantee the recovery of any costs directly or indirectly related to the 2012 Agreements.

(8) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.

² The Applicants initially proposed to include a new component in the net margin calculation. However, on August 18, 2011, the Applicants filed a revised AMAA that removed the proposed component from the net margin calculation.

³ *Application of Virginia Natural Gas, Inc., and AGL Energy Services, Inc., For approval of an Energy Services Agreement under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUA-2000-00085, 2000 S.C.C. Ann. Rept. 240, Order Granting Approval (Nov. 30, 2000). Subsequent to this case, AGL Energy Services, Inc., was converted to a Georgia limited partnership and was renamed Sequent.

⁴ *Ex Parte, In Re: Investigation of gas supply asset assignment and agency agreement between Virginia Natural Gas, Inc., and Sequent Energy Management, L.P., f/k/a AGL Energy Services, Inc.*, Case No. PUE-2004-00111, 2005 S.C.C. Ann. Rept. 360, Order Approving Affiliate Agreements and Closing Investigation (Oct. 31, 2005). The Commission's investigation was initiated in response to a petition filed by United States Gypsum Company, which requested the Commission to audit and investigate the energy services agreement between VNG and Sequent. *Petition of United States Gypsum Company v. Virginia Natural Gas, Inc. and Sequent Energy Management f/k/a AGL Energy Services, Inc.*, Case No. PUE-2004-00050, 2004 S.C.C. Ann. Rept. 460, Final Order (Sept. 20, 2004).

⁵ *Application of Virginia Natural Gas, Inc., and Sequent Energy Management, L.P., For Approval of an Asset Management Agreement Under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2008-00119, 2009 S.C.C. Ann. Rept. 362, Order Granting Approval (Mar. 30, 2009).

⁶ The Commission held the Applicants' Motion for Protective Ruling in abeyance. We note that the Commission has received no request for leave to review the confidential information filed in this proceeding. Accordingly, we deny the Motion for Protective Ruling as moot.

(9) The Commission reserves the right to examine the books and records of any affiliate in connection with the approval granted herein, whether or not such affiliate is regulated by the Commission. In this regard, VNG and Sequent shall respond to the Staff's data requests so that the Staff can monitor the Applicants' conduct under the 2012 Agreements.

(10) VNG shall include all transactions associated with the 2012 Agreements in its Annual Report of Affiliate Transactions ("ARAT") submitted to the PUA Director on or before May 1 of each year, which deadline may be extended administratively by the PUA Director.

(11) In the event that VNG's annual informational filings or general or expedited rate case filings are not based on a calendar year, then VNG shall include the affiliate information contained in its ARAT in such filings.

(12) There appearing nothing further to be done, this case is dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. PUE-2011-00095
NOVEMBER 14, 2011**

JOINT APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY,
LOUISVILLE GAS AND ELECTRIC COMPANY,
LG&E AND KU SERVICES COMPANY,
LG&E AND KU ENERGY LLC,
LG&E AND KU CAPITAL LLC,
PPL CORPORATION,
PPL ELECTRIC UTILITIES CORPORATION,
and
PPL SERVICES CORPORATION

For authority to engage in affiliate transactions and to enter into Utility Services Agreements, pursuant to Chapter 4 of Title 56 of the Code of Virginia, § 56-76 *et seq.*

ORDER GRANTING AUTHORITY

On August 15, 2011, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP"), Louisville Gas and Electric Company ("LG&E"), LG&E and KU Services Company ("LK Services"), LG&E and KU Energy LLC ("LKE"), LG&E and KU Capital LLC ("LKC"), PPL Corporation ("PPL"), PPL Electric Utilities Corporation ("PPL Electric"), and PPL Services Corporation ("PPL Services") (collectively, "Joint Applicants") filed a joint application ("Joint Application") with the State Corporation Commission ("Commission"), pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code")¹ and Ordering Paragraph (17) of the Commission's Final Order entered October 19, 2010, in Case No. PUE-2010-00060 ("2010 Order"),² requesting authority to engage in affiliate transactions and to enter into four (4) separate Utility Services Agreements, consisting of an Amended and Restated Utility Services Agreement ("Amended Services Agreement"),³ a Third-Party Vendor Services Agreement ("Third-Party Agreement"), a Data Hosting Agreement ("Data Hosting Agreement"), and a Utility Services Agreement for Mutual Assistance ("Mutual Assistance Agreement") (collectively, the "Utility Services Agreements").

Amended Services Agreement

The Amended Services Agreement is between KU/ODP, LG&E, and LK Services and is an amendment to the 2010 Agreement approved by the Commission in its 2011 Order. The services provided to and available from KU/ODP, LG&E, and LK Services under the Amended Services Agreement, the rules for determining and allocating the costs of such services, and the terms and conditions for the provision of such services are set forth in the Cost Allocation Manual ("CAM") attached to the Amended Services Agreement as Exhibit A. These services, allocation methods, and terms and conditions are primarily the same as those approved in the 2010 Agreement.

¹ Va. Code § 56-76 *et seq.* ("Affiliates Act").

² *Joint Petition of PPL Corporation, E.ON AG, E.ON US Investments Corp., E.ON U.S., LLC, and Kentucky Utilities Company d/b/a Old Dominion Power Company, For approval of transfer of ownership and control*, Case No. PUE-2010-00060, 2010 S.C.C. Ann. Rept. 534, Final Order (Oct. 19, 2010). Ordering Paragraph (17) of the 2010 Order states: "In the event that [LK Services] utilizes any other affiliates, including [PPL Services], to provide services to KU/ODP, then KU/ODP shall file an application requesting approval under the Affiliates Act to obtain such services." *Id.* at 537. Therefore, KU/ODP is required to file the instant Joint Application due to the proposed utilization of additional affiliates, specifically LKE, LKC, PPL, PPL Electric, and PPL Services.

³ On May 11, 2011, the Commission issued an Order Granting Authority in Case No. PUE-2010-00141 ("2011 Order") approving an amended and restated Utility Service Agreement between KU/ODP, LG&E, and LK Services ("2010 Agreement"). The 2010 Agreement reflected the repeal of the Public Utility Holding Company Act of 1935 ("1935 Act"), the change of LK Services' legal name that occurred on September 30, 2010, and updated the list of services provided and allocation methods used under the 2010 Agreement, with appropriate modifications made to the Cost Allocation Manual. See *Joint Application of Kentucky Utilities Company d/b/a Old Dominion Power Company, Louisville Gas and Electric Company, and LG&E and KU Services Company, For authority to engage in affiliate transactions and to enter into an Amended and Restated Utility Service Agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia, § 56-76 et seq.*, Case No. PUE-2010-00141, Doc. Con. Cen. No. 447468, Order Granting Authority (May 11, 2011). On June 9, 2011, pursuant to Ordering Paragraph (9) of the 2011 Order, KU/ODP filed with the Commission an executed copy of the 2010 Agreement reflecting the revisions ordered by the Commission in the 2011 Order.

The Amended Services Agreement, however, provides for expanded affiliate transactions between KU/ODP and LG&E related to their generation facilities and transmission and distribution systems, as well as to recognize the provision of retail business services between the two utility companies. Specifically, the expanded transactions under the Amended Services Agreement provide for: (1) KU/ODP and LG&E employees to operate, maintain, and service solely and jointly owned generation units;⁴ (2) KU/ODP and LG&E employees to provide operation and maintenance services for their respective transmission and distribution systems, and for KU/ODP and LG&E to provide to one another, upon request and at cost, certain goods that are needed to operate their respective systems; and (3) KU/ODP and LG&E to provide retail business services to one another such as those described in Section IV (Description of Services) of the CAM (e.g., customer service, meter reading, etc.). All such transactions will be invoiced at fully allocated cost and will occur only as reasonably required when KU/ODP and LG&E believe in good faith that such transactions will be to their advantage.

Similar to the 2010 Agreement, the Amended Services Agreement allows for KU/ODP and LG&E to provide to or receive from each other, at not more than cost less depreciation, any goods that were purchased by each for their own or joint use. The Amended Services Agreement, however, eliminates the "break down or other emergency" standard found in the 2010 Agreement because that standard was based on the regulations enacted under the now repealed 1935 Act.⁵ Finally, the Joint Applicants represent that the contents of Exhibit A to the 2010 Agreement (Description of Services and Allocation Factors) are fully contained in the CAM and, therefore, propose eliminating Exhibit A attached to the 2010 Agreement and, in its place, attaching only the CAM to the Amended Services Agreement, which contains no substantive changes.

The Joint Applicants state that, other than the changes discussed above, the terms and conditions of the Amended Services Agreement are the same as those approved by the Commission in the 2010 Agreement. The Amended Services Agreement provides that KU/ODP, LG&E, or LK Services may terminate the agreement by providing sixty (60) days' written notice to the remaining parties. The Amended Services Agreement contains a five (5)-year period of authorization, to become effective upon the date of approval by the Commission, and does not provide for renewability.

Third-Party Agreement

The Third-Party Agreement is between KU/ODP, LKE, PPL, and PPL Services and provides for LKE, PPL, and PPL Services to invoice KU/ODP, at cost, for KU/ODP's portion of certain joint purchases made with third-party vendors such as subscriptions to publications; membership in trade groups; license and maintenance fees for accounting and financial software; or engineering, financial, or legal services.⁶ The Third-Party Agreement will only be used where KU/ODP may cost-effectively enter a purchase due to the combined buying power of KU/ODP and its PPL affiliates, or where costs remain neutral but combined purchasing is desired for administrative billing purposes. The Joint Applicants state that, where possible, KU/ODP will be directly invoiced by the third-party vendor for its share of any applicable purchase. The Third-Party Agreement applies only where a third-party vendor refuses or is unable to separately invoice KU/ODP, or where separate invoicing would require additional costs or excessive procedures, thereby necessitating LKE, PPL, or PPL Services invoicing KU/ODP for its portion of the overall costs.

Pursuant to the terms of the Third-Party Agreement, LKE, PPL, and PPL Services will invoice KU/ODP at the actual cost for the good or service procured. Determination of cost will be transaction specific depending on the type of good or service being procured, using factors such as revenues, owned capacity, number of Securities and Exchange Commission registrants, number of software users, labor hours, labor dollars, departmental or entity headcount, capital expenditures, operations and maintenance costs, retail energy sales, generating plant sites, average allocation of direct reports, net book value of utility plant, total line of business assets, electrical capital expenditures, substation assets, and transformer assets, or based upon particular third-party vendor rate schedules or quantities/hours delivered.

The Third-Party Agreement provides that KU/ODP, LKE, PPL, or PPL Services may terminate the agreement by providing sixty (60) days' written notice to the other parties. The Third-Party Agreement contains a five (5)-year period of authorization, to become effective upon the date of approval by the Commission, and does not provide for renewability.

Data Hosting Agreement

The Data Hosting Agreement is between KU/ODP, LG&E, LK Services, LKC, and PPL Services and provides for LK Services to provide alternate data hosting services to PPL Services at the Simpsonville Data Center (the "Data Center"). The Data Center is jointly owned by KU/ODP, LG&E, and LKC in the following approximate percentages: KU/ODP owns 46.5%, LG&E owns 52.3%, and LKC owns 1.2%. The parties to the Data Hosting Agreement propose using available space at the Data Center to house equipment needed to serve as an alternate data center for PPL Services. LK Services will provide the labor and maintenance required for the alternate data hosting,⁷ while KU/ODP, LG&E, and LKC will provide the space and receive the benefit of recovering portions of the Data Center's cost through LK Services from PPL Services. Initially, PPL Services is requesting to store one (1) row of equipment for alternate data hosting at the Data Center, and may request an expansion of services in the future.

Exhibit A to the Data Hosting Agreement contains a Fee Schedule that will be used for determining the costs PPL Services will be charged for its use of the Data Center. The costs billed to PPL Services will be divided into three categories: fixed costs, variable costs, and project start-up costs. Variable costs, such as electricity usage by the equipment used to provide alternate data storage to PPL Services, will be provided at the tariffed rate. Project start-up costs, such as the labor involved with installing needed equipment, will be billed to PPL Services at cost. Fixed costs will be billed to PPL Services in proportion to the space its equipment occupies at the Data Center. PPL Services' alternate data hosting equipment will occupy a space that is approximately equal to 8.3% of the Data Center's total square footage. Therefore, fixed costs, such as revenue recovery, property tax and insurance, facility

⁴ Currently, KU/ODP and LG&E jointly own eleven (11) generation units.

⁵ The 1935 Act has been replaced by the Public Utility Holding Company Act of 2005. (Energy Policy Act of 2005, Pub. L. No. 109-58, August 8, 2005, 119 Stat. 594 (the Energy Policy Act), §§ 1263, 1274.)

⁶ PPL's involvement in the agreement is limited to transactions that involve procuring membership in and paying membership dues to the Edison Electric Institute ("EEI"), as well as certain specific instances in which PPL, and not PPL Services, procures and pays the fees for outside legal representation and certain software and software licenses.

⁷ Since neither LK Services nor PPL Services are regulated by the Commission, approval of the provision of services by LK Services to PPL Services under the Data Hosting Agreement is not required under the Affiliates Act.

expenses, labor, and depreciation, will be billed to PPL Services in an amount equal to 8.3% of the Data Center's annual budget. The Data Hosting Agreement also contains a true-up provision to ensure that PPL Services is billed for all the costs it incurs.

The Joint Applicants represent that invoicing PPL Services for fixed costs according to the square footage it occupies in the Data Center is an appropriate way for KU/ODP, LG&E, and LKC to recover costs associated with the Data Center. KU/ODP, LG&E, and LKC will incur the same costs with or without PPL Services utilizing the Data Center for alternate data hosting. The Joint Applicants state that allowing KU/ODP, LG&E, and LKC to provide space in the Data Center for PPL Services' alternate data hosting needs results in a benefit to the companies and to KU/ODP and LG&E customers, who will be credited with the revenue received from PPL Services for its use of the Data Center, thereby helping to reduce rates in future rate cases.

The Joint Applicants state that the Data Hosting Agreement contains adequate safeguards to protect confidential information and the rights of all parties thereto. The Data Hosting Agreement contains a term of five (5) years from the date of Commission approval and provides that KU/ODP, LG&E, LK Services, LKC, or PPL Services may terminate the agreement upon providing sixty (60) days' written notice to the remaining parties. PPL Services will have ninety (90) days after the date of termination to remove its equipment from the Data Center. During this ninety (90)-day period, however, PPL Services may request LK Services to continue providing data hosting services upon the same terms and conditions as exist under the Data Hosting Agreement. The Data Hosting Agreement may be renewed but is not self-renewing.

Mutual Assistance Agreement

The Mutual Assistance Agreement is between KU/ODP and PPL Electric and provides that KU/ODP and PPL Electric may receive from and provide mutual assistance to each other in the form of personnel, equipment, and services to aid in restoring and/or maintaining electric utility service when such service has been disrupted by the elements, equipment malfunctions, accidents, sabotage, or any other occurrence for which emergency assistance is deemed to be necessary or advisable ("Emergency Assistance").⁸ The Mutual Assistance Agreement states that such Emergency Assistance will be provided only (a) upon request, (b) when the requesting party ("Requesting Company") believes in good faith that the Emergency Assistance will benefit it and its native-load customers, and (c) the responding party ("Responding Company") believes in good faith that it can provide the Emergency Assistance without material detriment to itself or its native-load customers.

Pursuant to the terms of the Mutual Assistance Agreement, the Emergency Assistance period will commence when personnel and/or equipment expenses are initially incurred by the Responding Company in response to the Requesting Company's needs and will terminate when such employees or equipment have returned to the Responding Company. The Requesting Company will be charged all costs and expenses incurred by the Responding Company related to the provision of Emergency Assistance, such as employees' wages and benefits, employee travel and living expenses, replacement cost of materials and supplies, repair or replacement costs of equipment damaged or lost, charges for the use of transportation equipment and other equipment requested, and administrative and general costs that are properly allocable to the Emergency Assistance. The Joint Applicants represent that these principles governing cost and expenses under the Mutual Assistance Agreement are consistent with EEI's "Suggested Governing Principles Covering Emergency Assistance Arrangements Between Edison Electric Institute Member Companies," which the Joint Applicants state is illustrative of mutual assistance agreements nationwide.

The Mutual Assistance Agreement provides that KU/ODP or PPL Electric may terminate the agreement by providing sixty (60) days' written notice to the other party. The Mutual Assistance Agreement contains a five (5)-year period of authorization, to become effective upon the date of approval by either the Commission or the Pennsylvania Public Utility Commission ("PPUC"), whichever occurs later,⁹ and does not provide for renewal but may be renewed in the future with the Commission's approval.

The Joint Applicants represent that the Utility Services Agreements are in the public interest and that, as with past services agreements, the Utility Services Agreements are integral to achieving the benefits of the recent acquisition of KU/ODP by PPL approved in Case No. PUE-2010-00060¹⁰ and those mergers previously approved by the Commission in Case Nos. PUA-1997-00041, PUA-2000-00020, and PUA-2001-00028.¹¹ The Utility Services Agreements will allow for the continued performance of centralized staff functions, mutual assistance, and other services, and will facilitate the proper allocation of costs among the Joint Applicants. In addition, each of the Utility Services Agreements contains a five (5)-year period of authorization, which is consistent with the approval period for affiliate agreements established by the Commission in recent Affiliates Act approvals.¹²

⁸ On August 30, 2011, the Joint Applicants advised Commission Staff that KU/ODP had released 25 line technicians to support PPL Electric's storm restoration efforts following Hurricane Irene. The KU/ODP system did not sustain any damages or outages because of Hurricane Irene. The Joint Applicants stated that PPL Electric would reimburse KU/ODP at KU/ODP's fully distributed cost.

⁹ The Joint Applicants represent that, in addition to KU/ODP requiring approval from the Commission, PPL Electric must receive approval from the PPUC before the Mutual Assistance Agreement becomes effective.

¹⁰ In its 2010 Order, the Commission approved the transfer of ownership and control of KU/ODP to PPL through PPL's acquisition of LKE, KU/ODP's direct parent company. See note 2 *supra*.

¹¹ *Petition of Kentucky Utilities Company, d/b/a Old Dominion Power Company, KU Energy Corporation, and LG&E Energy Corp., For approval of the acquisition of control of Kentucky Utilities Company by LG&E Energy Corp.*, Case No. PUA-1997-00041, 1998 S.C.C. Ann. Rept. 162, Consent Order (Jan. 20, 1998); *Joint Petition of PowerGen plc, LG&E Energy Corp., and Kentucky Utilities Company, d/b/a Old Dominion Power Company, For approval of a merger*, Case No. PUA-2000-00020, 2000 S.C.C. Ann. Rept. 175, Final Order (July 21, 2000); and *Joint Petition of E.ON AG, PowerGen plc, LG&E Energy Corp., and Kentucky Utilities Company, d/b/a Old Dominion Power Company, For approval of an acquisition*, Case No. PUA-2001-00028, 2001 S.C.C. Ann. Rept. 196, Final Order (Oct. 5, 2001).

¹² See, e.g., *Application of East Coast Transport, Inc., and Tenaska, Inc., For approval of transactions under Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2009-00042, 2009 S.C.C. Ann. Rept. 474, Order Granting Approval (Aug. 3, 2009); *Joint Application of Kentucky Utilities Company d/b/a Old Dominion Power Company, Louisville Gas and Electric Company, and LG&E and KU Services Company, For authority to engage in affiliate transactions and to enter into an Amended and Restated Utility Service Agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia, § 56-76 et seq.*, Case No. PUE-2010-00141, Doc. Con. Cen. No. 447468, Order Granting Authority (May 11, 2011); *Application of NTELOS Telephone Inc., For approval of an amendment to an Affiliates Agreement pursuant to the Affiliates Act, Va. Code § 56-76 et seq.*, Case No. PUC-2011-00040, Doc. Con. Cen. No. 451473, Order Granting Approval (Aug. 26, 2011).

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described affiliate transactions and the Utility Services Agreements are in the public interest and should, therefore, be approved subject to the requirements recommended in the Commission Staff's Action Brief filed contemporaneously with this Order and noted below.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, the Joint Applicants are hereby granted authority to engage in affiliate transactions and to enter into the four (4) Utility Services Agreements as described herein, provided that the requirements as set forth herein are met.
- (2) Should KU/ODP wish to continue operating under any of the Utility Services Agreements, as approved herein, after the five (5)-year period of authorization, subsequent Commission approval shall be required.
- (3) The authority granted herein for the Amended Services Agreement shall not include the provision by LK Services or LG&E of services to KU/ODP through the use of KU/ODP affiliates. Should LK Services or LG&E desire to use KU/ODP affiliates in providing services, KU/ODP shall be required to file a separate application for approval pursuant to the Affiliates Act.
- (4) Approval of the Utility Services Agreements shall be limited to the services specifically identified in each of the Utility Services Agreements. Should KU/ODP desire to obtain additional services from or provide additional services to its affiliates, other than those services specifically listed in the Utility Services Agreements approved in this case, subsequent Commission approval shall be required.
- (5) Separate Commission approval shall be required for any changes in the terms and conditions in each of the Utility Services Agreements approved herein, including changes in allocation methodologies, service category descriptions, and successors and assigns.
- (6) KU/ODP shall maintain records to demonstrate that the services provided by KU/ODP to its affiliates are cost beneficial to Virginia customers and that, for all services provided to its affiliates where a market and a market price may exist, KU/ODP shall bear the burden of showing that it charged the higher of cost or market for such services. Likewise, where services are provided to KU/ODP by its affiliates, KU/ODP's records must demonstrate that such services are beneficial to Virginia customers and that, where a market and a market price exist, KU/ODP paid the lower of cost or market for such services. Records of such investigations and comparisons shall be available for Commission Staff review upon request.
- (7) KU/ODP shall file executed copies of each of the Utility Services Agreements approved herein within thirty (30) days of the date of this Order Granting Authority or within thirty (30) days of the agreement becoming effective, whichever occurs later, subject to administrative extension by the Commission's Director of Public Utility Accounting ("PUA Director").
- (8) The authority granted herein shall supplement the authority granted in Case No. PUE-2010-00141.
- (9) The authority granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (10) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- (11) The authority granted herein shall have no ratemaking implications for annual informational filings or future rate proceedings. Specifically, it will not guarantee the recovery of any costs directly or indirectly related to the Utility Services Agreements.
- (12) All transactions under the Utility Services Agreements shall be included in KU/ODP's Annual Report of Affiliate Transactions ("ARAT") submitted to the Commission's PUA Director on or before May 1 of each year, which deadline may be extended administratively by the Commission's PUA Director. In addition to information currently provided in the ARAT, all transactions under the Utility Services Agreements shall be reported in the ARAT as ordered in Case No. PUE-2010-00141.
- (13) If annual informational and/or general rate case filings are not based on a calendar year, then KU/ODP shall include the affiliate information contained in the ARAT in such filings.
- (14) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2011-00099
DECEMBER 21, 2011**

APPLICATION OF
AQUA VIRGINIA, INC.,
and
SYDNOR HYDRODYNAMICS, INC.

For an increase in water and sewer rates

ORDER FOR NOTICE AND HEARING

On November 1, 2011, Aqua Virginia, Inc. ("Aqua Virginia"), and Sydnor Hydrodynamics, Inc. ("Sydnor") (collectively, "Applicants"), filed an application with the State Corporation Commission ("Commission") for an increase in water and sewer rates ("Application"). The Application was filed

pursuant to Chapter 10 of Title 56 of the Code of Virginia ("Code")¹ and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings ("Rate Case Rules").² Exhibits and the pre-filed testimony of Gregory K. Odell, Stanley F. Szczygiel, Pauline M. Ahern, Paul R. Herbert, and Daniel T. Franceski were included with the Application.³ On November 10, 2011, the Applicants supplemented the Application with the filing of the additional pre-filed testimony of Paul R. Herbert.

The Applicants request authority to increase rates for water and sewer service to produce an increase in water revenues of \$936,871 and in wastewater revenues of \$531,908.⁴ The proposed rate increase would constitute a 9.9% increase in the Applicants' water and wastewater revenues.⁵ These amounts are based on a 10.90% common equity cost rate; however, the Applicants seek Commission authorization for the opportunity to earn a common equity cost rate of 11.85% on the common equity financed portion of Aqua Virginia's jurisdictional rate base.⁶ The Applicants state that they are seeking a rate increase because of: (i) ongoing capital needs that must be met in order to maintain and enhance service to customers; (ii) continuing increases in costs and operating expenses; (iii) costs associated with compliance requirements for state and federal regulations; and (iv) deficient earned returns on rate base for the adjusted test year ended June 30, 2011.⁷

The Applicants seek to "establish five water rate groups in order to consolidate Aqua Virginia and Sydnor rates."⁸ Currently, Aqua Virginia has four water rate groups, and there are multiple different water rates among Sydnor customers.⁹ According to the Applicants, consolidation of rates for the Sydnor systems with rates for the Aqua Virginia systems will produce economies of scale and foster operating and financing efficiencies that are not possible under separate management of the systems.¹⁰ The Applicants further seek to reduce Aqua Virginia's three sewer rate groups to two.¹¹ Sydnor currently has no wastewater customers.¹² The Applicants request that the increased rates become effective for service rendered on and after March 30, 2012, on an interim basis, and subject to refund pending a final order in this proceeding.¹³

Coincident with the Application, the Applicants filed (i) a Motion for Waivers by which they request a partial waiver of Rule 20 VAC 5-201-90 (Schedule 40) of the Rate Case Rules requiring certain cost of service studies,¹⁴ and (ii) a Motion of Petitioners for Entry of a Protective Order by which the Applicants request that the Commission enter a protective order setting forth the procedures by which disclosure of certain confidential information shall be handled in this proceeding.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that a public hearing should be convened to receive evidence on the Application and that pursuant to Rule 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules of Practice"), this matter should be assigned to a Hearing Examiner to conduct all further proceedings.¹⁵ We will direct the Applicants to give notice to the public of the Application, and we will give interested persons an opportunity to comment on the Application or to participate as a respondent in this proceeding. The Staff of the Commission ("Staff") shall investigate the Application and present its findings in testimony. The Applicants will be permitted to file testimony in rebuttal to the testimony filed by the respondents and the Staff.

¹ Va. Code § 56-232 *et seq.*

² 20 VAC 5-201-10 *et seq.*

³ On November 1, 2011, the Applicants also filed a joint petition, pursuant to §§ 56-88.1 and 56-89 of the Utility Transfers Act (Va. Code § 56-88 *et seq.*) and § 56-265.3 D of the Utility Facilities Act (Va. Code § 56-265.1 *et seq.*), for approval of a merger of Sydnor and Aqua Virginia into one corporation, with Aqua Virginia becoming the sole surviving entity, and for an amendment of Aqua Virginia's certificate of public convenience and necessity to permit Aqua Virginia to serve the territories currently served by the Sydnor water systems. *See Joint Petition of Aqua Virginia, Inc. and Sydnor Hydrodynamics, Inc., For approval of a change in control and the transfer of assets pursuant to §§ 56-88. 1 and 56-89 of the Utility Transfers Act and for the amendment of a certificate of public convenience and necessity pursuant to the Utility Facilities Act*, Case No. PUE-2011-00121.

⁴ Application at 1.

⁵ *Id.*

⁶ Pauline M. Ahern Direct Testimony at 2.

⁷ Stanley Szczygiel Direct Testimony at 4.

⁸ Application at 3.

⁹ *Id.*

¹⁰ Gregory K. Odell Direct Testimony at 4.

¹¹ Application at 3.

¹² *Id.* at 1, n.1.

¹³ *Id.* at 4.

¹⁴ In particular, the Applicants seek waivers of the requirements to file class and jurisdictional cost of service studies for their water and wastewater customers. Subsequent to the filing of this motion, the Applicants filed the Direct Testimony of Paul R. Herbert including and supporting Aqua Virginia's Cost of Service Allocation Study, rendering moot their request for a temporary waiver of the requirement to file a full class cost of service study for water customers.

¹⁵ On November 1, 2011, the Applicants filed a Motion for Entry of a Protective Order. This motion shall be addressed by separate ruling by the Hearing Examiner appointed to conduct the proceedings in this matter.

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The Applicants request that the proposed rates become effective for service rendered on and after March 30, 2012. The Applicants may, but are not required to, implement their proposed rates, charges, and terms and conditions for service rendered on and after March 30, 2012, on an interim basis, subject to refund with interest.

The Applicants also request a partial waiver of Rule 20 VAC 5-201-90 of the Rate Case Rules. We find that the Applicants' request for a waiver from the requirements to file a full jurisdictional cost of service study and a class cost of service study for wastewater customers should be granted, but the Staff, the Office of the Attorney General, and other interested persons should be allowed to file objections concerning the Applicants' requested waivers related to the required jurisdictional cost of service study and class cost of service study for wastewater customers. We need not address the Applicants' request for a temporary waiver of the requirement to file a full water class cost of service study because the Applicants have provided their water Cost of Service Allocation Study by their November 10, 2011, supplemental filing.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2011-00099.
- (2) Pursuant to § 12.1-31 of the Code and 5 VAC 5-20-120 of the Commission's Rules of Practice, a Hearing Examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission, concluding with the issuance of a report containing the Hearing Examiner's findings and recommendations.
- (3) The proposed rates, charges, and terms and conditions of service are suspended, pursuant to § 56-238 of the Code. The Applicants may, but are not obligated to, implement proposed rates, charges, and terms and conditions for service rendered on and after March 30, 2012, on an interim basis, subject to refund with interest.
- (4) A public hearing shall be convened on June 19, 2012, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, to receive comments from members of the public and to receive evidence on the Application. Any person desiring to make a statement at the public hearing concerning the Application need only appear in the Commission's Courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Commission's Bailiff.
- (5) Copies of the Application, testimony, and schedules, as well as a copy of this Order for Notice and Hearing, may be obtained by submitting a written request to counsel for the Applicants, Anthony Gambardella, Esquire, Woods Rogers PLC, Riverfront Plaza, West Tower, 901 East Byrd Street, Suite 1550, Richmond, Virginia 23219. If acceptable to the requesting party, the Applicants may provide the documents by electronic means. Copies of these documents also shall be available for interested persons to review in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.
- (6) On or before February 6, 2012, the Applicants shall cause a copy of the following notice to be published as display advertising (not classified) on one (1) occasion in newspapers of general circulation throughout the Applicants' service territory within Virginia:

NOTICE TO THE PUBLIC OF AN APPLICATION BY AQUA VIRGINIA, INC., AND SYDNOR
HYDRODYNAMICS, INC., FOR AN INCREASE IN WATER AND SEWER RATES
CASE NO. PUE-2011-00099

On November 1, 2011, Aqua Virginia, Inc. ("Aqua Virginia"), and Sydnor Hydrodynamics, Inc. ("Sydnor") (collectively, "Applicants"), filed an application with the State Corporation Commission ("Commission") for an increase in water and sewer rates ("Application"). The Application was filed pursuant to Chapter 10 of Title 56 of the Code of Virginia ("Code") and the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings ("Rate Case Rules"). On November 1, 2011, the Applicants also filed a joint petition with the Commission, docketed as Case No. PUE-2011-00121, seeking approval of a merger of Sydnor and Aqua Virginia into one corporation, with Aqua Virginia becoming the sole surviving entity, and for an amendment of Aqua Virginia's certificate of public convenience and necessity to permit Aqua Virginia to serve the territories currently served by the Sydnor water systems.

In the Application, the Applicants request authority to increase rates for water and sewer service to produce an increase in water revenues of \$936,871 and in wastewater revenues of \$531,908. The proposed rate increase would constitute a 9.9% increase in the Applicants' water and wastewater revenues. These amounts are based on a 10.90% common equity cost rate; however, the Applicants seek Commission authorization for the opportunity to earn a common equity cost rate of 11.85% on the common equity financed portion of Aqua Virginia's jurisdictional rate base. The Applicants state that they are seeking a rate increase because of: (i) ongoing capital needs that must be met in order to maintain and enhance service to customers; (ii) continuing increases in costs and operating expenses; (iii) costs associated with compliance requirements for state and federal regulations; and (iv) deficient earned returns on rate base for the adjusted test year ended June 30, 2011.

The Applicants seek to "establish five water rate groups in order to consolidate Aqua Virginia and Sydnor rates." Currently, Aqua Virginia has four water rate groups, and there are multiple different water rates among Sydnor customers. According to the Applicants, consolidation of rates for the Sydnor systems with rates for the Aqua Virginia systems will produce economies of scale and foster operating and financing efficiencies that are not possible under separate management of the systems. The Applicants further seek to reduce Aqua Virginia's three sewer rate groups to two. Sydnor currently has no wastewater customers. The Applicants request that the increased rates become effective for service rendered on and after March 30, 2012, on an interim basis, and subject to refund pending a final order in this proceeding.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

Interested persons are encouraged to review the Application and supporting documents for the details of these and other proposals. While the total revenue that may be approved by the Commission is limited to the amount produced by the Company's current rates, TAKE NOTICE that the Commission may approve revenues and adopt rates, fees, charges, tariff revisions, and terms and conditions of service that differ from those appearing in the Company's Application and supporting documents and may apportion revenues among customer classes and/or design rates in a manner differing from that shown in the Application and supporting documents.

Coincident with the Application, the Applicants filed (i) a Motion for Waivers by which they request a partial waiver of Rule 20 VAC 5-201-90 (Schedule 40) of the Rate Case Rules, requiring certain cost of service studies, and (ii) a Motion of Petitioners for Entry of a Protective Order by which the Applicants request that the Commission enter a protective order setting forth the procedures by which disclosure of certain confidential information shall be handled in this proceeding.

The Commission has suspended Aqua Virginia's proposed rates, charges, and terms and conditions of service, pursuant to § 56-238 of the Code. The Applicants may, but are not obligated to, implement proposed rates, charges, and terms and conditions for service rendered on and after March 30, 2012, on an interim basis, subject to refund with interest.

The Commission entered an Order for Notice and Hearing that, among other things, has scheduled a public hearing to commence at 10:00 a.m. on June 19, 2012, in the Commission's Second Floor Courtroom, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, for the purpose of receiving comments from members of the public and evidence related to the Application. Any person desiring to make a statement at the public hearing need only appear in the Commission's Second Floor Courtroom in the Tyler Building at the address set forth above prior to 9:45 a.m. on the day of the hearing and identify himself or herself to the Commission's Bailiff. Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing at 1-800-552-7945 (voice) or 1-804-371-9206 (TTD).

Copies of the Application and the Commission's Order for Notice and Hearing may be obtained by submitting a written request to counsel for the Applicants, Anthony Gambardella, Esquire, Woods Rogers PLC, Riverfront Plaza, West Tower, 901 East Byrd Street, Suite 1550, Richmond, Virginia 23219. If acceptable to the requesting party, the Applicants may provide the documents by electronic means. Copies of these documents also shall be available for interested persons to review in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday, excluding holidays. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

Any interested person may participate as a respondent in this proceeding by filing, on or before March 8, 2012, a notice of participation. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Anyone filing a notice of participation simultaneously shall serve a copy of the notice of participation on counsel to the Applicants at the address set forth above. Pursuant to Rule 5 VAC 5-20-80 B, Participation as a respondent, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.* ("Rules of Practice"), any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Interested persons shall refer in all of their filed papers to Case No. PUE-2011-00099. On or before April 13, 2012, each respondent may file with the Clerk of the Commission and serve on the Staff, the Applicants, and all other respondents any testimony and exhibits by which the respondent expects to establish its case. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be submitted to the Clerk of the Commission at the address set forth above. In all filings, the respondent shall comply with the Commission's Rules of Practice, including 5 VAC 5-20-140, *Filing and service*, 5 VAC 5-20-150, *Copies and format*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUE-2011-00099.

On or before June 12, 2012, any interested person may file with the Clerk of the Commission at the address set forth above, written comments on the Application. On or before June 12, 2012, any interested person desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. All correspondence shall refer to Case No. PUE-2011-00099.

On or before March 8, 2012, any interested person may file an objection to the Applicants' request for a partial waiver of Rule 20 VAC 5-201-90 of the Rate Case Rules to file a full jurisdictional cost of service study and a class cost of service study for wastewater customers.

The Commission's Rules of Practice may be viewed at: <http://www.scc.virginia.gov/case>. A printed copy of the Rules of Practice may be obtained from Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118.

AQUA VIRGINIA, INC. AND
SYDNOR HYDRODYNAMICS, INC.

(7) On or before February 6, 2012, the Applicants shall serve a copy of this Order for Notice and Hearing on the chairman of the board of supervisors and county attorney of each county and upon the mayor or manager of every city and town (or upon equivalent officials in counties, towns and cities having alternate forms of government) in which the Applicants provide service. Service shall be made by first class mail to the customary place of business or residence of the person served.

(8) On or before February 23, 2012, the Applicants shall file proof of the notice and service as ordered herein with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118.

(9) On or before June 12, 2012, any interested person may file with the Clerk of the Commission, at the address set forth in Ordering Paragraph (8), written comments on the Application. On or before June 12, 2012, any interested person desiring to submit comments electronically may do so by following the instructions found on the Commission's website <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. PUE-2011-00099.

(10) Any interested person may participate as a respondent in this proceeding by filing, on or before March 8, 2012, a notice of participation. If not filed electronically, an original and fifteen (15) copies of the notice of participation shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (8). Anyone filing a notice of participation simultaneously shall serve a copy of the notice of participation on counsel for the Applicants at the address set out in Ordering Paragraph (5). Pursuant to Rule 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. Interested persons shall refer in all of their filed papers to Case No. PUE-2011-00099.

(11) Within five (5) business days of receipt of a notice of participation as a respondent, the Applicants shall serve upon each respondent a copy of this Order for Notice and Hearing, a copy of the Application, and all materials filed by the Applicants with the Commission, unless these materials already have been provided to the respondent.

(12) On or before April 13, 2012, each respondent may file with the Clerk of the Commission and serve on the Staff, the Applicants, and all other respondents, any testimony and exhibits by which the respondent expects to establish its case. If not filed electronically, an original and fifteen (15) copies of such testimony and exhibits shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (8). In all filings, the respondent shall comply with the Commission's Rules of Practice, including: 5 VAC 5-20-140, *Filing and service*, 5 VAC 5-20-150, *Copies and format*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*. All filings shall refer to Case No. PUE-2011-00099.

(13) The Staff shall investigate the Application. On or before May 15, 2012, the Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits and shall serve a copy on counsel to the Applicants and all respondents.

(14) On or before June 5, 2012, the Applicants shall file with the Clerk of the Commission any rebuttal testimony and exhibits that the Applicants expect to offer in rebuttal to the testimony and exhibits of the respondents and the Staff and simultaneously shall serve a copy on the Staff and all respondents. If not filed electronically, an original and fifteen (15) copies of such rebuttal testimony and exhibits shall be submitted to the Clerk of the Commission at the address set forth in Ordering Paragraph (8).

(15) The Commission's Rule of Practice, 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, shall be modified for this proceeding as follows: answers to interrogatories and requests for production of documents shall be served within seven (7) business days after receipt of the same. Except as modified above, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-240 *et seq.*

(16) The Applicants' request for a partial waiver of Rule 20 VAC 5-201-90 of the Rate Case Rules to file a full jurisdictional cost of service study and a class cost of service study for wastewater customers is granted. Interested parties may file with the Clerk of the Commission, on or before March 8, 2012, objections to the Applicants' request for a partial waiver of Rule 20 VAC 5-201-90. Interested parties simultaneously shall send a copy of such objections to counsel to the Applicants at the address set out in Ordering Paragraph (5). The Hearing Examiner shall rule on any such objections.

(17) This matter is continued generally.

**CASE NO. PUE-2011-00101
NOVEMBER 28, 2011**

APPLICATION OF
WASHINGTON GAS LIGHT COMPANY

For approval to implement the SAVE Rider for calendar year 2012 in accordance with Washington Gas's Commission-approved SAVE Plan

ORDER APPROVING 2012 SAVE RIDER

On September 1, 2011, Washington Gas Light Company ("WGL" or "Company") filed with the State Corporation Commission ("Commission") its application ("Application") for approval of the SAVE Rider for 2012 ("2012 SAVE Rider") as required by the Commission's April 21, 2011 Order approving WGL's SAVE Plan.¹

¹ *Application of Washington Gas Light Company, For approval of a SAVE plan and rider as provided by Va. Code § 56-604, Case No. PUE-2010-00087, Doc. Con. Cen. No. 446676, Order Approving SAVE Plan and Rider (Apr. 21, 2011) ("April 21, 2011 Order").*

On September 14, 2011, the Commission issued its Order for Notice and Hearing ("Order for Notice and Hearing"), which, among other things, docketed the Application, directed WGL to give notice to the public of the Application, provided for the opportunity for interested parties to participate as respondents in this proceeding, directed the Commission Staff ("Staff") to investigate the Application, and scheduled a hearing on the Application.

On September 20, 2011, WGL filed certain revised pages to its Application, revised the calculation of the 2012 SAVE Rider to \$3,847,432, and adjusted the annual estimate for the 2012 SAVE Rider's impact on a typical residential customer's bill to \$6.43.² WGL also filed a motion requesting that the Commission amend the prescribed notice to the public to reflect the new estimate for the 2012 SAVE Rider's impact on a typical residential customer's bill. On September 21, 2011, the Commission entered an Amending Order granting the Company's motion and amending the prescribed notice to reflect the updated estimate.

On November 1, 2011, a public hearing was held on the Application. The Commission did not receive any notices of participation in this matter. In addition, no public witnesses appeared at the hearing and only one written comment was filed.³

NOW THE COMMISSION, having considered the matter, is of the opinion and finds that WGL's 2012 SAVE Rider should be approved pursuant to the findings made herein. At the November 1, 2011 hearing, testimony was presented demonstrating agreement between WGL and the Staff regarding certain accounting adjustments and recommendations made by the Staff. We hereby accept these adjustments and recommendations and find that they should be reflected in future SAVE Plan-related filings made by WGL.

Consistent with the position of WGL and the Staff, we approve a revenue requirement of \$3,847,432 for the 2012 SAVE Rider as set forth in the Errata Filing to the Company's Application, which was reflected in the notice to the public. We also confirm that, as stated in our April 21, 2011 Order,⁴ the 10% modification limit that we imposed upon the allocation of expenditures between WGL's four replacement projects applies to the total amount to be spent on each program over the five years of WGL's SAVE Plan.⁵

Accordingly, IT IS ORDERED THAT:

(1) The 2012 SAVE Rider, as permitted by § 56-603 *et seq.* of the Code of Virginia, is approved as set forth in this Order and shall become effective for bills rendered on and after January 1, 2012.

(2) WGL shall forthwith file revised tariffs for the 2012 SAVE Rider with the Clerk of the Commission and with the Commission's Division of Energy Regulation in accordance with this Order. The Clerk of the Commission shall retain such filing for public inspection in person and on the Commission's website: <http://www.scc.virginia.gov/case>.

(3) At least 30 days prior to the specific filings required as part of the SAVE Plan, as approved by the Commission in its April 21, 2011 Order, the Company shall provide information related to such filings to the Staff upon request.

(4) This matter is dismissed.

² September 20, 2011 Errata Filing, JBW-1 at 1; Revised Application at 2.

³ The public comment generally supported WGL's SAVE Plan.

⁴ See April 21, 2011 Order, slip op. at 12.

⁵ We need not, and do not, address in this Order any requirements related to modifying WGL's SAVE Rider as a result of WGL's pending base rate case, Case No. PUE-2010-00139.

**CASE NO. PUE-2011-00102
OCTOBER 17, 2011**

APPLICATION OF
SECURE FUTURES, L.L.C.

For a license to conduct business as a competitive service provider of 100% renewable electric service in Virginia

ORDER GRANTING LICENSE

On September 1, 2011, Secure Futures, L.L.C. ("SFLLC" or "Company"), and its affiliate special purpose entity, Lexington Solar, L.C. ("Lexington Solar"), together ("Applicants"), jointly filed an application with the State Corporation Commission ("Commission") for a license to conduct business as a competitive service provider pursuant to the Commission's Rules Governing Retail Access to Competitive Energy Services, 20 VAC 5-312-10 *et seq.* ("Retail Access Rules"). Initially, the Company sought authority to provide 100% renewable electric service to the Lexington campus of Washington & Lee University ("W&L"). On September 9, 2011, however, SFLLC amended its application to serve customers throughout the Commonwealth of Virginia, where the Company owns and operates renewable generating facilities. The Company attested that it would abide by all applicable regulations of the Commission as required by 20 VAC 5-312-40 B of the Retail Access Rules.

On September 16, 2011, the Commission issued an Order for Notice and Comment establishing the case; requiring SFLLC to give notice of the application to investor-owned electric utilities, electric cooperatives, and other interested persons; providing for the receipt of comments from the public; and requiring the Commission's Staff ("Staff") to analyze the reasonableness of the application and present its findings in a Staff Report. The Company filed proof of notice on September 23, 2011.

Sixteen comments were received on the application, including one comment from Virginia Electric and Power Company ("Dominion Virginia Power" or "Dominion"). No comments opposed the application. Dominion Virginia Power indicated that it does not oppose the issuance of a license to the Applicants to operate as a competitive service provider so long as the license holder complies with the applicable provisions of Dominion's Competitive Service Provider Coordination Tariff and its Terms and Conditions and Schedules for Supplying Electricity as well as the applicable Virginia law and Commission regulations.¹

The Staff filed its Report on October 7, 2011. The Staff Report noted that upon further discussion, the Staff and the Company had agreed to limit the scope of the application to Lexington Solar, rather than SFLLC, with Lexington Solar applying for a license to serve only the campus of W&L. In its Report, the Staff then summarized Lexington Solar's proposal and evaluated its financial condition and technical fitness. The Staff recommended that Lexington Solar be granted a license to conduct business as a competitive service provider to W&L in Lexington, Virginia, subject to any applicable legal limitations on retail access existing in statute or Commission regulation.

On October 12, 2011, the Commission received one response to the Staff Report from Dominion Virginia Power, requesting, among other things, that any order granting a license in this proceeding specify that it does not constitute a finding or decision with respect to the relief sought in Case No. PUE-2011-00107.²

NOW UPON CONSIDERATION of the application, the comments of interested persons, the Staff Report, the response to the Staff Report, and applicable law, the Commission finds that Lexington Solar's application for a license to conduct business as a competitive service provider of 100% renewable electric service to the campus of W&L should be granted, subject to the conditions set forth below.

Accordingly, IT IS ORDERED THAT:

(1) Lexington Solar, L.C., is hereby granted License No. E-27 to conduct business as a competitive service provider in Lexington, Virginia, to the campus of W&L. This license to act as a competitive service provider for electricity is granted subject to the provisions of the Retail Access Rules, this Order, and other applicable law.

(2) The issuance of License No. E-27 to Lexington Solar, L.C. does not constitute a determination of any other issues in any other dockets that may be pending before the Commission involving the Applicants.

(3) This license is not valid authority for the provision of any product or service not identified within the license itself.

(4) This case shall remain open for consideration of any subsequent amendments or modifications to this license.

¹ Comments of Dominion Virginia Power at 3-4.

² Response of Dominion Virginia Power to Staff Report at 2-3. The Applicants' dispute with Dominion Virginia Power over its ability to serve W&L in Dominion's service territory is subject to a separate declaratory judgment proceeding before the Commission in Case No. PUE-2011-00107.

CASE NO. PUE-2011-00104 NOVEMBER 10, 2011

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of a Reimbursement Agreement with Columbia Gas Transmission, LLC, pursuant to Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On September 14, 2011, Columbia Gas of Virginia, Inc. ("CGV" or "Applicant"), filed an application ("Application") with the State Corporation Commission ("Commission") seeking approval of a Reimbursement Agreement dated August 4, 2011 ("Agreement"), with Columbia Gas Transmission, LLC ("TCO"), pursuant to Chapter 4 of Title 56 ("Affiliates Act") of the Code of Virginia ("Code").¹ CGV also requested such approval without the necessity of a public hearing and seeks further relief as may be necessary and appropriate. Simultaneous with the Application filing, the Applicant filed a Motion for the Entry of a Protective Order ("Motion") in the matter pursuant to the provisions of Rule 5 VAC 5-20-170, *Confidential information*, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 *et seq.*

CGV is a Virginia public service corporation and natural gas local distribution company, which serves approximately 240,000 residential, commercial, and industrial customers located in Central and Southern Virginia, the Piedmont region, the Shenandoah Valley, portions of Northern and Western Virginia, and the Hampton Roads region. CGV is a wholly owned subsidiary of the Columbia Energy Group, which is a wholly owned subsidiary of NiSource, Inc. ("NiSource").

TCO transports approximately 3 billion cubic feet ("bcf") of natural gas per day through a nearly 12,000 mile pipeline network with ninety-two (92) compressor stations in ten (10) states and operates thirty-seven (37) storage fields in four (4) states with more than 650 bcf in total capacity. TCO is a "natural gas company" as defined in Section 15 U.S.C. § 717a of the Natural Gas Act and, as such, is regulated by the Federal Energy Regulatory Commission. TCO is a wholly owned subsidiary of NiSource.

¹ Va. Code §56-76 *et seq.*

CGV and TCO are considered affiliated interests under § 56-76 of the Code. In a 1996 Order,² the Commission approved CGV's Policy for Executing Revised or New Transportation Agreements with Affiliates, which permitted CGV to enter into supply-related arrangements with TCO prior to Commission approval with the understanding that the specifics of the arrangements would be provided to the Commission after the agreements were executed. In a 2004 Order,³ the Commission modified its earlier Order (collectively, "Gas Supply Policy Orders") to require CGV to provide notice to the Commission's Division of Public Utility Accounting as soon as such a gas-supply agreement became effective and to file for Affiliates Act approval within forty-five (45) days of the agreement's execution. The Applicant complied with both of these provisions in the filing of this Application.

The proposed Agreement specifies the circumstances, timing, and conditions under which CGV may reimburse TCO for the costs associated with engineering, survey, and right-of-way activities necessary to evaluate the provision of incremental natural gas transmission service to a potential new point of delivery ("POD") located downstream of TCO's Petersburg Compressor Station. The proposed Agreement also establishes the general parameters under which CGV might execute a precedent agreement and/or service agreement to provide such incremental natural gas transmission service. CGV represents that the proposed Agreement is necessary to persuade TCO to perform the engineering, survey, and right-of-way work. The proposed POD is located in an area where upstream capacity is fully subscribed, thus requiring new interstate pipeline construction to provide natural gas service to any new customers. There is no readily ascertainable market for the services contemplated in the Agreement, so CGV will, if necessary, reimburse TCO for its actual evaluation costs. If TCO proceeds with the POD project and CGV signs any precedent and/or service agreement to deliver natural gas from TCO to new customers, then CGV will make a subsequent filing to seek approval of any such agreement from the Commission.

NOW THE COMMISSION, upon consideration of this matter and having been advised by its Staff ("Staff"), is of the opinion and finds that the proposed Agreement is in the public interest and should be approved, subject to certain requirements necessary to protect the public interest. First, we find that CGV should keep the Staff apprised of the progress of the POD project through periodic updates and comply with the notice provisions of the Gas Supply Policy Orders if and when any subsequent precedent and/or service agreement is executed. Second, we find that our approval in this case should have no ratemaking implications. Specifically, the approval granted in this case should not guarantee the recovery of any costs directly or indirectly related to the Agreement described above. Finally, we will direct CGV to include all transactions related to the Agreement in its Annual Report of Affiliate Transactions ("ARAT").

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, CGV is granted approval of the proposed Agreement as described and set forth herein.
- (2) CGV shall keep the Staff apprised of the progress of the POD project through periodic updates and comply with the notice provisions of the Gas Supply Policy Orders if and when any subsequent precedent and/or service agreement is executed.
- (3) Commission approval shall be required for any change in the terms and conditions of the Agreement, including successors or assigns.
- (4) The approval granted in this case shall have no ratemaking implications. Specifically, the approval granted herein shall not guarantee the recovery of any costs directly or indirectly related to the Agreement.
- (5) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (6) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by the Commission.
- (7) CGV shall include all transactions associated with the approved Agreement in its ARAT submitted to the Director of the Commission's Division of Public Utility Accounting ("PUA Director") on or before May 1 of each year, which deadline may be extended administratively by the PUA Director.
- (8) In the event that CGV's annual informational filings or general or expedited rate case filings are not based on a calendar year, then CGV shall include the affiliate information contained in its ARAT in such filings.
- (9) The Applicant's Motion is moot; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.
- (10) There appearing nothing further to be done, this case is dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

² *Application of Commonwealth Gas Services, Inc., For approval of agreements with affiliates*, Case No. PUA-1995-00025, 1996 S.C.C. Ann. Rept. 118, Order Granting Approval (July 18, 1996).

³ *Application of Columbia Gas of Virginia, Inc., For approval of a firm transportation service agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia*, Case No. PUE-2004-00013, 2004 S.C.C. Ann. Rept. 432, Order Granting Approval (Apr. 13, 2004).

**CASE NO. PUE-2011-00105
OCTOBER 7, 2011**

APPLICATION OF
RAPPAHANNOCK ELECTRIC COOPERATIVE

For authority to incur indebtedness

ORDER GRANTING AUTHORITY

On September 16, 2011, Rappahannock Electric Cooperative ("Rappahannock" or "Cooperative") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia for authority to borrow up to \$61 million from the National Rural Utilities Cooperative Finance Cooperation ("CFC") under CFC's PowerVision loan program. Rappahannock has paid the requisite fee of \$250.

The loan will have a term of twenty-eight (28) years. The interest rate will be fixed for ten (10) years and will be based on the interest rate at the time of advance. At the time the application was filed, the long-term fixed interest rate was approximately 4.85%. The proceeds will be used to finance the expansion of Rappahannock's distribution facilities.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Rappahannock is authorized to incur up to \$61 million in debt obligations from the CFC under the PowerVision loan program, and under the terms and conditions and for the purposes set forth in the application.
- (2) Within thirty (30) days of the date of any advance of funds from CFC, the Cooperative shall file with the Commission's Division of Economics & Finance a report of action, which shall include the amount of the advance, the interest rate and the interest rate term.
- (3) The authority granted herein shall have no implications for ratemaking purposes.
- (5) There appearing nothing further to be done in this matter, it is hereby dismissed.

**CASE NO. PUE-2011-00106
DECEMBER 13, 2011**

APPLICATION OF
NORTHERN VIRGINIA ELECTRIC COOPERATIVE
and
SOUTH BOSTON ENERGY, LLC

For approval of a financing agreement under Chapter 4 of Title 56 of the Code of Virginia

ORDER GRANTING AUTHORITY

On September 16, 2011, Northern Virginia Electric Cooperative ("NOVEC" or "Cooperative") and South Boston Energy, LLC ("SBE") (collectively, "Applicants"), filed an application with the State Corporation Commission ("Commission") under Chapter 4¹ of Title 56 of the Code of Virginia ("Code") requesting approval of a financing arrangement by which NOVEC will provide a total of \$180 million to SBE for the construction and operation of a 49.9 megawatt biomass generation facility in Halifax County, Virginia ("Facility"). The Commission granted a certificate of public convenience and necessity for the construction and operation of the Facility on April 28, 2011.² The Commission also granted NOVEC approval pursuant to Chapter 3 of the Code to borrow up to \$130 million in the form of a construction loan to fund partially the construction of the Facility.³

The Facility is projected to cost approximately \$180 million. The Cooperative expects to use up to \$50 million in equity to supplement the \$130 million loan to fund the construction of the Facility. Pursuant to a financial arrangement between NOVEC and SBE, NOVEC is seeking approval to invest the proceeds from the construction loan, coupled with \$50 million in equity capital, into SBE in order to fund construction of the Facility. NOVEC intends to recover the costs of financing through the operation of a Power Purchase Agreement approved by the Commission.⁴ Applicants represent that the financial arrangement is a reasonable and cost-efficient mechanism by which SBE will receive financing at a lower cost than if it were to obtain construction loans and permanent financing in its own name.

¹ Va. Code § 56-76 *et seq.*

² *Application of South Boston Energy, LLC, For approval to construct, own and operate a nominal 49.9 MW biomass electric generating facility in Halifax County pursuant to Va. Code § 56-580 D*, Case No. PUE-2010-00126, Doc. Con. Cen. No. 446904, Order on Application (Apr. 28, 2011).

³ *Application of Northern Virginia Electric Cooperative, For authority to incur debt*, Case No. PUE-2011-00086, Doc. Con. Cen. No. 451867, Order Granting Authority (Sept. 9, 2011).

⁴ *Application of Northern Virginia Electric Cooperative and South Boston Energy, LLC, For approval of a Power Purchase Agreement between Affiliated Interests, pursuant to Va. Code § 56-76 et seq.*, Case No. PUE-2011-00062, Doc. Con. Cen. No. 451581, Order Granting Approval (Aug. 30, 2011).

NOW THE COMMISSION, upon consideration of this matter and having been advised by its Staff, is of the opinion and finds that the above-described financial arrangement is in the public interest and should, therefore, be approved.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, NOVEC is hereby authorized to invest up to \$180 million in its wholly owned subsidiary, SBE, for the sole purpose of funding the construction of the Facility.
- (2) The approval herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (3) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by the Commission.
- (4) The authority granted herein shall have no implications for ratemaking purposes.
- (5) This matter shall remain under the continued review, audit and appropriate directive of the Commission.

**CASE NO. PUE-2011-00108
OCTOBER 20, 2011**

APPLICATION OF
APPALACHIAN POWER COMPANY

For authority to issue long-term debt securities

ORDER GRANTING AUTHORITY

On September 23, 2011, Appalachian Power Company ("APCo" or "Applicant") filed an application with the Virginia State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia for authority to issue long-term debt securities. In conjunction, Applicant requests authority to enter into one or more interest rate hedging arrangements to protect against future interest rate movements in connection with the long-term debt securities to be issued. Furthermore, APCo requests authority to utilize interest rate management techniques by entering into various Interest Rate Management Agreements ("IRMAs"). Applicant has paid the requisite fee of \$250.

APCo proposes to issue secured or unsecured promissory notes ("Notes") up to the aggregate principal amount of \$350 million from time to time through December 31, 2012. The Notes may be issued in the form of First Mortgage Bonds, Senior Notes, Senior or Subordinated Debentures, Trust Preferred Securities or other unsecured promissory notes. Within certain limitations, APCo requests flexibility to select specific terms and conditions for the Notes based on market conditions at the time of issuance. The Notes will have maturities of not less than nine (9) months and not more than sixty (60) years. The interest rate may be fixed or variable. APCo intends to sell the Notes (i) by competitive bidding; (ii) through negotiation with underwriters or agents; or (iii) by direct placement with a commercial bank or other institutional investor. Underwriting costs for the Notes are estimated to be 1.0% of the principal amount issued. The proceeds from the issuance of the Notes will be used primarily to reimburse APCo's treasury for construction program expenditures. Some proceeds however may be used to redeem, directly or indirectly, long-term debt; to refund, directly or indirectly, preferred stock; to repay short-term debt; and for other proper corporate purposes.

If used, Trust Preferred Securities would be issued by financing entities, which APCo would organize and own exclusively for the purpose of facilitating certain types of financings such as the issuance of tax advantaged preferred securities. The financing entities would issue Trust Preferred Securities to third parties. APCo requests approval of all necessary authorities to enable the issuance of Trust Preferred Securities.

APCo also requests authority to enter into agreements and assume obligations necessary for the payment of principal, interest, and other costs associated with the issuance and sale of up to \$149.5 million of tax exempt bonds ("Bonds") by the West Virginia Economic Development Authority and the Industrial Development Authority of Russell County, Virginia (collectively "the Authorities") on behalf of Applicant. In addition to loan agreements with the Authorities, other agreements may include remarketing agreements and credit facility agreements required to provide liquidity support for the issuance of variable rate Bonds.

Aggregate issuance costs associated with the Bonds are estimated by Applicant to be approximately \$1.5 million which may include, but not be limited to, underwriting compensation, trustee fees, legal fees, and rating agency fees. According to the Applicant, the rate of interest on any Bonds will not exceed a fixed rate of 10.0% or an initial variable rate of 10.0%. In addition, the initial public offering price on the Bonds shall not be less than 95% of the principal amount issued.

In conjunction with the issuance of the Notes and Bonds, Applicant requests authority, through December 31, 2012, to enter into one or more interest rate hedging arrangements to protect against future interest rate movements in connection with the issuance of the Notes and the Bonds. Such hedging arrangements may include, but not be limited to, treasury lock agreements, forward-starting interest rate swaps, treasury put options, or interest rate collar agreements ("Hedge Agreements"). All Hedge Agreements will correspond to the underlying amount of one or more of the Notes or Bonds. Consequently, the cumulative notional amount of the Hedge Agreements cannot exceed \$350 million for underlying Notes and \$149.5 million for underlying Bonds.

Finally, APCo requests a continuation of the authority, initially granted in Case No. PUE-2004-00123 and last granted in Case No. PUE-2010-00110, to utilize interest rate management techniques and enter into IRMAs through December 31, 2012. The IRMAs will consist of interest rate swaps, caps, collars, floors, options, hedging forwards or futures, or any similar products designed and used to manage and minimize interest costs. IRMA transactions will be for a fixed period and based on a stated principal amount that corresponds to an underlying fixed or variable rate obligation of APCo,

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whether existing or anticipated. APCo will only enter into IRMAs with counterparties that are highly rated financial institutions. The aggregate notional amount of the IRMAs outstanding will not exceed 25% of APCo's existing debt obligations.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

(1) Applicant is hereby authorized under Chapter 3 and, to the extent necessary for Trust Preferred Securities, Chapter 4 of Title 56 of the Code of Virginia to issue and sell up to \$350 million of Notes, from time to time during the period January 1, 2012, through December 31, 2012, for the purposes and under the terms and conditions set forth in the application.

(2) Applicant is hereby authorized to enter into agreements and assume obligations necessary for the payment of principal, interest, and costs associated with the issuance and sale of up to \$149.5 million of Bonds from the date of this Order through December 31, 2012, for the purposes and under the terms and conditions set forth in the application.

(3) Applicant is authorized to enter into Hedge Agreements for the purposes set forth in its application and to the extent that the aggregate notional amount outstanding does not exceed \$350 million for underlying Notes and \$149.5 million for underlying Bonds.

(4) Applicant is authorized to enter into IRMAs for the purposes set forth in its application and to the extent that the aggregate notional amount outstanding does not exceed 25% of Applicant's total outstanding debt obligations during the period January 1, 2012, through December 31, 2012.

(5) Applicant shall not enter into any IRMA or Hedge Agreement transactions involving counterparties having credit ratings of less than investment grade.

(6) Applicant shall submit to the Clerk of the Commission a preliminary Report of Action within ten (10) days after the issuance of any security pursuant to this Order to include the type of security, the issuance date, the amount of the issue, the interest rate or yield, the maturity date, and any securities retired with the proceeds.

(7) Applicant shall submit to the Clerk of the Commission a preliminary Report of Action within ten (10) days after it enters into any Hedge Agreement or IRMA pursuant to Ordering Paragraphs (3) and (4) to include : the beginning and, if established, ending dates of the agreement, the notional amount, the underlying securities on which the agreement is based, an explanation of the general terms of the agreement that explain how the payment obligation is determined and when it is payable, and a calculation of the cumulative notional amount of all outstanding IRMAs as a percent of total debt outstanding.

(8) Within 60 days after the end of each calendar quarter in which any security is issued pursuant to this Order, Applicant shall file with the Clerk of the Commission a more detailed Report of Action to include: the type of security issued, the date and amount of each series, the interest rate or yield, the maturity date, net proceeds to Applicant, an itemized list of expenses to date associated with each issue, a description of how the proceeds were used, an analysis demonstrating the cost savings from Notes used to refund existing debt, a list of all Hedging Agreements and IRMAs associated the debt issued, and a balance sheet reflecting the actions taken.

(9) Applicant's Final Report of Action shall be due on or before March 30, 2013, to include the information required in Ordering Paragraph (8) in a cumulative summary of actions taken during the period authorized.

(10) Applicant shall file a Report with the Commission's Division of Economics and Finance should its exercise of the authority granted herein contribute to a decline in APCo's bond rating below investment grade. Such report shall be filed within thirty (30) days of a decline below an investment grade bond rating from any rating agency and the report shall outline plans and actions to restore an investment grade bond rating.

(11) Approval of the application shall have no implications for ratemaking purposes.

(12) The Commission reserves the right to examine the books and records of any affiliate, whether or not such affiliate is regulated by this Commission, in connection with the authority granted herein, pursuant to §56-79 of the Code of Virginia.

(13) This matter shall remain under the continued review, audit, and appropriate action of this Commission.

**CASE NO. PUE-2011-00109
OCTOBER 28, 2011**

APPLICATION OF
PRINCE GEORGE ELECTRIC COOPERATIVE

For authority to issue long-term debt

ORDER GRANTING AUTHORITY

On October 3, 2011, Prince George Electric Cooperative ("PGEC" or "Applicant") filed an application with the State Corporation Commission ("Commission") under Chapter 3 of Title 56 of the Code of Virginia requesting authority to issue long-term debt to the National Cooperative Service Corporation ("NCSC"). Applicant paid the requisite fee of \$250 dollars.

Applicant is seeking authority to borrow up to \$4,946,652.20 from the NCSC. The proceeds will be used to refinance, prior to maturity, a like amount of outstanding loans from the Rural Utilities Service ("RUS"). There are no prepayment penalties associated with the early retirement of the RUS debt. The new NCSC loan will be structured as 20 distinct notes, each with a different maturity and corresponding interest rate. The longest maturity will be twenty years. Each interest rate corresponding to each note will be fixed for the life of the new note. According to the analysis provided in its application, PGEC expects to generate over \$336,000 in additional cash flow as a result of interest savings.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Applicant is hereby authorized to borrow up to \$4,946,652.20 from the National Cooperative Service Corporation, under the terms and conditions and for the purposes set forth in the application.
- (2) Within thirty (30) days of the date of any advance of funds from NCSC, PGEC shall file with the Commission's Division of Economics and Finance a report of action, which shall include the amount of each loan, the interest rate, and the interest rate term.
- (3) The authority granted herein shall have no implications for ratemaking purposes.
- (4) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2011-00110
NOVEMBER 29, 2011**

APPLICATION OF
KENTUCKY UTILITIES COMPANY d/b/a OLD DOMINION POWER COMPANY

For authority under Chapter 4 of Title 56 of the Code of Virginia to execute an amended affiliate agreement

ORDER GRANTING AUTHORITY

On October 4, 2011, Kentucky Utilities Company d/b/a Old Dominion Power Company ("KU/ODP" or "Company"), filed an application ("Application") with the State Corporation Commission ("Commission") pursuant to Chapter 4 of Title 56 of the Code of Virginia ("Code"), § 56-76 *et seq.* of the Code, requesting authority to execute an amended affiliate agreement.

KU/ODP seeks Commission approval to enter into a revised Utility Money Pool Agreement ("2011 Money Pool") with affiliates. KU/ODP and its utility affiliate, Louisville Gas and Electric Company ("LG&E"), their parent LG&E and KU Energy, LLC, and their non-utility affiliate LG&E and KU Services Company ("Services Company") would be parties to the 2011 Money Pool. Only LG&E and KU/ODP would be borrowers from the 2011 Money Pool, and LG&E and KU/ODP could also act as lender to each other. LG&E and KU Energy, LLC, would be a lender only, and Services Company would administer the 2011 Money Pool. Interest rates on the outstanding balances of all loans to the Company would be based on the A2/P2/F2 rated commercial paper programs as quoted by Bloomberg.¹

KU/ODP states that the proceeds from any loans obtained from the 2011 Money Pool would be used for general corporate purposes, including repaying or refunding any borrowing then outstanding and unpaid.

KU/ODP seeks authority to borrow up to a maximum of \$500 million in short-term debt from time to time through November 30, 2016. KU/ODP states that the requested limit would represent 11.28% of the Company's total capitalization, less than the 12% threshold defined by § 56-65.1 of the Code that would require additional Commission authorization under Chapter 3 of Title 56 of the Code of Virginia.²

NOW THE COMMISSION, upon consideration of this matter and having been advised by its Staff, is of the opinion and finds that approval of the Application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) KU/ODP is authorized to execute the 2011 Money Pool Agreement and from time to time may borrow short-term debt, up to a maximum not to exceed \$500 million, from the date of this Order through November 30, 2016, all under the terms and conditions and for the purposes as set forth in the Application.
- (2) KU/ODP shall file with the Commission semi-annual reports of action no later than forty-five (45) days after the six-month periods ended June 30 and December 31 during the authorization period, reporting on its short-term debt activities during the previous six-month period. Such reports shall include a monthly schedule of daily average short-term borrowings from the 2011 Money Pool, daily average borrowings through revolving credit facilities, the average monthly balance of all borrowings, the average monthly interest rate, and the daily maximum amount of short-term debt outstanding for each month in the reporting period. The report of action covering the six-month period ending December 31 shall also include a schedule of the annual fees paid by KU/ODP for all credit facilities KU/ODP had available for the previous calendar year.

¹ Application at 6.

² Va. Code § 56-55 *et seq.*

(3) KU/ODP shall file with the Commission a final report of action no later than February 1, 2017, reporting on its short-term debt activities during the period from July 1, 2016, through November 30, 2016. Such report shall include a monthly schedule of daily average short-term borrowings from the 2011 Money Pool, daily average borrowings through revolving credit facilities, the average monthly balance of total short-term borrowings, the average monthly interest rate, the daily maximum amount of short-term debt outstanding for each month in the reporting period, and a schedule of the annual fees paid by KU/ODP for all credit facilities KU/ODP had available for the previous calendar year.

(4) Should KU/ODP wish to obtain authority beyond November 30, 2016, the Company shall file an application requesting such authority no later than September 30, 2016.

(5) Commission approval shall be required for any subsequent changes in the terms and conditions of the 2011 Money Pool.

(6) Approval of the Application shall have no implications for ratemaking purposes.

(7) The authority granted herein shall not preclude the Commission from applying the provisions of § 56-78 and § 56-80 of the Code hereafter.

(8) The Commission reserves the right to examine the books and records of any affiliate, whether or not such affiliate is regulated by this Commission, in connection with the authority granted herein.

(9) This matter shall be continued, subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2011-00111
NOVEMBER 3, 2011**

APPLICATION OF
VIRGINIA ELECTRIC AND POWER COMPANY
and
DOMINION ENERGY, INC.

For expedited consideration and approval of an Amended and Restated Parts Reimbursement Agreement pursuant to Chapter 4, Title 56 of the Code of Virginia

ORDER GRANTING APPROVAL

On October 11, 2011, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") and Dominion Energy, Inc. ("DEI") (collectively, the "Applicants"), filed an Application with the State Corporation Commission ("Commission") under Chapter 4 (§ 56-76 *et seq.*) of Title 56 of the Code of Virginia ("Code") for expedited consideration and approval of an Amended and Restated Parts Reimbursement Agreement ("Amended Parts Agreement") between the Company and DEI. The Applicants also filed a Motion of Virginia Electric and Power Company and Dominion Energy, Inc., for Entry of a Protective Order and for Additional Protective Treatment ("Motion"), pursuant to Rules 110 and 170 of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-110, *Motions*, and 5 VAC 5-20-170, *Confidential information*.

The original Parts Reimbursement Agreement (the "Original Parts Agreement") was approved by the Commission in Case No. PUE-2002-00573.¹ The Original Parts Agreement, among other things, allowed Dominion Virginia Power to realize savings through discounts from General Electric International, Inc. ("GEII"). Specifically, the Applicants request approval of the Amended Parts Agreement as a result of changes made in the Original Master Contractual Service Agreement ("Original Master CSA") between DEI and GEII² and the Original CSAs,³ which reflects ministerial changes to the Original Parts Agreement to: (1) clarify the change and increase in spare parts available to Dominion Virginia Power and DEI, excluding a spare unit rotor assembly;⁴ (2) reflect that a spare part may be repaired in addition to being replaced during the course of Unplanned Maintenance or Extra Work;⁵ and (3) reflect that payment for Unplanned Maintenance or Extra Work will be directly from Dominion Virginia Power to GEII as per the terms of the Original Master CSA and Original CSAs. The basic terms of the Original Parts Agreement have not changed.

The Applicants represent that the successful implementation of the Amended Parts Agreement and the related transactions with GEII will continue to improve the Company's efficiency and reliability in providing electric service to its customers because there are multiple complete sets of spare parts to which both Dominion Virginia Power and DEI have access, thereby reducing risk, cost, and time constraints by significantly reducing reliance on outside sources for spare parts. Further, by including Dominion Virginia Power's generating units along with DEI's generating units under the GEII agreements, Dominion Virginia Power and DEI are able to reduce costs through the realization of discounts from GEII. The Company reports benefits from

¹ *Petition of Virginia Electric and Power Company and Dominion Energy, Inc., For an exemption from the filing and prior approval requirements of Chapter 4 of Title 56 of the Code of Virginia or, in the alternative, approval of the transfer of inventory and Parts Reimbursement Agreement*, Case No. PUE-2002-00573, 2003 S.C.C. Ann. Rept. 421-23, Order Granting Approval (Jan. 21, 2003).

² The Original Master CSA was a volume-based fleet agreement between DEI and GEII. Application at 2.

³ The Original CSAs were individual, unit-specific agreements between Dominion Virginia Power and GEII and DEI and GEII for repair and maintenance of electric generating units owned by Dominion Virginia Power, and by DEI and its affiliates. *Id.*

⁴ The Applicants intend to file a related but separate application with respect to the spare unit rotor assembly, without an accompanying request for expedited consideration. This spare unit rotor assembly is essentially another spare part in the fleet spares inventory that GEII may use in repairing and maintaining certain Dominion Virginia Power and DEI electric generating units. *Id.* at 4, n.5.

⁵ As those terms are used in Extraordinarily Sensitive Attachment 2 and Attachment 3 to the Application.

such cost reductions in its Annual Report of Affiliate Transactions. The Applicants request expedited consideration to allow for the purchase of certain spare parts in connection with an upcoming planned outage.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the above-described Amended Parts Agreement is in the public interest and should be approved.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to § 56-77 of the Code, Dominion Virginia Power and DEI are hereby granted approval for the Amended Parts Agreement as described herein.
- (2) Should there be any changes in the terms and conditions of the Amended Parts Agreement from those described herein, Commission approval shall be required for such changes.
- (3) Dominion Virginia Power shall continue to provide to the Commission's Division of Public Utility Accounting in its Annual Report of Affiliate Transactions an analysis showing that Dominion Virginia Power continues to benefit from the Original Parts Agreement.
- (4) The approval granted herein shall have no ratemaking implications for biennial reviews or future rate proceedings. Specifically, it will not guarantee recovery of any costs directly or indirectly related to the Amended Parts Agreement.
- (5) The approval granted herein shall not preclude the Commission from exercising the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (6) The Commission reserves the authority to examine the books and records of any affiliate in connection with the approval granted herein whether or not the Commission regulates such affiliate.
- (7) Dominion Virginia Power shall include the transactions related to the Amended Parts Agreement in its Annual Report of Affiliate Transactions submitted to the Commission's Director of Public Utility Accounting.
- (8) If biennial review or general rate case filings are not based on a calendar year, then Dominion Virginia Power shall include the affiliate information contained in the Annual Report of Affiliate Transactions in such filings.
- (9) The Applicants' Motion is moot; however, we direct the Clerk of the Commission to retain the confidential information, to which the Motion pertains, under seal.
- (10) There appearing nothing further to be done in this matter, it hereby is dismissed.

**CASE NO. PUE-2011-00114
DECEMBER 8, 2011**

APPLICATION OF
ATMOS ENERGY CORPORATION
and
ATMOS ENERGY HOLDINGS, INC.

For authority to incur short-term debt and to lend and borrow short-term funds to and with its affiliate

ORDER GRANTING AUTHORITY

On October 17, 2011, Atmos Energy Corporation ("Atmos" or "Company") and Atmos Energy Holdings, Inc. ("AEH") (collectively, "Applicants"), filed an application with the State Corporation Commission ("Commission") under Chapters 3¹ and 4² of Title 56 of the Code of Virginia ("Code") requesting authority to incur short-term indebtedness up to a maximum of \$1 billion between January 1, 2012, and December 31, 2012. The amount of short-term debt requested in the application is in excess of twelve percent (12%) of total capitalization as defined in § 56-65.1 of the Code and thus requires prior Commission approval. Atmos also requests authority to lend and borrow short-term funds to and from its affiliate in an amount not to exceed \$500 million at any one time during 2012. Applicants paid the requisite fee of \$250.

Atmos proposes to incur short-term indebtedness by making drawdowns under its existing credit facility (or new lines of credit in the process of being negotiated), through intercompany borrowings or through the use of its commercial paper program. Currently, Atmos has a \$750 million credit facility in place that has an accordion feature that could allow borrowings up to \$1 billion ("Credit Facility"). According to the application, borrowings under Atmos's Credit Facility will bear interest at floating rates based on the type of loan Atmos elects, either as a Base Rate Loan or a Eurodollar Loan. Under Atmos's commercial paper program, the interest rate is set at the time of the advance and is based on capital market conditions at that time. Atmos states that the funds will be used to repay all or a portion of the Company's outstanding short-term debt; to acquire and/or construct additional properties or facilities as well as improvements to the Company's existing plant; and for other general corporate purposes.

Atmos also proposes to continue to borrow from and lend to AEH, its wholly owned subsidiary, through a \$500 million short-term cash credit facility ("Affiliate Facility") for the period January 1, 2012, through December 31, 2012. The Affiliate Facility will also supply cash working capital needs

¹ Va. Code § 56-55 *et seq.*

² Va. Code § 56-76 *et seq.*

and financing of capital construction projects for affiliates of AEH, including Atmos Energy Marketing ("AEM"). The interest rate on AEH loans from Atmos under the Affiliate Facility will be based on the higher of the one-month London Interbank Offered Rate plus 300 basis points or the AEM borrowing rate from its committed secured revolving letter of credit facility ("Stand Alone Facility") plus 75 basis points. Loans from AEH to Atmos will be priced at the lesser of the Atmos borrowing rate as a Eurodollar loan or the rate on its commercial paper, if there is any commercial paper outstanding at the time.

NOW THE COMMISSION, upon consideration of this matter, and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

- (1) Atmos is hereby authorized to incur short-term indebtedness up to \$1.5 billion at any one time between January 1, 2012, and December 31, 2012, under the terms and conditions and for the purposes set forth in the application.
- (2) Atmos is hereby authorized to borrow from and lend short-term funds to AEH up to an aggregate amount of \$500 million between January 1, 2012, and December 31, 2012, under the terms and conditions and for the purposes set forth in the application.
- (3) Applicants shall file with the Commission quarterly reports of action no later than May 16, 2012, August 15, 2012, and November 15, 2012, reporting on its short-term debt activities during the previous calendar quarter. Such reports shall include a monthly schedule of daily short-term borrowings of Atmos separate from AEH borrowings, the average monthly balance, the average monthly interest rate, and the monthly maximum amount of short-term debt outstanding.
- (4) Applicants shall submit to the Commission a final report of action on or before February 28, 2013, providing the information required in Ordering Paragraph (3) for the fourth calendar quarter of 2012. The final report of action shall also include a summary schedule of fees paid by Atmos in 2012 for its Credit Facility in effect during 2012.
- (5) Applicants shall provide to the Division of Utility Accounting and Finance the quarterly financial reports for AEH that are provided to its lenders at the same time such reports are provided to the lenders.
- (6) Commission approval shall be required for any subsequent changes in the terms and conditions of the Affiliate Facility.
- (7) The authority granted herein shall not preclude the Commission from applying to Applicants the provisions of §§ 56-78 and 56-80 of the Code hereafter.
- (8) The Commission reserves the right to examine the books and records of any affiliate of Applicants in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- (9) Should Applicants wish to obtain authority beyond calendar year 2012, Atmos shall file an application requesting such authority no later than November 1, 2012.
- (10) This matter shall remain under the continued review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2011-00115
DECEMBER 1, 2011**

APPLICATION OF
INTEGRYS ENERGY SERVICES - NATURAL GAS, L.L.C.

For a license to conduct business as a competitive service provider of natural gas in Virginia

ORDER GRANTING LICENSE

On October 18, 2011, Integrys Energy Services - Natural Gas, L.L.C. ("Integrys" or "Company"), filed an application with the State Corporation Commission ("Commission") for a license to act as a competitive service provider for natural gas service pursuant to § 56-235.8 F of the Code of Virginia ("Application"). This Application seeks authority to serve residential, commercial, and industrial customers in the service territories of Appalachian Natural Gas Distribution Company, Atmos Energy, Columbia Gas of Virginia, Inc., Roanoke Gas Company, Southwestern Virginia Gas Company, Virginia Natural Gas, Inc., Washington Gas Light Company, and Shenandoah Gas Division of Washington Gas Light. The Company attested that it would abide by all applicable regulations of the Commission as required by 20 VAC 5-312-40 B of the Commission's Rules Governing Retail Access to Competitive Energy Services ("Retail Access Rules").

On November 3, 2011, the Commission issued an Order for Notice and Comment ("Order") which docketed the Application, directed that notice of the Application be given to natural gas distribution utilities, permitted interested persons to file comments on the Company's Application, and required the Commission Staff to analyze the reasonableness of the Application and present its findings in a Staff Report. On November 14, 2011, the Company filed the proof of service required by the Commission's Order. No comments were received on Integrys's Application.

The Staff filed its Report on November 22, 2011, addressing Integrys's fitness to conduct business as a competitive service provider for natural gas service. In its Report, the Staff summarized Integrys's proposal and evaluated its financial condition and technical fitness for licensure. Based on its review of the Application, the Staff recommended that Integrys be granted a license to conduct business as a competitive natural gas service provider for residential, commercial, and industrial customers throughout the Commonwealth of Virginia as Virginia opens to retail access and customer choice, and that

Integritys would not be required to seek a license each and every time service territories in Virginia, currently not open to retail access, open to retail access and customer choice.¹

NOW UPON CONSIDERATION of the Application, the applicable law, and the Staff Report, the Commission adopts the findings and recommendations of the Staff Report and finds that Integritys's Application for a license as a competitive service provider of natural gas should be granted, subject to the conditions set forth below.

Accordingly, IT IS ORDERED THAT:

(1) Integritys Energy Services - Natural Gas, L.L.C. is hereby granted license No. G-31 as a competitive service provider of natural gas service to residential, commercial, and industrial customers throughout the Commonwealth of Virginia. This license to act as a competitive service provider is granted subject to the provisions of the Retail Access Rules, this Order, and other applicable laws.

(2) This license is not valid authority for the provision of any product or service not identified within the license itself.

(3) This case shall remain open for consideration of any subsequent amendments or modifications to this license.

¹ As Staff noted in its report, only the service territories of Columbia Gas of Virginia, Inc. and Washington Gas Light Company, including its Shenandoah Gas Division, are currently open to retail access and customer choice.

CASE NO. PUE-2011-00118 DECEMBER 21, 2011

APPLICATION OF
VIRGINIA-AMERICAN WATER COMPANY
and
AMERICAN WATER CAPITAL CORP.

To continue participation in a financial services agreement with an affiliate

ORDER GRANTING AUTHORITY

On October 26, 2011, Virginia-American Water Company ("Virginia-American") and American Water Capital Corp. ("AWCC") (collectively, "Applicants") filed with the State Corporation Commission ("Commission") an application to continue participation in a Financial Services Agreement ("FSA") under Chapter 4¹ of Title 56 of the Code of Virginia ("Code") through December 31, 2013.²

The current application seeks authority to continue participating in the FSA for an additional two-year period. Financial services supplied under the FSA include cash management through nightly "cash sweeps" and investment of excess cash. The interest rate applicable to short-term borrowings from AWCC or short-term investment with AWCC will be the effective cost of funds in the market. According to the Applicants, continued participation in the FSA will allow Virginia-American to borrow at lower rates and receive higher investment rates than it could obtain on a stand-alone basis. The Applicants represent that interest savings under the FSA have benefited ratepayers over the past several years.

According to the Staff of the Commission ("Staff"), it appears that Virginia-American may have exceeded its statutorily defined authority to issue short-term debt by issuing such debt in excess of 12% of total capitalization on more than one occasion during May 2010. The Commission noted in Ordering Paragraph (8) of the Prior Order that "Virginia-American shall file for separate authority under Chapter 3 to have aggregate short-term borrowings in excess of twelve percent of total capitalization."³ There is no record of such a filing from Virginia-American.

Further, according to the Staff, rebuttal testimony filed on October 4, 2011, by Virginia-American in its most recent rate proceeding,⁴ seemed to indicate that Virginia-American did not believe it needed Commission approval to issue common equity (or to receive a capital contribution from a corporate parent). The testimony filed appears to indicate that between \$7 million and \$8.5 million in capital contributions were received by Virginia-American during 2010.⁵ Section 56-57 A of the Code reads:

¹ § 56-76 *et seq.*

² Most recent authorization to participate in the FSA was granted in 2009. *See Application of Virginia-American Water Company and American Water Capital Corp., To continue participation in a financial services agreement with an affiliate*, Case No. PUE-2009-00120, 2009 S.C.C. Ann. Rept. 286, Order Granting Authority (Dec. 21, 2009) (hereinafter, "Prior Order"). Ordering Paragraph (9) reads, "Should Applicants seek to extend the authority for Virginia-American to participate in the FSA beyond December 31, 2011, Applicants shall file an application requesting such authority no later than November 1, 2011." *Id.* at 287.

³ *Id.* at 286. The reference to "Chapter 3" is a reference to Chapter 3 of Title 56 of the Code, § 56-55 *et seq.*

⁴ *Application of Virginia-American Water Company, For an increase in rates*, Case No. PUE-2010-00001, Doc. Con. Cen. No. 450561, Order (July 29, 2011), *modified*, Doc. Con. Cen. No. 454841, Order (Nov. 29, 2011).

⁵ *See Ex. 39 (Miller rebuttal) at 26 in Case No. PUE-2010-00001.*

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

This chapter shall apply to every stock or stock certificate or other evidence of interest or ownership, and, except as otherwise provided by § 56-65, every bond, note or other evidence of indebtedness, of a public service company, which may be issued, and to every obligation or liability as guarantor, endorser, surety or otherwise in respect of the securities of any other person, firm, association or corporation, when such securities are payable at periods of twelve months or more after the date thereof, which may be or may have been assumed after March 24, 1934, notwithstanding the fact that any preparatory steps, whether by the issuance or amendment of a certificate of incorporation, or by the action of the board of directors, or the stockholders or otherwise, may have been taken prior to such date.

NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that Applicant's continued participation in the FSA is in the public interest. However, we expect Virginia-American to maintain full compliance with all statutory requirements and conditions of our Orders. We direct our Staff to investigate the Applicant's 2010 activities and to report their findings within sixty (60) days of the end of the authorization period in Case No. PUE-2009-00120. We will also shorten the approval period for this application to a one-year authorization and will require quarterly reports of action demonstrating compliance with Commission jurisdiction and Commission orders.

Finally, we will require that Virginia-American file an application to receive a capital contribution from an affiliate within thirty (30) days of the date of this Order Granting Authority for all common equity investments received by the Company from May 1, 2010 to the present.

Accordingly, IT IS ORDERED THAT:

- (1) The Applicants are hereby authorized to participate under the FSA from January 1, 2012, through December 31, 2012, under the terms and conditions and for the purposes set forth in the application, except as modified herein.
- (2) Prior to any changes in terms and conditions of the FSA, Virginia-American shall obtain prior approval from this Commission.
- (3) The Applicants shall file a report of action on a quarterly basis within sixty (60) days of the end of each calendar quarter during the authorization period that shall include a monthly schedule of the short-term borrowing and lending activity during the previous calendar quarter. The schedule shall include: a monthly schedule of the maximum daily balance borrowed or invested by Virginia-American; the average daily balance for the month and the average rate of interest for the month; a simplified balance sheet as of the end of the quarter containing balances for short-term debt, long-term debt, preferred stock, and common equity; and a monthly schedule of the allocation of all line of credit fees.
- (4) Virginia-American shall file an application within 30 days of the date of this Order Granting Authority for separate authority under Chapters 3 and 4 of Title 56 of the Code to receive capital contributions from an affiliate for all contributions received by Virginia-American during the period May 1, 2010, to the present.
- (5) The authority granted herein shall have no implications for ratemaking purposes.
- (6) Approval of the application shall not preclude the Commission from applying the provisions of § 56-78 and § 56-80 of the Code of Virginia hereafter.
- (7) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.
- (8) Virginia-American shall file for separate authority under Chapter 3 of Title 56 of the Code to have aggregate short-term borrowings in excess of 12% of total capitalization.
- (9) Should the Applicants seek to extend the authority for Virginia-American to participate in the FSA beyond December 31, 2012, the Applicants shall file an application requesting such authority no later than November 1, 2012.
- (10) This matter is continued.

**CASE NO. PUE-2011-00119
NOVEMBER 16, 2011**

APPLICATION OF
SOUTHWESTERN VIRGINIA GAS COMPANY

For an Annual Informational Filing

ORDER GRANTING WAIVER

On October 26, 2011, Southwestern Virginia Gas Company ("Southwestern" or "Company") delivered its Annual Informational Filing ("AIF") for the twelve (12) months ending June 30, 2011, to the State Corporation Commission ("Commission"), together with a Request for Waivers ("Request") of certain information required by the Commission's Rules Governing Utility Rate Applications and Annual Informational Filings, 20 VAC 5-201-10 *et seq.* ("Rate Case Rules"). In its Request, Southwestern, by counsel, seeks a waiver pursuant to 20 VAC 5-201-10 E of the Rate Case Rules for reporting information for Southwestern Virginia Energy Industries, Ltd. ("Parent"), and consolidated information for the Parent and the Company as required in the Rate Case Rules Schedules 1, 2, 6, and 7, as well as a waiver of the Rate Case Rules applicable to AIFs that require the Company to prepare and submit a jurisdictional cost of service study as a part of Schedule 40 of the Rate Case Rules. In support of its Request with regard to Rate Case Rules Schedules 1, 2, 6, and 7, Southwestern represents that its Parent: (i) historically has never contributed to the raising of capital for the Company; (ii) historically has never

assisted the Company in raising capital by guaranteeing debt or in any other manner securing the Company's obligations; (iii) is a closely held corporation and not traded publicly; and (iv) does not have financial statements prepared for public distribution.¹

With regard to the request to waive the requirement of Rate Case Rules Schedule 40 to prepare a jurisdictional cost of service study, Southwestern represents that it serves very few governmental non-jurisdictional customers and that these non-jurisdictional customers - government offices and schools - represent a very small portion of the Company's customers and gas throughput.² According to Southwestern, these non-jurisdictional customers pay for service on the basis of Commission-approved rates.³ Additionally, the Company contends that these customers have "virtually no impact" on the per-customer cost of service and that there is no economic justification to expend the money, time, and effort to create a non-jurisdictional cost of service study.⁴

On November 10, 2011, the Commission Staff ("Staff") responded to the Company's Request.⁵ In its Response, the Staff advised that it does not oppose Southwestern's Request for the purposes of the captioned AIF but reserves the right to require the filing of all of the Rate Case Rules Schedules, if necessary, in future AIFs and rate proceedings filed by Southwestern and further reserved its right to request that the Company provide additional or supplemental information as the Staff investigates the current AIF.⁶

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the captioned AIF and Request should be docketed; that Southwestern's Request regarding its Parent and the consolidated information of the Parent and the Company otherwise required in Rate Case Rules Schedules 1, 2, 6, and 7, as well as the requested waiver regarding the preparation and submission of a jurisdictional cost of service study are reasonable and should be granted;⁷ and that the Staff should review Southwestern's AIF for the test period ending June 30, 2011, and shall file with the Clerk of the Commission a report on its findings. Moreover, we encourage the Company and the Staff to work together cooperatively in the event that the Staff requests the Company to provide additional information or to supplement the information already provided by Southwestern in the present AIF.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned application for the test period ending June 30, 2011, is docketed and assigned Case No. PUE-2011-00119.
- (2) Southwestern is granted a waiver of the requirement to report information for Southwestern Virginia Energy Industries, Ltd., its Parent, or consolidated information for the Parent and the Company as would otherwise be required in the Rate Case Rules Schedules 1, 2, 6, and 7, as part of its AIF for the twelve (12) months ending June 30, 2011.
- (3) The Company's requested waiver of the Rate Case Rules requiring the preparation and submission of a jurisdictional cost of service study as required by Rate Case Rules Schedule 40 is hereby granted.
- (4) The Staff shall review Southwestern's AIF for the test period ending June 30, 2011, and shall file with the Clerk of the Commission a report on its findings.
- (5) This case is continued pending further order of the Commission.

¹ Request at 2.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See November 10, 2011 "Response of the Staff of the State Corporation Commission ("Response").

⁶ Response at 3.

⁷ The waivers granted herein are limited to the unique circumstances identified by Southwestern for this AIF, and this Order should not be cited in support of other waiver requests by Southwestern or other public utilities subject to the Commission's jurisdiction.

**CASE NO. PUE-2011-00123
DECEMBER 7, 2011**

APPLICATION OF
VIRGINIA NATURAL GAS, INC.,
AGL RESOURCES INC.,
and
AGL SERVICES COMPANY

For authority to issue short-term debt, long-term debt, and common stock to an affiliate

ORDER GRANTING AUTHORITY

On November 15, 2011, Virginia Natural Gas, Inc. ("VNG"), AGL Resources Inc. ("AGLR"), and AGL Services Company ("AGL Services") (collectively, "Applicants"), filed an application under Chapters 3¹ and 4² of Title 56 of the Code of Virginia ("Code") requesting authority for VNG to participate in an AGLR Utility Money Pool ("Utility Money Pool"), to issue and sell common stock to an affiliate, and to issue long-term debt to an affiliate. The amount of short-term debt, including money pool transactions proposed in the application, exceeds twelve percent of the total capitalization as defined in § 56-65.1 of the Code. Applicants paid the requisite fee of \$250.

The Applicants request authorization for VNG to: (i) issue short-term debt up to an aggregate balance of \$150,000,000 through participation in the Utility Money Pool administered by AGL Services; (ii) issue long-term debt to AGLR in an amount not to exceed \$250,000,000; and (iii) issue and sell common stock to AGLR in an amount not to exceed \$300,000,000, all through December 31, 2012.

The Applicants note that the requested level of authority to issue long-term debt and common stock in this case is identical to the limits previously authorized in Case Nos. PUE-2010-00133, PUE-2009-00127, PUE-2008-00110, PUE-2007-00108, PUE-2006-00119, PUE-2005-00104, and PUE-2004-00132, among other cases. Terms of significance will vary with respect to the particular type of debt security issued, as noted in the application.

Applicants' requested level of short-term debt borrowing authority through the Utility Money Pool is identical to the level previously requested and authorized in Case No. PUE-2010-00133. Applicants represent that the requested authority for Utility Money Pool borrowings of up to \$150,000,000 is a maximum and does not reflect VNG's actual short-term borrowing requirements. However, Applicants state the level of short-term borrowing requested will provide the flexibility needed by VNG to finance its operations on a short-term basis until management deems it appropriate to secure permanent, long-term financing, based on capital market conditions and other criteria.

All short-term borrowings will be in accordance with the Utility Money Pool Agreement that remains unchanged from what was originally approved by the Commission's Order Granting Authority in Case No. PUE-2004-00132.³ With respect to the Utility Money Pool, loans to participants will be made in the form of open account advances for periods of less than 12 months. Borrowings will be payable on demand together with all interest accrued thereon. Interest on borrowings will accrue daily at a rate that will be determined based on the source of funds available in the Utility Money Pool.

If Utility Money Pool borrowings in a given month solely consist of surplus funds from participants ("Internal Funds"), the daily interest rate will be equal to the high-grade unsecured 30-day commercial paper rate of major corporations sold through dealers as quoted in *The Wall Street Journal*. If Utility Money Pool borrowings in a given month solely consist of proceeds from bank borrowings or the issuance of commercial paper ("External Funds"), the daily rate will reflect the weighted average cost of External Funds. In months when borrowings are supported by Internal Funds and External Funds, the rate will reflect a composite rate, equal to the weighted average cost of Internal Funds and External Funds.

The cost of compensating balances and fees paid to banks to maintain credit lines that support the availability of External Funds to the Utility Money Pool will be allocated to borrowing parties in proportion to their respective daily outstanding borrowing of External Funds. Borrowing parties will borrow pro rata from each fund source in the same proportion that the respective funds from each source bear to the total amount of funds available to the Utility Money Pool.

With respect to long-term debt issued by VNG to AGLR, any terms and conditions thereon will mirror the terms and conditions of debt issued by AGLR. If AGLR does not issue long-term debt within one year from the date of the long-term debt issued by VNG, the rate of interest on that corresponding issue of VNG debt will be determined utilizing the interest rate on the comparable term U.S. Treasury Securities as reported in the H.15 Federal Reserve Statistical Release nearest to the time of the loan takedown, plus an appropriate credit spread for AGLR's existing long-term debt rating. However, such VNG debt rate will be adjusted to match AGLR's cost of borrowing if AGLR subsequently issues long-term debt within one year after the VNG loan is drawn.

For common stock, VNG requests authority to issue up to 6,282 shares of common stock without par value to AGLR. If all additional shares of common stock are issued pursuant to this request, the total number of common shares outstanding will be 10,000 shares. This is equal to the total number of shares authorized. The common stock will be sold at the book value of VNG's common equity as of its most recent balance sheet date immediately prior to the sale date.

Applicants state that the proposed issuance of long-term debt and common equity will be used to reduce short-term borrowings, to fund distribution system capital improvement projects, to pay or refinance other obligations of VNG, and for other proper public utility purposes.

¹ Va. Code § 56-55 *et seq.*

² Va. Code § 56-76 *et seq.*

³ The Utility Money Pool Agreement became effective January 1, 2005, and is an arrangement among AGLR, AGL Services, VNG, and other AGLR subsidiaries participating in the Utility Money Pool. Application at 4-5.

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NOW THE COMMISSION, upon consideration of the application and having been advised by its Staff, is of the opinion and finds that approval of the application will not be detrimental to the public interest.

Accordingly, IT IS ORDERED THAT:

(1) VNG is authorized to participate in the Utility Money Pool and to incur short-term indebtedness in excess of twelve percent of capitalization not to exceed \$150,000,000, for the period January 1, 2012, through December 31, 2012, under the terms and conditions and for the purposes set forth in the captioned application.

(2) VNG is hereby authorized to issue long-term debt to AGLR in an amount not to exceed \$250,000,000 and to issue and sell common stock to AGLR in an amount not to exceed \$300,000,000, through December 31, 2012, under the terms and conditions and for the purposes set forth in the captioned application.

(3) Applicants shall seek additional Commission authority to alter or amend the terms and conditions set forth in the application for participation in the Utility Money Pool or to change Utility Money Pool participants.

(4) Should Applicants seek to extend the authority for VNG to participate in the Utility Money Pool beyond December 31, 2012, Applicants shall file an application requesting such authority no later than November 15, 2012.

(5) Approval of this application shall have no implications for ratemaking purposes.

(6) Approval of this application does not preclude the Commission from applying the provisions of §§ 56-78 and 56-80 of the Code.

(7) Applicants shall provide the Commission's Division of Utility Accounting and Finance with at least thirty (30) days' advance notice of the prospective amount and date of any dividend payment by VNG to AGLR.

(8) The Commission reserves the right to examine the books and records of any affiliate in connection with the authority granted herein, whether or not such affiliate is regulated by this Commission.

(9) Applicants shall file quarterly reports of action within sixty (60) days of the end of each calendar quarter following the date of this Order, to include:

- (a) A monthly schedule of Utility Money Pool borrowings, segmented by borrower (whether VNG or an affiliate); and
- (b) Monthly schedules that separately reflect interest expenses, each type of allocated fee, and an explanation of how both the interest rate and allocated fee have been calculated.

(10) Applicants shall, within ten (10) days after the issuance of any common stock or long-term debt pursuant to the authority granted herein, file a preliminary report with the Clerk of the Commission. Such report shall include the date of issuance, type of security, amount issued, and the respective interest rate, date of maturity, and other terms and conditions of any issuance.

(11) Applicants shall, within sixty (60) days of the end of each calendar quarter in which common stock or long-term debt securities are issued pursuant to the authority granted herein, submit a more detailed report to the Commission. Such report shall include the information noted in Ordering Paragraph (10) above, the cumulative amount of securities issued to date for each type of security and the amount of authorized but unissued securities that remain, a general statement concerning the purposes for which the securities were issued, and a balance sheet reflecting the actions taken.

(12) Applicants shall file their final report of action with the Commission on or before March 1, 2013, to include all of the information outlined in Ordering Paragraphs (9) and (11), summarizing the financings entered into pursuant to Ordering Paragraphs (1) and (2) during the fourth calendar quarter of 2012.

(13) This matter is continued subject to the continuing review, audit, and appropriate directive of the Commission.

**CASE NO. PUE-2011-00124
DECEMBER 20, 2011**

APPLICATION OF
COLUMBIA GAS OF VIRGINIA, INC.

For approval of a modification of the calculation of the 2011 Annual Allowed Distribution True-Up within the Company's Revenue Normalization Adjustment

ORDER GRANTING APPROVAL

On December 4, 2009, the State Corporation Commission ("Commission") entered a Final Order in Case No. PUE-2009-00051 approving a Conservation and Ratemaking Efficiency Plan ("CARE Plan") for residential and small general service customers of Columbia Gas of Virginia, Inc. ("Columbia Gas" or "Company"), for a three-year term commencing on December 31, 2009, pursuant to Chapter 25 of Title 56 (§§ 56-600 *et seq.*) (Natural

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Gas Conservation and Ratemaking Efficiency Act) of the Code of Virginia ("Code").¹ The CARE Plan approved by the Commission included a decoupling mechanism, referred to as a Revenue Normalization Adjustment ("RNA"), that allows the Company to adjust its actual non-gas distribution revenue per customer to the "allowed distribution revenue" per customer as defined in § 56-600 of the Code.²

On November 17, 2011, the Company filed an application with the Commission which, among other things, represented that the Company had calculated incorrectly its RNA for the months of January 2011 through August 2011 for its residential customer class and for the months of January 2011 through July 2011 for its small general service class.³ As a result of this error, the residential customer class was overbilled by \$227,065, and the small general service customer class was overbilled by \$23,441.⁴

In order to flow back the erroneous overbillings to its residential and small general service customer classes, the Company's application requests authority for a limited modification of the 2011 Annual Allowed Distribution Revenue True-Up ("AADRT") under Section 123(f) of the Company's General Terms and Conditions. According to the Company's application, "[t]he proposed flow back of the overbillings through the AADRT is the most efficient, cost effective and equitable manner of returning the overbillings to customers . . ."⁵

The Company's application further represents that the Commission Staff does not oppose the relief requested in the application.

NOW THE COMMISSION, having considered this matter, is of the opinion and finds that the application should be granted as filed and that this case should be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) Columbia Gas's application is granted.
- (2) The Company shall modify the calculation of its 2011 AADRT under Section 12.3(f) of the Company's General Terms and Conditions to flow back the over collections from its residential and small general service customer classes through the annual true-up mechanism, rather than through individual customer refunds, as described in the Company's application.
- (3) There being nothing further to be done herein, this case is dismissed from the Commission's docket of active proceedings and the papers filed herein shall be made a part of the Commission's file for ended causes.

¹ *Application of Columbia Gas of Virginia, Inc., For approval to implement a natural gas conservation and ratemaking efficiency plan including a decoupling mechanism*, Case No. PUE-2009-00051, 2009 S.C.C. Ann. Rept. 484, Final Order (Dec. 4, 2009). See also, *Application of Columbia Gas of Virginia, Inc., For authority to amend its natural gas conservation and rate making efficiency plan*, Case No. PUE-2010-00099, 2010 S.C.C. Ann. Rept. 603, Final Order (Dec. 15, 2010) (making changes to the Company's CARE Plan related to the suspension of its free water heater insulation blanket measure).

² Section 56-600 of the Code defines "Allowed distribution revenue" as "the average annual, weather-normalized, nongas commodity revenue per customer associated with the rates in effect as adopted in the applicable utility's last Commission-approved rate case or performance-based regulation plan, multiplied by the average number of customers served."

³ Application at 3.

⁴ *Id.*

⁵ *Id.* at 4.

DIVISION OF SECURITIES AND RETAIL FRANCHISING**CASE NOS. SEC-2005-00012, SEC-2005-00013,
SEC-2005-00029, AND SEC-2006-00021
FEBRUARY 1, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

ARTEMIS VISION FUND, INC.,
ARTEMIS STRATEGY FUND, INC.,
THOMAS TREXLER,
and
REBEL HOLIDAY,
Defendants

ORDER

On May 4, 2007, the Division of Securities and Retail Franchising ("Division"), by counsel, filed a Rule to Show Cause ("Rule") with the State Corporation Commission ("Commission") against the above-named Defendants alleging various violations of the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia ("Act"). Pursuant to the Rule, each Defendant was ordered to file a responsive pleading to the Rule and a hearing date was scheduled for October 3, 2007.

The hearing was continued generally by Hearing Examiner's Ruling dated September 5, 2007, as counsel for the Division represented that the parties had reached an agreement in principle and were finalizing a settlement. The settlement of the instant cases was based not only on a resolution of the allegations against Defendants Rebel Holiday ("Holiday") and Thomas Trexler ("Trexler") herein, but also in other companion cases filed against them and other companies they managed and operated.¹

A settlement was not reached and hearings went forward in the companion cases against Holiday, Trexler, and the other companies. After conducting a hearing on the merits in the companion cases, the Commission ultimately found that the Defendants, except for Holiday in Case No. SEC-2007-00030, violated the registration and fraud provisions of the Act.² Holiday and Trexler were penalized monetarily and enjoined from transacting business in securities within the Commonwealth.

On January 13, 2011, the Division, by counsel, filed a Motion to Dismiss ("Motion") in these cases. In its Motion, the Division takes the position that given the similarities of the allegations in the Rule in these cases with those of the companion cases that have been heard, it is the position of the Division that the penalties and injunctions ordered against Holiday and Trexler in the companion cases sufficiently address the Division's regulatory concerns. Furthermore, to the best of the Division's knowledge, the Defendants Artemis Vision Fund, Inc., and Artemis Strategy Fund, Inc., are no longer in operation and pose no future risk of violating the Act. Therefore, the Division states that it is unnecessary to pursue further sanctions against the Defendants in this matter.

On January 18, 2011, the Hearing Examiner issued a Report finding that, upon good cause shown, the Division's Motion should be granted. The Hearing Examiner further found that there was no need to provide an opportunity for comments to the Report pursuant to Rule 5 VAC 5-20-120 C of the Commission's Rules of Practice and Procedure since the Division had moved to dismiss the cases.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the January 18, 2011 Hearing Examiner's Report are hereby adopted; and
- (2) These cases are dismissed from the Commission's docket and the papers herein shall be placed in the file for ended causes.

¹ See *SCC v. Logical Fashion Inc., et al.*, Case Nos. SEC-2006-00030, SEC-2006-00028, SEC-2005-00044 and SEC-2007-00032; *SCC v. Fashion Technology Ventures, Inc. et al.*, Case Nos. SEC-2006-00079, SEC-2007-00030 and SEC-2007-00029 ("companion cases").

² A decision in *State Corporation Commission v. Holiday*, Case No. SEC-2007-00030, is still pending.

**CASE NOS. SEC-2007-00067 AND SEC-2009-00030
MARCH 18, 2011**

COMMONWEALTH OF VIRGINIA, *ex. rel.*
STATE CORPORATION COMMISSION

v.
BYRON HALE DELAVAN, JR.
and
AMERICAN RECOVERY SERVICES, LLC,
Defendants

JUDGMENT ORDER

On April 30, 2009, the State Corporation Commission ("Commission") issued Rules to Show Cause ("Rules") against Byron Hale Delavan, Jr. ("Delavan"), and American Recovery Services, LLC ("ARS") (collectively, "Defendants"). The Rules alleged numerous violations of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia. Specifically, the Division alleged that between the years 2000 through 2006, ARS issued various promissory notes ("Notes") through Delavan to several Virginia investors under the representation that the proceeds from those investors' funds would be used for ARS business purposes. It was also alleged that the Defendants made material misrepresentations and omissions of fact in connection with the offer and sale of the Notes.

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled a three-day evidentiary hearing beginning on September 30, 2009. Additionally, the Rules ordered the Defendants to file a responsive pleading on or before May 22, 2009, in which the Defendants were required to expressly admit or deny the allegations in the Rules and present any affirmative defenses that they intended to assert.

On June 19, 2009, the Defendants, by counsel, filed their Answer. The Defendants admitted that from 2000 to 2006, ARS issued various promissory notes to several Virginia residents under the representations that the proceeds would be used for ARS business. The Defendants denied that the majority of those funds were used for purposes unrelated to ARS business or that Delavan converted the funds for his own personal use. Further, the Defendants denied that the Notes are securities as defined under the Virginia Securities Act.

At the request of the Defendants' counsel and pursuant to a Hearing Examiner's Ruling dated September 21, 2009, the hearing was rescheduled for December 2, 2009.

An evidentiary hearing on the Rules was held on December 2, 3, 4, and 8, 2009. The Division of Securities and Retail Franchising ("Division") was represented by its counsel, Gauhar R. Naseem, Esquire. The Defendants were represented by James C. Cosby, Esquire, and Peter Reeves, Esquire.

The Division presented the testimony of Gail Moore, Senior Investigator in the enforcement section of the Division, along with documentary proof of the ARS Notes and bank records and transactions associated with ARS and the Virginia investors. Additionally, the Division presented the testimony of three Virginia investors who testified as to the facts surrounding their transactions and dealings with Delavan and ARS.

Delavan testified on his own behalf. The Defendants also presented the testimony of Walter Kelley, an individual who provided legal services for the Defendants, and had also loaned money to ARS and received a promissory note in return.

On February 26, 2010, the Division filed its Post Hearing Brief. In its brief, the Division maintained that the Notes issued by ARS and sold by Delavan are securities under Virginia law and that based on the evidence introduced at the hearing, it had proven by clear and convincing evidence that the Defendants made material misrepresentations and omissions in the sale of ARS Notes and misappropriated investor funds in a practice and course of business that operated or would have operated as a fraud or deceit upon ARS Noteholders. The Division requested the maximum penalty of \$5,000 per violation and sought a permanent injunction that would preclude the Defendants from transacting business in securities in any capacity in the Commonwealth.

On February 26, 2010, the Defendants filed their Post Hearing Brief wherein they stated that the Division failed to prove by clear and convincing evidence any of the allegations in the Rules. The Defendants also argued that the ARS Notes were merely loans and lack any of the characteristics of a security.

On March 29, 2010, the Hearing Examiner issued a Ruling in which he directed the parties to file supplemental briefs on the use of court-approved methodologies for proving the sources and uses of specific cash. On April 16, 2010, the parties filed Supplemental Briefs addressing this issue.

On September 23, 2010, the Hearing Examiner issued his report ("Report"), which thoroughly summarized the factual and procedural history of this case, as well as the evidence and arguments presented at the hearing. In his Report, the Hearing Examiner found that: (i) the ARS Notes are securities as the term is defined in § 13.1-501 of the Act; (ii) the Division did not allege any violations of the Act for failure to register pursuant to §§ 13.1-504 and 13.1-507 of the Act; (iii) the Division failed to prove the Defendants violated § 13.1-502 (2) of the Act for misuse of proceeds from the ARS Notes in violation of their express terms; (iv) the Division failed to prove the Defendants violated § 13.1-502 (2) of the Act for failure to advise ARS Noteholders of the circumstances of Delavan's termination from Shearson Lehman, Inc.; and (v) the Division failed to prove by clear and convincing evidence that the Defendants engaged in any transaction, practices, or courses of business that operated as a fraud or deceit on any ARS Noteholders in violation of § 13.1-502 (3) of the Act. Accordingly, the Hearing Examiner recommended that the Rules be dismissed.

On October 14, 2010, the Division filed comments to the Report and asked that the Commission enter a ruling remanding the case back to the Hearing Examiner for further proceedings, or for the Hearing Examiner to reconsider the case. The Defendants did not file comments.

NOW THE COMMISSION, upon consideration of the Rules, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's recommendation to dismiss the Rules should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The Rules to Show Cause issued in these cases are hereby DISMISSED; and
- (2) The papers herein shall be filed among the ended cases.

**CASE NOS. SEC-2007-00072, SEC-2008-00064, SEC-2008-00063, AND SEC-2008-00062
JANUARY 20, 2011**

COMMONWEALTH OF VIRGINIA, *ex. rel.*
STATE CORPORATION COMMISSION

v.

FIRM GRIP BUSINESS MANAGEMENT AND HOLDING COMPANY, LLC,
FIRM GRIP FINANCIAL SERVICES, LLC,
CHARLES ELSTON,
and
ROSE ELSTON,
Defendants

SETTLEMENT ORDER

The Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") conducted an investigation of Firm Grip Business Management and Holding Company, LLC ("Firm Grip"), Firm Grip Financial Services, LLC ("Firm Grip Financial"), Charles Elston ("Elston") and Rose Elston (collectively, "Defendants"), pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), §§ 13.1-501 *et seq.* of the Code of Virginia.

On July 15, 2008, the Commission issued Rules to Show Cause ("Rules") in the above-captioned cases. The Rules alleged, among other things, that Firm Grip and Firm Grip Financial offered a program whereby an investor would enter into an investment contract, pay an initial lump sum payment to Firm Grip Financial, and in exchange for that initial lump sum payment, Firm Grip and Firm Grip Financial, with no additional involvement from the investor, would pay off the investor's mortgage. A portion of the initial investment money was sent to Clint Eastman ("Eastman") in Kansas, who was identified as the financial strategist for Firm Grip and Firm Grip Financial. The investors' mortgages have not been paid as promised, nor have they been able to get their original investment back from Firm Grip or Firm Grip Financial. None of the Defendants were registered with the Division to sell securities in the Commonwealth of Virginia, nor were they exempt from registration.

The Rules alleged that the Defendants: (i) violated § 13.1-507 of the Act, in that they offered and sold securities, in the form of investment contracts, that were not registered under the Act nor exempt from registration; and (ii) violated § 13.1-502(2) of the Act by omitting certain material facts necessary in order to make the statements made to potential investors, in light of the circumstances under which they were made, not misleading, in that they failed to provide adequate risk warnings to potential investors and failed to provide material information, including the fact that Eastman had filed for bankruptcy.

Additionally, the Rules alleged that Firm Grip, Elston and Rose Elston violated § 13.1-502(3) of the Act by engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in that they continued to sell investments after being informed by the Division of their concern for the safety of the money which had been forwarded to Eastman, that the investments needed to be registered, that there was evidence that the financial strategist's claims as to potential returns were not valid, and that the program would not be able to meet its obligations to investors.

Finally, the Rules alleged that (i) Firm Grip violated § 13.1-504 B of the Act by selling securities through Elston, Rose Elston, and others who were not registered with the Division as agents of the issuer, and that (ii) Elston and Rose Elston violated § 13.1-504 A of the Act by selling securities issued by Firm Grip without being duly registered with the Division as agents of the issuer.

If the standards of the statute are met, the Commission is authorized by § 13.1-506 of the Act to revoke the Defendants' registrations, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order the Defendants to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants neither admit nor deny these allegations but admit to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) Within fifteen (15) days of the date of entry of this Order, the Defendants will notify each investor of the settlement and provide a copy of this Settlement Order to each investor. The Defendants will submit certified mail receipts to William R. Ward, Senior Investigator, Division of Securities and Retail Franchising, State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219, within thirty (30) days of the date of entry of this Order, as proof that this requirement has been satisfied.

(2) Starting on January 31, 2011, the Defendants will divide funds Elston received as salary and commissions from Firm Grip in the total amount of Seventy Thousand Dollars (\$70,000) and make equal payments to each identified investor of Firm Grip. The Defendants will pay a total of Three Thousand One Hundred Twenty-five Dollars (\$3,125) every other month, payable in installments of \$125 to each investor, no later than the last day of every other month, directly to each investor at the investors' last known addresses. These payments will continue bi-monthly until all investors identified by the Division are paid their proportionate share (\$2,800) of the monies being disgorged by the Defendants.

(3) By the last day of each month when payment is due, the Defendants will send a status report by e-mail to William R. Ward at Bill.Ward@scc.virginia.gov, specifying the date, amount, and to whom each payment was made that month. This e-mail also will include a copy of the certified mailing receipts and a copy of the checks as proof of the required payments.

(4) Elston and Rose Elston will provide an affidavit and attorney proffer detailing their and Eastman's involvement with Firm Grip and Firm Grip Financial, as well as a detailed outline of where, to the best of their knowledge, investor money is currently located.

(5) Elston and Rose Elston will be permanently enjoined from registering or transacting business as a broker-dealer, agent of a broker-dealer, agent of an issuer, investment advisor, or investment advisor representative and from selling securities within the Commonwealth of Virginia upon the date of entry of this Order.

(6) The Defendants will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

The Commission, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in the settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants fully comply with the aforesaid terms and undertakings of this settlement; and
- (3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

**CASE NO. SEC-2007-00079
APRIL 8, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
STEPHEN JAMES KAUFMANN,
Defendant

FINAL ORDER

On January 10, 2011, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Stephen James Kaufmann ("Defendant") alleging that the Defendant had violated the terms of a Settlement Order entered by the Commission on July 15, 2008 ("2008 Settlement Order"). The Commission directed the Defendant to file a response to the Rule on or before January 25, 2011, and scheduled an evidentiary hearing for February 16, 2011.

On January 24, 2011, the Defendant filed his Response to the Rule. The Defendant indicated that his current medical condition would make it difficult for him to attend the scheduled hearing.

On February 1, 2011, the Division of Securities and Retail Franchising ("Division"), by counsel, filed a Motion for Continuance. In support of its Motion, the Division stated that it had communicated with the Defendant and verified that the Defendant's medical condition would make any appearance at the scheduled hearing difficult. The Division agreed to continue the matter generally.

By Hearing Examiner's Ruling dated February 3, 2011, the evidentiary hearing was cancelled and the case was continued generally.

On March 31, 2011, the Division filed a Motion to Dismiss. In support, the Division stated that: (i) the Defendant had forwarded payment of all outstanding amounts due under the 2008 Settlement Order entered by the Commission; (ii) the Division would not seek to impose any further penalties on the Defendant for contempt pursuant to § 12.1-33 of the Code of Virginia; and (iii) the Division recommended that the Rule be dismissed.

On April 4, 2011, the Hearing Examiner issued his Report. In his Report, he found that the Division's Motion to Dismiss should be granted and the comment period waived.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the April 4, 2011, Hearing Examiner's Report are hereby adopted.
- (2) The papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. SEC-2008-00043
JANUARY 12, 2011**

COMMONWEALTH OF VIRGINIA, *ex. rel.*
STATE CORPORATION COMMISSION

v.

ENTITY PRIVATE HELD MORTGAGES, LLC,
Defendant

JUDGMENT ORDER

On May 17, 2010, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") at the request of the Division of Securities and Retail Franchising ("Division") against Jonathan Keese, individually, and as the managing member of Entity Professionals, LLC, Entity Value Fund, LLC, and Entity Private Held Mortgages, LLC ("EMortgages") (collectively, "Defendants"). The Rule alleged various violations of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for September 29 and 30, 2010. Additionally, the Rule ordered the Defendants to file a responsive pleading on or before July 1, 2010, in which the Defendants were required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that they intended to assert. The Defendants were advised that they may be found in default if they failed to either timely file a responsive pleading or other appropriate pleading, or if they filed such pleading and failed to make an appearance at the hearing. If found in default, the Defendants were advised that they would be deemed to have waived all objections to the admissibility of evidence and may have entered against them a judgment by default imposing some or all of the sanctions permitted by law.

On August 6, 2010, the Division filed a Motion to Amend Rule to Show Cause ("Amended Rule"). In support, the Division stated that it had been unable to effect proper service of the Rule on the Defendants and requested entry of an Amended Rule so that it could have the Sheriff's Office serve the Amended Rule on the Defendants.

By Hearing Examiner's Ruling entered on August 10, 2010, the Division's Motion was granted and the evidentiary hearing scheduled for September 29 and 30, 2010, was cancelled. Additionally, the Hearing Examiner certified the Ruling to the Commission and recommended that, among other things, (i) the style of the case be amended to reflect that Jonathan Keese individually, and as the managing member of EMortgages violated certain sections of the Act and (ii) the Commission enter the Amended Rule attached to the Division's Motion.

On September 3, 2010, the Commission entered the Amended Rule which rescheduled the evidentiary hearing for November 8 and 9, 2010, and directed the Defendants to file an answer or other responsive pleading on or before September 27, 2010.

On October 27, 2010, the Division filed a Motion for Default. In support, the Division stated that EMortgages had not filed an answer or other responsive pleading to the Amended Rule. The Division provided legal authority for the Commission to enter a default judgment and provided a sworn affidavit and supporting exhibits from Tom Bayly, investigator with the Division, as well as evidence to establish proper service of the Amended Rule.

The evidentiary hearing was convened as scheduled on November 8, 2010. EMortgages appeared by its acting chief executive officer and registered agent, Jimmie D. Hamm, Jr.¹ The Division appeared by its counsel, Debra M. Bollinger, Esquire. One public witness appeared at the hearing, Steven C. Wells. The Division presented the testimony of Tom Bayly along with documentary proof to provide the facts necessary to prove the allegations set forth in the Amended Rule. Mr. Bayly's sworn affidavit with attachments was offered into the record as an exhibit. Additionally, the Division requested that the Hearing Examiner recommend to the Commission (i) in lieu of monetary penalties, EMortgages be ordered to make restitution to its investors; and (ii) EMortgages be permanently enjoined from any future violations of the Virginia Securities Act.

On November 17, 2010, the Hearing Examiner issued his Report. In his Report, he found that (i) The EMortgages' membership units are investment contracts and are securities as defined in § 13.1-501 of the Code of Virginia and were not registered or exempt from registration pursuant to Title 13 of the Code of Virginia; (ii) EMortgages violated § 13.1-502 (2) of the Code of Virginia on 148 occasions by obtaining money from 74 investors by means of an untrue statement of material fact in the EMortgages Subscription Agreement and an untrue statement of material fact in the EMortgages Confidential Private Offering document; (iii) EMortgages, an unregistered broker-dealer, violated § 13.1-504 B of the Code of Virginia on 74 occasions by employing Jonathan Keese, an unregistered agent, to act as its agent in the offer and sale of EMortgages' membership units/investment contracts; and (iv) EMortgages violated § 13.1-507 of the Code of Virginia on 74 occasions by selling unregistered securities, EMortgages' membership units/investment contracts to 74 investors.

The Hearing Examiner recommended to the Commission that (i) the Commission should adopt the findings and recommendations contained in the Report; (ii) the Motion for Default Judgment should be granted; (iii) the Commission should order EMortgages to make restitution to its investors; and (iv) EMortgages should be permanently enjoined from any future violations of the Virginia Securities Act. Additionally, the Report allowed EMortgages twenty-one (21) days in which to provide comments. EMortgages did not file comments.

NOW THE COMMISSION, upon consideration of the Amended Rule, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the November 17, 2010, Hearing Examiner's Report are hereby adopted;
- (2) The Division's Motion for Default Judgment is hereby GRANTED;

¹ Since Mr. Hamm is not a licensed attorney in the Commonwealth of Virginia, he could not represent the interests of EMortgages. See 5 VAC 5-20-30 of the Commission's Rules of Practice and Procedure.

- (3) Pursuant to § 13.1-521 of the Virginia Securities Act, EMortgages shall make restitution to its Virginia investors;
- (4) Pursuant to § 13.1-519 of the Virginia Securities Act, EMortgages is permanently enjoined from violating the Act in the future; and
- (5) This case is dismissed from the Commission's docket and the papers herein shall be placed in the file for ended causes.

**CASE NO. SEC-2008-00065
JANUARY 24, 2010**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
MADELINE FORTUNATO,
Defendant

FINAL ORDER

On May 7, 2009, Defendant, Madeline Fortunato, entered into a Commission Settlement Order as a proposal to settle all matters arising out of violations of the Virginia Securities Act, § 13.1-501 *et seq.*, of the Code of Virginia ("Act") alleged by the Division to have been made by the Defendant. Pursuant to the terms of the Settlement Order, the Defendant was required to pay monetary penalties in the amount of Seven Thousand Five Hundred Dollars (\$7,500) to be paid in monthly installments of Five Hundred Dollars (\$500). Additionally, pursuant to the terms of the Settlement Order, the Defendant was required to pay Five Thousand Dollars (\$5,000) to defray the cost of investigation to be paid in monthly installments of One Thousand Dollars (\$1,000).

Subsequently, due to the Defendant's financial condition and other attendant circumstances, the Commission amended the previously entered Settlement Order reducing the amount of payments to defray the cost of investigation from One Thousand Dollars (\$1000) per month to Five Hundred Dollars (\$500) per month and amended the due date for payment to the 15th of each month. All other terms and conditions of the Settlement Order remained in full force and effect.

On January 12, 2011, the Division filed its Motion to Dismiss in this matter. In its Motion to Dismiss, the Division states the Defendant has satisfied all payments to defray the cost of investigation in this matter and has paid approximately One Thousand Five Hundred Dollars (\$1,500) towards satisfying her penalty obligations under the Settlement Order. The Division further states that the Defendant had routinely made payments to satisfy her obligation to pay the monetary penalties under the Settlement Order, but has recently encountered significant financial hardship due to her serious medical condition. The Division states that paying the remaining penalties has become overly burdensome due to the Defendant's mounting medical bills and the Defendant is no longer able to make any further payments.

Under the circumstances as represented, the Division proposes that the Defendant be released from her remaining payment obligations under the Settlement Order and that this case be dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant be released from all payment obligations under the previously entered Settlement Order and the Amended Settlement Order.
- (2) This case be dismissed from the Commission's docket and the papers herein shall be placed in the file for ended causes.

**CASE NO. SEC-2008-00114
OCTOBER 21, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
THOMAS J. WILEY, SR.,
and
NUMATEX, INC.,
Defendants

FINAL ORDER

On February 22, 2011, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Thomas J. Wiley, Sr. and Numatex, Inc. (collectively, "Defendants"), that, among other things, set this case to be heard before the Commission's Hearing Examiner on March 24, 2011. In the Rule, the Division of Securities and Retail Franchising ("Division") alleged that the Defendants had violated the terms of a previous Commission Settlement Order entered on June 23, 2009.

The Defendants filed a response to the Rule on April 25, 2011. After granting two (2) requests by the Division to continue the hearing in this matter, the Division filed a Motion to Dismiss ("Motion") on October 11, 2011. In support of its Motion, the Division stated that the Defendants had complied with all terms of the previously entered Commission Settlement Order.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

On October 17, 2011, Alexander F. Skirpan, Jr., Senior Hearing Examiner, issued his Report. In his Report, the Hearing Examiner recommended that the Division's Motion should be granted and the matter dismissed based on the Division's representation that the Defendants had complied with all the terms of the previously entered Settlement Order.

NOW THE COMMISSION, upon consideration of the Rule, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the October 17, 2011, Hearing Examiner's Report are hereby adopted.
- (2) This case is dismissed and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NOS. SEC-2009-00052 AND SEC-2009-00099
JANUARY 31, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

THOMAS R. MAY,
SWEET SEATS, LLC,
Defendants

FINAL ORDER

On March 11, 2009, the Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") opened an investigation of Thomas R. May and Sweet Seats, LLC (collectively, "Defendants"), pursuant to § 13.1-518 of the Virginia Securities Act ("Act") in response to a referral from the Virginia Attorney General's Office. On June 9, 2009, the Commission issued its Subpoena To Produce Documents ("Subpoena"), ordering the Defendants to produce the requested documents on or before July 15, 2009.

Based on allegations from the Division that Defendants failed to produce all of the subpoenaed documents, on August 18, 2009, the Commission issued its Rule To Show Cause in which it, among other things: (i) ordered the Defendants to appear before the Commission on September 22, 2009, and show cause why they should not be held in contempt of the Commission and ordered to produce the documents forthwith, and why Defendants should not be penalized pursuant to §§ 12.1-33 and 13.1-521 of the Code of Virginia for refusing to comply with the Commission's subpoena; and (ii) assigned this matter to a Hearing Examiner.

A hearing was convened on September 22, 2009, as scheduled. At the hearing, counsel for the Division stated that he had received that very morning, a set of documents produced by the Defendants. The Division asked that the proceeding be continued generally, to provide the Division with adequate time to review the documents to determine if the Defendants had complied with the subpoena. The Division's request was granted and the matter was continued generally, pending further motion from the Division.

Subsequently, the Division filed separate Motions to Dismiss for each Defendant in the above-captioned cases. In its Motions to Dismiss, the Division stated that after conducting an investigation, the Division found that the Defendants had committed no enforceable violations of the Act.

On December 1, 2010, the Hearing Examiner issued a Report finding that, based on the pleadings and the Division's findings that the Defendants had committed no enforceable violations of the Act, the Motions to Dismiss in both cases should be granted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the December 1, 2010 Hearing Examiner's Report are hereby adopted; and
- (2) Case Nos. SEC-2009-00052 and SEC-2009-00099 are dismissed from the Commission's docket and the papers herein shall be placed in the file for ended causes.

**CASE NOS. SEC-2009-00075, SEC-2009-00076, SEC-2009-00077, SEC-2009-00078,
SEC-2009-00079, SEC-2009-00080, SEC-2009-00082, SEC-2009-00105, SEC-2009-00106,
SEC-2009-00107, SEC-2009-00115, SEC-2009-00116, SEC-2009-00117, SEC-2009-00121,
SEC-2010-00019, SEC-2010-00057, AND SEC-2010-00058
MARCH 31, 2011**

COMMONWEALTH OF VIRGINIA, *ex. rel.*
STATE CORPORATION COMMISSION

v.

JULIUS EVERETT JOHNSON, WALTER RAY REINHARDT, BENEFIT CONTRACT ADMINISTRATORS, INC., MHC LINEN SERVICES, LLC, RIVER CITY CLEANERS, LLC, ROBERTS AWNING RESTORATION AND RENEWAL, LLC, *f/k/a* ROBERTS AWNING, LLC, JULIUS EVERETT JOHNSON *d/b/a* BENEFIT CONTRACT ADMINISTRATORS, LLC, FIRST FIDELITY FINANCIAL OF RICHMOND, LLC, CAPITAL INVESTOR GROUP, INC., COMMONWEALTH ASSURITY, LLC, MID ATLANTIC INSURANCE AGENCIES, INC., FIC FINANCIAL GROUP, INC., LIVINGWELL HEALTHCARE OF VIRGINIA, LLC, EVERETT AWNINGS, INC. *d/b/a* ROBERTS AWNING, NORVELL AWNING GROUP, LLC, JULIUS EVERETT JOHNSON *d/b/a* NORTH CAROLINA GROUP BENEFITS, INC., PUBLIC BENEFIT CONSULTANTS, INC.,

Defendants

JUDGMENT ORDER

On February 8, 2010, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule I") against Julius Everett Johnson ("Johnson"); Walter Ray Reinhardt ("Reinhardt"); Benefit Contract Administrators, Inc. ("Benefit Contract Inc."); MHC Linen Services, LLC ("MHC Linens"); River City Cleaners, LLC ("River City"); Roberts Awning Restoration and Renewal, LLC *f/k/a* Roberts Awning, LLC ("Roberts R&R"); Julius Everett Johnson *d/b/a* Benefit Contract Administrators, LLC ("Benefit Contract, LLC"); First Fidelity Financial of Richmond, LLC ("First Fidelity"); Capital Investor Group, Inc. ("Capital Investor"); Commonwealth Assurity, LLC ("Commonwealth Assurity"); Mid Atlantic Insurance Agencies, Inc. ("Mid Atlantic"); FIC Financial Group, Inc. ("FIC Financial"); LivingWell Healthcare of Virginia, LLC ("LivingWell"); and Everett Awnings, Inc. *d/b/a* Roberts Awning ("Everett") based on allegations by the Commission's Division of Securities and Retail Franchising ("Division") that the Defendants had violated the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

In Rule I the Commission provided the Defendants an opportunity to respond to the Commission as to why the Temporary Injunction granted on October 28, 2009, should not be extended until such time as the allegations contained in Rule I are resolved by further action of the Commission. The Commission granted the Defendants until February 22, 2010, to file a response. No response was filed, and the Temporary Injunction was extended until further action of the Commission.

On June 3, 2010, the Commission issued an additional Rule to Show Cause ("Rule II") against Johnson and Reinhardt, and against Norvell Awning Group, LLC ("Norvell"), Julius Everett Johnson *d/b/a* North Carolina Group Benefits, Inc. ("NC Group"), and Public Benefit Consultants, Inc. ("Public Benefit") (collectively, Rule I and Rule II are the "Rules").

The Rules, among other things, scheduled an evidentiary hearing for July 22, 2010 and assigned the matter to a Hearing Examiner to conduct all further proceedings in this case.

For purposes of simplified identification, the companies under Johnson's control include: Benefit Contract Inc., MHC Linens, River City, Roberts R&R, Benefit Contract, LLC, Mid Atlantic, FIC Financial, LivingWell, Everett, Norvell, NC Group, and Public Benefit, (collectively, "the Johnson Companies"). The companies under Reinhardt's control include: First Fidelity, Capital Investor, and Commonwealth Assurity (collectively, "the Reinhardt Companies").

On April 23, 2010, and July 1, 2010, respectively, Johnson and the Johnson Companies filed a response to the Rules. Each response indicated that due to an on-going federal investigation, Johnson and the Johnson Companies declined to respond to the substantive allegations of the Rules on the grounds of the Fifth Amendment to the United States Constitution.

Evidentiary hearings for these matters were held on July 22, 23, and 26, 2010. Michael L. Unti, Esquire; Leah Landerman, Esquire; and David H. Worrell, Jr., Esquire, appeared on behalf of Johnson and the Johnson Companies. Reinhardt appeared *pro se*. Debra M. Bollinger, Esquire, and C. Maureen Stinger, Esquire, appeared on behalf of the Division.

During the hearing, the Division offered, and the Hearing Examiner accepted into the record numerous exhibits, including: (i) the Requests for Admission for Johnson, (ii) the Requests for Admission for Reinhardt, (iii) the deposition transcript of Henry W. Morrow, and (iv) the deposition transcript of Thomas David Myers. In addition, the Division called twenty witnesses, including eighteen witnesses that had transactions with the Defendants.

Counsel for Johnson and the Johnson Companies stated that because of an ongoing federal criminal investigation, the Defendants could not defend themselves against the Division's allegations "without jeopardizing or impinging on their Fifth Amendment rights."¹ Thus, the Defendants did not present testimony.

In its Post-Hearing Brief ("Brief"), the Division contended that it provided clear and convincing evidence of the violations of the Act.² Also, in its Brief, the Division requested that the Defendants be ordered to make restitution in the amount of \$11,347,906.34.³ In addition, the Division asked that if

¹ Transcript at 9.

² Division Brief at 46-47.

³ *Id.*

the Commission were to assess penalties in these cases, the Division would request the maximum penalty of \$10,000 per violation.⁴ Finally, the Division asked for a permanent injunction that precludes the Defendants from transacting business in securities in any capacity in the Commonwealth.⁵

In its Post-Hearing Memorandum, Johnson and the Johnson Companies attempted to establish the Division's opening statement at the hearing as the legal standard of this proceeding and then presented arguments that the Division failed to prove certain contentions made in its opening statement. Johnson and the Johnson Companies argued that the Division failed to prove "that Mr. Johnson intentionally sold securities in violation of Rule 506 of Regulation D of the U.S. Securities and Exchange Commission."⁶ Among other things, Johnson contended that (i) the investors were given the required disclosures and sufficient opportunity to review the disclosures; (ii) Johnson reasonably believed that the investors were either accredited or sophisticated; and (iii) Johnson did not knowingly advertise corporate notes for his companies.⁷ Finally, Mr. Johnson and the Johnson Companies outlined a repayment plan, the details of which "shall be submitted to the Commission under separate cover . . ."⁸

On December 7, 2010, the Hearing Examiner issued his Report. In addressing the issues raised by the Division and Johnson and the Johnson Companies in regard to whether the securities issued in this proceeding are subject to an exemption pursuant to Regulation D, Rule 506 of the Securities Act of 1933, the Hearing Examiner thoroughly examined (i) the burden of proof; (ii) whether the failure to file the SEC Form D notice document and a filing fee with the Division, pursuant to 21 VAC-5-45-20, had any impact on an exemption pursuant to Rule 506; and (iii) whether the offerings complied with the conditions required for an exemption from registration pursuant to Regulation D.

In his Report, the Hearing Examiner found that (i) the Defendants failed to meet their burden of proving that the securities in question were exempt from registration, and he further found that the securities were public offerings and were sold to investors who lacked the knowledge and experience necessary to evaluate the merits and risks of the securities; (ii) the Division presented clear and convincing evidence that Johnson, the Johnson Companies, and Reinhardt violated § 13.1-507 of the Act with the sale of each unregistered note for the Johnson Companies; (iii) the Division presented clear and convincing evidence that Johnson, Reinhardt, and the Reinhardt Companies committed acts which violated § 13.1-504 A of the Act; (iv) the Division presented clear and convincing evidence that Johnson, the Johnson Companies, and Reinhardt committed acts which violated § 13.1-504 B of the Act; (v) the Division presented clear and convincing evidence that Johnson, Reinhardt, and the Reinhardt Companies committed acts which violated § 13.1-502 (2) of the Act; and (vi) the Division presented clear and convincing evidence that Johnson and the Johnson Companies committed acts which violated § 13.1-502 (3) of the Act. The Hearing Examiner found that the Division presented clear and convincing evidence that the Defendants committed 3,743 violations of the Act. Additionally, based on the record in this case, the Hearing Examiner agreed with the Division's recommended sanctions of restitution of principal to purchasers of the securities or an assessment of the maximum penalty of \$10,000 per violation, or \$37,430,000.

On December 28, 2010, the Division filed Comments to the Hearing Examiner's Report in which the Division indicated that: (1) it agreed with the Hearing Examiner's lengthy discussion of the requirements of Regulation D, Rule 506, but that the Hearing Examiner had gone too far in indicating in the Report that the Commission's requirement to make a notice filing and pay the requisite filing fee had no impact on determining whether a security is exempt under Regulation D, Rule 506, and (2) that the Hearing Examiner had mistakenly failed to recommend the Division's request that the Commission impose a permanent injunction from transacting business in securities in any capacity in the Commonwealth.

None of the Defendants filed any comments to the Hearing Examiner's Report.

NOW THE COMMISSION, upon consideration of the Rules, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted, and that it is noted that Commission Rule 21 VAC 5-245-20 is not inconsistent with the provisions of Regulation D, Rule 506 of the Securities Act of 1933.

Accordingly, IT IS ORDERED THAT:

(1) The findings and recommendations of the December 7, 2010, Hearing Examiner's Report are hereby adopted, and that it is noted that Commission Rule 21 VAC 5-245-20 is not inconsistent with the provisions of Regulation D, Rule 506 of the Securities Act of 1933.

(2) In accordance with the Commission's regulatory duties and powers pursuant to § 13.1-521 A of the Act, judgment is entered for the Commonwealth against the Defendants in the amount of \$37,430,000 as outlined in the Hearing Examiner's Report. The penalty will be waived if the Defendants pay restitution of approximately \$11,347,906.34 within one year to the investors designated in the record of the case.

(3) Defendants Capital Investor Group, Inc. and Everett Awnings, Inc. d/b/a Roberts Awning are dismissed from this action in accordance with the Hearing Examiner's finding that neither Defendant violated the Act⁹.

(4) The Temporary Injunction that was in place on October 28, 2009, shall remain in place until such time as the Commission makes a further determination on the instant injunction. The Defendants will have twenty-one (21) days from the date of this Judgment Order to respond to the Commission as to why the Commission should not make the Division's recommendation for permanent injunction from transacting securities business in the Commonwealth permanent. If the Defendants fail to file a response as provided for herein, the Commission may find the Defendants in default and issue a permanent injunction.

⁴ *Id.*

⁵ *Id.*

⁶ Mr. Johnson and the Johnson Companies Post-Hearing Memorandum at 17 (typeface and case modified).

⁷ *Id.* at 17-26.

⁸ *Id.* at 33-34.

⁹ Hearing Examiner's Report at 51-52.

- (5) No cost of investigation was assessed in the bringing of this case pursuant to § 13.1-518 of the Act.
- (6) This matter is continued.

**CASE NOS. SEC-2009-00075, SEC-2009-00076, SEC-2009-00077, SEC-2009-00078,
SEC-2009-00079, SEC-2009-00080, SEC-2009-00082, SEC-2009-00105, SEC-2009-00107,
SEC-2009-00115, SEC-2009-00116, SEC-2009-00117, SEC-2010-00019, SEC-2010-00057, SEC-2010-00058
MAY 6, 2011,**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

JULIUS EVERETT JOHNSON, WALTER RAY REINHARDT, BENEFIT CONTRACT ADMINISTRATORS, INC., MHC LINEN SERVICES, LLC, RIVER CITY CLEANERS, LLC, ROBERTS AWNING RESTORATION AND RENEWAL, LLC, f/k/a ROBERTS AWNING, LLC, JULIUS EVERETT JOHNSON d/b/a BENEFIT CONTRACT ADMINISTRATORS, LLC, FIRST FIDELITY FINANCIAL OF RICHMOND, LLC, COMMONWEALTH ASSURITY, LLC, MID ATLANTIC INSURANCE AGENCIES, INC., FIC FINANCIAL GROUP, INC., LIVINGWELL HEALTHCARE OF VIRGINIA, LLC, NORVELL AWNING GROUP, LLC, JULIUS EVERETT JOHNSON d/b/a NORTH CAROLINA GROUP BENEFITS, INC., PUBLIC BENEFIT CONSULTANTS, INC.,
Defendants

ORDER

On March 31, 2011, the State Corporation Commission ("Commission") entered a Judgment Order against Julius Everett Johnson; Walter Ray Reinhardt; Benefit Contract Administrators, Inc.; MHC Linen Services, LLC; River City Cleaners, LLC; Roberts Awning Restoration and Renewal, LLC f/k/a Roberts Awning, LLC; Julius Everett Johnson d/b/a Benefit Contract Administrators, LLC; First Fidelity Financial of Richmond, LLC; Commonwealth Assurity, LLC; Mid Atlantic Insurance Agencies, Inc.; FIC Financial Group, Inc.; LivingWell Healthcare of Virginia, LLC; Norvell Awning Group, LLC; Julius Everett Johnson d/b/a North Carolina Group Benefits, Inc.; and Public Benefit Consultants, Inc. (collectively, "Defendants").

As a part of the Commission's Judgment Order entered on March 31, 2011, the Commission provided that the Temporary Injunction that was in place on October 28, 2009, shall remain in place until such time as the Commission determined whether to lift or make permanent the injunction. The Defendants were provided twenty-one (21) days from the date of the Judgment Order to respond to the Commission as to why the Commission should not make the Division's recommendation for permanent injunction from transacting securities business in the Commonwealth permanent. As a part of this provision, the Commission stated that if the Defendants failed to respond to the Division's request, the Commission may find the Defendants in default and issue a permanent injunction.

The Defendants failed to respond to the Division's request that the Commission permanently enjoin the Defendants from transacting securities business in the Commonwealth.

NOW THE COMMISSION, upon consideration of the provisions of the Judgment Order and the entire record herein, find that the Defendants are in default and should be permanently enjoined from transacting securities business in the Commonwealth of Virginia.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendants are permanently enjoined from transacting securities business in the Commonwealth of Virginia, in accordance with the Commission's regulatory duties and powers pursuant to § 13.1-519 of the Virginia Securities Act.
- (2) This case is closed and the papers filed herein shall be placed in the file for ended causes.

**CASE NOS. SEC-2009-00093, SEC-2009-00094,
SEC-2009-00095, AND SEC-2009-00097
FEBRUARY 17, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

DONNA P. MCCOY,
H. PATE MCCOY,
DONNA P. MCCOY and H. PATE MCCOY d/b/a PORTA OFFICE CYBER CAFÉ, LLC,
and
DONNA P. MCCOY and H. PATE MCCOY d/b/a MORGAN COMMUNICATIONS MEDIA, INC.,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Donna P. McCoy and H. Pate McCoy (together, the "McCoys"), individually and together as the McCoys d/b/a Porta Office Cyber Café, LLC ("Porta Office"), and the McCoys d/b/a Morgan Communications Media, Inc. ("Morgan Communications") (collectively, "Defendants"): (i) violated § 13.1-504 A of the Virginia Securities Act ("Act"), §§ 13.1-501 *et seq.* of the Code of Virginia, by transacting business in the Commonwealth of Virginia without duly being registered with the

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Division as an agent of the issuer; (ii) violated § 13.1-504 B of the Act by employing unregistered agents in the offer and sale of securities; and (iii) violated § 13.1-507 of the Act by offering and selling securities that were not registered under the Act or exempt from registration.

If the standards of the statutes are met, the State Corporation Commission is authorized by § 13.1-506 of the Act to revoke the Defendants' registrations, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order the Defendants to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants admit the allegations contained herein as well as the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) The Defendants will be permanently enjoined from registering or transacting business as a broker-dealer, agent of an issuer, investment advisor or investment advisor representative and from selling securities within the Commonwealth of Virginia.

(2) Within thirty (30) days from the date of entry of this Order, the Defendants will notify each investor located in Virginia of the settlement, and provide a copy of this Settlement Order to each such investor.

(3) The Defendants will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted.

(2) The Defendants fully comply with the aforesaid terms and undertakings of this settlement.

(3) This case is dismissed and the papers herein shall be placed in the file for ended causes.

Dismissal of this case does not relieve the Defendants from their reporting obligations to any regulatory authority.

**CASE NO. SEC-2009-00114
JULY 8, 2011**

COMMONWEALTH OF VIRGINIA, *ex. rel.*
STATE CORPORATION COMMISSION

v.

ANDREW PILZ

and

TINA PILZ D/B/A SKIN APPEAL DAY SPA, INC.,

Defendants

FINAL ORDER

The Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") conducted an investigation of Andrew Pilz and Tina Pilz d/b/a Skin Appeal Day Spa, Inc., pursuant to § 13.1-518 of the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia.

Based upon that investigation, the Division alleged that the Defendants: (i) violated § 13.1-502(2) of the Act by, directly or indirectly, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (ii) violated § 13.1-504 A of the Act by transacting business in the Commonwealth of Virginia without being duly registered with the Division as an agent of the issuer; and (iii) violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration.

The Defendants agreed to the entry of a Commission Settlement Order which was entered on June 17, 2010. Pursuant to the terms of the Settlement Order, the Defendants agreed to pay Two Hundred Ten Thousand Dollars (\$210,000) in monetary penalties and Two Thousand Four Hundred Dollars (\$2,400) to defray the costs of investigation. Such penalties and investigative costs were waived upon the condition that the Defendants make a written offer of rescission to all investors who were offered and sold securities in violation of the Act within thirty (30) days of the date of entry of the Settlement Order. Additionally, the written offer of rescission was to be provided to the Division for comment and review at least ten (10) days prior to its being sent to investors. No such written offer of rescission was furnished to the Division for review nor was any written offer of rescission made to any investor in accordance with the terms of the Settlement Order. Furthermore, no investor has received any form of restitution. Paragraph (3) of the undertakings section of the Settlement Order provided:

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The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

On December 8, 2010, the Commission issued a Rule to Show Cause ("Rule") against the Defendants. The Rule, among other things, assigned the matter to a Hearing Examiner, scheduled an evidentiary hearing for January 13, 2011, and directed the Defendants to file a responsive pleading on or before December 29, 2010. Additionally, the Rule ordered the Defendants to appear and show cause why each Defendant should not be: (i) ordered to pay the penalties as previously delineated in the Settlement Order; (ii) enjoined pursuant to § 13.1-519 of the Act from future violations; and (iii) held in contempt of the Commission's Settlement Order pursuant to § 12.1-33 of the Code of Virginia.

An evidentiary hearing on the Rule was convened on January 13, 2011. Gauhar R. Naseem, Esquire, appeared on behalf of the Division. There was no appearance by or on behalf of the Defendants. Mr. Naseem advised that he was unable to confirm proper service on the Defendants, and the Division requested a general continuance of the proceedings. The motion was granted pending further ruling of the Hearing Examiner. Subsequently, the Division filed additional motions requesting the Commission issue an Amended Rule to Show Cause and to continue the case generally in order to obtain proper service on the Defendants through the Secretary of the Commonwealth. On March 3, 2011, the Commission issued an Amended Rule to Show Cause ("Amended Rule") scheduling a hearing for April 27, 2011.

An evidentiary hearing on the Amended Rule was convened on April 27, 2011. Gauhar R. Naseem, Esquire, appeared on behalf of the Division. The Defendants failed to appear at the hearing and did not file a responsive pleading. The proof of service of the Amended Rule on the Secretary of the Commonwealth was offered into the record as an exhibit. Additionally, the Division offered a sworn affidavit and supporting exhibits from Danny Taylor, investigator with the Division, setting forth the details of the Division's investigation.

The Division asked that the Defendants be found in contempt of the June 17, 2010 Settlement Order and fined One Hundred Dollars (\$100) per day from June 17, 2010 to April 27, 2011, for a total of Thirty-one Thousand Seven Hundred Dollars (\$31,700). In addition, the Division requested that the initial penalties and investigative costs that were waived as part of the Settlement Order be reinstated.

On May 25, 2011, the Hearing Examiner issued his Report. In his report, he found that: (i) the Defendants were in default of the Amended Rule to Show Cause issued on March 3, 2011; (ii) the Defendants should be held in contempt of the Settlement Order entered on June 17, 2010, and be fined in the amount of Thirty-one Thousand Seven Hundred Dollars (\$31,700); and (iii) the penalty in the amount of Two Hundred Ten Thousand Dollars (\$210,000) and the investigative costs of Two Thousand Four Hundred Dollars (\$2,400) that were suspended in the Settlement Order should be reinstated against the Defendants. The Report allowed the parties 21 days in which to provide comments. The Defendants did not file comments.

NOW THE COMMISSION, upon consideration of the Amended Rule, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the May 25, 2011 Hearing Examiner's Report are hereby adopted;
- (2) The Defendants are in default of the March 3, 2011 Amended Rule to Show Cause;
- (3) The Defendants are in contempt of the Commission's Settlement Order pursuant to § 12.1-33 of the Code of Virginia and are hereby fined in the amount of Thirty-one Thousand Seven Hundred Dollars (\$31,700);
- (4) The penalty in the amount of Two Hundred Ten Thousand Dollars (\$210,000) and the investigative costs of Two Thousand Four Hundred Dollars (\$2,400) that were suspended in the previously entered Settlement Order of June 17, 2010, are hereby reinstated against the Defendants;
- (5) The Defendants are permanently enjoined from violating the Act in the future; and
- (6) This case is dismissed and the papers filed herein shall be placed in the file for ended causes.

**CASE NO. SEC-2009-00118
NOVEMBER 14, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
GLOBAL RETAILERS, LLC
and
BILL BUSSEY,
Defendants

CONSENT ORDER

Defendant Global Retailers, LLC ("Global Retailers"), is a Delaware corporation with its principal office located in Virginia Beach, Virginia. Defendant Bill Bussey ("Bussey") is the CEO and President of Global Retailers. In June of 2011, the Division of Securities and Retail Franchising ("Division") opened an investigation into the Defendants. On August 24, 2011, a Rule to Show Cause ("Rule") was entered against the Defendants as a result of the investigation. In the Rule, the Division alleged that, beginning in October of 2010, the Defendants solicited and sold unregistered securities in Global Retailers in violation of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.*, of the Code of Virginia and in violation of a previously entered

Commission Settlement Order. The Division also alleged that the Defendants knowingly withheld information from the Division about an unlawful securities offering during the course of a previous investigation.

By affidavits signed and submitted by both Bussey and an authorized member of Global Retailer's Board of Directors, received by the Division, in an effort to continue to work towards a settlement that will bring the Defendants into compliance with all requirements of the Act, the Defendants have agreed to the entry of an order in which they will abide by and comply with the following terms and undertakings:

(1) The Defendants are temporarily enjoined from offering or selling securities within the Commonwealth of Virginia until such time as a Judgment Order or Settlement Order has been entered in this case.

(2) Within fifteen (15) days of the date of entry of this Order, the Defendants will make available for inspection to the Division the financial records of Global Retailers including but not limited to: (i) bank statements for all Global Retailers' operating accounts containing balance and transaction information for the period of ninety (90) days preceding the date of entry of this Order; (ii) copies of Global Retailers' federal income tax returns for the three (3) most recent years; (iii) any and all financial statements prepared by Global Retailers or by any outside accountant for the three (3) most recent years which shall include balance sheets, cash flow statements, income statements and equity statements; and (iv) any other financial documents as might be requested by the Division to explain or assist in the explanation of the documents as identified in this paragraph.

(3) The Defendants agree to preserve all assets of the company including but not limited to cash, securities, retail inventory, real and personal property and any other assets or property, to the extent such assets exist, which may be applied toward any form of rescission and/or restitution that may be ordered by the Commission.

In light of the foregoing, the Division has recommended that this Consent Order be entered in this matter.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Division, is of the opinion that a Consent Order should be entered.

Accordingly, IT IS ORDERED THAT:

(1) The terms as outlined in this Consent Order are hereby accepted.

(2) The Defendants through execution of this Order, voluntarily waive their right to a hearing on this matter and to judicial review of this Order under § 13.1-521 A of the Act and § 12.1-39 of the Code of Virginia.

(3) The Defendants enter into this Order voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce the Defendants to enter into this Order.

(4) Entry of this Order will not preclude the Division from taking any actions and pursuing any remedies available under the Act for any violations of the Act discovered by the Division through the course of discovery or by investigation.

(5) Entry of this Order does not waive any rights, defenses or remedies available to the Defendants by law or under the Act in any proceeding against the Defendants before the Commission.

(6) This Order shall be binding upon the Defendants and each of its successors and assigns with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

**CASE NOS. SEC-2010-00040 AND SEC-2010-00043
FEBRUARY 8, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

WINDOW GANG VENTURES CORPORATION

and

TIMOTHY MCCULLEN,

Defendants

FINAL ORDER

On September 21, 2010, the State Corporation Commission ("Commission") entered a Settlement Order ("Order") in this case. The staff of the Division of Securities and Retail Franchising has now reported to the Commission that the Defendants have fulfilled the requirements of the Order.

Accordingly, IT IS ORDERED THAT:

(1) This case is dismissed.

(2) All undertakings and provisions of a continuing nature set forth in the prior Order remain in full force and effect.

(3) Entry of this Final Order shall not affect any duty or obligation to disclose the existence or nature of this matter or of any order entered herein.

(4) The papers herein shall be filed among the ended cases.

**CASE NOS. SEC-2010-00046, SEC-2010-00047, SEC-2010-00048
SEC-2010-00049 AND SEC-2010-00051
NOVEMBER 22, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

TECSEC, INC.,
JOHN R. PETTY
POLK RUN, LLC
EDWARD M. SCHEIDT,
ARL JOSEPH WACK,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that TecSec, Inc., John R. Petty, Polk Run, LLC, Edward M. Scheidt, and Carl Joseph Wack (collectively, "Defendants"): (i) violated § 13.1-502 (2) of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia by, directly or indirectly, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (ii) violated § 13.1-504 A (i) of the Act by transacting business in the Commonwealth of Virginia without duly being registered with the Division; (iii) violated § 13.1-507 A of the Act by offering or selling securities that were not registered under the Act or exempt from registration; and (iv) Defendants TecSec, Inc. and Polk Run, LLC violated § 13.1-504 B of the Act by employing unregistered agents in the offer and sale of securities.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Act to revoke the Defendants' registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order the Defendants to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants neither admit nor deny these allegations but admit to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) The Defendants will pay to the Treasurer of the Commonwealth of Virginia the amount of Five Thousand Dollars (\$5,000) in monetary penalties.

(2) Defendant TecSec, Inc., will make a rescission offer to all shareholders.

(a) Within thirty (30) days of the date of this Settlement Order, TecSec, Inc., will make a written offer of rescission sent by certified mail to all shareholders, which will include an offer to pay all shareholders \$.06 a share, and a provision that gives all shareholders thirty (30) days from the date of receipt of the rescission offer to provide TecSec, Inc., with written notification of their decision to accept or reject the offer.

(b) TecSec, Inc., will provide to the Division a copy of the rescission offer for its review and comment at least ten (10) days before sending it to all shareholders.

(c) TecSec, Inc., will include with the written offer of rescission a copy of this Settlement Order.

(d) If the rescission offer is accepted, TecSec, Inc., will forward the payment to the shareholder within fifteen (15) days of receipt of the acceptance.

(e) Within sixty (60) days from the date of the Settlement Order, TecSec, Inc., will submit to the Division proof of certified mailing of the rescission offer and an affidavit, executed by John R. Petty, Edward M. Scheidt, and Carl Joseph Wack, which contains the date on which each shareholder received the offer of rescission, the shareholder's response, and, if applicable, the amount and the date that payment was sent to the shareholder.

(3) The Defendants will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

The Commission, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants fully comply with the aforesaid terms and undertakings of this settlement; and
- (3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

NOTE: A copy of Attachment A entitled "Admission and Consent" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. SEC-2010-00053
JULY 22, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

LELAND OTTO STEVENS,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Leland Otto Stevens ("Defendant"): (i) violated § 13.1-502 (2) of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by directly or indirectly, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (ii) violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration; (iii) violated Securities Rule 21 VAC 5-20-280 B (2) by effecting any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction; and (iv) violated Securities Rule 21 VAC 5-20-280 B (6) as referenced in Securities Rule 21 VAC 5-20-280 A (3), by recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objective, financial situation, risk tolerance and needs, and any other relevant information known by the broker-dealer.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Act to revoke the Defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order the Defendant to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendant admits to the allegations of § 13.1-507 of the Act and Securities Rule 21 VAC 5-20-280 B (2), neither admits nor denies the allegations of § 13.1-502 (2) of the Act or Securities Rule 21 VAC 5-20-280 B (6), and admits to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

- (1) The Defendant will pay to the Treasurer of the Commonwealth of Virginia the amount of One Hundred Fifty Thousand Dollars (\$150,000) in monetary penalties. However, One Hundred Forty Thousand Dollars (\$140,000) of the amount of the penalty has been suspended based upon (i) the Defendant's admission to the specified violations in this Settlement Order; and (ii) the Defendant does not engage in any further violations of the Act or the Commission's Securities Rules.
- (2) The Defendant is enjoined from registering or transacting business as an agent for a broker-dealer, an agent of an issuer, an investment advisor or investment advisor representative, and from selling securities within the Commonwealth of Virginia until he has paid to the Treasurer of the Commonwealth of Virginia the assessed penalty of Ten Thousand Dollars (\$10,000).
- (3) The Defendant will not violate the Act or Securities Rules in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

The Commission, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendant fully comply with the aforesaid terms and undertakings of this settlement; and
- (3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendant's failure to comply with the terms and undertakings of the settlement.

**CASE NO. SEC-2010-00054
SEPTEMBER 12, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
GREAT AMERICAN ADVISORS, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Great American Advisors, Inc. ("Defendant"): (i) violated Commission Rule 21 VAC 5-20-260 A by failing to be responsible for the acts, practices, and conduct of its agents in connection with the sales of securities during the time that they are employed with the firm; (ii) violated Commission Rule 21 VAC 5-20-260 B by failing to diligently supervise Leland Otto Stevens ("Stevens") who was registered with the Division as an agent and employed by the Defendant as an agent from February 15, 2005, until November 23, 2009, in that the Defendant (a) failed to detect that Stevens was making offers and sales of securities products to Virginia residents in violation of the Act, (b) failed to ensure that Stevens' correspondence was properly maintained so the Defendant could verify correspondence as required by Securities and Exchange Commission Rule 17a-4 (b)(4) (17 CFR 24.17a-4) and failed to retain said correspondence at the time Stevens was terminated by the Defendant, (c) failed to promptly review and approve correspondence as required by 21 VAC 5-20-260 D 3, (d) failed to ensure that suitability information was updated on the Defendant's customer account files, and (e) failed to detect the Select Fund, LLC and Queen Shoals, LLC account files that were maintained by Stevens in the Defendant's offices operated by Stevens; (iii) violated Commission Rule 21 VAC 5-20-260 E 2 for failing to conduct a physical office inspection of Stevens' office in 2007 to insure that the written procedures and compliance requirements were enforced; (iv) violated Commission Rule 21 VAC 5-20-240 by failing to maintain books and records relating to its business in that the Defendant (a) failed to maintain client correspondence from 2007-2009, pursuant to SEC Rule 17a-4(b)(4), and (b) failed to maintain records with respect to clients' accounts after the accounts were closed, pursuant to SEC Rule 17a-4(c); and (v) violated Commission Rule 21 VAC 5-20-230 A 1 for failing to notify the Commission of a pending Financial Industry Regulatory arbitration proceeding.

If the standards of the statute are met, the Commission is authorized by § 13.1-506 of the Act to revoke the Defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order the Defendant to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendant admits to the allegations listed in items (iii), (iv) and (v) above, neither admits nor denies the remaining allegations, but admits to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

- (1) The Defendant will pay to the Treasurer of the Commonwealth of Virginia, contemporaneously with the entry of this Order, the amount of Ten Thousand Dollars (\$10,000) in monetary penalties.
- (2) The Defendant will pay to the Treasurer of the Commonwealth of Virginia, contemporaneously with the entry of this Order the amount of Ten Thousand Dollars (\$10,000) to defray the cost of investigation.
- (3) If the Defendant reenters the retail securities business by effecting or undertaking to effect the sale of securities (other than acting as the underwriter of variable annuities for its affiliated insurance company) in the Commonwealth within three years from the date of the entry of this Settlement Order, it will agree to review client files and securities transactions for at least ten percent (10%) of active client files at any one business location, among other books and records required to be maintained by the firm when complying with Commission Rule 21 VAC 5-20-260 E 2.
- (4) If the Defendant reenters the retail securities business by effecting or undertaking to effect the sale of securities (other than acting as the underwriter of variable annuities for its affiliated insurance company) in the Commonwealth within three years from the date of the entry of this Settlement Order, it will revise the firm's policies and procedures to include recording and maintaining new account forms for all individuals that become clients of Great American Advisors, Inc., regardless of whether securities are recommended, pursuant to SEC Rule 17a-3(a)(17).
- (5) If the Defendant reenters the retail securities business by effecting or undertaking to effect the sale of securities (other than acting as the underwriter of variable annuities for its affiliated insurance company) in the Commonwealth, it will review correspondence, whether written or electronic, that pertains to any agents' securities activities promptly, as stated in Rule 21 VAC 5-20-260 D 3.
- (6) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

The Commission, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendant fully comply with the aforesaid terms and undertakings of this settlement; and

(3) This case is dismissed and the papers herein shall be placed in the file for ended causes.

Dismissal of this case does not relieve the Defendant from its reporting obligations to any regulatory authority.

**CASE NO. SEC-2010-00056
JANUARY 21, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
GOLDMAN, SACHS & CO.,
Defendant

CONSENT ORDER

Goldman, Sachs & Co. ("Goldman Sachs") is a broker-dealer registered in the Commonwealth of Virginia ("Commonwealth").

The State Corporation Commission ("Commission") has been a part of coordinated investigations into Goldman Sachs' activities in connection with the marketing and sale of auction rate securities ("ARS").

Goldman Sachs has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations.

Goldman Sachs has advised regulators of its agreement to resolve the investigations relating to its marketing and sale of ARS to individual investors.

Goldman Sachs agrees to take certain actions described herein and to make certain payments; and

Goldman Sachs admits to the jurisdiction of the Commission and consents to the entry of this Consent Order (the "Order" or "Consent Order").

Goldman Sachs elects to permanently waive any right to a hearing and appeal under § 13.1-521 A of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, and § 12.1-39 of the Code of Virginia with respect to this Consent Order.

Goldman Sachs acknowledges, without admitting or denying the Findings of Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the Commission.

NOW, THEREFORE, the Commission, as administrator of the Act, hereby enters this Order.

**I.
FINDINGS OF FACT**

1. ARS are long-term bonds issued by municipalities, corporations, and student loan companies, or perpetual equity instruments issued by closed-end mutual funds that pay an interest rate that resets periodically through a bidding process known as a Dutch auction.

2. Goldman Sachs participated in the marketing and sale of ARS.

3. Goldman Sachs acted as an underwriter and as the auction broker-dealer for certain issues of ARS. When acting as sole manager, Goldman Sachs was the only firm that could submit bids into the auction on behalf of its clients and/or other broker-dealers who wanted to buy and/or sell any ARS in such auctions. When acting as lead manager, Goldman Sachs was the primary firm that could submit bids into the auction, but other auction broker-dealers were able to submit orders on behalf of their clients as well. Goldman Sachs received revenue in connection with ARS, including an underwriting fee representing a percentage of total issuance and a fee for managing the auctions.

4. Goldman Sachs conveyed to certain clients that ARS were secure, liquid securities that were a suitable alternative for cash management purposes. It did so through its sales force, some of whom represented to certain investors that ARS were highly liquid, safe investments for cash management purposes.

5. These representations were misleading to certain investors. ARS were in fact different from cash and money market funds. As discussed above, the liquidity of an ARS relied on the successful operation of the Dutch auction process. In the event of a failed auction, investors cannot sell their ARS in that auction and are potentially stuck holding long-term investments, not money market instruments. As discussed below, starting in the fall of 2007, the ARS market faced dislocation and an increased risk of auction failure.

6. Since it began participating in the ARS market, Goldman Sachs submitted "cover" bids, purchase orders for the entirety of an ARS issue for which it acted as the sole or lead auction manager. Such "cover" bids were Goldman Sachs' proprietary orders that would be filled, in whole or in part, if there was otherwise insufficient demand in an auction. When Goldman Sachs purchased ARS through "cover" bids, those ARS were then owned by Goldman Sachs and the holdings were recorded on Goldman Sachs' balance sheet. For risk management purposes, Goldman Sachs imposed limits on the amounts of securities its Municipal Money Markets unit could hold (which included Goldman Sachs' ARS holdings).

7. Because many investors could not ascertain how much of an auction was filled through Goldman Sachs' "cover" bids, those investors could not determine if auctions were clearing because of normal marketplace demand or because Goldman Sachs was making up for the lack of demand through "cover" bids. Many investors were also not aware that the liquidity of the ARS was dependent upon Goldman Sachs' continued use of "cover" bids. While

Goldman Sachs could track its own inventory as a measure of the supply and demand for its ARS, many investors had no comparable ability to assess the operation of the auctions. There was no way for those investors to monitor supply and demand in the market or to assess when broker-dealers might decide to stop supporting the market, which could cause its collapse.

8. In August of 2007, the credit crisis and other deteriorating market conditions began to strain the ARS market. Some institutional investors withdrew from the market, decreasing demand for ARS.

9. The resulting market dislocation should have been evident to Goldman Sachs. When client demand for its ARS declined, Goldman Sachs' "cover" bids filled the increasing shortfall, thereby sustaining the impression for certain investors that auctions managed by Goldman Sachs were functioning. As a result, Goldman Sachs' ARS inventory grew significantly, requiring Goldman Sachs to raise its risk management limits for its Municipal Money Markets business (which included ARS) several times.

10. From the fall of 2007 through early February of 2008, demand for ARS continued to erode and Goldman Sachs' ARS inventory increased significantly. Goldman Sachs was aware of the increasing strains in the ARS market, and increasingly questioned the viability of the ARS market. Goldman Sachs did not disclose these increasing risks of owning or purchasing ARS to all of its clients.

11. In February of 2008, Goldman Sachs and other firms stopped supporting auctions. Without the benefit of "cover" bids, the ARS market collapsed, leaving certain investors who had been led to believe that these securities were liquid, safe investments appropriate for managing short-term cash needs, holding long-term or perpetual securities that could not be sold at par value until and if the auctions cleared again.

12. Goldman Sachs violated Rules 21 VAC 5-20-280 A3 and E12 of the Commission's Rules ("Rules") by engaging in prohibited business practices of a broker-dealer.

Failure to Supervise

13. In violation of Rules 21 VAC 5-20-260 A and B, Goldman Sachs did not adequately supervise certain of its salespeople to ensure that all of the firm's clients would be sufficiently apprised of ARS, the mechanics of the auction process, and the potential illiquidity of ARS, including the fact that Goldman Sachs may stop submitting "cover" bids, as discussed above.

II. CONCLUSIONS OF LAW

14. The Commission has jurisdiction over this matter pursuant to the Act.

15. The Commission finds that the above conduct subjects Goldman Sachs to sanctions for violations of Rules 21 VAC 5-20-280 A 3 and E 12, and Rules 21 VAC 5-20-260 A and B of the Act.

16. Nothing in this Order shall be construed as a finding or admission of fraud.

17. The Commission finds the following relief appropriate and in the public interest.

III. ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Goldman Sachs' consent to the entry of this Order, for the sole purpose of settling this matter prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

18. This Order concludes the investigation by the Commission and any other action that the Commission could commence under applicable Virginia law on behalf of Virginia as it relates to Goldman Sachs' marketing and sale of ARS to Goldman Sachs' Eligible Investors, as defined below.

19. This Order is entered into solely for the purpose of resolving the investigation into Goldman Sachs' marketing and sale of ARS and is not intended to be used for any other purpose.

20. This Order shall be binding upon Goldman Sachs and its successors and assigns as well as to successors and assigns of relevant affiliates with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

21. Goldman Sachs shall refrain from future violations of the Act and Rules promulgated thereunder and will comply with Rules 21 VAC 5-20-80 A 3 and E 12 and Rules 21 VAC 5-20-260 A and B in connection with the marketing and sale of ARS.

22. Goldman Sachs shall pay the sum of Three Hundred Thirty-three Thousand One Hundred Thirty-seven Dollars and Twelve Cents (\$333,137.12) to the Commission as a civil monetary penalty, which amount constitutes the Commonwealth of Virginia's proportionate share of the state settlement amount of Twenty-two Million, Five Hundred Thousand Dollars (\$22,500,000), which shall be payable to the Commonwealth of Virginia within ten (10) days of the date on which this Order is entered.

23. In the event another state securities regulator determines not to accept Goldman Sachs' settlement offer, the total amount of the payment to the Commonwealth of Virginia shall not be affected.

Requirement to Repurchase ARS from Retail ARS Investors

24. Goldman Sachs shall have provided liquidity to Eligible Investors by offering to buy back Eligible ARS, that, since February 11, 2008, have not been auctioning, at par, in the manner described below.

25. "Eligible ARS," for the purposes of this Order, shall mean ARS purchased from Goldman Sachs on or before February 11, 2008.

26. "Eligible Investors," for the purposes of this Order, shall mean:

i. Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian UGMA and UTMA accounts, and guardianship accounts);

ii. Legal entities forming investment vehicles for closely related individuals including but not limited to IRA accounts, Trusts, Family Limited Partnerships, and other legal entities performing a similar function;

iii. Charities and non-profits with Internal Revenue Code Section 501(c) status that purchased Eligible ARS from Goldman Sachs; and

iv. Small Businesses that purchased Eligible ARS from Goldman Sachs. For purposes of this provision, "Small Businesses" shall mean Goldman Sachs' clients not otherwise covered in paragraphs 25(i) and (ii) above that had \$10 million or less in assets in their accounts with Goldman Sachs, net of margin loans, as determined by the client's aggregate household position(s) at Goldman Sachs as of August 31, 2008, or, if the client was not a client of Goldman Sachs as of August 31, 2008, as of the date that the client terminated its client relationship with Goldman Sachs. Notwithstanding any other provision, "Small Businesses" does not include broker-dealers or banks acting as conduits for their customers.

27. Goldman Sachs shall have offered to purchase, at par plus accrued and unpaid dividends/interest, from Eligible Investors their Eligible ARS that since February 11, 2008, have not been auctioning ("Buyback Offer"), and explain what Eligible Investors must do to accept, in whole or part, the Buyback Offer. The Buyback Offer shall have remained open until at least November 12, 2008 ("Offer Period"). Goldman Sachs may extend the Offer Period beyond this date.

28. Goldman Sachs shall have undertaken its best efforts to identify and provide notice to Eligible Investors who invested in Eligible ARS that since February 11, 2008, have not been auctioning, of the relevant terms between Goldman Sachs and the Commission.

29. Eligible Investors may have accepted the Buyback Offer by notifying Goldman Sachs at any time before midnight, Eastern Time, November 12, 2008, or such later date and time as Goldman Sachs may extend the Offer Period. For Eligible Investors who accepted the Buyback Offer within the Offer Period, Goldman Sachs shall have purchased the Eligible ARS on or before November 17, 2008 (or a later date if an Offer Period is extended). For Eligible Investors who accepted the Buyback Offer within the Offer Period but custodied their Eligible ARS away from Goldman Sachs, Goldman Sachs shall repurchase the Eligible ARS upon receipt of assurance reasonably satisfactory to Goldman Sachs from the Eligible Investor's current financial institution that the bidding rights associated with the Eligible ARS will be transferred to Goldman Sachs and transfer of the Eligible ARS.

30. No later than December 31, 2009, any Eligible Investor who for good cause (including but not limited to incapacity or failure to receive the notice provided for in paragraph 27) did not accept the Buyback Offer pursuant to paragraph 28 above, shall be entitled to sell their Eligible ARS, at par, to Goldman Sachs for thirty (30) days after establishing such good cause, and Goldman Sachs shall purchase such Eligible Investor's Eligible ARS promptly.

31. No later than October 20, 2008, Goldman Sachs shall have established a dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and to respond to questions from clients concerning the terms of the settlement between Goldman Sachs and the Commission.

Review of Client Accounts

32. For a period of two years from the date of this Order, upon request from any firm that is repurchasing ARS, upon receipt from the repurchasing firm of (i) the names of any Goldman Sachs clients that may hold ARS subject to the repurchasing firm's repurchase offer, (ii) the CUSIPs of the Eligible ARS, (iii) the clients' Goldman Sachs' account number(s) (if known to the repurchasing firm), and (iv) the date those ARS were transferred to Goldman Sachs (if known to the repurchasing firm), Goldman Sachs shall take reasonable steps to provide notice to those clients of the repurchasing firm's repurchase offer.

Relief for Investors Who Sold Below Par

33. By November 12, 2008, Goldman Sachs shall have undertaken its best efforts to identify any Eligible Investor who sold Eligible ARS below par between February 11, 2008, and August 21, 2008, and shall have paid any such Eligible Investor the difference between par and the price at which the Eligible Investor sold the Eligible ARS.

Reimbursement for Related Loan Expenses

34. Goldman Sachs shall have made best efforts to identify Eligible Investors who took out loans from Goldman Sachs between February 11, 2008, and March 19, 2010, that were secured by Eligible ARS that were not successfully auctioning at the time the loan was taken out from Goldman Sachs and paid interest associated with the ARS-based portion of those loans in excess of the total interest and dividends received on the ARS during the duration of the loan. Goldman Sachs shall have reimbursed such clients for the excess expense, plus reasonable interest thereon. Such reimbursement shall have occurred no later than March 31, 2010.

Claims for Consequential Damages

35. Goldman Sachs shall consent to participate in a special arbitration ("Arbitration") for the exclusive purpose of arbitrating any Eligible Investor's consequential damages claim arising from their inability to sell Eligible ARS. Goldman Sachs shall have provided written notice to Eligible Investors of the terms of the Arbitration process on or before November 12, 2008.

36. The Arbitration shall be conducted by a single public arbitrator (as defined by section 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007), under the auspices of FINRA. Goldman Sachs will pay all applicable forum and filing fees. Any Eligible Investors who choose to pursue such claims in the Arbitration shall bear the burden of proving that they suffered consequential damages and that such damages were caused by their inability to access funds invested in Eligible ARS.

37. In the Arbitration, Goldman Sachs shall be permitted to defend itself against such claims; provided, however, that Goldman Sachs shall not contest in these arbitrations liability related to the sale of ARS, or use as part of its defense any decision by an Eligible Investor not to borrow money from Goldman Sachs.

38. Eligible Investors seeking consequential damages who elect to use the special arbitration process provided for herein shall not be eligible for punitive or special damages.

39. Eligible Investors who elect to utilize the special arbitration process set forth above are limited to the remedies available in that process and may not bring or pursue a claim against Goldman Sachs or in any case where Goldman Sachs is an underwriter relating to Eligible ARS in another forum.

Institutional Investors

40. Goldman Sachs shall endeavor to work with issuers and other interested parties, including regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional investors not covered by paragraph 24 above that purchased ARS from Goldman Sachs prior to February 11, 2008 ("Institutional Investors").

41. Beginning November 12, 2008, and within 45 days of the end of each Goldman Sachs' fiscal quarter thereafter, Goldman Sachs shall have submitted a written report to the Illinois Securities Department or other representative specified by the North American Securities Administrators Association ("NASAA") outlining Goldman Sachs' progress with respect to its obligations pursuant to this Order. Goldman Sachs shall have, at the option of the Illinois Securities Department or other representative specified by NASAA, conferred with such representative on a quarterly basis to discuss Goldman Sachs' progress to date. Such quarterly reports and conferences shall have continued until December 31, 2009. Following every quarterly report, the representative shall have advised Goldman Sachs of any concerns regarding Goldman Sachs' progress, and, in response, Goldman Sachs shall have discussed how Goldman Sachs plans to address such concerns. The reporting or meeting deadlines may be amended with written permission from the Illinois Securities Department or other representative specified by NASAA.

Relief for Municipal Issuers

42. Goldman Sachs shall promptly refund to municipal issuers refinancing fees paid to Goldman Sachs for the refinancing or conversion of their ARS that occurred between February 11, 2008, and the date of this Order, where Goldman Sachs acted as underwriter for the initial primary offering of the ARS between August 1, 2007, and February 11, 2008. Nothing in this Order precludes the Commission from pursuing any other civil action that may arise with regard to ARS other than the marketing and sale of ARS to retail investors.

43. Goldman Sachs agrees to waive any right to indemnification and/or claims of contribution, and/or other similar remedies with respect to any costs, expenses, or losses in connection with this Order that Goldman Sachs may have against any municipal issuers that issued securities through Goldman Sachs in the primary market, including any student loan authority.

Additional Considerations

44. Nothing herein shall preclude Virginia, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Commission and only to the extent set forth in paragraph 18 above (collectively, "State Entities"), and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against Goldman Sachs in connection with certain ARS practices at Goldman Sachs.

45. This Order shall not disqualify Goldman Sachs or any of its affiliates or current or former employees from any business that they otherwise are qualified or licensed to perform under applicable state law, and this Order is not intended to form the basis for any disqualification.

46. To the extent applicable, this Order hereby waives any disqualification from relying upon the registration exemptions or registration safe harbor provisions that may be contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self regulatory organizations or any states' or U.S. Territories' securities laws. In addition, this Order is not intended to form the basis for any such disqualifications. In addition, this Order is not intended to form the basis of a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934.

47. Except in an action by the Commission to enforce the obligations of Goldman Sachs in this Order, this Order may neither be deemed nor used as an admission of or evidence of any alleged fault, omission, or liability of Goldman Sachs in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal. For any person or entity not a party to this Order, this Order does not limit or create any private right against Goldman Sachs including, without limitation with respect to the use of any e-mails or other documents of Goldman Sachs or of others concerning the marketing and/or sales of ARS, limit or create liability of Goldman Sachs, or limit or create defenses of Goldman Sachs to any claims.

48. This Order and any dispute related thereto shall be construed and enforced in accordance with, and governed by, the laws of the Commonwealth of Virginia without regard to any choice of law principles.

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49. Evidence of a violation of this Order proven in a court of competent jurisdiction shall constitute prima facie proof of a violation of the Act in any civil action or proceeding hereafter commenced by the Commission against Goldman Sachs.

50. Should the Commission prove that a material breach of this Order by Goldman Sachs has occurred, Goldman Sachs shall pay to the Commission the cost, if any, of such determination and of enforcing this Order including without limitation legal fees, expenses, and court costs.

51. If Goldman Sachs fails to make the payment specified in paragraph 22, the Commission, at its sole discretion, may pursue any legal remedies, including but not limited to initiating an action to enforce the Order, revoking Goldman Sachs' registration within the Commonwealth of Virginia, or terminating this Order.

52. If in any proceeding, after notice and opportunity for a hearing, a court of competent jurisdiction, including an administrative proceeding by a state securities administrator, finds that there was a material breach of this Order, the Commission, at its sole discretion, may terminate the Order. If Goldman Sachs defaults on any other obligation under this Order, the Commission may, at its sole discretion, pursue legal remedies to enforce the Order or pursue an administrative action, including but not limited to an action to revoke Goldman Sachs' registration within the Commonwealth of Virginia. Goldman Sachs agrees that any statute of limitations or other time related defenses applicable to the subject of the Order and any claims arising from or relating thereto are tolled from and after the date of this Order.

53. In the event of such termination, Goldman Sachs expressly agrees and acknowledges that this Order shall in no way bar or otherwise preclude the Commission from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Order, against Goldman Sachs, or from using in any way any statements, documents, or other materials produced or provided by Goldman Sachs prior to or after the date of this Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations, except as may otherwise be provided in a written agreement with the Commission.

54. Goldman Sachs shall cooperate fully and promptly with the Commission and shall use its best efforts to ensure that all the current and former officers, directors, trustees, agents, members, partners, and employees of Goldman Sachs (and of any of Goldman Sachs' parent companies, subsidiaries, or affiliates) cooperate fully and promptly with the Commission in any pending or subsequently initiated investigation, litigation, or other proceeding relating to ARS and/or the subject matter of the Order. Such cooperation shall include, without limitation, and on a best efforts basis:

(a) production, voluntarily and without service of subpoena, upon the request of the Commission, of all documents or other tangible evidence requested by the Commission and any compilations or summaries of information or data that the Commission requests that Goldman Sachs (or the Goldman Sachs' parent companies, subsidiaries, or affiliates) prepare, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges;

(b) without the necessity of a subpoena, having the current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners, and employees of Goldman Sachs (and of any of the Goldman Sachs' parent companies, subsidiaries, or affiliates) attend any Proceedings (as hereinafter defined) in Virginia or elsewhere at which the presence of any such persons is requested by the Commission and having such current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners, and employees answer any and all inquiries that may be put by the Commission to any of them at any proceedings or otherwise, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges; "Proceedings" include, but are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings, or other proceedings;

(c) fully, fairly, and truthfully disclosing all information and producing all records and other evidence in its possession, custody, or control (or the possession, custody, or control of the Goldman Sachs' parent companies, subsidiaries, or affiliates) relevant to all inquiries made by the Commission concerning the subject matter of the Order, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges; and

(d) making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Order and to answer questions, except to the extent such presentations or questions call for the disclosure of information protected by the attorney-client and/or work product privileges.

55. In the event Goldman Sachs fails to comply with paragraph 24 of the Order, the Commission shall be entitled to specific performance, in addition to any other available remedies.

56. The Commission has agreed to the terms of this Order based on, among other things, the representations made to the Commission by Goldman Sachs, its counsel, and the Commission's own factual investigation. To the extent that any material representations are later found to be materially inaccurate or misleading, this Order is voidable by the Commission in its sole discretion.

**CASE NO. SEC-2010-00080
AUGUST 15, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

DAVID KREHBIEL
and
LAMKEN ENTERPRISES, INC.,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that David Krehbiel and Lamken Enterprises, Inc. (a subfranchisor of System4, LLC) (collectively, "Defendants") violated § 13.1-563 (2) of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia, by making untrue statements of a material fact or omitting to state a material fact necessary in order to avoid misleading the offeree in connection with the sale or offer to sell a franchise.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-562 of the Act to revoke the Defendants' registration, by § 13.1-568 of the Act to issue temporary or permanent injunctions, by § 13.1-570 of the Act to impose certain monetary penalties and to request the Defendants make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

Prior to the entry of this Order, the Defendants made partial restitution of franchise fees to the affected franchisees.

The Defendants neither admit nor deny these allegations but admit to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) The Defendants will pay to the Treasurer of the Commonwealth of Virginia the amount of Seven Thousand dollars (\$7,000) in monetary penalties. The payments will be made within twenty-four (24) months from the date of entry of this Order.

(2) The Defendant will pay to the Treasurer of the Commonwealth of Virginia the amount of Three Thousand dollars (\$3,000) to defray the cost of investigation. The payments will be made within twenty-four (24) months from the date of entry of this Order.

(3) The Defendants will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

The Commission, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendants in settlement of the matter set forth herein is hereby accepted;

(2) The Defendants fully comply with the aforesaid terms and undertakings of this settlement; and

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

**CASE NO. SEC-2010-00080
AUGUST 17, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

DAVID KREHBIEL
and
LAMKEN ENTERPRISES, INC.,
Defendants

VACATING ORDER

On August 15, 2011, the State Corporation Commission entered into a Settlement Order with the Defendants. The Settlement Order, however, inadvertently included as a named Defendant an individual not subject to the terms of the settlement.

Accordingly, IT IS ORDERED THAT the Settlement Order entered in this case on August 15, 2011, is hereby vacated.

**CASE NO. SEC-2010-00080
AUGUST 17, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

LAMKEN ENTERPRISES, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Lamken Enterprises, Inc. (a subfranchisor of System4, LLQ ("Defendant")), violated § 13.1-563 (2) of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia, by making untrue statements of a material fact or omitting to state a material fact necessary in order to avoid misleading the offeree in connection with the sale or offer to sell a franchise.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-562 of the Act to revoke the Defendant's registration, by § 13.1-568 of the Act to issue temporary or permanent injunctions, by § 13.1-570 of the Act to impose certain monetary penalties and to request the Defendant make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

Prior to the entry of this Order, the Defendant voluntarily returned a portion of the financing fees to the affected franchisees.

The Defendant neither admits nor denies these allegations but admits to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

- (1) The Defendant will pay to the Treasurer of the Commonwealth of Virginia the amount of Seven Thousand dollars (\$7,000) in monetary penalties. The payment will be made within twenty-four (24) months from the date of entry of this Order.
- (2) The Defendant will pay to the Treasurer of the Commonwealth of Virginia the amount of Three Thousand dollars (\$3,000) to defray the cost of investigation. The payment will be made within twenty-four (24) months from the date of entry of this Order.
- (3) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted;
- (2) The Defendant fully comply with the aforesaid terms and undertakings of this settlement; and
- (3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendant's failure to comply with the terms and undertakings of the settlement.

**CASE NO. SEC-2010-00082
NOVEMBER 10, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

BOTJ INVESTMENT GROUP, INC.,
Defendant

SETTLEMENT ORDER

The Division of Securities and Retail Franchising ("Division") of the State Corporation Commission ("Commission") conducted an investigation of BOTJ Investment Group, Inc. ("Investment Group"), pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), §§ 13.1-501 *et seq.* of the Code of Virginia.

The investigation concerned the offer and sale of certain private placements of securities to investors within the Commonwealth of Virginia. These transactions involved Investment Group, Community Bankers Securities, LLC ("CB Securities"), which provided broker-dealer services under a "networking agreement" with Investment Group, certain officers of CB Securities, and certain CB Securities registered representatives dually employed by CB Securities and Investment Group under the networking agreement. Additionally, these transactions involved the offer and sale of the following

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securities: (i) Medical Provider Financial Corporation II through IV, and Medical Provider Funding Corporation V and VI Notes; (ii) Evolution Capital Advisors, LLC Secured Three- and Five-Year Notes and Evolution Investment Group, LLC Secured Promissory Notes; and (iii) Cash Ready, LLC Secured Twelve-, Thirty-, and Sixty-Month Notes (collectively, the "Securities").

Based upon the investigation, the Division alleges that Investment Group committed violations of the Act in conjunction with the offer and sale of the Securities to investors in the Commonwealth of Virginia, including: (i) § 13.1-507 of the Act; (ii) § 13.1-504 A of the Act; (iii) § 13.1-502(3) of the Act; (iv) Commission Rule 21 VAC 5-20-260 A and B; and (v) Commission Rule 21 VAC 5-20-280 A 3.

If the standards of the statute are met, the Commission is authorized by § 13.1-506 of the Act to revoke a defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order a defendant to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

Investment Group admits the Commission's jurisdiction and authority to enter this Settlement Order. Without admitting to all of the Division's allegations, Investment Group admits that multiple violations of one or more provisions of the Act (as well as the regulations promulgated thereunder) occurred in connection with transactions involving the Securities. As evidenced by the signature below of its counsel, Investment Group consents to the entry of this Settlement Order.

As a proposal to settle all matters arising from these allegations, Investment Group has made an offer of settlement to the Commission wherein Investment Group will abide by and comply with the following terms and undertakings:

(1) Within ninety (90) days of the date of this Order, Investment Group shall pay restitution, in an amount equal to the full extent of its assets as of October 18, 2011,¹ to the persons who are current holders of Securities that are deemed in default as of the date of this Order, consisting of outstanding and unpaid notes issued by Medical Provider Financial Corporation II through IV, and Medical Provider Funding Corporation V and VI Notes (collectively, "Investors"). If Investment Group fails to make this restitution within ninety (90) days of the date of this Order, Investment Group shall pay a penalty to the Commission in the amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000). Distributions to Investors shall be made on a *pro rata* basis to all Investors.

(2) Investment Group will notify each Investor who receives a payment under Paragraph 1, above, of the settlement at the Investor's last known address. Investment Group will submit certified mail receipts to the Division as proof that the mailings required have been satisfied.

(3) Investment Group will be permanently enjoined from offering or selling any private placements of securities or other securities under Regulation D, Rule 506 of the Securities Act of 1933, 17 C.F.R. § 230.506, within the Commonwealth of Virginia after the date of entry of this Order.

(4) In the event that Investment Group desires to enter into a networking agreement with any registered broker-dealer in the future, Investment Group shall submit the proposed networking agreement to the Division for review prior to executing or commencing operations under such an agreement.

(5) Investment Group will not violate the Act in the future.

(6) This Order is a full and final settlement between the Division and Investment Group regarding Investment Group's activities regarding the Securities, and without prejudice to any additional action that the Division may pursue regarding CB Securities, CB Securities' affiliates, CB Securities' control persons, and the registered representatives affiliated with CB Securities.

The Division has recommended that the Commission accept the offer of settlement of Investment Group.

The Commission, having considered the record herein, the offer of settlement of Investment Group, and the recommendation of the Division, is of the opinion that Investment Group's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of Investment Group in the settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) Investment Group fully complies with the aforesaid terms and undertakings of this settlement; and
- (3) The Commission shall retain jurisdiction in this matter for all purposes.

¹ The amount of these assets is identified in the letter dated October 18, 2011 from Investment Group's counsel to the Division's counsel.

**CASE NO. SEC-2010-00091
JANUARY 6, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

SCOTT & STRINGFELLOW, LLC

and

CHARLES PALMER PEBBLES, JR.,

Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Scott & Stringfellow, LLC, and Charles Palmer Peebles, Jr. ("Peebles") (collectively, "Defendants"): (i) violated Securities Rule 21 VAC 5-20-280-A (3) by recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, risk tolerance and needs, and any other relevant information known by the broker-dealer; and (ii) Scott & Stringfellow, LLC, violated Securities Rule 21 VAC 5-20-260 B for failing to exercise diligent supervision over the securities activities of its agent, Peebles. It is further alleged that Peebles violated Securities Rule 21 VAC 5-20-280 B (6) by engaging in conduct as specified in allegation (i) above.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Act to revoke the Defendants' registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order the Defendants to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants neither admit nor deny these allegations but admit to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) The Defendants will pay to the Treasurer of the Commonwealth of Virginia, contemporaneously with the entry of this Order, the amount of Twenty Thousand Dollars (\$20,000) in monetary penalties.

(2) The Defendants will pay to the Treasurer of the Commonwealth of Virginia, contemporaneously with the entry of this Order, the amount of Five Thousand Dollars (\$5,000) to defray the cost of investigation.

(3) The Defendants will make a rescission offer to one (1) Virginia investor.

(a) Within fifteen (15) days of the date of this Settlement Order, the Defendants will make a written offer of rescission sent by certified mail to the investor, which will include an offer to repay Ten Thousand Dollars (\$10,000) to the investor, and a provision that gives the investor thirty (30) days from the date of receipt of the rescission offer to provide the Defendants with written notification of the investor's decision to accept or reject the offer.

(b) The Defendants will include with the written offer of rescission a copy of this Settlement Order.

(c) If the rescission offer is accepted, the Defendants will forward the payment to the investor within fifteen (15) days of receipt of the acceptance.

(d) Within ninety (90) days from the date of the Settlement Order, the Defendants will submit to the Division proof of certified mailing of the rescission offer and an affidavit, executed by the Defendants, that contains the date on which the investor received the offer of rescission, the investor's response, and, if applicable, the amount and the date that payment was sent to the investor.

(4) Defendant Scott & Stringfellow, LLC, will draft and circulate a compliance memorandum to all registered persons of the firm. Among other things, the memorandum will address and reinforce specific state and federal laws, and enhance agent training with regard to client suitability in connection with the offer and sale of securities. The Division will work with Defendant Scott & Stringfellow, LLC, to develop the memorandum subject of this paragraph. Once the Division has approved the memorandum it will be used as a part of the Scott & Stringfellow, LLC, compliance and training procedures.

(5) The Defendants will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

The Commission, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;

(2) The Defendants fully comply with the aforesaid terms and undertakings of this settlement; and

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendants' failure to comply with the terms and undertakings of the settlement.

**CASE NO. SEC-2011-00003
JANUARY 27, 2011**

APPLICATION OF
ENTERPRISE COMMUNITY LOAN FUND, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received September 29, 2010, with exhibits attached thereto, as subsequently amended, of Enterprise Community Loan Fund, Inc. ("ECLF"), requesting that: Enterprise Community Impact Notes ("Notes") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia and that certain officers and employees of ECLF be exempted from the agent registration requirements of the Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: ECLF is a Maryland corporation operating not for private profit but exclusively for charitable and educational purposes; ECLF intends to offer and sell the Notes in an approximate aggregate amount of up to \$50,000,000 on terms and conditions as more fully described in the Offering Circular filed as a part of the application; and said securities are to be offered and sold by officers and employees of ECLF who will not be compensated for their sales efforts.

NOW THE COMMISSION, based on the facts asserted by ECLF in the written application and exhibits, and upon the recommendation of the Division of Securities and Retail Franchising, is of the opinion and finds, and does hereby ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above are exempt from the securities registration requirements of the Act, and the officers and employees of ECLF are exempt from the agent registration requirements of § 13.1-504 of the Act.

**CASE NO. SEC-2011-00004
JANUARY 27, 2011**

APPLICATION OF
ENTERPRISE COMMUNITY PARTNERS, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received September 29, 2010, with exhibits attached thereto, as subsequently amended, of Enterprise Community Partners, Inc. ("ECP"), requesting that: ECP's guaranty of Enterprise Community Impact Notes ("Notes") issued by Enterprise Community Loan Fund, Inc. ("ECLF"), be exempted from the securities registration requirements of the Virginia Securities Act ("Act") § 13.1-501 *et seq.* of the Code of Virginia and that certain officers and employees of ECP be exempted from the agent registration requirements of the Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: ECP is a Maryland corporation operating not for private profit but exclusively for charitable and educational purposes; ECP intends to guaranty Notes issued by ECLF (a subsidiary of ECP); under the terms of a Guaranty Agreement, dated July 30, 2010, ECP has agreed to promptly and completely pay, when due, the sum of the principal amount under the Notes up to \$50,000,000 and any and all unpaid interest due; and said securities are to be offered and sold by officers of ECP who will not be compensated for their sales efforts.

NOW THE COMMISSION, based on the facts asserted by ECP in the written application and exhibits, and upon the recommendation of the Division of Securities and Retail Franchising, is of the opinion and finds, and does hereby ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above are exempt from the securities registration requirements of the Act, and the officers and employees of ECP are exempt from the agent registration requirements of § 13.1-504 of the Act.

**CASE NO. SEC-2011-00005
FEBRUARY 10, 2011**

APPLICATION OF
SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION

For an official interpretation pursuant to § 13.1-525 of the Code of Virginia

OFFICIAL INTERPRETATION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by letter-application of the Segregated Account of Ambac Assurance Corporation ("Applicant") received on October 29, 2010, supplemented on November 19, 2010, and filed pursuant to § 13.1-525 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by its counsel and upon payment of the requisite fee. The Applicant has requested a determination that the proposed securities transactions described below be exempted from the securities registration requirements of the Act pursuant to § 13.1-514 B 15 or B 5 of the Act. The pertinent information contained in the application is summarized as follows:

The Applicant was established by Ambac Assurance Corporation ("Ambac Assurance"), a Wisconsin-domiciled insurance company, following the deterioration of Ambac Assurance's financial condition. Ambac Assurance is a wholly owned subsidiary of Ambac Financial Group, Inc., which is a holding company based in New York City and whose stock is publicly traded on the New York Stock Exchange. Ambac Assurance provides financial guarantee products and other financial services in the public and private sectors, including financial guaranty insurance on investment grade municipal finance, project finance, and structured-finance debt obligations, such as municipal bonds and residential mortgage-backed securities.

Due to the deterioration of Ambac Assurance's financial guaranty business, the Office of the Commissioner of Insurance of the State of Wisconsin ("Wisconsin OCI") increased its oversight of Ambac Assurance and began to evaluate Ambac Assurance's ability to pay all claims in its insured portfolio. On March 24, 2010, the Wisconsin OCI requested that Ambac Assurance establish the Applicant and filed a rehabilitation petition in Wisconsin Circuit Court.¹ The Wisconsin Circuit Court granted the rehabilitation petition on the same date and appointed the Wisconsin Commissioner of Insurance as rehabilitator ("Rehabilitator") of the Applicant.

On October 8, 2010, the Rehabilitator filed a Plan of Rehabilitation ("Plan") pursuant to Wisconsin Statutes § 645.33(5), which authorizes the Rehabilitator to prepare a "plan for reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer." The Rehabilitator provided notice to policyholders and other known parties-in-interest about the filing of the Plan. Additionally, the Rehabilitator made the Plan and other related documents to the rehabilitation publicly available at a website established by the Rehabilitator (<http://www.ambacpolicyholders.com>) to provide claimants and interested parties access to relevant materials concerning the rehabilitation.

The Wisconsin Circuit Court confirmed the Plan on January 24, 2011. Prior to confirmation, the Circuit Court conducted hearings on the fairness and reasonableness of the terms of the Plan. Following the Applicant's submission of the Plan, the Circuit Court held a scheduling conference on October 14, 2010, issued a Scheduling Order on October 20, 2010, and held evidentiary hearings open to the public on November 15-19, 2010, regarding confirmation of the Plan. Oral argument regarding confirmation of the Plan was held on November 30, 2010. The Wisconsin Circuit Court will retain jurisdiction of the case, among other things, for purposes of implementing and overseeing the Plan.

The Plan allows the Applicant to issue Surplus Notes to holders of certain permitted claims ("Holders") in partial satisfaction of such claims. The Surplus Notes will bear interest at 5.1% per annum and mature on June 7, 2020. By their terms, the Surplus Notes will be subordinated obligations and no payment of principal or interest may be made without the prior written approval of the Wisconsin OCI. No commission or remuneration will be paid or given, directly or indirectly, to any person in connection with the solicitation of the Holders or the issuance of the Surplus Notes to Holders.

The Plan allows a "Management Services Provider" to distribute the Surplus Notes. Pursuant to the Plan as well as a Management Services Agreement between Ambac Assurance and the Applicant, Ambac Assurance (or its successors) will serve as the "Management Services Provider" to perform certain administrative duties, including the "issuance and management of the Surplus Notes."

Surplus Notes will be issued from time to time in accordance with the Plan by means of a global Surplus Note eligible for deposit at The Depository Trust Corporation ("DTC"). The Applicant will execute, authorize and deposit each global Surplus Note with The Bank of New York Mellon, as fiscal agent for the Applicant ("Fiscal Agent"). The Applicant will issue one global Surplus Note each month, with a principal amount equal to the portion of claim payments to Holders from the previous month to be satisfied through issuance of Surplus Notes. The Fiscal Agent will transfer the Surplus Notes to either the Applicant or directly to the Holders in accordance with the rules and procedures of the Fiscal Agent and DTC.

In most instances, the Holders are serving as trustees for beneficial owners of the underlying financial instrument(s) insured by the Ambac Assurance insurance policy. In their capacity as trustees, the Holders will deliver the Surplus Notes, via DTC, to the custodians holding positions on behalf of the beneficial holders. The custodians will then deliver the Surplus Notes to the accounts of the beneficial holders by posting the positions on the books and records of those beneficial holders. The Rehabilitator believes that the ultimate holders of the Surplus Notes will be the beneficial owners of the underlying financial instrument(s) insured by the Ambac Assurance insurance policy. The Surplus Notes will be transferable by such beneficial owners as long as such transfer is made in compliance with applicable securities laws.

Although Ambac Assurance can readily identify trustees that submit a claim, it may not know nor be able to identify the beneficial owners that ultimately receive the Surplus Notes. Accordingly, neither the Wisconsin OCI nor Ambac Assurance can determine the identity or number of beneficial owners that will receive the Surplus Notes in Virginia.

On October 29, 2010, the Applicant requested a determination that the proposed transactions involving Surplus Notes are exempt from the registration requirements of the Act pursuant to § 13.1-514 B 15 of the Act. On November 19, 2010, the Applicant requested a further determination that the transactions are exempt pursuant to § 13.1-514 B 5 of the Act.

Section 13.1-514 B 15 of the Act provides an exemption from the securities, broker-dealer and agent registration requirements of the Act for "[a]ny transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, sale of assets, or exchange of securities[.]" Alternatively, § 13.1-514 B 5 of the Act provides an exemption from the securities, broker-dealer and agent registration requirements of the Act for "[a]ny transaction in his official capacity by a receiver, trustee in bankruptcy or other judicially appointed officer selling securities pursuant to court order[.]" Both of these exemptions recognize that the benefits of registration under the Act are unnecessary in connection with a transaction that is controlled by a statutory or judicial proceeding, which affords adequate investor protection.

The proposed issuance of Surplus Notes satisfies the requirements of § 13.1-514 B 15. The proposed transaction is a judicially approved reorganization pursuant to the laws of Wisconsin. The Plan and other related documents to the rehabilitation were made available and distributed to interested persons in advance of the hearing on the fairness of the Plan and provided all interested parties the opportunity to be heard at the hearing. Upon confirmation of the Plan, the Wisconsin Circuit Court has judicially approved issuance and distribution of the Surplus Notes according to the requirements of the Plan.

¹ See *In the Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corp.*, Case No. 10-CV-1576 (Wis. Cir. Ct., Dane County).

Applying the requirements of the exemption under § 13.1-514 B 15 of the Act, registration of the Surplus Notes is not in the public interest or necessary for the protection of the Holders because: (1) the Holders are protected by judicial approval of the Plan, including approval of both the fairness of the terms and conditions of the Plan as well as the issuance of the Surplus Notes; and (2) issuance of the Surplus Notes is incident to a judicially approved reorganization under § 645.33(5) of the Wisconsin Statutes, which authorizes the Rehabilitator to "prepare a plan for reorganization ... of the insurer." Additionally, the issuance of Surplus Notes does not constitute a "sale," "offer," or "offer to sell," which terms the Uniform Securities Act defines to exclude "any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash."

The proposed issuance of Surplus Notes also satisfies the requirements of § 13.1-514 B 5. Applying this exemption, registration of the Surplus Notes is not in the public interest or necessary for the protection of the Holders because: (1) the Holders are protected by judicial approval of the Plan, including approval of both the fairness of the terms and conditions of the Plan as well as the issuance of the Surplus Notes; (2) the Wisconsin court will retain jurisdiction over the case; and (3) distribution of the Surplus Notes will occur by or at the direction of a judicially appointed officer subject to the approval of a court or administrative body responsible for establishing and supervising the Applicant.

THE COMMISSION, upon consideration of this matter and in reliance upon the facts and representations contained in the application, is of the opinion and finds that the securities transactions contained in the proposed Plan are within the purview of § 13.1-514 B 15 and § 13.1-514 B 5.

Accordingly, IT IS ORDERED THAT the proposed transactions described above, and based upon the representations of the Applicant, are exempt from the securities, broker-dealer and agent registration requirements § 13.1-514 B 15 and § 13.1-514 B 5 of the Act.

**CASE NO. SEC-2011-00005
MAY 23, 2011**

APPLICATION OF
SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION

For an official interpretation pursuant to § 13.1-525 of the Code of Virginia

OFFICIAL INTERPRETATION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by a supplemental request of the Segregated Account of Ambac Assurance Corporation ("Applicant") received on January 28, 2011, and which supplements its previous letter-application dated October 29, 2010, and filed pursuant to § 13.1-525 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by its counsel and upon payment of the requisite fee. The Applicant has requested a further determination that the proposed securities transactions described below be exempted from the securities registration requirements of the Act pursuant to § 13.1-514 B 15 or B 5 of the Act.

On February 10, 2011, the Commission entered an Official Interpretation in response to the Applicant's letter-application dated October 29, 2010, and as supplemented on November 19, 2010. As set forth in that Official Interpretation, the Applicant proposed to issue securities to holders of certain permitted insurance claims ("Holders") pursuant to a judicially approved Plan of Rehabilitation ("Plan") prepared by the Office of the Commissioner of Insurance of the State of Wisconsin ("Wisconsin OCI"). Based upon the representations of the Applicant, the Official Interpretation ordered that the proposed transactions are exempt from the securities, broker-dealer and agent registration requirements of the Act pursuant to § 13.1-514 B 15 and § 13.1-514 B 5 of the Act.

By letter dated January 27, 2011, the Applicant made a supplemental request regarding additional transactions under the Plan. The Applicant again requested a determination that these transactions are exempt from registration requirements pursuant to § 13.1-514 B 15 and § 13.1-514 B 5 of the Act. The pertinent information contained in the supplemental application is summarized as follows:¹

The Applicant was established by Ambac Assurance Corporation ("Ambac Assurance"), a Wisconsin-domiciled insurance company, following the deterioration of Ambac Assurance's financial condition. As a result, the Wisconsin OCI increased its oversight of Ambac Assurance and began to evaluate the company's ability to pay all claims in its insured portfolio. On March 24, 2010, Ambac Assurance acquiesced to the Wisconsin OCI's request that Ambac Assurance establish the Applicant and file a rehabilitation petition in Wisconsin state court.² The Wisconsin Circuit Court for Dane County ("Wisconsin Circuit Court" or "Court") granted the rehabilitation petition and appointed the Wisconsin Commissioner of Insurance as rehabilitator ("Rehabilitator") of the Applicant.

On October 8, 2010, the Rehabilitator filed a Plan pursuant to Wisconsin Statutes § 645.33(5), which authorizes the Rehabilitator to prepare a "plan for reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer." The Rehabilitator provided notice to policyholders and other known parties-in-interest about the filing of the Plan. Additionally, the Rehabilitator made the Plan and other related documents to the rehabilitation publicly available at a website established by the Rehabilitator (<http://www.ambacpolicyholders.com>) to provide claimants and interested parties access to relevant materials concerning the rehabilitation.

The Wisconsin Circuit Court confirmed the Plan on January 24, 2011. Prior to confirmation, the Court conducted hearings on the fairness and reasonableness of the terms of the Plan, including evidentiary hearings on November 15-19, 2010, and oral arguments regarding confirmation of the Plan on November 30, 2010. The Wisconsin Circuit Court has retained jurisdiction of the case for purposes of implementing and overseeing the Plan.

¹ For additional information regarding the Applicant's original request and determination of exemption, please refer to *Application of Segregated Account of Ambac Assurance Corporation*, Case No. SEC-2011-00005 Official Interpretation (Feb. 10, 2011).

² See *In the Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corp.*, Case No. 10-CV-1576 (Wis. Cir. Ct., Dane County).

The Plan allows the Applicant to issue Surplus Notes to Holders in partial satisfaction of claims. The Surplus Notes will bear interest at 5.1% per annum and mature on June 7, 2020. By their terms, the Surplus Notes will be subordinated obligations and no payment of principal or interest may be made without the prior written approval of the Wisconsin OCI. No commission or remuneration will be paid or given, directly or indirectly, to any person in connection with the solicitation of the Holders or the issuance of the Surplus Notes to Holders.

Item 3.06 ("Alternative Resolution of Claims") of the Plan allows the Rehabilitator to "resolve any Claim through the arrangement, negotiation, effectuation and execution of an amendment, restructuring, refinancing, purchase, repurchase, termination, settlement, commutation, tender, synthetic commutation or tear-up, or any similar transaction that results in the extinguishment or reduction of the Segregated Account's liability" Subsection (a) of Item 3.06 requires that each Alternative Resolution "must not violate the law and must be equitable to the interests of the Holders of Policy Claims generally" as determined by the Rehabilitator. Additionally, subsection (b) of Item 3.06 requires the Rehabilitator to "obtain the approval of this Court prior to effectuating any Alternative Resolution that involves the payment of Cash by the Segregated Account in excess of \$50 million."

On December 27, 2010, the Applicant and Ambac Assurance entered into a Settlement Agreement ("Settlement Agreement") with Nuveen Asset Management, Restoration Capital Management LLC, and Stone Lion Capital Partners L.P., on behalf of themselves and/or funds and accounts managed or controlled by them, as holders of certain current interest bonds and capital appreciation bonds ("Insured Bonds"). As part of the Settlement Agreement, the Applicant proposes to issue Surplus Notes to Wells Fargo Bank, N.A., as trustee, on behalf of holders of the Insured Bonds ("Insured Bondholders") in partial satisfaction of the Applicant's obligations under the financial guaranty insurance policy and surety bond issued for the benefit of the Insured Bondholders ("Policies").

The Settlement Agreement provides two alternative methods for resolving the Insured Bondholders' claims. The primary method is by a "commutation," in which the Applicant will receive a release and the Policies will be commuted. In exchange, the Applicant will make a cash payment of \$111 million and issue \$90 million in principal amount of Surplus Notes to be shared in a pro rata amount among Insured Bondholders. If the commutation cannot be consummated, certain claims of Insured Bondholders will be resolved through an "offer to purchase" method. This method will require the Applicant to commence an offer to purchase the rights under the Policies of the Insured Bondholders through a "synthetic commutation." Each Insured Bondholder who accepts the offer to purchase will receive its pro rata share of a cash payment of \$111 million and \$81 million in principal amount of Surplus Notes issued by the Applicant in exchange for terminating its Policy and releasing the Applicant.³

Pursuant to the terms of Item 3.06 of the Plan as well as the terms of the Settlement Agreement, the Wisconsin Circuit Court must approve the Settlement Agreement. Similarly, the Rehabilitator must approve the commutation and/or the order to purchase subject to Item 3.06 of the Plan and the terms of the Settlement Agreement.

On February 10, 2011, the Rehabilitator filed a motion to approve the Settlement Agreement. Following a hearing on April 21, 2011, the Wisconsin Circuit Court granted the Rehabilitator's motion by an Order issued the same day. The Order states that the motion to approve the Settlement Agreement came before the Wisconsin Circuit Court on proper advance written notice and that "[a]ll parties-in-interest were afforded the opportunity to appear and be heard on the fairness of the Settlement Agreement without any improper impediments." The Order further states the Court's finding that "the terms and conditions of the issuance of surplus notes and/or trust certificates to [Holders] contemplated by the settlement agreement will be procedurally and substantively fair to the recipients or such securities."

By letter dated January 27, 2011, the Applicant requested a determination that the proposed transactions involving Surplus Notes as part of the Settlement Agreement are exempt from the registration requirements of the Act pursuant to § 13.1-514 B 15 and § 13.1-514 B 5 of the Act.

Section 13.1-514 B 15 of the Act provides an exemption from the securities, broker-dealer and agent registration requirements of the Act for "[a]ny transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, sale of assets, or exchange of securities[.]" Alternatively, § 13.1-514 B 5 of the Act provides an exemption from the securities, broker-dealer and agent registration requirements of the Act for "[a]ny transaction in his official capacity by a receiver, trustee in bankruptcy or other judicially appointed officer selling securities pursuant to court order[.]" Both of these exemptions recognize that the benefits of registration under the Act are unnecessary in connection with a transaction that is controlled by a statutory or judicial proceeding, which affords adequate investor protection.

The proposed transactions are conducted pursuant to Item 3.06 of the Plan. In the Official Interpretation entered on February 10, 2011, the Commission stated that issuance of Surplus Notes under the Plan were exempt from the securities, broker-dealer and agent registration requirements of the Act pursuant to § 13.1-514 B 15 and § 13.1-514 B 5 of the Act. A similar analysis applies here regarding issuance of Surplus Notes as part of the proposed Settlement Agreement.

The proposed issuance of Surplus Notes satisfies the requirements of § 13.1-514 B 15. The proposed transaction is made pursuant to a judicially approved reorganization under the laws of Wisconsin. The Plan, which authorizes the Rehabilitator to engage in alternative resolutions, and other related documents to the rehabilitation were made available and distributed to interested persons in advance of the hearing on the fairness of the Plan and provided all interested parties the opportunity to be heard at the hearing. Additionally, interested parties had the opportunity to appear and be heard regarding the fairness of the Settlement Agreement in response to the Rehabilitator's motion to approve the Settlement Agreement. Following confirmation of the Plan and approval of the Settlement Agreement, the Wisconsin Circuit Court has judicially approved issuance and distribution of the Surplus Notes, which will be conducted according to the requirements of the Plan and the Settlement Agreement.

A registration exemption for the Surplus Notes, as provided by § 13.1-514 B 15 of the Act, appears appropriate because: (1) the Holders are protected by judicial approval of the Plan and Settlement Agreement, including approval of both the fairness of the terms and conditions of the Plan and Settlement Agreement as well as the issuance of the Surplus Notes; and (2) issuance of the Surplus Notes is incident to a judicially approved reorganization under § 645.33(5) of the Wisconsin Statutes, which authorizes the Rehabilitator to "prepare a plan for reorganization . . . of the insurer." Additionally, the issuance of Surplus Notes does not constitute a "sale," "offer," or "offer to sell," which terms the Uniform Securities Act defines to exclude "any act incident

³ The amounts above depend upon all Insured Bondholders accepting the offer to purchase and the aggregate amounts will decrease if fewer than all Insured Bondholders accept.

to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash."

The proposed issuance of Surplus Notes also satisfies the requirements of § 13.1-514 B 5. Applying this exemption, registration of the Surplus Notes is not in the public interest or necessary for the protection of the Holders because: (1) the Holders are protected by judicial approval of the Plan and Settlement Agreement, including approval of both the fairness of the terms and conditions of the Plan and Settlement Agreement as well as the issuance of the Surplus Notes; (2) the Wisconsin Circuit Court will retain jurisdiction over the case; and (3) approval of the Settlement Agreement and distribution of the Surplus Notes will occur by or at the direction of a judicially appointed officer subject to the approval of a court or administrative body responsible for establishing and supervising the Applicant.

THE COMMISSION, upon consideration of this matter and in reliance upon the facts and representations contained in the application, is of the opinion and finds that the securities transactions contained in the proposed Settlement Agreement are within the purview of § 13.1-514 B 15 and § 13.1-514 B 5.

Accordingly, IT IS ORDERED THAT the proposed transactions described above, and based upon the representations of the Applicant, are exempt from the securities, broker-dealer and agent registration requirements of the Act pursuant to § 13.1-514 B 15 and § 13.1-514 B 5 of the Act.

**CASE NO. SEC-2011-00006
OCTOBER 3, 2011**

COMMONWEALTH OF VIRGINIA, ex. rel.
STATE CORPORATION COMMISSION
v.
VERITRAX CORPORATION
and
DALE TOLER,
Defendants

ORDER

On May 19, 2011, the State Corporation Commission ("Commission") issued a Rule to Show Cause ("Rule") against Veritrac Corporation ("Veritrac") and Dale Toler ("Toler") (collectively, "Defendants"). The Rule summarized allegations by the Division of Securities and Retail Franchising ("Division"). Specifically, the Division alleged that the Defendants failed to comply with a subpoena which was issued by the Commission on March 22, 2011, ("Subpoena") in accordance with § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code").

The Rule, among other things, assigned the matter to a Hearing Examiner and scheduled an evidentiary hearing for July 14, 2011. Additionally, the Rule ordered the Defendants to file a responsive pleading on or before June 10, 2011, in which each Defendant was required to expressly admit or deny the allegations in the Rule and present any affirmative defenses that they intended to assert. The Rule also advised the Defendants that they may be found in default if they failed to either timely file a responsive pleading or if they failed to appear at the hearing.

An evidentiary hearing on the Rule was held on July 14, 2011. The Division of Securities and Retail Franchising ("Division") was represented by its counsel, Gauhar R. Naseem, Esquire. The Defendants failed to appear after receiving notice of the hearing. The proof of service of the Rule was offered into the record as an exhibit. The Division presented the testimony of Gail Moore, Senior Investigator in the enforcement section of the Division, along with documentary proof to provide the facts necessary to prove the allegations set forth in the Rule.

On August 9, 2011, the Hearing Examiner issued her report ("Report"), which thoroughly summarized the factual and procedural history of this case, as well as the evidence presented at the hearing. In her Report, the Hearing Examiner found that: (i) the Rule was properly served in accordance with § 12.1-19.1 of the Code; (ii) the Defendants were in default; (iii) the Defendants were subject to penalty pursuant to § 12.1-33 of the Code for failing or refusing to obey the Commission's Subpoena; (iv) The Defendants should be fined in the amount of \$10,000 for failing or refusing to obey the Commission's Subpoena; (v) the Defendants should be ordered to produce the documents specified in the Subpoena within ten (10) days following the entry of this Order; (vi) the penalty should be waived if the Defendants produce the documents specified in the Subpoena within ten (10) days following the entry of this Order; (vii) the Defendants should be advised that they will be subject to a separate fine of \$10,000 for each day that they fail or refuse to obey the Commission's order; and (viii) the Commission should retain jurisdiction over this matter for the assessment of additional fines in accordance with § 12.1-33 of the Code if appropriate.

The Report allowed the Defendants twenty-one (21) days in which to provide comments. The Defendants did not file comments.

NOW THE COMMISSION upon consideration of the Rule, the record, the Hearing Examiner's Report, and the applicable statutes, is of the opinion and finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted as modified herein.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the August 9, 2011, Hearing Examiner's Report, as modified herein, are hereby adopted;
- (2) Defendants are hereby fined in the amount of Ten Thousand Dollars (\$10,000) for failing or refusing to obey the Commission's Subpoena;
- (3) The Defendants shall produce the documents specified in the Subpoena within fifteen (15) days following the entry of this Order;
- (4) The penalty will be waived if the Defendants produce the documents specified in the Subpoena within fifteen (15) days following the entry of this Order;

(5) The Defendants will be subject to a separate fine of Ten Thousand Dollars (\$10,000) for each day that they fail or refuse to obey the Commission's Order computed from the day following entry of this Order; and

(6) The Commission should retain jurisdiction over this matter for the assessment of additional fines in accordance with § 12.1-33 of the Code if appropriate.

CASE NO. SEC-2011-00008
JULY 11, 2011

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

PETE FRESE, JR.

and

STRATUS FRANCHISING, LLC,
Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Pete Frese, Jr. and Stratus Franchising, LLC (collectively, "Defendants") violated § 13.1-563 (2) of the Virginia Retail Franchising Act ("Act"), § 13.1-557 *et seq.* of the Code of Virginia, by making untrue statements of a material fact or omitting to state a material fact necessary in order to avoid misleading the offeree in connection with the sale or offer to sell a franchise.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-562 of the Act to revoke the Defendants' registration, by § 13.1-568 of the Act to issue temporary or permanent injunctions, by § 13.1-570 of the Act to impose certain monetary penalties and to request the Defendants make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants neither admit nor deny these allegations but admit to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) The Defendants will pay to the Treasurer of the Commonwealth of Virginia, contemporaneously with the entry of this Order, the amount of Fifteen Thousand dollars (\$15,000) in monetary penalties.

(2) The Defendants will pay to the Treasurer of the Commonwealth of Virginia, contemporaneously with the entry of this Order, the amount of Five Thousand dollars (\$5,000) to defray the costs of investigation.

(3) The Defendants will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

The Commission, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendants in settlement of the matter set forth herein is hereby accepted;

(2) The Defendants fully comply with the aforesaid terms and undertakings of this settlement; and

(3) This case is dismissed and the papers herein shall be placed in the file for ended causes.

Dismissal of this case does not relieve the Defendants from their reporting obligations to any regulatory authority.

**CASE NO. SEC-2011-00012
MAY 31, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
THE WOODLAND, INC.,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that The Woodland, Inc. ("Defendant") violated § 13.1-507 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by offering or selling securities that were not registered under the Act or exempt from registration.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Act to revoke the Defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order the Defendant to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendant neither admits nor denies these allegations but admits to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

(1) The Defendant will make a rescission offer to the investors in the Company's October 22, 2009 and July 15, 2010 offerings.

(a) Within thirty (30) days of the date of this Settlement Order, the Defendant will make a written offer of rescission sent by certified mail to the investors, which will include an offer to repay all monies invested by or through the Defendant, and a provision that gives each investor thirty (30) days from the date of receipt of the rescission offer to provide the Defendant with written notification of his decision to accept or reject the offer.

(b) The Defendant will provide to the Division a copy of the rescission offer for its review and comment at least ten (10) days before sending it to each investor.

(c) The Defendant will include with the written offer of rescission a copy of this Settlement Order.

(d) If the rescission offer is accepted, the Defendant will forward the payment to the investors within fifteen (15) days of receipt of the acceptance.

(e) Within ninety (90) days from the date of the Settlement Order, the Defendant will submit to the Division proof of certified mailing of the rescission offer and an affidavit, executed by the Defendant, which contains the date on which each investor received the offer of rescission, the investor's response, and, if applicable, the amount and the date that payment was sent to the investor.

(2) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

The Commission, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;

(2) The Defendant fully comply with the aforesaid terms and undertakings of this settlement; and

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendant's failure to comply with the terms and undertakings of the settlement.

**CASE NO. SEC-2011-00015
MARCH 30, 2011**

APPLICATION OF
NATIONAL COVENANT PROPERTIES

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received March 1, 2011, with exhibits attached thereto, of National Covenant Properties, requesting that: 5-Year Fixed Rate Renewable Certificates, Variable Rate Certificates, Individual Retirement Account Certificates, Church Demand Investment Accounts, and Health Savings Account Certificates (collectively, "Certificates") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, and that certain officers of National Covenant Properties be exempted from the agent registration requirements of the Act.

Based upon the information submitted, the following facts, in addition to others not enumerated herein, appear to exist: National Covenant Properties is a non-stock Illinois corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; National Covenant Properties intends to offer and sell the Certificates in an approximate aggregate amount of up to \$100,000,000 on terms and conditions as more fully described in the Offering Circular filed as a part of the application; said securities are to be offered and sold by officers of National Covenant Properties who will not be compensated for their sales efforts; and that National Covenant Properties will discontinue issuer transactions for all Certificates previously exempted by the Commission upon the grant of the exemption for the offering of Certificates described herein.

Based on the facts asserted by National Covenant Properties in the written application and exhibits, pursuant to the provisions of § 13.1-514.1 B of the Act, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and does hereby ADJUDGE and ORDER that the securities described above are exempted from the securities registration requirements of the Act and that certain officers of National Covenant Properties are exempted from the agent registration requirements of § 13.1-504 of the Act.

**CASE NO. SEC-2011-00016
MARCH 30, 2011**

APPLICATION OF
BAPTIST GENERAL CONFERENCE CORNERSTONE FUND, d/b/a CONVERGE CORNERSTONE FUND

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received March 1, 2011, with exhibits attached thereto, of Baptist General Conference Cornerstone Fund, d/b/a Converge Cornerstone Fund (the "Fund"), requesting that Fixed Rate Certificates, Demand Certificates and Individual Retirement Account (IRA) Certificates (collectively, "Certificates") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, and that certain officers of the Fund be exempted from the agent registration requirements of the Act.

Based upon the information submitted, the following facts, in addition to others not enumerated herein, appear to exist: the Fund is a non-stock Illinois corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; the Fund intends to offer and sell the Certificates in an approximate aggregate amount of up to \$100,000,000 on terms and conditions as more fully described in the Offering Circular filed as a part of the application; said securities are to be offered and sold by officers of the Fund who will not be compensated for their sales efforts; and the Fund will discontinue issuer transactions for all Certificates previously exempted by the Commission upon the grant of the exemption for the offering of Certificates described herein.

Based on the facts asserted by the Fund in the written application and exhibits, pursuant to the provisions of § 13.1-514.1 B of the Act, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and does hereby ADJUDGE and ORDER that the securities described above are exempted from the securities registration requirements of the Act and that certain officers of the Fund are exempted from the agent registration requirements of § 13.1-504 of the Act.

**CASE NO. SEC-2011-00017
APRIL 11, 2011**

APPLICATION OF
COLUMBIA UNION REVOLVING FUND

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received March 16, 2011, with exhibits attached thereto, as subsequently amended, of Columbia Union Revolving Fund (the "Fund"), requesting that 90-day Demand

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Promissory Notes ("Notes"), be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: the Fund is a Delaware corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; the Fund intends to offer and sell the Notes in an approximate aggregate amount of up to \$45,000,000 on terms and conditions as more fully described in the Offering Circular filed as a part of the application; the Notes are to be offered and sold by a registered agent; and the Fund will discontinue issuer transactions for all Notes previously exempted by the Commission upon the grant of the exemption for the offering of Notes described herein.

Based on the facts asserted by the Fund in the written application and exhibits, pursuant to the provisions of § 13.1-514.1 B of the Act, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and does hereby ADJUDGE and ORDER that the securities described above are exempted from the securities registration requirements of the Act. IT IS FURTHER ORDERED that the Fund will discontinue issuer transactions for all notes previously exempted by the Commission.

**CASE NO. SEC-2011-00018
JUNE 14, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
EXMOVERE HOLDINGS, INC.,
Defendant

CONSENT ORDER

The Defendant, Exmovere Holdings, Inc. ("Exmovere"), is a Nevada corporation with its principal office located in McLean, Virginia. In March of 2010, the Division of Securities and Retail Franchising ("Division") opened an investigation into the Defendant's activities involving the offer and sale of securities within the Commonwealth. The Division alleges that, beginning in February of 2009, the Defendant, through its agents, solicited and sold stock to at least seventy (70) investors. Such securities were not registered with the Division pursuant to the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia. The Defendant's agents were also not registered to transact business in securities under the Act.

In an effort to resolve Exmovere's registration issues with the Division, Exmovere has agreed to the entry of an order prohibiting it from offering or selling Exmovere stock within the Commonwealth of Virginia until such time as they have properly registered with the Division.

In light of the foregoing, the Division has recommended that this Consent Order be entered in this matter.

NOW THE COMMISSION, having considered the record herein and the recommendation of the Division, is of the opinion that a Consent Order should be entered.

Accordingly, IT IS ORDERED THAT:

- (1) The Defendant shall not offer or sell Exmovere stock until such time as it has registered with the Division.
- (2) By entry of this Order, the Defendant has waived its right to a hearing and to judicial review of this Order under § 13.1-521 A of the Act and § 12.1-39 of the Code of Virginia.
- (3) Entry of this Order will not preclude the Division from taking any actions and pursuing any remedies available under the Act for any violations of the Act arising from the Defendant's sale of Exmovere stock.
- (4) Entry of this Order does not waive any rights or remedies available to Exmovere by law or under the Act in the event the Division pursues any action or remedy available under the Act.
- (5) This Order shall be binding upon Defendant and each of its successors and assigns with respect to all conduct subject to the provisions above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

**CASE NO. SEC-2011-00022
APRIL 21, 2011**

APPLICATION OF
MISSION INVESTMENT FUND OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received March 31, 2011, with exhibits attached thereto, of the Mission Investment Fund of the Evangelical Lutheran Church in America ("Mission Fund"), requesting that: Demand Investments, Fixed and Adjustable Interest Term Investments, MIF4KIDZ Investments (custodian for minor only) and the IRA/CESA/HSA

program (collectively "Mission Investments"), be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: Mission Fund is a Minnesota corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; Mission Fund intends to offer and sell Mission Investments in an approximate aggregate amount of up to \$300,000,000 on terms and conditions as more fully described in the Offering Circular filed as a part of the application; and said securities are to be offered and sold by registered securities sales agents for Mission Fund in Virginia.

Based on the facts asserted by Mission Fund in the written application and exhibits, pursuant to the provisions of § 13.1-514.1 B of the Act, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and does hereby ADJUDGE and ORDER that the securities described above are exempted from the securities registration requirements of the Act.

**CASE NO. SEC-2011-00023
OCTOBER 6, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

THE BUFFALO EXTENSION, LLP

and

RICHARD F. REYNOLDS,

Defendants

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that The Buffalo Extension, LLP, and Richard F. Reynolds ("Defendants"): (i) violated § 13.1-504 A (i) of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by transacting business in the Commonwealth of Virginia without duly being registered with the Division as an agent of the issuer; (ii) violated § 13.1-504 B of the Act by employing an unregistered agent in the offer and sale of securities; and (iii) violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Act to revoke the Defendants' registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order the Defendants to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendants neither admit nor deny these allegations but admit to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendants have made an offer of settlement to the Commission wherein the Defendants will abide by and comply with the following terms and undertakings:

(1) The Defendants will pay to the Treasurer of the Commonwealth of Virginia, within nine (9) months from the date of entry of this Order, the amount of Ten Thousand Dollars (\$10,000) in monetary penalties.

(2) The Defendants will pay to the Treasurer of the Commonwealth of Virginia, within nine (9) months from the date of entry of this Order, the amount of Five Thousand Dollars (\$5,000) to defray the cost of investigation.

(3) The Defendants will make a rescission offer to all Virginia investors.

(a) Within thirty (30) days of the date of this Settlement Order, the Defendants will make a written offer of rescission sent by certified mail to the investors, which will include an offer to repay all monies invested by or through Buffalo, and a provision that gives each investor thirty (30) days from the date of receipt of the rescission offer to provide the Defendants with written notification of his decision to accept or reject the offer.

(b) The Defendants will provide to the Division a copy of the rescission offer for its review and comment at least ten (10) days before sending it to each investor.

(c) The Defendants will include with the written offer of rescission a copy of this Settlement Order.

(d) If the rescission offer is accepted, the Defendants will forward the payment to the investors within fifteen (15) days of receipt of the acceptance.

(e) Within ninety (90) days from the date of the Settlement Order, the Defendants will submit to the Division proof of certified mailing of the rescission offer and an affidavit, executed by the Defendants, which contains the date on which each investor received the offer of rescission, the investor's response, and, if applicable, the amount and the date that payment was sent to the investor.

(4) The Defendants will not offer or sell securities within the Commonwealth of Virginia through any agent, affiliate or affiliate issuer until such time as they have registered with the Division.

(5) The Defendants will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendants.

The Commission, having considered the record herein, the offer of settlement of the Defendants, and the recommendation of the Division, is of the opinion that the Defendants' offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendants in settlement of the matter set forth herein be, and it is hereby, accepted;
- (2) The Defendants fully comply with the aforesaid terms and undertakings of this settlement; and
- (3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendant's failure to comply with the terms and undertakings of the settlement.

**CASE NO. SEC-2011-00024
MAY 9, 2011**

APPLICATION OF
HARNETT HEALTH SYSTEM, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration by written application of the Harnett Health System, Inc. ("Harnett Health"), which the Commission received on March 31, 2011, with attached exhibits. The application requested that the Adjustable Rate Hospital Bonds, Series 2011A ("2011 A Bonds") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: (i) Harnett Health is a North Carolina corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; (ii) Harnett Health intends to offer and sell \$22,400,000 of the 2011 A Bonds on terms and conditions as more fully described in the Offering Memorandum filed as a part of the application and as subsequently amended; and (iii) the 2011 A Bonds are to be offered and sold by broker-dealers registered under the Act.

Based on the facts asserted by Harnett Health in the written application and exhibits, and pursuant to the provisions of § 13.1-514.1 B of the Act, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and does hereby ADJUDGE AND ORDER that, the securities described above are exempt from the securities registration requirements of the Act.

**CASE NO. SEC-2011-00031
JULY 20, 2011**

APPLICATION OF
THE UNITED METHODIST DEVELOPMENT FUND

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration by written application of The United Methodist Development Fund ("Fund"), which the Commission received on June 7, 2011, with attached exhibits. The application requested that the notes, Flexible Investment Notes, One Year Notes, Two Year Notes, Three Year Notes, Four Year Notes and IRA Notes (collectively, "Notes") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.*, of the Code of Virginia and that certain officers and employees of the Fund be exempted from the agent registration requirements of the Act.

Based upon the information submitted, the following facts appear to exist, in addition to others not enumerated herein: (i) the Fund is a Pennsylvania corporation operating not for private profit but exclusively for religious and charitable purposes; (ii) the Fund intends to offer and sell One Hundred Million Dollars (\$100,000,000) of the Notes in a continuous offering on terms and conditions as more fully described in the Offering Circular filed as a part of the application, as subsequently amended; (iii) the Notes are to be offered and sold by officers and employees of the Fund who will not be compensated for the offers and sales of the Notes; and (iv) the Fund will discontinue issuer transactions for all other securities previously exempted by Commission Order in Case No. SEC-2005-00039.

Based on the facts asserted by the Fund in the written application, as amended, and exhibits, and pursuant to the provisions of § 13.1-514.1 B of the Act, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and does hereby ADJUDGE AND ORDER that the securities described above are exempt from the securities registration requirements of the Act, and the officers and employees of the Fund are exempt from the agent registration requirements of § 13.1-504 A of the Act.

**CASE NO. SEC-2011-00032
JULY 6, 2011**

APPLICATION OF
HERITAGE INVESTMENT SERVICES FUND, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received April 14, 2011, with exhibits attached thereto, of the Heritage Investment Services Fund, Inc. ("HIS Fund"), requesting that Unsecured Promissory Notes (collectively, "Notes") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, and that certain officers, directors, and employees of HIS Fund be exempted from the agent registration requirements of the Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: HIS Fund is a Pennsylvania corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; HIS Fund intends to offer and sell Notes in an approximate aggregate amount of up to \$60,000,000 on terms and conditions as more fully described in the Prospectus filed as a part of the application; and said securities are to be offered and sold by directors, officers, and employees of HIS Fund, who will not be compensated for their sales efforts in Virginia.

Based on the facts asserted by HIS Fund in the written application and exhibits, pursuant to the provisions of § 13.1-514.1 B of the Act, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and does hereby ADJUDGE and ORDER that the securities described above are exempted from the securities registration requirements of the Act, and the officers, directors and employees of HIS Fund are exempted from the agent registration requirements of § 13.1-504 of the Act.

**CASE NO. SEC-2011-00034
JULY 25, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting a Revision to the Rules Governing the Virginia Securities Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://www.scc.virginia.gov/case>.

On July 19, 2011, the Division of Securities and Retail Franchising ("Division") issued a policy statement which recognized changes in federal laws and regulations governing investment advisors adopted under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). The policy statement is attached hereto. As part of the policy statement, the Division stated that it was responding to the regulatory gaps created by the Dodd-Frank Act as recognized and addressed by other member states of the North American Securities Administrators Association. Specifically, the Division noted that changes occasioned by the Dodd-Frank Act had left certain investor advisors uncertain regarding when they must register to comply with state securities laws, including under the Act. The Division's policy statement addresses these issues concerning the registration of investment advisors and their investment advisor representatives managing private equity and venture capital funds operating within the Commonwealth of Virginia.

Accordingly, the Division has submitted to the Commission proposed revisions to Chapters 10 and 80 of Title 21 of the Virginia Administrative Code entitled "Rules and Forms Governing Virginia Securities Act" ("Rules").

Rule 21 VAC 5-80-215 is created granting certain investment advisors and investment advisor representatives an exemption from the registration provisions of the Act provided the investment advisor was exempt from registration pursuant to § 203(b)(3) of the Investment Advisors Act of 1940 ("40 Act") prior to July 21, 2011, and the investment advisor is subject to the Securities and Exchange Commission's ("SEC") Rule 203-1(e) granting an extension to those investment advisors formerly exempt from registration under § 203(b)(3) of the 40 Act until March 30, 2012, who would otherwise have been required to register with the SEC by July 21, 2011.

Rule 21 VAC 5-80-210 A. 7 is repealed in its entirety.

Rule 21 VAC 5-10-40 is amended to replace the word "chapter" with "title."

The Division has recommended to the Commission that the proposed revisions should be considered for adoption with a proposed effective date of September 2, 2011. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefor.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by mail or e-mail request and also can be found at the Division's website: <http://www.scc.virginia.gov/srf>. Any comments to the proposed rules must be received by August 29, 2011.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed revisions are appended hereto and made a part of the record herein.
- (2) Comments or requests for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before August 29, 2011. Any request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. SEC-2011-00034. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.
- (3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons may also request a copy of the proposed revisions from the Division by telephone, mail or e-mail.
- (4) This Order, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

NOTE: A copy of the Attachments are on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. SEC-2011-00034
SEPTEMBER 7, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

Ex Parte: In the matter of Adopting a Revision to the Rules Governing the Virginia Securities Act

ORDER ADOPTING AMENDED RULES

By order entered on July 25, 2011, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapters 10 and 80 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Rules and Forms Governing Virginia Securities Act." On August 8, 2011, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of the proposed Regulations to all interested parties pursuant to the Virginia Securities Act, § 13.1-501 *et seq.* of the Code of Virginia. The Order to Take Notice described the proposed amendments and afforded interested parties an opportunity to file comments and request a hearing by August 29, 2011, with the Clerk of the Commission.

No comments were filed nor were any requests for hearing made in this matter.

The Commission, upon consideration of the proposed amendments to the Regulations the recommendations of the Division, and the record in this case, finds that the proposed amendments to the Regulations should be adopted.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed Regulations are attached hereto, made a part hereof, and are hereby ADOPTED effective September 9, 2011.
- (2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

NOTE: A copy of Attachment A entitled "Rules Governing the Virginia Securities Act" is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. SEC-2011-00039
NOVEMBER 15, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
RAYMOND JAMES & ASSOCIATES, INC.,
and
RAYMOND JAMES FINANCIAL SERVICES, INC.,
Defendants

CONSENT ORDER

Raymond James & Associates, Inc. ("RJA") and Raymond James Financial Services, Inc. ("RJFS") (collectively, "Defendants") are broker-dealers registered in the Commonwealth of Virginia; and

The Defendants' activities regarding the sale of auction rate securities ("ARS") have been the subject of coordinated investigations conducted by a multi-state task force; and

The Defendants have cooperated fully with regulators conducting the investigations by providing documentary evidence and other materials and by providing regulators with access to information relevant to their investigations; and

On June 29, 2011, the Defendants and the multi-state task force reached an agreement to resolve the investigations relating to Defendants' sale of ARS to certain customers; and

The Defendants agree, among other things, to purchase certain ARS from customers and to make certain payments; and

The Defendants elect to waive permanently any right to a hearing and appeal under § 12.1-39 of the Code of Virginia, with respect to this Consent Order (the "Order"); and

The Defendants admit the jurisdiction of the State Corporation Commission ("Commission") and consent to the entry of this Order by the Commission; and

The Defendants have voluntarily agreed to purchase ARS from certain customers, as described in Section IV below, and to use best efforts to provide liquidity solutions for certain other customers; and

The Defendants neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order.

NOW, THEREFORE, the Commission, as administrator of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, hereby enters this Order:

I.

1. RJA (CRD #705) was, at all times material herein, a Florida corporation with its principal place of business at 880 Carillon Parkway, St. Petersburg, Florida 33716.

2. RJFS (CRD #6694) was, at all times material herein, a Florida corporation with its principal place of business at 880 Carillon Parkway, St. Petersburg, Florida 33716.

II. FINDINGS OF FACT

3. The Defendants are each in the business of effecting transactions in securities in Virginia as a "broker-dealer" within the meaning of the Act.

4. The Defendants have customers located across the United States of America, including Virginia.

5. Prior to February 13, 2008, the Defendants sold financial instruments known as ARS to Virginia residents.

ARS

6. ARS are bonds or preferred stocks that have interest rates or dividend yields that are periodically reset through an auction process, typically every seven (7), twenty-eight (28), or thirty-five (35) days.

7. ARS are usually issued with thirty (30) year maturities, but ARS maturities can range from five (5) years to perpetuity.

8. ARS can be attractive investments to investors because ARS may offer slightly higher yields than various alternative products, including forms of cash alternative products.

9. An ARS yield is determined by the periodic auctions (commonly referred to as "Dutch" auctions) during which ARS are auctioned at par.

10. ARS can be bought or sold at par at one of these periodic Dutch auctions.

11. Under the typical procedures for an ARS auction in effect prior to February 13, 2008, an investor, including a customer of either Defendant, who wished to purchase ARS at auction, submitted a bid that included the minimum interest or dividend rate that the investor would accept.

12. ARS holders could either choose to keep their securities until the next auction or submit offers to sell their ARS.

13. An auction agent collected all of the bids and offers for a particular auction.

14. The final yield rate at which the ARS were sold was the "clearing rate," and the clearing rate applied to that particular ARS until the next auction.

15. Bids with the lowest rate and then successively higher rates were accepted until all ARS sell orders were filled.

16. The clearing rate was the lowest rate bid sufficient to cover all ARS offered for sale in the auction.

17. If there were not enough bids to cover the ARS offered for sale in an auction, then an auction would fail.

18. In a failed auction, investors who want to sell are not able to do so, and such investors must hold their ARS until at least the next auction.
19. In the event of a failed auction, an ARS issuer pays the holders a maximum rate or "penalty" rate, which is either a flat rate or a rate based on a formula set forth in the ARS offering documents.
20. Penalty rates might be higher or lower than the prior clearing rate or market rates on similar products.
21. To facilitate the auction process, issuers of ARS selected one or more broker-dealers to underwrite an offering and/or manage an auction process.
22. In many instances, these broker-dealers submitted their own bids to support the ARS auctions and to prevent the auctions from failing, maintain an orderly market, or set a clearing rate.
23. Due to various market conditions in the early part of 2008, many of the broker-dealers that acted as underwriters of the ARS offerings or as lead managers for the ARS auctions stopped submitting their own bids in support of the ARS auctions.
24. As a result, by February 13, 2008, the ARS market began to experience widespread auction failures, leaving ARS investors, including some of the Defendants' customers throughout the United States of America, unable to sell their ARS holdings.
25. On February 13, 2008, through the date of this Order, the ARS market has continued to experience widespread failures, making ARS holdings illiquid.
26. Some ARS have been redeemed by their issuers since February 13, 2008. Thousands of ARS investors, however, including some of the Defendants' customers, have been unable to liquidate their ARS positions through the auction process.
27. The Defendants' customers currently hold hundreds of millions of dollars in illiquid ARS that they are unable to sell through the auction process.

Defendants' Roles in the ARS Market

28. RJA acted as an underwriter of single-issue municipal auction rate securities ("MARS"). RJA managed the auctions of MARS it underwrote and of MARS underwritten by other broker-dealers. Additionally, RJA submitted bids in the auctions it managed to prevent them from failing, to maintain an orderly market, or to set a clearing rate.
29. RJFS did not underwrite or act as an auction manager for ARS, and did not at any time submit bids in auctions.
30. The Defendants also acted as agents for their customers, on a solicited and unsolicited basis, by submitting customers' orders to purchase and sell two other ARS products: auction rate preferred securities backed by a pool of municipal bonds ("ARPS") and taxable auction rate securities ("TARS"), which were variable rate perpetual preferred stock issued by closed-end funds. As distributing or "downstream" broker-dealers for the ARPS and TARS, the Defendants did not submit bids in these auctions.

Defendants' ARS Sales to Customers

31. In selling ARS to its customers prior to the middle of February 2008, some of the Defendants' registered representatives and financial advisors made inaccurate comparisons between ARS and other investments, such as money market funds, telling customers that ARS were "cash equivalents," "the same as cash," and "highly liquid," but with a slightly higher yield. The Defendants' registered representatives and financial advisors also did not accurately characterize the investment nature of ARS, since ARS are highly complex securities that are very different from money market funds, as evidenced by, among other things, the dependence of ARS on successful auctions for liquidity.
32. The Defendants' ARS trade confirmations, sent after customers purchased ARS, disclosed the risks that these auctions could fail and that the Defendants were not obligated to ensure their success. Nevertheless, the Defendants did not provide customers with adequate and complete disclosures regarding the complexity of the auction process, including failing to adequately disclose to customers that RJA managed the auctions of the MARS and that RJA routinely bid in MARS auctions to prevent a failed auction, maintain an orderly market, or set a particular clearing rate. For example, some of the Defendants' registered representatives and financial advisors did not adequately disclose to customers that their ARS could become illiquid for an indeterminate period of time in the event of an auction failure.
33. The information described in Paragraphs 31 through 32 was material to the Defendants' customers.
34. The Defendants should have known that their registered representatives and financial advisors marketed ARS to customers as highly liquid and as an alternative to cash or money market funds without adequately disclosing that ARS are complex securities that may become illiquid.
35. In connection with the marketing of ARS, the Defendants failed to adopt policies and procedures reasonably designed to ensure that its registered representatives and financial advisors recommended ARS only to customers who had stated investment objectives that were consistent with their purchase of ARS. Some of the Defendants' registered representatives and financial advisors recommended ARS to customers as a liquid, short-term investment. As a result, some of the Defendants' customers who needed short-term access to funds invested in ARS even though ARS had long-term maturity dates, or in the case of ARPS and TARS, no maturity dates.

III. CONCLUSIONS OF LAW

36. The Commission has jurisdiction over this matter pursuant to the Act.

37. By engaging in the acts and conduct set forth in paragraphs II.3 through II.35, the Defendants engaged in dishonest or unethical practices, in violation of Commission Rule 21 VAC 5-20-280 G.

38. By engaging in the acts and conduct set forth in paragraphs II.3 through II.35, the Defendants failed to reasonably supervise their agents in violation of Commission Rule 21 VAC 5-20-260.

IV. ORDER

On the basis of the Findings of Fact, Conclusions of Law, and the Defendants' consent to the entry of this Order, without admitting or denying the facts or conclusions herein, NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order concludes the investigation by the Commission's Division of Securities and Retail Franchising and precludes any other action that the Commission could commence against the Defendants under the applicable Act on behalf of Virginia as it relates to the Defendants' sale of ARS to Eligible Investors, as defined below.

2. This Order is entered into solely for the purpose of resolving the above-referenced multi-state investigation and is not intended to be used for any other purpose.

3. The Defendants shall not violate the Act and will comply with the Act in the future.

4. Within ten (10) days of the date of this Order, the Defendants shall pay the sum of Twenty-five Thousand Five Hundred Ninety-seven Dollars and Eighty-six Cents (\$25,597.86) to the Treasurer of Virginia, which amount constitutes the Commonwealth of Virginia's proportionate share of the total state settlement amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000). In the event another state securities regulator determines not to accept the Defendants' settlement offer, the total amount of the payment to the Commonwealth of Virginia shall not be affected.

5. The Defendants shall take certain measures with respect to current and former customers with respect to "Eligible Auction Rate Securities," as defined below in Paragraph IV.6.

6. "Eligible Auction Rate Securities." For purposes of this Order, "Eligible Auction Rate Securities" means ARS purchased at the Defendants on or before February 13, 2008, and that have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing definition, the term "Eligible Auction Rate Securities" shall not include ARS that were purchased at the Defendants in accounts owned, managed, or advised by or through correspondent broker-dealers or unaffiliated registered investment advisers.

7. "Eligible Investors". For purposes of this Order, "Eligible Investors" shall mean the following:

(1) Any investor that purchased Eligible Auction Rate Securities at the Defendants on or before February 13, 2008, did not transfer such Eligible Auction Rate Securities away from the Defendants prior to January 1, 2006, and held those securities on February 13, 2008.

(2) "Eligible Investors," for the purposes of this Order, shall not include institutional money managers.

(3) "Eligible Investors," for the purposes of this Order, shall not include customers who resolved their ARS claims through arbitration proceedings or negotiated settlements with the Defendants.

8. Purchase Offer. The Defendants shall offer to purchase, at par plus accrued and unpaid dividends/interest, from Eligible Investors their Eligible Auction Rate Securities that have failed at auction at least once since February 13, 2008 (the "Purchase Offer").

9. Notification and Buyback Procedures.

a. The Defendants shall create a written notice related to the Purchase Offer (the "Notice"). The Notice shall explain the relevant terms of this Order and describe what Eligible Investors must do to accept, in whole or in part, the Purchase Offer, including how Eligible Investors may accept the Purchase Offer.

b. Initial Notice

i. The Defendants shall have provided the Notice to Eligible Investors who purchased Eligible Auction Rate Securities at the Defendants no later than thirty (30) days from June 29, 2011.

ii. Furthermore, the Defendants shall have undertaken their best efforts to identify and locate customers who purchased Eligible Auction Rate Securities at the Defendants but who transferred such Eligible Auction Rate Securities away from the Defendants prior to January 1, 2006, no later than thirty (30) days from June 29, 2011. The Defendants will provide any such customers the Purchase Offer described in Section IV.8, the Notification and Buyback Procedures described in Section IV.9, and the other terms described in Sections IV.11, IV.12, and IV.13.

c. Second Notice

With respect to each Eligible Investor that the Defendants sent the Notice required by Paragraph IV.9.b above and who did not respond, the Defendants shall provide a second copy of the Notice on or before forty-five (45) days before the end of the Offer Period, as defined below.

d. Offer Period

i. The Defendants shall keep the Purchase Offer open for seventy-five (75) days after mailing the Initial Notice as required by Paragraph IV.9.b, above ("Offer Period").

ii. Eligible Investors may accept the Purchase Offer by notifying the Defendants as described in the Purchase Offer, at any time before 11:59 P.M. Eastern Time, on or before the last day of the Offer Period. For those Eligible Investors who accept the Purchase Offer within the Offer Period, the Defendants shall purchase their Eligible Auction Rate Securities by no later than five (5) business days following the expiration of the Offer Period.

e. An Eligible Investor may revoke their acceptance of the Defendants' Purchase Offer at any time up until the Defendants' purchase of such Eligible Investor's Eligible Auction Rate Securities or provide notice of their intent to purchase such Eligible Auction Rate Securities.

f. The Defendants' obligation to those Eligible Investors who custodied their Eligible Auction Rate Securities away from the Defendants as of the date of this Order shall be contingent on: (1) the Defendants receiving reasonably satisfactory assurances from the financial institution currently holding the Eligible Investor's Eligible Auction Rate Securities that the bidding rights associated with such Eligible Auction Rate Securities will be transferred to the Defendants; (2) the Eligible Investor reactivating their former account with the Defendants; and (3) the transfer of the Eligible Auction Rate Securities to the Eligible Investor's former account with the Defendants.

g. The Defendants shall use their best efforts to identify, contact, and assist any Eligible Investor, who has transferred the Eligible Auction Rate Securities out of the Defendants' custody, in returning such ARS to the Defendants' custody and shall not charge such Eligible Investor any fees relating to or in connection with the return to the Defendants or custodianship by the Defendants of such Eligible Auction Rate Securities.

10. Customer Assistance. Within two (2) days of June 29, 2011, the Defendants shall have established a dedicated toll-free telephone assistance line and website to provide information and to respond to questions concerning the terms of this Order and to provide information concerning the terms of this Order and, via an e-mail address or other reasonable means, to respond to questions concerning the terms of this Order. The Defendants shall maintain the telephone assistance line for at least nine (9) months from the date of this Order.

11. Relief for Eligible Investors Who Sold Below Par. The Defendants shall use their best efforts to identify each Eligible Investor who: (i) purchased Eligible Auction Rate Securities at the Defendants on or before February 13, 2008; and (ii) who sold those Eligible Auction Rate Securities below par between February 13, 2008, and the date of this Order ("Below Par Sellers"). Within seventy-five (75) days of June 29, 2011, the Defendants shall have paid each Below Par Seller the difference between par and the price at which the Below Par Seller sold the Eligible Auction Rate Securities, plus reasonable interest thereon. Furthermore, the Defendants will pay promptly the difference between par and the price at which the Below Par Seller sold the Eligible Auction Rate Securities, plus reasonable interest thereon to any Below Par Sellers identified more than seventy-five (75) days after this Order.

12. Consequential Damages Arbitration Process.

a. The Defendants shall consent to participate in a special arbitration process ("Arbitration") for the exclusive purpose of arbitrating any Eligible Investor's consequential damages claim arising from their inability to sell Eligible Auction Rate Securities. In the Arbitration, the Special Arbitration Process applicable to firms that have entered into settlements with state regulators (the "State SAP") will be available for the exclusive purpose of arbitrating any Eligible Investor's consequential damages claim. The Defendants shall notify Eligible Investors of the terms of the Arbitration process through the Notice.

b. The Arbitration shall be conducted under the auspices of Financial Industry Regulatory Authority ("FINRA"), pursuant to the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007. The Defendants will pay all applicable forum and filing fees.

c. Any Eligible Investors who choose to pursue such claims in the Arbitration shall bear the burden of proving that they suffered consequential damages and that such damages were caused by their inability to access funds invested in Eligible Auction Rate Securities. In the Arbitration, the Defendants shall be able to defend themselves against such claims; provided, however, that the Defendants shall not contest liability for the illiquidity of the underlying ARS position or use as part of their defense any decision by the Eligible Investor not to borrow money from either Defendant.

d. Eligible Investors who elect to use the Arbitration provided for herein shall not be eligible for punitive damages or for any other types of damages other than consequential damages. However, the State SAP will govern the availability of attorney's fees.

13. Loan Interest Expense.

The Defendants shall use their best efforts to identify Eligible Investors that obtained a loan through the Defendants (or its affiliates) secured by Eligible Auction Rate Securities that were not successfully auctioning at the time the loan was taken and who paid more in interest on the loan than the Eligible Investor received in interest or dividends from the Eligible Auction Rate Securities during the time the loan was outstanding ("Negative Carry"). If the Eligible Investor can provide the Defendants documentation evidencing the amount of Negative Carry, the Defendants, on or before seventy-five (75) days from the date of this Order, will reimburse the Eligible Investor the amount of Negative Carry actually paid.

14. Best Efforts.

The Defendants will use their best efforts to provide the institutional money managers, within nine (9) months of the date of June 29, 2011, opportunities to liquidate their Eligible Auction Rate Securities including, but not limited to, facilitating issuer redemptions, restructurings, and through other reasonable means. Although the Defendants are required to use their best efforts to liquidate Eligible Auction Rate Securities owned by the institutional money managers, the Defendants are not obligated to purchase the securities.

15. Reports and Meetings.

a. The Defendants shall submit a bi-monthly written report detailing the Defendants' progress with respect to the provisions of this Order within forty-five (45) days of the end of each month in which a report is required, beginning with a report covering the month ended after June 29, 2011, and continuing through and including a report covering the month ended nine (9) months from June 29, 2011. This report shall be submitted to a representative specified by the North American Securities Administrators Association ("NASAA").

b. Beginning one hundred twenty (120) days after June 29, 2011, the Defendants shall confer at least quarterly with the representative specified by NASAA to discuss the Defendants' progress with respect to the provisions of this Order. Such quarterly conferences shall continue for nine (9) months from June 29, 2011.

c. The reporting and conference deadlines set forth above may be amended or modified with written permission from the representative specified by NASAA.

16. This Order is not intended to indicate that the Defendants or any of its affiliates or current or former employees shall be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self regulatory organizations, or various states' securities laws including any disqualifications from relying upon the registration exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any such disqualifications.

17. Except in an action by the Commonwealth of Virginia to enforce the obligations of the Defendants in this Order, this Order may neither be deemed nor used as an admission of or evidence of any alleged fault, omission, or liability of the Defendants in any civil, criminal, arbitration, or administrative proceeding in any court, administrative agency, or tribunal. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against the Defendants including, without limitation with respect to the use of any e-mails or other documents of the Defendants or of others concerning the marketing and/or sales of ARS, limit or create liability of the Defendants, or limit or create defenses of the Defendants to any claims.

18. This Order is not intended to disqualify the Defendants or any of its affiliates or current or former employees from any business that they otherwise are qualified or licensed to perform under applicable state securities law, and this Order is not intended to form the basis for any disqualification.

**CASE NO. SEC-2011-00045
AUGUST 26, 2011**

APPLICATION OF
CALVERT SOCIAL INVESTMENT FOUNDATION

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received June 13, 2011, with exhibits attached thereto, as subsequently amended, of Calvert Social Investment Foundation ("Foundation"), requesting that: Community Investment Notes ("Notes") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia and that certain employees of the Foundation be exempted from the agent registration requirements of the Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: the Foundation is a Maryland corporation operating not for private profit but exclusively for benevolent and charitable purposes; the Foundation intends to offer and sell the Notes in an approximate aggregate amount of up to \$50,000,000 on terms and conditions as more fully described in the Prospectus filed as a part of the application; said securities are to be offered and sold by employees of the Foundation who will not be compensated for their sales efforts and by broker-dealers registered under the Act; and the Foundation will discontinue issuer transactions for all Notes previously exempted by the Commission upon the grant of the exemption for the offering of the Notes described herein.

Based on the facts asserted by the Foundation in the written application and exhibits, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and finds, and does hereby ADJUDGE and ORDER, that pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above are exempt from the securities registration requirements of the Act, and the employees of the Foundation are exempt from the agent registration requirements of § 13.1-504 of the Act.

**CASE NO. SEC-2011-00046
DECEMBER 13, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
HERNANDO CHOUIL,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), it is alleged that Hernando Chovil ("Defendant"): (i) violated § 13.1-502 (1) of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by employing any device, scheme or artifice to defraud; (ii) violated § 13.1-504 A (i) of the Act by transacting business in the Commonwealth of Virginia without duly being registered with the Division as an agent of the issuer; and (iii) violated § 13.1-507 of the Act by offering or selling securities that were not registered under the Act or exempt from registration.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Act to revoke a Defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order a Defendant to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendant admits to these allegations and to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

(1) The Defendant will pay to the Treasurer of the Commonwealth of Virginia, within twelve (12) months of the date of the entry of this Settlement Order, the amount of Nine Thousand Five Hundred Dollars (\$9,500) to defray the cost of investigation.

(2) The Defendant will make restitution to each Virginia investor ("investor").

(a) Within twelve (12) months of the date of the entry of this Settlement Order, the Defendant will refund to each investor all monies received by the Defendant in the sale of investment contracts.

(b) Within thirteen (13) months from the date of the entry of this Settlement Order, the Defendant will submit to the Division proof of certified mailings of restitution and an affidavit, executed by the Defendant, which contains the amount and the date that restitution was sent to the investor.

(c) The Defendant will include with the first restitution payment a copy of this Settlement Order.

(3) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

The Commission, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;

(2) The Defendant fully comply with the aforesaid terms and undertakings of this settlement; and

(3) The Commission shall retain jurisdiction in this matter for all purposes, including the institution of a show cause proceeding, or taking such other action it deems appropriate, on account of the Defendant's failure to comply with the terms and undertakings of the settlement.

**CASE NO. SEC-2011-00047
SEPTEMBER 20, 2011**

APPLICATION OF
CRAIGS BAPTIST CHURCH

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received July 25, 2011, with exhibits attached thereto, as subsequently amended, of Craigs Baptist Church ("Craigs Baptist"), requesting that First Mortgage Bonds ("Bonds") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: Craigs Baptist is a Virginia non-stock corporation operating as a non-profit corporation exclusively for religious, charitable and educational purposes; Craigs Baptist intends to offer and sell the Bonds in an approximate aggregate amount of up to \$925,000 on terms and conditions as more fully described in the Prospectus filed as a part of the application; and said securities are to be offered and sold by Share Financial Services, Inc., a broker-dealer registered in the Commonwealth of Virginia.

Based on the facts asserted by Craigs Baptist in the written application and exhibits, and pursuant to § 13.1-514.1 B of the Act, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and does hereby ADJUDGE AND ORDER that the securities described above are exempted from the securities registration requirements of the Act.

**CASE NO. SEC-2011-00048
SEPTEMBER 29, 2011**

APPLICATION OF
LUTHERAN CHURCH EXTENSION FUND-MISSOURI SYNOD

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

THIS MATTER came before the State Corporation Commission ("Commission") for consideration by written application received August 22, 2011, with exhibits attached thereto, of Lutheran Church Extension Fund-Missouri Synod ("LCEF"), requesting that: Dedicated Certificates, Family Emergency StewardAccount Certificates, StewardAccount Certificates, FlexPlus Certificates, Fixed-Rate Term Notes, Floating-Rate Term Notes, Congregation Demand Certificates, Congregation StewardAccount Certificates, Congregation Cemetery Perpetual Care StewardAccount Certificates, Congregation Fixed-Rate Endowment Certificates, Congregation Floating-Rate Endowment Certificates, K.I.D.S. Stamps and Next Generation Notes (collectively, "Notes"), be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia and that certain officers of LCEF be exempted from the agent registration requirements of the Act.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: (i) LCEF is a Missouri corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; (ii) LCEF intends to offer and sell the Notes in an approximate aggregate amount of up to \$75,000,000 on terms and conditions as more fully described in the Offering Circular filed as a part of the application; (iii) said securities are to be offered and sold by officers of LCEF who will not be compensated for their sales efforts; and (iv) LCEF will discontinue issuer transactions for all other securities previously exempted by the Commission upon the grant of the exemption for the offering of Notes described herein.

Based on the facts asserted by LCEF in the written application and exhibits, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and finds, and does hereby ADJUDGE and ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above are exempt from the securities registration requirements of the Act, and the officers of LCEF are exempt from the agent registration requirements of § 13.1-504 of the Act.

**CASE NO. SEC-2011-00050
OCTOBER 6, 2011**

APPLICATION OF
UNITED PENTECOSTAL CHURCH DEVELOPMENT FUND, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration by written application of United Pentecostal Church Development Fund, Inc. ("Fund"), which the Commission received July 7, 2011, with attached exhibits. The application requested that the certificates, One Year Certificates, Three Year Certificates, and Five Year Certificates (collectively, "Certificates"), be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, and that certain officers and employees of the Fund be exempted from the agent registration requirements of the Act.

Based upon the information submitted, the following facts, in addition to others not enumerated herein, appear to exist: (i) the Fund is a Missouri corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; (ii) the Fund intends to offer and sell the Certificates in an approximate aggregate amount of up to \$25,000,000 on terms and conditions as more fully described in the Offering Circular filed as a part of the application; and (iii) said securities are to be offered and sold by officers and employees of the Fund who will not be compensated for their sales efforts.

Based on the facts asserted by the Fund in the written application and exhibits, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and finds, and does hereby ADJUDGE and ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above are exempt from the securities registration requirements of the Act, and the officers and employees of the Fund are exempt from the agent registration requirements of § 13.1-504 of the Act.

**CASE NO. SEC-2011-00051
OCTOBER 6, 2011**

APPLICATION OF
JAMES CITY COMMUNITY CHURCH, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration by written application of the James City Community Church, Inc. ("James City"), which the Commission received on May 31, 2011, with attached exhibits. The application requested that the First Mortgage Bonds ("Bonds") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia.

BASED UPON THE INFORMATION submitted, the following facts, in addition to others not enumerated herein, appear to exist: (i) James City is a Virginia corporation operating not for private profit but exclusively for religious, charitable, and educational purposes; (ii) James City intends to offer and sell up to \$750,000 of the Bonds on terms and conditions as more fully described in the prospectus filed as a part of the application and as subsequently amended; and (iii) the Bonds are to be offered and sold by broker-dealers registered under the Act.

Based on the facts asserted by James City in the written application and exhibits, and pursuant to the provisions of § 13.1-514.1 B of the Act, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and does hereby ADJUDGE AND ORDER that the securities described above are exempt from the securities registration requirements of the Act.

**CASE NO. SEC-2011-00053
NOVEMBER 22, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

NAI BLUESTONE REAL ESTATE CAPITAL, LLC,
Defendant

SETTLEMENT ORDER

Based on an investigation conducted by the Division of Securities and Retail Franchising ("Division"), the Division alleges that NAI BlueStone Real Estate Capital, LLC ("Defendant"): (i) violated § 13.1-504 A of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, by conducting broker-dealer activity in the Commonwealth of Virginia as a broker-dealer prior to being registered; (ii) violated § 13.1-504 B of the Act by employing an unregistered agent in the offer and sale of securities; (iii) violated Commission Rule 21 VAC 5-20-260 by failing to exercise diligent supervision over the securities activities of its agent; and (iv) violated § 13.1-502 (2) of the Act by directly or indirectly, obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

If the standards of the statute are met, the State Corporation Commission ("Commission") is authorized by § 13.1-506 of the Act to revoke the Defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order the Defendant to make rescission and restitution, and by § 12.1-15 of the Code of Virginia to settle matters within its jurisdiction.

The Defendant neither admits nor denies these allegations but admits to the Commission's jurisdiction and authority to enter this Settlement Order.

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

- (1) The Defendant will pay to the Treasurer of the Commonwealth of Virginia, contemporaneously with the entry of this Order, the amount of Ten Thousand Dollars (\$10,000) in monetary penalties.
- (2) The Defendant will pay to the Treasurer of the Commonwealth of Virginia, contemporaneously with the entry of this Order, the amount of Seven Thousand Dollars (\$7,000) to defray the cost of investigation.
- (3) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

The Commission, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein be, and it is hereby, accepted;

- (2) The Defendant fully comply with the aforesaid terms and undertakings of this settlement; and
- (3) This case is dismissed and the papers herein shall be placed in the file for ended causes.

Dismissal of this case does not relieve the Defendant from its reporting obligations to any regulatory authority.

**CASE NO. SEC-2011-00054
OCTOBER 21, 2011**

APPLICATION OF
CHRISTIAN SERVICE FOUNDATION, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration by written application of Christian Service Foundation, Inc. ("Fund"), which the Commission received September 7, 2011, with attached exhibits. The application requested that the Twelve Month Term Certificates, Twenty-four Month Term Certificates, Thirty-six Month Term Certificates, Forty-eight Month Term Certificates, Sixty Month Term Certificates, Demand Certificates, Youth Stewardship Certificates, and Deferred Gift Agreements (collectively, "Certificates") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia and that the officers and directors of the Fund be exempted from the agent registration requirements of the Act.

Based upon the information submitted, the following facts, in addition to others not enumerated herein, appear to exist: (i) the Fund is an Indiana corporation operating not for private profit but exclusively for religious and educational purposes; (ii) the Fund intends to offer and sell the Certificates in an approximate aggregate amount of up to \$30,000,000 on terms and conditions as more fully described in the Offering Circular filed as a part of the application; and (iii) said securities are to be offered and sold by officers and directors of the Fund who will not be compensated for their sales efforts.

Based on the facts asserted by the Fund in the written application and exhibits, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and finds, and does hereby ADJUDGE and ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above are exempt from the securities registration requirements of the Act, and the officers and directors of the Fund are exempt from the agent registration requirements of § 13.1-504 of the Act.

**CASE NO. SEC-2011-00057
DECEMBER 2, 2011**

APPLICATION OF
GREEN BAY PACKERS, INC.

For an Order of Exemption under § 13.1-514.1 B of the Code of Virginia

ORDER OF EXEMPTION

This matter came before the State Corporation Commission ("Commission") for consideration by written application of Green Bay Packers, Inc. ("GBP"), which the Commission received November 4, 2011, with attached exhibits. The application requested that the Common Stock ("Stock") be exempted from the securities registration requirements of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia and that the employees, officers, and directors of GBP be exempted from the agent registration requirements of the Act.

Based upon the information submitted, the following facts, in addition to others not enumerated herein, appear to exist: (i) GBP is a Wisconsin stock corporation operating not for private profit but exclusively for charitable purposes; (ii) GBP intends to offer and sell the Stock in an approximate aggregate amount of up to \$220,000,000 on terms and conditions as more fully described in the Offering Document filed as a part of the application; and (iii) said securities are to be offered and sold by employees, officers, and directors of GBP who will not receive a commission or other remuneration for effecting transactions.

Based on the facts asserted by GBP in the written application and exhibits, and upon the recommendation of the Division of Securities and Retail Franchising, the Commission is of the opinion and finds, and does hereby ADJUDGE and ORDER that, pursuant to the provisions of § 13.1-514.1 B of the Act, the securities described above are exempt from the securities registration requirements of the Act, and the employees, officers, and directors of GBP are exempt from the agent registration requirements of § 13.1-504 of the Act.

DIVISION OF UTILITY AND RAILROAD SAFETY

**CASE NO. URS-2010-00053
JUNE 16, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
COLUMBIA GAS OF VIRGINIA, INC.,
Defendant

ORDER

On May 10, 2010, the State Corporation Commission ("Commission") entered an Order of Settlement ("Settlement Order") that, among other things, fined Columbia Gas of Virginia, Inc. ("CGV" or "Company"), One Hundred Twenty-one Thousand Dollars (\$121,000) for certain alleged violations of the Commission's minimum gas pipeline safety standards.¹ In accordance with the provisions of the Settlement Order, Thirty-two Thousand One Hundred Twenty-five Dollars (\$32,125) was paid contemporaneously with its entry.

Undertaking Paragraph (1) and Ordering Paragraph (4) of the Settlement Order provide that the remaining Eighty-eight Thousand Eight Hundred Seventy-five Dollars (\$88,875) shall be due as outlined in Undertaking Paragraph (7), but may be suspended and vacated, in whole or in part, provided that the Company successfully undertakes the actions required by Undertaking Paragraph (2) of the Settlement Order, and files affidavits certifying that the Company has completed those remedial actions, pursuant to Undertaking Paragraphs (4), (5), and (6). Undertaking Paragraph (7) provides that the Company shall notify the Division of the reasons for CGV's failure to accomplish the actions required by Undertaking Paragraph (2); and further that if, upon investigation, the Division determines that the reason for said failure justifies a payment lower than Eighty-eight Thousand Eight Hundred Seventy-five Dollars (\$88,875), it may recommend to the Commission a reduction in the amount due. Undertaking Paragraph (7) also notes that the Commission shall determine the amount due, and upon such determination, the Company shall immediately tender to the Commission said amount.

As a result of inspections performed by the Division Staff on February 28, 2011, and March 8, 2011, and a follow-up investigation of CGV's compliance with Undertaking Paragraph (2)(d) of the Settlement Order, the Division Staff determined that although the Company revised its Operator Qualification Program in compliance in Undertaking Paragraph (2)(d), the Company failed to train company and contractor employees that perform directional drilling and pneumatic boring.

The Division advises that it then brought its findings to the attention of CGV and that CGV agreed that it failed to successfully complete the remedial actions required by Undertaking Paragraph (2)(d) of the Settlement Order. The Division further advises that following discussions with the Commission Staff, the Company completed the training of company and contractor employees, and agreed to pay an additional fine of Forty-five Thousand Two Hundred Dollars (\$45,200) recommended by the Division as a result of CGV's initial failure to comply with Undertaking Paragraph (2)(d). Documentation evidencing the completion of the training has been received from CGV, along with confirmation of the number of employees trained in the new procedures. The Division recommends that the Commission accept the Forty-five Thousand Two Hundred Dollars (\$45,200) tendered contemporaneously with entry of this Order as an appropriate fine, and further recommends that the Commission (1) leave this case open; and (2) retain the option to suspend and subsequently vacate the remaining Forty-three Thousand Six Hundred Seventy-five Dollars (\$43,675), in whole or in part, if the Company timely undertakes the remaining actions required in Undertaking Paragraph (2) of the Settlement Order.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the additional fine of Forty-five Thousand Two Hundred Dollars (\$45,200) recommended by the Division should be accepted; that the Company's compliance with the remaining requirements of the Settlement Order should be monitored; and that this case should remain open pending completion of the Company's obligations therein.

Accordingly, IT IS ORDERED THAT:

(1) The sum of Forty-five Thousand Two Hundred Dollars (\$45,200) tendered contemporaneously with the entry of this Order is accepted. The remaining Forty-three Thousand Six Hundred Seventy-five Dollars (\$43,675) shall remain due as outlined herein and in the Settlement Order, but may be suspended and subsequently vacated, in whole or in part, provided the Company timely undertakes the remaining actions required in Undertaking Paragraph (2) of the Settlement Order, and files the timely certification of the remedial actions as required by Undertaking Paragraphs (4), (5), and (6) of the Settlement Order.

(2) The Commission shall retain jurisdiction over this matter for all purposes, and this case shall be continued pending further order of the Commission.

¹ In Case No. PUE-1989-00052, the Commission adopted Parts 191, 192, 193, and 199 of Title 49 of the Code of Federal Regulations to serve as minimum gas pipeline safety standards in Virginia. See *Commonwealth of Virginia, At the relation of the State Corporation Commission, Ex Parte, In the matter of adopting gas pipeline safety standards and reporting procedures for public service corporations providing gas service under Commission jurisdiction through transmission and distribution facilities located and operated within the Commonwealth of Virginia and granting other authorizations pertaining to the Gas Pipeline Safety Program*, Case No. PUE-1989-00052, 1989 S.C.C. Ann. Rep. 312.

**CASE NO. URS-2010-00310
FEBRUARY 7, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

NUSTAR TERMINALS OPERATIONS PARTNERSHIP L.P.,
Defendant

ORDER OF SETTLEMENT

The federal pipeline safety statutes found at 49 U.S.C. § 60101 *et seq.* ("Act") require the Secretary of Transportation ("Secretary") to establish minimum federal safety standards for the transportation of hazardous liquids and pipeline facilities. The Secretary is further authorized to delegate to an appropriate state agency the authority to prescribe safety standards and enforce compliance with such standards over hazardous liquid pipeline facilities used for intrastate transportation.

The State Corporation Commission ("Commission") has been designated as the appropriate state agency for the Commonwealth of Virginia to prescribe and enforce compliance with standards for hazardous liquid pipeline facilities used for intrastate transportation. In Case No. PUE-1994-00070, the Commission adopted Parts 195 and 199 of Title 49 of the Code of Federal Regulations to serve as minimum intrastate hazardous liquids pipeline safety standards ("Safety Standards") in Virginia. The Commission is authorized to enforce the Safety Standards for liquid pipeline facilities under § 56-555 of the Code of Virginia, which allows the Commission to impose the fines and penalties authorized therein.

The Commission's Division of Utility and Railroad Safety ("Division") is charged with the investigation of each jurisdictional hazardous liquid company's compliance with the Safety Standards, has conducted various inspections of records, construction, operation, and maintenance activities involving NuStar Terminals Operations Partnership L.P. ("NuStar" or "Company"), the Defendant, and alleges that:

- (1) NuStar is a person within the meaning of § 56-555 of the Code of Virginia; and
- (2) The Company violated the Commission's Safety Standards by the following conduct:

49 C.F.R. § 195.402 (a) - Failure to follow written procedure, NuStar Welding Manual Spec 107: Ultrasonic Wall Thickness Examination, Sections 4 and 5, by not using a certified and calibrated UT meter to conduct an ultrasonic wall thickness survey to detect any possible material defects such as laminations, corrosion, and inclusions.

The Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters arising from the allegations made against it, NuStar represents and undertakes that:

(1) The Company shall pay to the Commonwealth of Virginia the amount of Nine Thousand Five Hundred Dollars (\$9,500), which shall be paid contemporaneously with the entry of this Order. The payment shall be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director of the Division of Utility and Railroad Safety, Post Office Box 1197, Richmond, Virginia, 23218-1197.

NOW THE COMMISSION, finding sufficient basis herein for the entry of this Order and in reliance on the Defendant's representations and undertakings set forth above, is of the opinion and finds that the offer of compromise and settlement set forth above should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned case shall be docketed and assigned Case No. URS-2010-00310.
- (2) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of compromise and settlement made by NuStar be, and it hereby is, accepted.
- (3) Pursuant to § 56-555 of the Code of Virginia, NuStar shall pay the amount of Nine Thousand Five Hundred Dollars (\$9,500) in settlement hereof.
- (4) The sum of Nine Thousand Five Hundred Dollars (\$9,500) tendered contemporaneously with the entry of this Order is accepted.
- (5) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2010-00388
APRIL 18, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
WASHINGTON GAS LIGHT COMPANY,
Defendant

ORDER OF SETTLEMENT

The federal pipeline safety statutes found at 49 U.S.C. § 60101 *et seq.*, formerly the Natural Gas Pipeline Safety Act, require the Secretary of Transportation ("Secretary") to establish minimum federal safety standards for the transportation of gas and pipeline facilities. The Secretary is further authorized to delegate to an appropriate state agency the authority to prescribe safety standards and enforce compliance with such standards over gas pipeline facilities used for intrastate transportation.

The State Corporation Commission ("Commission") has been designated as the appropriate state agency for the Commonwealth of Virginia to prescribe and enforce compliance with standards for gas pipeline facilities used for intrastate transportation. In Case No. PUE-1989-00052, the Commission adopted Parts 191, 192, 193, and 199 of Title 49 of the Code of Federal Regulations to serve as minimum gas pipeline safety standards ("Safety Standards") in Virginia. The Commission is authorized to enforce the Safety Standards for natural gas facilities under § 56-257.2 B of the Code of Virginia, which allows the Commission to impose the fines and penalties authorized therein.

The Commission's Division of Utility and Railroad Safety is charged with the investigation of each jurisdictional gas company's compliance with the Safety Standards, has conducted various inspections of records, construction, operation and maintenance activities involving Washington Gas Light Company, ("WGL" or "Company"), the Defendant, and alleges that:

- (1) WGL is a person within the meaning of § 56-257.2 B of the Code of Virginia; and
- (2) The Company violated the Commission's Safety Standards by the following conduct:
 - (a) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow procedure, Section 7155, which was developed to comply with 49 C.F.R. § 192.605 (b)(3), by not having an active gas pipeline facility accurately displayed on Company service record card;
 - (b) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow procedure, Section 4103, which was developed to comply with 49 C.F.R. § 192.614 (c)(5), by not verifying the location of Company facilities; and
 - (c) 49 C.F.R. § 192.605 (a) - Failing on one occasion of Company contractor to follow Company procedure Section 5374, by not manning a fire extinguisher as required when performing a Level 1 activity.

The Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters arising from the allegations made against it, WGL represents and undertakes that:

- (1) The Company shall pay to the Commonwealth of Virginia the amount of Forty-five Thousand Dollars (\$45,000), which shall be paid contemporaneously with the entry of this Order. The payment will be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director of the Division of Utility and Railroad Safety, Post Office Box 1197, Richmond, Virginia, 23218-1197.
- (2) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of WGL's cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the journal entries made to record such amounts with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, finding sufficient basis herein for the entry of this Order and in reliance on the Defendant's representations and undertakings set forth above, is of the opinion and finds that the offer of compromise and settlement set forth above should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned case shall be docketed and assigned Case No. URS-2010-00338.
- (2) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of compromise and settlement made by WGL be, and it hereby is, accepted.
- (3) Pursuant to § 56-257.2 B of the Code of Virginia, WGL shall pay the amount of Forty-five Thousand Dollars (\$45,000) in settlement hereof.
- (4) The sum of Forty-five Thousand Dollars (\$45,000) tendered contemporaneously with the entry of this Order is accepted.
- (5) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2010-00389
APRIL 1, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

COLUMBIA GAS OF VIRGINIA, INC.,
Defendant

ORDER OF SETTLEMENT

The federal pipeline safety statutes found at 49 U.S.C. § 60101 *et seq.* formerly the Natural Gas Pipeline Safety Act, require the Secretary of Transportation ("Secretary") to establish minimum federal safety standards for the transportation of gas and pipeline facilities. The Secretary is further authorized to delegate to an appropriate state agency the authority to prescribe safety standards and enforce compliance with such standards over gas pipeline facilities used for intrastate transportation.

The State Corporation Commission ("Commission") has been designated as the appropriate state agency for the Commonwealth of Virginia to prescribe and enforce compliance with standards for gas pipeline facilities used for intrastate transportation. In Case No. PUE-1989-00052, the Commission adopted Parts 191, 192, 193, and 199 of Title 49 of the Code of Federal Regulations to serve as minimum gas pipeline safety standards ("Safety Standards") in Virginia. The Commission is authorized to enforce the Safety Standards for natural gas facilities under § 56-257.2 B of the Code of Virginia, which allows the Commission to impose the fines and penalties authorized therein.

The Commission's Division of Utility and Railroad Safety ("Division") is charged with the investigation of each jurisdictional gas company's compliance with the Safety Standards, has conducted various inspections of records, and construction, operation, and maintenance activities involving Columbia Gas of Virginia, Inc. ("CGV" or "Company"), the Defendant, and alleges that:

- (1) CGV is a person within the meaning of § 56-257.2 B of the Code of Virginia; and
- (2) The Company violated the Commission's Safety Standards by the following conduct:
 - (a) 49 C.F.R. § 192.225 (b) - Failing on one occasion to record in detail each welding procedure, including the results of the qualifying tests;
 - (b) 49 C.F.R. § 192.355 (b)(1) - Failing on one occasion to have a regulator vent that is insect resistant;
 - (c) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow procedures developed to comply with 49 C.F.R. § 192.605 (b)(3), by not having an active gas pipeline facility accurately displayed on a company service record card;
 - (d) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow procedures by utilizing a backhoe for tamping, which caused damage to a tapping tee;
 - (e) 49 C.F.R. § 192.619 (a) - Failing on one occasion to operate a segment of a pipeline below the maximum allowable operating pressure; and
 - (f) 49 C.F.R. § 192.723 (b)(2) - Failing on multiple occasions to perform a leakage survey on cathodically unprotected distribution lines subject to § 192.465(e) on which electrical surveys for corrosion are impractical, at least once every 3 calendar years at intervals not exceeding 39 months.

The Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters arising from the allegations made against it, CGV represents and undertakes that:

(1) The Company shall pay to the Commonwealth of Virginia the amount of Two Hundred Forty-four Thousand Dollars (\$244,000), of which Seventy Thousand Dollars (\$70,000) shall be paid contemporaneously with the entry of this Order. The remaining One Hundred Seventy-four Thousand Dollars (\$174,000) shall be due as outlined in Undertaking Paragraph (7) herein, and may be suspended and subsequently vacated in whole or in part by the Commission, provided the Company timely takes the actions required by Undertaking Paragraph (2) herein and tenders the requisite certifications as required by Undertaking Paragraphs (3), (4), (5), and (6) herein. The initial payment and any subsequent payments shall be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director, Division of Utility and Railroad Safety, State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23218-1197.

- (2) The Company shall undertake the following remedial actions:
 - (a) On or before May 30, 2011, the Company shall conduct a study of its system to identify those regulator stations in which debris or other contaminants within the gas stream may cause the system to exceed its maximum operating pressure, and submit to the Division a list of the stations needing corrective measures with the specific actions the Company plans to take to correct the deficiencies found for each station. On or before December 30, 2012, the Company shall have corrected all deficiencies found by installing filters, relief valves, or other equipment as appropriate and acceptable to the Division.
 - (b) On or before December 30, 2011, the Company shall replace 353 cathodically unprotected steel services throughout its system.
 - (c) On or before April 1, 2011, the Company shall revise its welding procedures to conform with API 1104 and train employees that perform such tasks.

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- (d) On or before May 30, 2011, the Company shall modify its construction record ("as-built") process to ensure that the Company prepares and maintains accurate installation records of its underground utility lines. Additionally, the Company shall implement a program to review its existing facility records and address any issues found promptly.
- (3) On or before April 11, 2011, CGV shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit, executed by the General Manager of Columbia Gas of Virginia, certifying that the Company completed the remedial actions set forth in Undertaking Paragraph (2)(c) above.
- (4) On or before May 31, 2011, CGV shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit, executed by the General Manager of Columbia Gas of Virginia, certifying that the Company completed the remedial actions set forth in Undertaking Paragraph (2)(d) above and the Company has begun to perform the remedial actions set forth in Undertaking Paragraph (2)(a) above.
- (5) On or before December 30, 2011, CGV shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit, executed by the General Manager of Columbia Gas of Virginia, certifying that the Company completed the remedial actions set forth in Undertaking Paragraph (2)(b) above.
- (6) On or before December 31, 2012, CGV shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit, executed by the General Manager of Columbia Gas of Virginia, certifying that the Company completed the remedial actions set forth in Undertaking Paragraph (2)(a) above.
- (7) Upon timely receipt of said affidavits, the Commission may suspend and subsequently vacate up to One Hundred Seventy-four Thousand Dollars (\$174,000) of the amount set forth in Undertaking Paragraph (1) above. Should CGV fail to tender the affidavits required by Undertaking Paragraphs (3), (4), (5), and (6) above, or fail to take the actions required by Undertaking Paragraph (2) above, a payment of One Hundred Seventy-four Thousand Dollars (\$174,000) shall become due and payable, and the Company shall immediately notify the Division of the reasons for CGV's failure to accomplish the actions required by Undertaking Paragraphs (2), (3), (4), (5), and (6) above. If, upon investigation, the Division determines that the reason for said failure justifies a payment lower than One Hundred Seventy-four Thousand Dollars (\$174,000), it may recommend to the Commission a reduction in the amount due. The Commission shall determine the amount due, and upon such determination, the Company shall immediately tender to the Commission said amount.
- (8) Any amounts paid in accordance with Undertaking Paragraph (1) of this Order shall not be recovered in the Company's rates as part of CGV's cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the trial balance showing this entry with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, finding sufficient basis herein for the entry of this Order and in reliance on the Defendant's representations and undertakings set forth above, is of the opinion and finds that the offer of compromise and settlement set forth above should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned case shall be docketed and assigned Case No. URS-2010-00389.
- (2) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of compromise and settlement made by CGV be, and it hereby is, accepted.
- (3) Pursuant to § 56-257.2 B of the Code of Virginia, CGV shall pay the amount of Two Hundred Forty-four Thousand Dollars (\$244,000), part of which may be suspended and subsequently vacated in part as provided in Undertaking Paragraph (1) of this Order.
- (4) The sum of Seventy Thousand Dollars (\$70,000) tendered contemporaneously with the entry of this Order is accepted. The remaining One Hundred Seventy-four Thousand Dollars (\$174,000) is due as outlined herein and may be suspended and subsequently vacated, in whole or in part, provided the Company timely undertakes the actions required in Undertaking Paragraph (2) of this Order and files the timely certification of the remedial actions required by Undertaking Paragraphs (3), (4), (5), and (6) of this Order.
- (5) The Commission shall retain jurisdiction over this matter for all purposes, and this case shall be continued pending further order of the Commission.

**CASE NO. URS-2010-00390
AUGUST 22, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
VIRGINIA NATURAL GAS, INC.,
Defendant

ORDER OF SETTLEMENT

The federal pipeline safety statutes found at 49 U.S.C. § 60101 *et seq.* formerly the Natural Gas Pipeline Safety Act, require the Secretary of Transportation ("Secretary") to establish minimum federal safety standards for the transportation of gas and pipeline facilities. The Secretary is further authorized to delegate to an appropriate state agency the authority to prescribe safety standards and enforce compliance with such standards over gas pipeline facilities used for intrastate transportation.

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The State Corporation Commission ("Commission") has been designated as the appropriate state agency for the Commonwealth of Virginia to prescribe and enforce compliance with standards for gas pipeline facilities used for intrastate transportation. In Case No. PUE-1989-00052, the Commission adopted Parts 191, 192, 193, and 199 of Title 49 of the Code of Federal Regulations to serve as minimum gas pipeline safety standards ("Safety Standards") in Virginia. The Commission is authorized to enforce the Safety Standards for natural gas facilities under § 56-257.2 B of the Code of Virginia, which allows the Commission to impose the fines and penalties authorized therein.

The Commission's Division of Utility and Railroad Safety ("Division") is charged with the investigation of each jurisdictional gas company's compliance with the Safety Standards; has conducted various inspections of records, construction, operation, and maintenance activities involving Virginia Natural Gas, Inc. ("VNG" or "Company"), the Defendant; and alleges that:

- (1) VNG is a person within the meaning of § 56-257.2 B of the Code of Virginia; and
- (2) The Company violated the Commission's Safety Standards by the following conduct:
 - (a) 49 C.F.R. § 192.303 - Failing on one occasion of Company contractor to construct a main in accordance with written specifications, developed to comply with 49 C.F.R. § 192.281, by not scraping the appropriate surface area to be fused when installing an electrofusion tapping tee as stated in Company Procedure, Division II, Section 10.4.3;
 - (b) 49 C.F.R. § 192.317 (b) - Failing on one occasion to protect an aboveground transmission line or main from accidental damage by vehicular traffic or other similar causes either by being placed at a safe distance from the traffic or by installing barricades;
 - (c) 49 C.F.R. § 192 .361 (a) - Failing on one occasion of Company contractor to install a service line with at least 18" of cover in streets and roads;
 - (d) 49 C.F.R. § 192.605 (a) - Failing on one occasion of Company contractor to follow a written procedure by not taking precautions to determine that a hazardous atmosphere was not present as stated in Company Procedure, Division II, Section 19.2.2;
 - (e) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow a written procedure by squeezing a plastic service in the same place more than once as stated in Company Procedure, Division III, Section 5.16(c) ;
 - (f) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow a written procedure by not installing an excess flow valve on a service as stated in Company Procedure, Division II, Section 10.2;
 - (g) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow a written procedure by not removing a section of damaged pipe as stated in Company Procedure, Division III, Section 5.16(k);
 - (h) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow a written procedure by not having tracer wire installed adjacent to the plastic pipe for accurate locating as stated in Company Procedure, Division III, Section 5.11.4;
 - (i) 49 C.F.R. § 192.605 (a) - Failing on two occasions to follow a written procedure by not marking the appropriate stab length while installing a mechanical fitting as stated in Company Procedure, Division II, Section 10.3.4;
 - (j) 49 C.F.R. § 192.605 (a) - Failing on two occasions to follow a written procedure by not using a piece of tape or other conspicuous method to identify squeeze-off point as stated in Company Procedure, Division III, Section 5.16.1(a);
 - (k) 49 C.F.R. § 192.605 (a) - Failing on two occasions to follow a written procedure by not grounding squeeze-off tool as stated in Company Procedure, Division IV, Section 5.2.3(D);
 - (l) 49 C.F.R. § 192.605 (a) - Failing on eight occasions of Company and Company contractor to follow a written procedure by locating a squeeze-off tool within 3 times the pipe diameter, or 12 inches, whichever is greater, from any fusion joint, mechanical connection as stated in Company Procedure, Division III, Section 5.16(d);
 - (m) 49 C.F.R. § 192.605 (a) - Failing on one occasion to follow a written procedure by not depicting an unusual construction detail on a service card as stated in Company Procedure, Division I, Section 2.19.3;
 - (n) 49 C.F.R. § 192.605 (a) - Failing on one occasion of Company contractor to follow a written procedure by not visually inspecting for clearances of other utilities during directional drilling operations as stated in Company Procedure, Division I, Section 9.4;
 - (o) 49 C.F.R. § 192.605 (a) - Failing on one occasion of Company contractor to follow a written procedure by not following manufacturers specifications for the equipment utilized while performing a hot tap as stated in Company Procedure, Division II, Section 20.2(d);
 - (p) 49 C.F.R. § 192.605 (a) - Failing on two occasions to follow a written procedure by not grounding pipe before installing squeeze-off tool as stated in Company Procedure, Division IV, Section 5.2.3(C) ;
 - (q) 49 C.F.R. § 192.725 (b) - Failing on one occasion to test a service line temporarily disconnected from the main from the point of disconnection to the service line valve in the same manner as a new service line, before reconnecting; and
 - (r) 49 C.F.R. § 192 .805 - Failing on one occasion to identify squeeze-off as a covered task and ensure through evaluation that individuals performing covered tasks are qualified.

The Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

As an offer to settle all matters arising from the allegations made against it, VNG represents and undertakes that:

(1) The Company shall pay to the Commonwealth of Virginia the amount of Three Hundred Eighty-six Thousand Eight Hundred Fifty Dollars (\$386,850), of which One Hundred Eighty-seven Thousand One Hundred Fifty Dollars (\$187,150) shall be paid contemporaneously with the entry of this Order. The remaining One Hundred Ninety-nine Thousand Seven Hundred Dollars (\$199,700) shall be due as outlined in Undertaking Paragraph (7) herein and may be suspended and subsequently vacated, in whole or in part, by the Commission, provided the Company timely takes the actions required by Undertaking Paragraph (2) herein and tenders the requisite certifications as required by Undertaking Paragraphs (3), (4), (5), and (6) herein. The initial payment and any subsequent payments shall be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director, Division of Utility and Railroad Safety, State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23218-1197.

(2) The Company shall undertake the following remedial actions:

- (a) On or before August 31, 2011, the Company shall develop a procedure for identifying potentially isolated short sections of steel pipelines and reporting any found to VNG's corrosion department for review and corrective action as appropriate and train any employees whose job functions include working around customer meters, including but not limited to, meter readers and leak survey technicians, to this procedure.
- (b) On or before August 31, 2011, the Company shall purchase and begin using two universal electrofusion machines with GPS and bar code capability. The Company shall also develop a procedure, train, and qualify its employees in the use of these machines. The Company shall record the data input into the machines in the field and store it in Company servers for use in the Company's Distribution Integrity Management Plan.
- (c) On or before October 1, 2011, the Company shall implement the study outlined in Attachment A, Study to evaluate new and emerging locate technology, with the final report submitted to the Division on or before October 1, 2013, detailing the study results.
- (d) On or before December 31, 2011, the Company shall leak survey all cast iron and bare unprotected steel pipelines in its system to establish a baseline for determining risk for use in its distribution integrity management program ("DIMP"). The Company shall also annually determine the need for more frequent leak surveys of cast iron and bare steel pipelines, or other actions as appropriate, based upon the data gathered and the implementation of the DIMP plan.
- (e) On or before December 31, 2011, the Company shall implement a web based training portal for fire departments and other emergency responders in VNG's service territory to educate them on pipeline safety, including, but not limited to, the characteristics of natural gas, gas migrations, risk mitigation, responsibilities of the gas operator, and any other pipeline safety and damage prevention information that is necessary for the emergency responders to have pursuant to the Company's public awareness plan. This web based training shall also meet the necessary requirements for continuing education for the emergency responders.
- (f) On or before March 31, 2012, the Company shall perform an in-line inspection to ensure that certain gas pipelines are not in conflict with sewer mains or laterals. This in-line inspection shall be conducted with a high resolution video camera in those sewer mains and laterals in the vicinity of pipelines installed as part of a planned pipeline replacement or betterment project between calendar years 2000 and 2005. The in-line inspections performed must represent a statistically significant sample size sufficient to demonstrate a 95% confidence level. The Company shall provide a report to the Division that delineates the results of the inspections and descriptions of any actions taken to correct any issues found during the in-line inspections.
- (g) On or before July 31, 2012, the Company shall take over the operation and maintenance of 4 gas master meter systems currently served by VNG. This is in addition to the 32 master meter systems VNG agreed to take over the operation of in Case Nos. URS-2006-00581, URS-2008-00003, and URS-2009-00043. At least 2 of the 4 master meter systems to be taken over must currently serve more than 100 units.

(3) On or before September 15, 2011, VNG shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the President of Virginia Natural Gas, Inc., certifying that the Company completed the remedial actions set forth in Undertaking Paragraphs (2)(a) and (2)(b) above.

(4) On or before January 15, 2012, VNG shall tender to the Clerk of the Commission with a copy to the Division, an affidavit executed by the President of Virginia Natural Gas, Inc., certifying that the Company completed the remedial actions set forth in Undertaking Paragraphs (2)(d) and (2)(e) above.

(5) On or before April 15, 2012, VNG shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the President of Virginia Natural Gas, Inc., certifying that the Company completed the remedial actions set forth in Undertaking Paragraph (2)(f) above.

(6) On or before August 15, 2012, VNG shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the President of Virginia Natural Gas, Inc., certifying that the Company completed the remedial actions set forth in Undertaking Paragraph (2)(g) above.

(7) Upon timely receipt of said affidavits, the Commission may vacate up to One Hundred Ninety-nine Thousand Seven Hundred Dollars (\$199,700) of the amount set forth in Undertaking Paragraph (1) above. Should VNG fail to tender the affidavits required by Undertaking Paragraphs (3), (4), (5), and (6) above, or fail to take the actions required by Undertaking Paragraph (2) above, a payment of One Hundred Ninety-nine Thousand Seven Hundred Dollars (\$199,700) shall become due and payable, and the Company shall immediately notify the Division of the reasons for VNG's failure to accomplish the actions required by Undertaking Paragraphs (2), (3), (4), (5), and (6) above. If, upon investigation, the Division determines that the reason for said failure justifies a payment lower than One Hundred Ninety-nine Thousand Seven Hundred Dollars (\$199,700), it may recommend to the Commission a reduction in the amount due. The Commission shall determine the amount due, and upon such determination, the Company shall immediately tender to the Commission said amount.

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(8) Any amounts paid in accordance with Undertaking Paragraph (1) of this Order shall not be recovered in the Company's rates as part of VNG's cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the trial balance showing this entry with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, finding sufficient basis herein for the entry of this Order and in reliance on the Defendant's representations and undertakings set forth above, is of the opinion and finds that the offer of compromise and settlement set forth above should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned case shall be docketed and assigned Case No. URS-2010-00390.
- (2) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of compromise and settlement made by VNG be, and it hereby is, accepted.
- (3) Pursuant to § 56-257.2 B of the Code of Virginia, VNG shall pay the amount of Three Hundred Eighty-six Thousand Eight Hundred Fifty Dollars (\$386,850), which may be suspended and subsequently vacated, in whole or in part, as provided in Undertaking Paragraph (1) of this Order.
- (4) The sum of One Hundred Eighty-seven Thousand One Hundred Fifty Dollars (\$187,150) tendered contemporaneously with the entry of this Order is accepted. The remaining One Hundred Ninety-nine Thousand Seven Hundred Dollars (\$199,700) is due as outlined herein and may be suspended and subsequently vacated, in whole or in part, provided the Company timely undertakes the actions required in Undertaking Paragraph (2) of this Order and files the timely certification of the remedial actions as required by Undertaking Paragraphs (3), (4), (5), and (6) of this Order.
- (5) The Commission shall retain jurisdiction over this matter for all purposes, and this case shall be continued pending further order of the Commission.

**CASE NO. URS-2010-00391
MAY 26, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

APPALACHIAN NATURAL GAS DISTRIBUTION COMPANY,
Defendant

ORDER OF SETTLEMENT

The federal pipeline safety statutes found at 49 U.S.C. § 60101 *et seq.* ("Act"), formerly the Natural Gas Pipeline Safety Act, require the Secretary of Transportation ("Secretary") to establish minimum federal safety standards for the transportation of gas and pipeline facilities. The Secretary is further authorized to delegate to an appropriate state agency the authority to prescribe safety standards and enforce compliance with such standards over gas pipeline facilities used for intrastate transportation.

The State Corporation Commission ("Commission") has been designated as the appropriate state agency for the Commonwealth of Virginia to prescribe and enforce compliance with standards for gas pipeline facilities used for intrastate transportation. In Case No. PUE-1989-00052, the Commission adopted Parts 191, 192, 193, and 199 of Title 49 of the Code of Federal Regulations to serve as minimum gas pipeline safety standards ("Safety Standards") in Virginia. The Commission is authorized to enforce the Safety Standards for natural gas facilities under § 56-257.2 B of the Code of Virginia, which allows the Commission to impose the fines and penalties authorized therein.

The Commission's Division of Utility and Railroad Safety ("Division") is charged with the investigation of each jurisdictional gas company's compliance with the Safety Standards, has conducted various inspections of records, construction, operation and maintenance activities involving Appalachian Natural Gas Distribution Company, ("ANGD" or "Company"), the Defendant, and alleges that:

- (1) ANGD is a person within the meaning of § 56-257.2 B of the Code of Virginia; and
- (2) The Company violated the Commission's Safety Standards by the following conduct: 49 C.F.R. § 192.285(a) – Failing on ten occasions to have employees qualified under the applicable joining procedure.

The Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters arising from the allegations made against it, ANGD represents and undertakes that:

- (1) The Company shall pay to the Commonwealth of Virginia the amount of Seventy-five Thousand Dollars (\$75,000), of which Ten Thousand Dollars (\$10,000) shall be paid contemporaneously with the entry of this Order. The remaining Sixty-five Thousand Dollars (\$65,000) shall be due as outlined in Undertaking Paragraph (8) herein and may be suspended and subsequently vacated in whole or in part by the Commission, provided the Company timely takes the actions required by Undertaking Paragraphs (2) and (3) herein and tenders the requisite certifications as required by Undertaking Paragraphs (5), (6), and (7) herein. The initial payment and any subsequent payments shall be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director, Division of Utility and Railroad Safety, State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23218-1197.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (2) The Company shall undertake the following remedial actions:
- (a) On or before May 31, 2011, the Company shall:
 - (1) Destructively test the sample specimens of electro-fusion joints made during calendar years 2008 and 2009 for the annual employee qualification performed to meet the requirements of 49 C.F.R. §192.285 (b)(2)(iii).
 - (2) Excavate, remove from service, and destructively test a statistically significant number of electro-fusion joints installed on the Company's distribution piping between January 1, 2008, and December 31, 2009. The testing shall be in the same manner as required by 49 C.F.R. §192.285 (b)(2)(iii).
 - (3) Revise its Operation and Maintenance Manual ("O&M") and Operator Qualification ("OQ") procedures to require the destructive testing of specimens made during the annual qualification of employees for plastic pipe fusion. The Company shall also begin to institute annual reviews and monitoring of the Company's Operator Qualification process.
 - (b) On or before December 31, 2011, the Company shall install Supervisory Control and Data Acquisition ("SCADA") pressure transducers at three (3) locations on the Company's facilities located in Castlewood and Lebanon, Virginia. The installed SCADA systems shall monitor the inlet and outlet pressures of the stations at a maximum of 15-minute intervals. The information shall be sent to, and monitored at, the Company's offices for the life of the pipeline facilities.
- (3) In addition, in order to resolve this matter, the Company has agreed to and shall undertake the following remedial actions:
- (a) Mail bill inserts containing information on the odor of gas and how to recognize it to all of the Company's Virginia customers once a year in the spring for three (3) consecutive years, beginning in the Spring of 2011.
 - (b) The Company shall promote the C.A.R.E. message by the following:
 - (1) Mailing postcards to all persons that normally engage in excavation activities in the Company's operating area that have been identified in accordance with 49 C.F.R. § 192.614(c)(1) by the Company with the C.A.R.E. message twice a year (spring and fall) for three (3) consecutive years starting in the Spring of 2011.
 - (2) On or before October 31, 2011, place the C.A.R.E. logo in area high school sporting event programs for a minimum of five (5) separate sporting events.
 - (3) Cause the C.A.R.E. message and logo, as approved by the Division, to be displayed on two (2) billboards for three (3) months in the Spring of 2011 and three (3) months in the Fall of 2011 to promote the "Dig with C.A.R.E." message.
 - (4) Purchase television advertising on the local TV stations to broadcast the Division's 30-second C.A.R.E. spot, aired at least 40 times during the Spring of 2011 season, for a three-month period. In addition to the C.A.R.E. commercial, the television advertising shall include a rotating bulletin board that shall display the "Dig with C.A.R.E." message at least seven (7) times an hour during the three-month period in the Fall of 2011. The advertising broadcast shall cover the Counties of Wise, Virginia and Russell, Virginia.
- (4) The Company has complied fully with the terms and undertakings outlined in Undertaking Paragraph (2)(a) above. Documentation evidencing destructive testing of the sample specimens, as well as a statistically significant number of electro-fusion joints removed from service and tested, has been submitted to the Division. The Company has also provided documentation of the revisions to its O&M and OQ manuals.
- (5) On or before June 30, 2011, ANGD shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the President of Appalachian Natural Gas Distribution Company certifying that the Company has commenced the voluntary remedial actions set forth in Undertaking Paragraphs (3)(a) and (3)(b)(1).
- (6) On or before December 31, 2011, ANGD shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the President of Appalachian Natural Gas Distribution Company certifying that the Company has completed the voluntary remedial actions set forth in Undertaking Paragraph (3)(b)(2), (3)(b)(3), and (3)(b)(4).
- (7) On or before January 31, 2012, ANGD shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the President of Appalachian Natural Gas Distribution Company certifying that the Company has completed the installation described in Undertaking Paragraph (2)(b) and commenced the other remedial actions set forth therein.
- (8) Upon timely receipt of said affidavits described in Undertaking Paragraphs (5), (6), and (7) above, the Commission may suspend up to Sixty-five Thousand Dollars (\$65,000) of the amount set forth in Undertaking Paragraph (1) above. Should ANGD fail to tender the affidavits required by Undertaking Paragraphs (5), (6), and (7) above, or fail to take the actions required by Undertaking Paragraphs (2) and (3) above, a payment of Sixty-five Thousand Dollars (\$65,000) shall become due and payable, and the Company shall immediately notify the Division of the reasons for ANGD's failure to accomplish the actions required by Undertaking Paragraphs (2) and (3) above or tender the affidavits required by Undertaking Paragraphs (5), (6), and (7) above. If, upon investigation, the Division determines that the reason for said failure justifies a payment lower than Sixty-five Thousand Dollars (\$65,000), it may recommend to the Commission a reduction in the amount due. The Commission shall determine the amount due, and upon such determination, the Company shall immediately tender to the Commission said amount.
- (9) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of ANGD's cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the trial balance showing this entry with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, finding sufficient basis herein for the entry of this Order and in reliance on the Defendant's representations and undertakings set forth above, is of the opinion and finds that the offer of compromise and settlement set forth above should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned case shall be docketed and assigned Case No. URS-2010-00391.
- (2) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of compromise and settlement made by ANGD be, and it hereby is, accepted.
- (3) Pursuant to § 56-257.2 B of the Code of Virginia, ANGD shall pay the amount of Seventy-five Thousand Dollars (\$75,000) in settlement hereof, which may be suspended and subsequently vacated in part as provided in Undertaking Paragraph (1) of this Order.
- (4) The sum of Ten Thousand Dollars (\$10,000) tendered contemporaneously with the entry of this Order is accepted. The remaining Sixty-five Thousand Dollars (\$65,000) shall be due as outlined in Undertaking Paragraph (8) herein, and may be suspended and subsequently vacated in whole or in part by the Commission, provided the Company timely takes the actions required by Undertaking Paragraphs (2) and (3) herein and tenders the timely certifications as required by Undertaking Paragraphs (5), (6), and (7) herein.
- (5) The Commission shall retain jurisdiction over this matter for all purposes, and this case shall be continued pending further orders of the Commission.

**CASE NO. URS-2010-00392
AUGUST 23, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
DOMINION TRANSMISSION, INC.,
Defendant

ORDER OF SETTLEMENT

The federal pipeline safety statutes found at 49 U.S.C. § 60101 *et seq.* formerly the Natural Gas Pipeline Safety Act, require the Secretary of Transportation ("Secretary") to establish minimum federal safety standards for the transportation of gas and pipeline facilities. The Secretary is further authorized to delegate to an appropriate state agency the authority to prescribe safety standards and enforce compliance with such standards over gas pipeline facilities used for intrastate transportation.

The State Corporation Commission ("Commission") has been designated as the appropriate state agency for the Commonwealth of Virginia to prescribe and enforce compliance with standards for gas pipeline facilities used for intrastate transportation. In Case No. PUE-1989-00052, the Commission adopted Parts 191, 192, 193, and 199 of Title 49 of the Code of Federal Regulations to serve as minimum gas pipeline safety standards ("Safety Standards") in Virginia. The Commission is authorized to enforce the Safety Standards for natural gas facilities under § 56-257.2 B of the Code of Virginia, which allows the Commission to impose the fines and penalties authorized therein.

The Commission's Division of Utility and Railroad Safety ("Division") is charged with the investigation of each jurisdictional gas company's compliance with the Safety Standards; has conducted various inspections of records, construction, operation, and maintenance activities involving Dominion Transmission, Inc. ("DTI" or "Company"), the Defendant; and alleges that:

- (1) DTI is a person within the meaning of § 56-257.2 B of the Code of Virginia; and
- (2) The Company violated the Commission's Safety Standards by the following conduct:
 - (a) 49 C.F.R. § 192.465 (c) - Failing on multiple occasions to electrically check each diode and interference bond and keep a record of the tests;
 - (b) 49 C.F.R. § 192.614 (a) - Failing on one occasion to have adequate Damage Prevention procedures; and
 - (c) 49 C.F.R. § 192.707 (d) (2) - Failing on one occasion to include the operator's name and telephone number on a transmission line marker.

The Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters arising from the allegations made against it, DTI represents and undertakes that:

- (1) The Company shall pay to the Commonwealth of Virginia the amount of Sixteen Thousand Dollars (\$16,000), of which Five Thousand Dollars (\$5,000) shall be paid contemporaneously with the entry of this Order. The remaining Eleven Thousand Dollars (\$11,000) shall be due as outlined in Undertaking Paragraph (5) herein, and may be suspended and subsequently vacated, in whole or in part, by the Commission, provided the Company timely takes the actions required by Undertaking Paragraph (2) herein and tenders the requisite certifications as required by Undertaking Paragraphs (3) and (4) herein. The initial payment and any subsequent payments shall be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director, Division of Utility and Railroad Safety, State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23218-1197.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

- (2) The Company shall undertake the following remedial actions:
- (a) On or before October 3, 2011, the Company shall install and monitor a remote sensing device at the alternating current ("AC") mitigation polarization cell replacement location on its TL-520 pipeline. This device shall allow for continuous monitoring and alarm outside set parameters.
 - (b) On or before October 3, 2011, the Company shall install AC measurement test stations at five (5) locations on its TL-520 pipeline to monitor AC potentials and AC current density. The test stations shall be inspected at least once per calendar year at intervals not exceeding 15 months. The test stations shall be installed pursuant to a review of:
 - i. Locations where AC potentials exceed 15 volts;
 - ii. Locations where AC interference may be concentrated;
 - iii. Soil resistivity data;
 - iv. Close interval and direct current voltage gradient survey data; and
 - v. AC calculations and industry best practices.
 - (c) On or before December 30, 2011, the Company shall perform a study to determine the effectiveness of the AC mitigation measures installed on the pipeline. A copy of the study shall be provided to the Division on or before January 15, 2012.
 - (d) On or before December 30, 2011, the Company shall install and maintain a remote valve operator on the mainline valve on its TL-520 pipeline, located near Woodbridge, Virginia.
 - (e) On or before October 3, 2011, the Company shall update its internet homepage to include information on pipeline safety and damage prevention including, but not limited to, what to do if there is a gas leak and the Dig with C.A.R.E. message.
 - (f) On or before October 3, 2011, the Company shall place Virginia's Dig with C.A.R.E. message stickers on its pipeline markers, test stations, and other aboveground facilities along the Company's TL-520 pipeline's right-of-way.
 - (g) On or before October 3, 2011, the Company shall revise its public education materials to include information on what gas smells like, along with Virginia-specific damage prevention information.
 - (h) On or before October 3, 2011, the Company shall review and revise its damage prevention program procedures to ensure compliance with the requirements of 49 C.F.R. § 192.614.

(3) On or before October 18, 2011, DTI shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the Vice President of Pipeline Engineering and Plant Operations certifying that the Company completed the remedial actions set forth in Undertaking Paragraphs (2)(a), (2)(b), (2)(e), (2)(f), (2)(g), and (2)(h) above.

(4) On or before January 16, 2012, DTI shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the Vice President of Pipeline Engineering and Plant Operations certifying that the Company completed the remedial actions set forth in Undertaking Paragraphs (2)(c) and (2)(d) above.

(5) Upon timely receipt of said affidavits, the Commission may suspend and subsequently vacate up to Eleven Thousand Dollars (\$11,000) of the amount set forth in Undertaking Paragraph (1) above. Should DTI fail to tender the affidavits required by Undertaking Paragraphs (3) and (4) above, or fail to take the actions required by Undertaking Paragraph (2) above, a payment of Eleven Thousand Dollars (\$11,000) shall become due and payable, and the Company shall immediately notify the Division of the reasons for DTI's failure to accomplish the actions required by Undertaking Paragraphs (2), (3), and (4) above. If, upon investigation, the Division determines that the reason for said failure justifies a payment lower than Eleven Thousand Dollars (\$11,000), it may recommend to the Commission a reduction in the amount due. The Commission shall determine the amount due, and upon such determination, the Company shall immediately tender to the Commission said amount.

NOW THE COMMISSION, finding sufficient basis herein for the entry of this Order and in reliance on the Defendant's representations and undertakings set forth above, is of the opinion and finds that the offer of compromise and settlement set forth above should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned case shall be docketed and assigned Case No. URS-2010-00392.
- (2) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of compromise and settlement made by DTI be, and it hereby is, accepted.
- (3) Pursuant to § 56-257.2 B of the Code of Virginia, DTI shall pay the amount of Sixteen Thousand Dollars (\$16,000) in settlement hereof.
- (4) The sum of Five Thousand Dollars (\$5,000) tendered contemporaneously with the entry of this Order is accepted. The remaining Eleven Thousand Dollars (\$11,000) is due as outlined herein and may be suspended and subsequently vacated, in whole or in part, provided the Company timely undertakes the actions required in Undertaking Paragraph (2) of this Order and files the timely certification of the remedial actions required by Undertaking Paragraphs (3) and (4) of this Order.

(5) The Commission shall retain jurisdiction over this matter for all purposes, and this case shall be continued pending further order of the Commission.

**CASE NO. URS-2010-00409
FEBRUARY 7, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
IRONHORSE CONST. INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) On or about October 25, 2010, while performing trenchless excavation, Ironhorse Const. Inc. ("Company") damaged a one-inch copper water service line operated by the County of Henrico, located at or near Dumbarton Road and Byrd Hill Road, Henrico County, Virginia, while excavating;

(2) On or about October 26, 2010, while performing trenchless excavation, the Company damaged two (2) one-inch copper water service lines operated by the County of Henrico, located at or near Dumbarton Road and Byrd Hill Road, Henrico County, Virginia, while excavating;

(3) On or about October 26, 2010, while performing trenchless excavation, the Company operated a drill within two feet of a partially exposed gas main and crossed, but did not damage, five sewer laterals, two water mains, and one power service line.

(4) On the occasions set out in paragraphs (1), (2), and (3) above, the Company failed to exercise due care at all times to protect underground utility lines, in violation of § 56-265.14 A of the Code;

(5) On the occasion set out in paragraph (3) above, the Company utilized mechanized equipment within two feet of the extremities of all exposed utility lines, in violation of 20 VAC 5-309-140 3 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act;

(6) On the occasion set out in paragraph (3) above, the Company failed to ensure that grounding rods were installed at a safe distance (at least 24 inches plus the width of the utility line, if known) away from the marked or staked location of utility lines, in violation of 20 VAC 5-309-150 3 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act;

(7) On the occasion set out in paragraph (2) above, the Company failed to ensure sufficient clearance was maintained between the bore path and any underground utility lines during pullback, in violation of 20 VAC 5-309-150 4 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act;

(8) On the occasions set out in paragraphs (1), (2), and (3) above, the Company failed to expose all utility lines which were in the bore path by hand digging to establish the underground utility line's location prior to commencing bore, in violation of 20 VAC 5-309-150 6 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act; and

(9) On the occasions set out in paragraphs (2) and (3) above, the Company failed to visually check the drill head as it passed through potholes, entrances, and exit pits, in violation of 20 VAC 5-309-150 8 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Fourteen Thousand Five Hundred Fifty Dollars (\$14,550) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Fourteen Thousand Five Hundred Fifty Dollars (\$14,550) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2010-00423
FEBRUARY 14, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
COLUMBIA GAS OF VIRGINIA, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

- (1) On or about September 7, 2010, Classic City Mechanical, Inc., damaged a one-and-one-quarter-inch iron gas service stub operated by Columbia Gas of Virginia, Inc. ("Company"), located at or near the 1100 block of Eighteenth Street, Lynchburg, Virginia, while excavating;
- (2) On or about September 17, 2010, Peters and White Construction Company damaged a one-half-inch plastic gas service line operated by the Company, located at or near 1901 Elm Avenue, Portsmouth, Virginia, while excavating;
- (3) On or about October 18, 2010, F. L. Showalter, Incorporated, damaged a one-inch plastic gas service stub operated by the Company, located at or near 525 Taylor Street, Lynchburg, Virginia, while excavating;
- (4) On or about October 26, 2010, JCB Construction Co., Inc., damaged a one-half-inch plastic gas service line operated by the Company, located at or near 22 Hobson Street, Portsmouth, Virginia, while excavating;
- (5) On or about October 29, 2010, JCB Construction Co., Inc., damaged a one-half-inch plastic gas service line operated by the Company, located at or near 30 Hobson Street, Portsmouth, Virginia, while excavating; and
- (6) On the occasions set out in paragraphs (1) through (5) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that:

- (1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of Seven Thousand One Hundred Dollars (\$7,100) to be paid contemporaneously with the entry of this Order. This payment will be made by check payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.
- (2) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the journal entries made to record such amounts with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.
- (2) The sum of Seven Thousand One Hundred Dollars (\$7,100) tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2010-00425
JANUARY 31, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
ONE VISION UTILITY SERVICES, LLC,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act ("Act"), § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents that occurred between July 22, 2010, and October 22, 2010, listed in Attachment A, involving One Vision Utility Services, LLC ("Company"), the Defendant, and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code and, as a contract locator acting on behalf of an operator, if the Company fails to perform the duties imposed by Chapter 10.3 of Title 56 of the Code, it is subject to the civil penalties set out in § 56-265.32 of the Code pursuant to § 56-265.19 D of the Code; and
- (2) During the aforementioned period, the Company violated the Act by the following conduct:
 - (a) Failing on certain occasions to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines in violation of § 56-265.19 A of the Code.
 - (b) Failing on certain occasions to mark the underground utility lines within the time prescribed in the Act in violation of § 56-265.19 A of the Code.
 - (c) Failing on certain occasions to report to the notification center that lines had been marked or that they were not in conflict with the proposed excavation in violation of § 56-265.19 A of the Code.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, which include all probable violations presented to the Underground Utility Damage Prevention Advisory Committee, and set out in Attachment A hereto, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Eight Thousand Five Hundred Fifty Dollars (\$8,550) to be paid contemporaneously with the entry of this Order. This payment will be made by cashier's check or money order, payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.
- (2) The sum of Eight Thousand Five Hundred Fifty Dollars (\$8,550) tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2010-00426
JANUARY 21, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
PROMARK UTILITY LOCATORS, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

- (1) Promark Utility Locators, Inc. ("Company"), is a contract locator as that term is defined in § 56-265.15 of the Code, and as a contract locator acting on behalf of an operator, if the Company fails to perform the duties imposed by Chapter 10.3 of Title 56 of the Code, it is subject to the civil penalties set out in § 56-265.32 of the Code pursuant to § 56-265.19 D of the Code;

(2) On or about July 26, 2010, the City of Covington damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 1843 South Carpenter Drive, Alleghany County, Virginia, while excavating;

(3) On or about August 25, 2010, the Town of Culpeper damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 133 East Culpeper Street, Culpeper County, Virginia, while excavating;

(4) On or about September 4, 2010, Terry Brown, homeowner, damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 8819 Rachelle Court, Prince William County, Virginia, while excavating;

(5) On or about September 9, 2010, George E. Jones & Sons, Inc., damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 919 Early Street, Lynchburg, Virginia, while excavating;

(6) On or about September 22, 2010, Western Virginia Water Authority damaged a two-inch plastic gas main line operated by Roanoke Gas Company, located at or near 457 Ingal Boulevard, Roanoke County, Virginia, while excavating;

(7) On the occasions set out in paragraphs (2) through (6) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code;

(8) On or about September 11, 2010, River House Enterprises LC damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 104 Manassas Drive, Prince William County, Virginia, while excavating;

(9) On or about October 4, 2010, Richard Phillips, homeowner, damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 219 Catalpa Drive, Pittsylvania County, Virginia, while excavating; and

(10) On the occasions set out in paragraphs (8) and (9) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Nine Thousand Nine Hundred Fifty Dollars (\$9,950) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Nine Thousand Nine Hundred Fifty Dollars (\$9,950) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00001
APRIL 18, 2011**

PETITION OF
NORFOLK SOUTHERN RAILWAY COMPANY

For a protective order

FINAL ORDER

On January 24, 2011, Norfolk Southern Railway Company ("Norfolk Southern" or "Company") filed a Petition for Protective Order ("Petition") with the State Corporation Commission ("Commission"). In its Petition, Norfolk Southern requested that the Commission enter an order prohibiting disclosure of certain documents currently in the possession of the Commission's Division of Utility and Railroad Safety ("Division" or "Staff").

On February 4, 2011, the Commission entered a Procedural Order, which, among other things, docketed the case; established a schedule for filing responses to the Petition; directed the Company to file the documents it sought to be protected from disclosure with the Clerk of the Commission under seal; assigned the case to a Hearing Examiner to conduct all further proceedings on behalf of the Commission; and scheduled a hearing for arguments on the Petition for April 28, 2011.

On March 7, 2011, the Division and Elizabeth H. and Nelson C. McKinney ("Respondents") each filed, by counsel, responses to Norfolk Southern's Petition. On April 11, 2011, Norfolk Southern filed a Motion to Withdraw Petition and to Dismiss ("Motion"). In support of its Motion, the

Company stated that the matter had been settled between the parties; that Mr. Crawford, counsel to the Respondents, had withdrawn his request to the Commission for the subject documents; and that neither the Respondents nor the Staff had any objections to the Company's Motion.

On April 13, 2011, Michael D. Thomas, Hearing Examiner, issued his Report, in which he found that the Company's Motion should be granted and that the case should be dismissed, based upon the Company's Motion and the withdrawal of the request by counsel to the Respondents for the documents in the possession of the Staff.

NOW THE COMMISSION, having considered the Petition, the Motion, and the Hearing Examiner's Report, is of the opinion and finds that the Company's Motion should be granted; and that the findings and recommendations of the Hearing Examiner should be adopted, except that the Petition should be dismissed without prejudice based upon the Motion and the withdrawal of the request for documents by counsel to the Respondents.

Accordingly, IT IS ORDERED THAT:

- (1) Norfolk Southern's Motion to Withdraw Petition and to Dismiss is hereby granted.
- (2) This case is dismissed.

**CASE NO. URS-2011-00033
MARCH 1, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

PROMARK UTILITY LOCATORS, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) Promark Utility Locators, Inc. ("Company"), is a contract locator as that term is defined in § 56-265.15 of the Code, and as a contract locator acting on behalf of an operator, if the Company fails to perform the duties imposed by Chapter 10.3 of Title 56 of the Code, it is subject to the civil penalties set out in § 56-265.32 of the Code pursuant to § 56-265.19 D of the Code;

(2) On or about November 9, 2010, the City of Salem damaged a one-half-inch steel gas service line operated by Roanoke Gas Company, located at or near 2344 Mowles Drive, Roanoke County, Virginia, while excavating;

(3) On or about November 11, 2010, the City of Staunton damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 313 Greenway Road, Augusta County, Virginia, while excavating;

(4) On or about January 7, 2011, Final Cut Carpentry excavated at or near 4137 Old Lyne Road, Virginia Beach, Virginia;

(5) On the occasions set out in paragraphs (2) through (4) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code;

(6) On or about August 24, 2010, Alderson Construction, Inc., damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 235 North Main Street, Pittsylvania County, Virginia, while excavating;

(7) On or about October 15, 2010, Liberty Plumbing, LLC, damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 878 Station Street, Fairfax County, Virginia, while excavating;

(8) On or about December 7, 2010, Contracting Enterprises, Incorporated, damaged a one-half-inch plastic gas service line operated by Roanoke Gas Company, located at or near 640 Janette Avenue, S.W., Roanoke County, Virginia, while excavating;

(9) On the occasions set out in paragraphs (6) through (8) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code; and

(10) On the occasion set out in paragraph (6) above, the Company failed to use all information necessary to mark their facilities accurately, in violation of 20 VAC 5-309-110 M of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Seven Thousand Six Hundred Dollars (\$7,600) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

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NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.
- (2) The sum of Seven Thousand Six Hundred Dollars (\$7,600) tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00036
MARCH 1, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
UTILIQUEST, LLC,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act ("Act"), § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents that occurred between September 23, 2010 and December 3, 2010, listed in Attachment A, involving Utiliquest, LLC ("Company"), the Defendant, and alleges that:

- (1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code and, as a contract locator acting on behalf of an operator, if the Company fails to perform the duties imposed by Chapter 10.3 of Title 56 of the Code, it is subject to the civil penalties set out in § 56-265.32 of the Code pursuant to § 56-265.19 D of the Code; and
- (2) During the aforementioned period, the Company violated the Act by the following conduct:
 - (a) Failing on certain occasions to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines in violation of § 56-265.19 A of the Code.
 - (b) Failing on certain occasions to mark the underground utility lines within the time prescribed in the Act in violation of § 56-265.19 A of the Code.
 - (c) Failing on certain occasions to use all information necessary to mark their facilities accurately in violation of 20 VAC 5-309-110 M of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, which includes all probable violations presented to the Underground Utility Damage Prevention Advisory Committee, and set out in Attachment A hereto, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Nine Thousand One Hundred Dollars (\$9,100) to be paid contemporaneously with the entry of this Order. This payment will be made by check payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.
- (2) The sum of Nine Thousand One Hundred Dollars (\$9,100) tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00040
MARCH 8, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

WASHINGTON GAS LIGHT COMPANY,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) On or about October 9, 2010, Ronco Utilities, Inc., damaged a one-quarter-inch plastic gas service line operated by Washington Gas Light Company ("Company"), located at or near 9037 Westerholme Way, Fairfax County, Virginia, while excavating;

(2) On or about October 23, 2010, Bertin Escobar, Owner, damaged a one-half-inch plastic gas service line operated by the Company, located at or near 9510 Dublin Drive, Prince William County, Virginia, while excavating;

(3) On the occasions set out in paragraphs (1) and (2) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code;

(4) On or about October 18, 2010, D&F Construction, Inc. damaged a four-inch plastic gas service stub operated by the Company, located at or near 44521 Hastings Drive, Loudoun County, Virginia, while excavating;

(5) On or about November 3, 2010, R. E. Lee Electric Company, Incorporated, damaged a one-half-inch plastic gas service line operated by the Company, located at or near North Street and University Drive, Fairfax County, Virginia, while excavating;

(6) On or about November 19, 2010, Anchor Construction Corporation damaged a three-quarter-inch plastic gas service line operated by the Company, located at or near 4021 University Drive, Fairfax County, Virginia, while excavating;

(7) On the occasions set out in paragraphs (4) through (6) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code; and

(8) On the occasions set out in paragraphs (4) through (6) above, the Company failed to prepare and maintain reasonably accurate installation records of the underground utility lines, in violation of 20 VAC 5-309-160 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that:

(1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of Six Thousand Three Hundred Dollars (\$6,300) to be paid contemporaneously with the entry of this Order. This payment will be made by check payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

(2) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the journal entries made to record such amounts with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Six Thousand Three Hundred Dollars (\$6,300) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00088
APRIL 5, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
COLUMBIA GAS OF VIRGINIA, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

- (1) On or about October 28, 2010, Virginia Electric and Power Company damaged a one-and-one-quarter-inch plastic gas main line operated by Columbia Gas of Virginia, Inc. ("Company"), located at or near 200 Truxton Avenue, Portsmouth, Virginia, while excavating;
- (2) On or about November 2, 2010, JCB Construction Co., Inc., damaged a one-half-inch plastic gas service line operated by the Company, located at or near 38 Hobson Street, Portsmouth, Virginia, while excavating;
- (3) On or about November 12, 2010, E. V. Williams, Inc., damaged a one-half-inch plastic gas service line operated by the Company, located at or near 5802 Campbell Street, Portsmouth, Virginia, while excavating;
- (4) On the occasions set out in paragraphs (1) through (3) above, the Company failed to mark the approximate horizontal location of the underground utility line on the ground to within two feet of either side of the underground utility line, in violation of § 56-265.19 A of the Code;
- (5) On or about December 3, 2010, Peters and White Construction Company damaged a one-half-inch plastic gas service line operated by the Company, located at or near 1611 Elm Street, Portsmouth, Virginia, while excavating;
- (6) On or about January 21, 2011, the City of Petersburg damaged a one-half-inch plastic gas service line operated by the Company, located at or near 123 Franklin Street, Petersburg, Virginia, while excavating; and
- (7) On the occasions set out in paragraphs (5) and (6) above, the Company failed to mark the underground utility line by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that:

- (1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of Five Thousand Eight Hundred Dollars (\$5,800) to be paid contemporaneously with the entry of this Order. This payment will be made by check payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.
- (2) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the journal entries made to record such amounts with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.
- (2) The sum of Five Thousand Eight Hundred Dollars (\$5,800) tendered contemporaneously with the entry of this Order is accepted.
- (3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00092
APRIL 5, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
PROMARK UTILITY LOCATORS, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act ("Act"), § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents that occurred between November 2, 2010, and January 13, 2011, listed in Attachment A, involving Promark Utility Locators, Inc. ("Company"), the Defendant, and alleges that:

(1) The Company is a contract locator as that term is defined in § 56-265.15 of the Code and, as a contract locator acting on behalf of an operator, if the Company fails to perform the duties imposed by Chapter 10.3 of Title 56 of the Code, it is subject to the civil penalties set out in § 56-265.32 of the Code pursuant to § 56-265.19 D of the Code; and

(2) During the aforementioned period, the Company violated the Act by the following conduct:

- (a) Failing on certain occasions to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines in violation of § 56-265.19 A of the Code.
- (b) Failing on certain occasions to mark the underground utility lines within the time prescribed in the Act in violation of § 56-265.19 A of the Code.
- (c) Failing on certain occasions to use all information necessary to mark their facilities accurately in violation of 20 VAC 5-309-110 M of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, which includes all probable violations presented to the Underground Utility Damage Prevention Advisory Committee, and set out in Attachment A hereto, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Ten Thousand Five Hundred Fifty Dollars (\$10,550) to be paid contemporaneously with the entry of this Order. This payment will be made by cashier's check or money order, payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Ten Thousand Five Hundred Fifty Dollars (\$10,550) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00124
SEPTEMBER 12, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
PROMARK UTILITY LOCATORS, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) Promark Utility Locators, Inc. ("Company"), is a contract locator as that term is defined in § 56-265.15 of the Code, and as a contract locator acting on behalf of an operator, if the Company fails to perform the duties imposed by Chapter 10.3 of Title 56 of the Code, it is subject to the civil penalties set out in § 56-265.32 of the Code pursuant to § 56-265.19 D of the Code;

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(2) On or about December 20, 2010, George E. Jones & Sons, Inc., damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 1113 Dearing Street, Lynchburg, Virginia, while excavating;

(3) On the occasion set out in paragraph (2) above, the Company failed to report the marking status to the excavator-operator information exchange system by no later than 7:00 a.m. on the third day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code;

(4) On or about January 19, 2011, Ryan Construction damaged a two-inch plastic gas main line operated by Roanoke Gas Company, located at or near 655 Lee Street, Roanoke County, Virginia, while excavating;

(5) On or about January 19, 2011, S.C. Rossi & Company, Inc., damaged a one-inch plastic gas service line operated by Roanoke Gas Company, located at or near 4965 Topping Hill Drive, S.W., Roanoke County, Virginia, while excavating;

(6) On or about January 24, 2011, Commonwealth Excavating and Pipeline Company damaged a two-inch plastic gas main line operated by Roanoke Gas Company, located at or near Carefree Lane at Lakeview Circle, Roanoke County, Virginia, while excavating;

(7) On the occasions set out in paragraphs (4) through (6) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code;

(8) On or about February 1, 2011, Western Virginia Water Authority damaged a one-half-inch plastic gas service line operated by Roanoke Gas Company, located at or near 323 Ingall Boulevard, Roanoke County, Virginia, while excavating;

(9) On or about February 21, 2011, DLB, Inc., damaged a one-half-inch plastic gas service line operated by Roanoke Gas Company, located at or near 3902 West Main Street, Roanoke County, Virginia, while excavating; and

(10) On the occasions set out in paragraphs (8) and (9) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Eight Thousand Two Hundred Dollars (\$8,200) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Eight Thousand Two Hundred Dollars (\$8,200) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00128
AUGUST 22, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*

v.

COLUMBIA GAS OF VIRGINIA, INC.,

Defendant

ORDER OF SETTLEMENT

The federal pipeline safety statutes found at 49 U.S.C. § 601 01 *et seq.* formerly the Natural Gas Pipeline Safety Act, require the Secretary of Transportation ("Secretary") to establish minimum federal safety standards for the transportation of gas and pipeline facilities. The Secretary is further authorized to delegate to an appropriate state agency the authority to prescribe safety standards and enforce compliance with such standards over gas pipeline facilities used for intrastate transportation.

The State Corporation Commission ("Commission") has been designated as the appropriate state agency for the Commonwealth of Virginia to prescribe and enforce compliance with standards for gas pipeline facilities used for intrastate transportation. In Case No. PUE-1989-00052, the Commission adopted Parts 191, 192, 193, and 199 of Title 49 of the Code of Federal Regulations to serve as minimum gas pipeline safety standards ("Safety Standards") in Virginia. The Commission is authorized to enforce the Safety Standards for natural gas facilities under § 56-257.2 B of the Code of Virginia, which allows the Commission to impose the fines and penalties authorized therein.

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The Commission's Division of Utility and Railroad Safety ("Division") is charged with the investigation of each jurisdictional gas company's compliance with the Safety Standards; has conducted various inspections of records, construction, operation, and maintenance activities involving Columbia Gas of Virginia, Inc. ("CGV" or "Company"), the Defendant; and alleges that:

- (1) CGV is a person within the meaning of § 56-257.2 B of the Code of Virginia; and
- (2) The Company violated the Commission's Safety Standards by the following conduct:
 - (a) 49 C.F.R. § 192.361(d) - Failing on one occasion to install a service line so as to minimize anticipated piping strain;
 - (b) 49 C.F.R. § 192.805 (b) - Failing on one occasion to ensure through evaluation that individuals performing covered tasks: H2, Install, Repair, Replace Gas Service Lines and Excavation and Backfilling and M8, Install, Replace, Repair Main Lines, are qualified;
 - (c) 49 C.F.R. § 192.805 (b) - Failing on multiple occasions to ensure through evaluation that individuals performing covered tasks: G-2, Horizontal Directional Drilling and G-3, other Boring Methods, are qualified;
 - (d) 49 C.F.R. § 192.805 (f) - Failing on multiple occasions to communicate changes that affect covered tasks: OQ Task G-2, Horizontal Directional Drilling and OQ Task G-3, other Boring Methods, to individuals performing those covered tasks;
 - (e) 49 C.F.R. § 192.907 (a) - Failing on two occasions to follow Company Procedure IMP 6-19, developed to comply with ASME B31.8S-2004, by not properly repairing two (2) gouges discovered during an integrity assessment; and
 - (f) 49 C.F.R. § 192.907 (a) - Failing on one occasion to have adequate procedures for evaluating Third-Party Damage as described in Table 4 of ASME B31.8S-2004.

The Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters arising from the allegations made against it, CGV represents and undertakes that:

- (1) The Company shall pay to the Commonwealth of Virginia the amount of Two Hundred Eighty-nine Thousand Five Hundred Dollars (\$289,500), of which One Hundred Forty-six Thousand Five Hundred Dollars (\$146,500) shall be paid contemporaneously with the entry of this Order. The remaining One Hundred Forty-three Thousand Dollars (\$143,000) shall be due as outlined in Undertaking Paragraph (6) herein and may be suspended and subsequently vacated, in whole or in part, by the Commission, provided the Company timely takes the actions required by Undertaking Paragraph (2) herein and tenders the requisite certifications as required by Undertaking Paragraphs (3), (4), and (5) herein. The initial payment and any subsequent payments shall be made by check, payable to the Treasurer of Virginia, and directed to the attention of the Director, Division of Utility and Railroad Safety, State Corporation Commission Post Office Box 1197, Richmond, Virginia 23218-1197.
- (2) The Company shall undertake the following remedial actions:
 - (a) On or before October 15, 2011, the Company shall revise its Operator Qualification Program for individuals that perform locating, leak survey, and meter reading activities to identify potential risks including, but not limited to, facilities located under structures, placement of regulators/meters, and atmospheric corrosion, as abnormal operating conditions. The Company shall communicate the change and train individuals that perform such tasks in accordance with § 192.805 by no later than December 15, 2011.
 - (b) On or before August 1, 2011, the Company shall provide the Division with a listing of all pipelines that were installed by directional drilling and pneumatic boring from July 1, 2010, to April 15, 2011. On or before September 1, 2011, the Company shall develop a plan to excavate and test a statistically significant sample size from the aforementioned list to ensure the integrity of the listed pipelines at a 95% confidence level. On or before, April 1, 2012, the Company shall provide the results to the Division along with descriptions of all actions taken to correct any issues discovered.
 - (c) On or before August 1, 2011, the Company shall train all individuals that perform directional drilling and pneumatic boring to OQ task G-2, Horizontal Directional Drilling, and OQ task G-3, other Boring Methods.
 - (d) On or before October 1, 2011, the Company shall revise its Procedures to include evaluation criteria for Third-Party Damage as described in Table 4 of ASME B31.8S-2004.
 - (e) On or before October 1, 2011, the Company shall revise its Operator Qualification Program to include evaluation criteria for Third-Party Damage as described in Table 4 of ASME B31.8S-2004. The Company shall communicate the change and train individuals that perform such tasks in accordance with § 192.805.
 - (f) On or before September 1, 2011, the Company shall excavate the two gouges on the Harrisonburg transmission pipeline caused by excavation during the recent integrity assessment examination and conduct an evaluation of the gouges and perform the appropriate repair.
 - (g) On or before October 1, 2011, the Company shall implement the study outlined in Attachment A to this Order to evaluate new and emerging locate technology, with a final report submitted to the Division on or before October 1, 2013, detailing the study results.
 - (h) On or before September 1, 2011, the Company shall begin a comprehensive review of its records and identify active distribution main and service line "stubs" throughout its service area. The Company shall document the presence of each stub and communicate the approximate location of these stubs to the appropriate Company and contract locator employees to assist them in locating these stubs in response to notices of excavation. The review of the records shall be completed by no later than April 1, 2012. On or before January 1, 2012, CGV shall begin an abandonment program to remove the identified stubs from service. The abandonment program

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shall be completed by no later than December 31, 2016, or earlier, should the Company's distribution integrity management program require more prompt action.

(3) On or before August 24, 2011, CGV shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the General Manager of Columbia Gas of Virginia, Inc., certifying that the Company has completed the remedial actions set forth in Undertaking Paragraph (2)(c) above.

(4) On or before October 15, 2011, CGV shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the General Manager of Columbia Gas of Virginia, Inc., certifying that the Company has completed the remedial actions set forth in Undertaking Paragraphs (2)(a), (2)(d), (2)(e), (2)(f), and (2)(g) above.

(5) On or before January 15, 2017, CGV shall tender to the Clerk of the Commission, with a copy to the Division, an affidavit executed by the General Manager of Columbia Gas of Virginia, Inc., certifying that the Company has completed the remedial actions set forth in Undertaking Paragraph (2)(h) above.

(6) Upon timely receipt of said affidavits, the Commission may suspend and subsequently vacate up to One Hundred Forty-three Thousand Dollars (\$143,000) of the amount set forth in Undertaking Paragraph (1) above. Should CGV fail to tender the affidavits required by Undertaking Paragraphs (3), (4), and (5) above, or fail to take the actions required by Undertaking Paragraph (2) above, a payment of One Hundred Forty-three Thousand Dollars (\$143,000) shall become due and payable, and the Company shall immediately notify the Division of the reasons for CGV's failure to accomplish the actions required by Undertaking Paragraphs (2), (3), (4), and (5) above. If, upon investigation, the Division determines that the reason for said failure justifies a payment lower than One Hundred Forty-three Thousand Dollars (\$143,000), it may recommend to the Commission a reduction in the amount due. The Commission shall determine the amount due, and upon such determination, the Company shall immediately tender to the Commission said amount.

(7) Any amounts paid in accordance with Undertaking Paragraph (1) of this Order shall not be recovered in the Company's rates as part of CGV's cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the trial balance showing this entry with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, finding sufficient basis herein for the entry of this Order and in reliance on the Defendant's representations and undertakings set forth above, is of the opinion and finds that the offer of compromise and settlement set forth above should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The captioned case shall be docketed and assigned Case No. URS-2011-00128.
- (2) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of compromise and settlement made by CGV be, and it hereby is, accepted.
- (3) Pursuant to § 56-257.2 B of the Code of Virginia, CGV shall pay the amount of Two Hundred Eighty-nine Thousand Five Hundred Dollars (\$289,500), which may be suspended and subsequently vacated, in whole or in part, as provided in Undertaking Paragraph (1) of this Order.
- (4) The sum of One Hundred Forty-six Thousand Five Hundred Dollars (\$146,500) tendered contemporaneously with the entry of this Order is accepted. The remaining One Hundred Forty-three Thousand Dollars (\$143,000) is due as outlined herein and may be suspended and subsequently vacated, in whole or in part, provided the Company timely undertakes the actions required in Undertaking Paragraph (2) of this Order and files the timely certification of the remedial actions required by Undertaking Paragraphs (3), (4), and (5) of this Order.
- (5) The Commission shall retain jurisdiction over this matter for all purposes, and this case shall be continued pending further order of the Commission.

**CASE NO. URS-2011-00151
JULY 28, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
COLUMBIA GAS OF VIRGINIA, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

- (1) On or about October 18, 2010, A & M Concrete Corp. damaged a one-half-inch plastic gas service line operated by Columbia Gas of Virginia, Inc. ("Company"), located at or near 621 Spring Street, Fairfax County, Virginia, while excavating;
- (2) On the occasion set out in paragraph (1) above, the Company failed to mark the approximate horizontal location of the underground utility line on the ground to within two feet of either side of the underground utility line, in violation of § 56-265.19 A of the Code;

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(3) On or about March 25, 2011, Old Dominion Demolition Corporation damaged a one-half-inch plastic gas service line operated by the Company located at or near 3249 Tyre Neck Road, Portsmouth, Virginia, while excavating;

(4) On or about March 14, 2011, the City of Portsmouth damaged a one-half-inch plastic gas service line operated by the Company, located at or near 3119 Riveredge Drive, Portsmouth, Virginia, while excavating;

(5) On or about March 16, 2011, Axis Utility Construction, Inc., damaged a one-half-inch plastic gas service line operated by the Company, located at or near South Church Street, Isle of Wight County, Virginia, while excavating;

(6) On or about January 3, 2011, Richard L. Crowder Construction, Inc., damaged a two-inch plastic gas service line, operated by the Company, located at or near 506 Halifax Street, Petersburg, Virginia, while excavating;

(7) On the occasions set out in paragraphs (3) through (6) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code; and

(8) On the occasions set out in paragraphs (4) through (6) above, the Company failed to prepare and maintain reasonably accurate installation records of the underground utility lines, in violation of 20 VAC 5-309-160 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that:

(1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of Six Thousand Five Hundred Dollars (\$6,500) to be paid contemporaneously with the entry of this Order. This payment will be made by check payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

(2) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the journal entries made to record such amounts with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Six Thousand Five Hundred Dollars (\$6,500) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00155
SEPTEMBER 12, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

TIDEWATER UTILITY CONSTRUCTION, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) On or about March 4, 2011, Tidewater Utility Construction, Inc. ("Company"), damaged a three-quarter-inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 515 West 35th Street, Norfolk, Virginia, while excavating;

(2) On or about March 28, 2011, the Company damaged a two-inch plastic gas main line operated by Virginia Natural Gas, Inc., located at or near 2500 Middle Avenue, Norfolk, Virginia, while excavating;

(3) On the occasions set out in paragraphs (1) and (2) above, the Company failed to request the re-marking of lines, in violation of § 56-265.24 B of the Code;

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(4) On the occasion set out in paragraph (2) above, the Company failed to reasonably protect and preserve markings, in violation of 20 VAC 5-309-170 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act;

(5) On or about March 24, 2011, the Company damaged a one-half-inch plastic gas service line operated by Virginia Natural Gas, Inc., located at or near 4625 Chippendale Court, Virginia Beach, Virginia, while excavating;

(6) On or about April 18, 2011, the Company damaged a four-inch plastic gas main line operated by Virginia Natural Gas, Inc., located at or near 1441 Oceana Boulevard, Virginia Beach, Virginia, while excavating;

(7) On the occasions set out in paragraphs (5) and (6) above, the Company failed to exercise due care at all times to protect underground utility lines, in violation of § 56-265.24 A of the Code;

(8) On the occasion set out in paragraph (6) above, the Company failed to wait three hours after an additional call was made to the notification center for the area before excavating, in violation of § 56-265.17 C of the Code;

(9) On the occasion set out in paragraph (5) above, the Company failed to expose the underground utility line to its extremities by hand digging within the excavation area when excavation was expected to come within two feet of the marked location of the underground utility line, in violation of 20 VAC 5-309-140 2 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act;

(10) On the occasion set out in paragraph (6) above, the Company utilized mechanized equipment within two feet of the extremities of all exposed utility lines, in violation of 20 VAC 5-309-140 3 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act; and

(11) On the occasion set out in paragraph (5) above, the Company failed to maintain a reasonable clearance between the marked or staked location of an underground utility line and the cutting edge or point of any mechanized equipment, in violation of 20 VAC 5-309-140 4 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Five Thousand Two Hundred Fifty Dollars (\$5,250) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.
- (2) The sum of Five Thousand Two Hundred Fifty Dollars (\$5,250) tendered contemporaneously with the entry of this Order is accepted.
- (3) The Company has complied fully with the terms and undertakings outlined in the Damage Prevention Policy ("Policy") as described in Attachment A. Documentation evidencing the implementation of the Policy has been submitted to the Division.
- (4) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

NOTE: A copy of Attachment A is on file and may be examined at the State Corporation Commission, Clerk's Office, Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia.

**CASE NO. URS-2011-00160
OCTOBER 12, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
WINDSTREAM KDL-VA, INC.,
Defendant

**ORDER ACCEPTING OFFER OF
SETTLEMENT AND DISMISSING PROCEEDING**

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

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- (1) On or about April 6, 2011, Windstream KDL-VA, Inc. ("Company"), excavated at or near Forest Hill Avenue and Stratford Road, Richmond, Virginia;
- (2) On or about April 7, 2011, the Company excavated at or near North Huguenot Road and Old Spring Road, Richmond, Virginia;
- (3) On or about April 26, 2011, the Company damaged a thirty-six-inch water main line operated by the City of Richmond, located at or near North Hopkins Road and Jefferson Davis Highway, Richmond, Virginia, while excavating;
- (4) On the occasions set out in paragraphs (1) through (3) above, the Company failed to exercise due care at all times to protect underground utility lines, in violation of § 56-265.24 A of the Code;
- (5) On the occasion set out in paragraph (3) above, the Company failed to maintain a reasonable clearance between the marked or staked location of an underground utility line and the cutting edge or point of any mechanized equipment, in violation of 20 VAC 5-309-140 4 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act;
- (6) On the occasions set out in paragraphs (1) through (3) above, the Company failed to ensure sufficient clearance was maintained between the bore path and any underground utility lines during pullback, in violation of 20 VAC 5-309-150 4 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act;
- (7) On the occasions set out in paragraphs (1) through (3) above, the Company failed to expose all utility lines which would be in the bore path by hand digging to establish the underground utility line's location prior to commencing bore, in violation of 20 VAC 5-309-150 6 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act; and
- (8) On the occasions set out in paragraphs (1) through (3) above, the Company failed to visually check the drill head as it passed through potholes, entrances, and exit pits, in violation of 20 VAC 5-309-150 8 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order Accepting Offer of Settlement and Dismissing Proceeding.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company has offered, and agreed to comply with, the following terms and undertakings:

- (1) That it will pay a civil penalty to the Commonwealth of Virginia in the amount of Thirteen Thousand Five Hundred Fifty Dollars (\$13,550);
- (2) That One Thousand Five Hundred Dollars (\$1,500) of said penalty will be vacated upon the condition that the Company conducts a training session for its employees on the subject of underground utility damage prevention and submits documentation evidencing the training session to the Commission contemporaneously with the entry of this Order; and
- (3) That the Twelve Thousand Fifty Dollar (\$12,050) balance of said penalty will be paid contemporaneously with the entry of this Order by check payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

The Company has now complied fully with the terms and undertakings of the settlement as outlined herein. Documentation evidencing the training session on the subject of underground utility damage prevention has been submitted on a timely basis in accordance with the undertakings set forth above.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for acceptance of the Company's offer of settlement and evidence of training, hereby accepts this offer of settlement and evidence of training. Because the Company has complied with the terms and undertakings accepted herein, the remainder of the penalty should be vacated and this case dismissed.

Accordingly, IT IS ORDERED THAT:

- (1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.
- (2) The Company is hereby penalized in the amount of Thirteen Thousand Five Hundred Fifty Dollars (\$13,550).
- (3) The sum of Twelve Thousand Fifty Dollars (\$12,050) tendered contemporaneously with the entry of this Order is accepted.
- (4) The remainder of the penalty amount, One Thousand Five Hundred (\$1,500), shall be vacated.
- (5) This case is hereby dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00163
AUGUST 2, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

J. A. WALDER, INCORPORATED,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) On or about July 1, 2011, J. A. Walder, Incorporated ("Company"), damaged a six-inch plastic gas main line operated by the City of Richmond, located at or near the intersection of 5th Street and Tredegar Street, Richmond, Virginia, while excavating;

(2) On the occasion set out in paragraph (1) above, the Company failed to exercise due care at all times to protect underground utility lines, in violation of § 56-265.24 A of the Code; and

(3) On the occasion set out in paragraph (1) above, the Company failed to maintain a reasonable clearance between the marked or staked location of an underground utility line and the cutting edge or point of any mechanized equipment, in violation of 20 VAC 5-309-140 4 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Five Thousand Dollars (\$5,000) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Five Thousand Dollars (\$5,000) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00192
AUGUST 24, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

COLUMBIA GAS OF VIRGINIA, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) On or about March 2, 2011, Perkinson Construction, L.L.C., damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc. ("Company"), located at or near 406 East Randolph Street, Hopewell, Virginia, while excavating;

(2) On or about March 16, 2011, Perkinson Construction, L.L.C., damaged a two-inch plastic gas main line operated by the Company, located at or near Booker Street and Terminal Street, Hopewell, Virginia, while excavating;

(3) On the occasions set out in paragraphs (1) and (2) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code;

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(4) On or about December 2, 2010, Richard L. Crowder Construction, Inc., damaged a one-and-one-quarter-inch plastic gas service stub operated by the Company, located at or near 518 Halifax Street, Petersburg, Virginia, while excavating;

(5) On or about March 17, 2011, Perkinson Construction, L.L.C., damaged a three-quarter-inch steel gas service line operated by the Company, located at or near 436 Maycox Street, Petersburg, Virginia, while excavating;

(6) On or about April 7, 2011, the City of Petersburg damaged a one-half-inch plastic gas service line operated by the Company, located at or near 124 New Street, Petersburg, Virginia, while excavating;

(7) On or about May 6, 2011, Secured Network Solutions, Inc., damaged a two-inch plastic gas main line operated by the Company, located at or near Portsmouth Boulevard and Grand Street, Portsmouth, Virginia, while excavating;

(8) On the occasions set out in paragraphs (4) through (7) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code; and

(9) On the occasion set out in paragraph (4) above, the Company failed to prepare and maintain reasonably accurate installation records of the underground utility lines, in violation of 20 VAC 5-309-160 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that:

(1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of Eight Thousand One Hundred Dollars (\$8,100) to be paid contemporaneously with the entry of this Order. This payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

(2) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the journal entries made to record such amounts with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Eight Thousand One Hundred Dollars (\$8,100) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00193
SEPTEMBER 14, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
DE-TECH SERVICES, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) De-Tech Services, Inc. ("Company"), is a contract locator as that term is defined in § 56-265.15 of the Code, and as a contract locator acting on behalf of an operator, if the Company fails to perform the duties imposed by Chapter 10.3 of Title 56 of the Code, it is subject to the civil penalties set out in § 56-265.32 of the Code pursuant to § 56-265.19 D of the Code;

(2) On or about February 3, 2011, Skanska USA Civil Southeast Inc. damaged a one-and-one-eighth-inch plastic gas service line operated by the City of Richmond, located at or near 206 Kanawha Drive, Henrico County, Virginia, while excavating;

(3) On or about February 7, 2011, G. L. Howard, Inc., damaged a one-inch iron gas service line operated by the City of Richmond, located at or near 3855 Fauquier Avenue, Richmond, Virginia, while excavating;

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(4) On the occasions set out in paragraphs (2) and (3) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code;

(5) On or about December 20, 2010, the County of Henrico damaged a two-inch plastic gas main line operated by the City of Richmond, located at or near 7506 Sweetbriar Road, Henrico County, Virginia, while excavating;

(6) On or about March 11, 2011, Henkels & McCoy, Inc., damaged a one-and-one-eighth-inch plastic gas service line operated by the City of Richmond, located at or near 16 North Allen Avenue, Richmond, Virginia, while excavating;

(7) On or about July 1, 2011, J. A. Walder, Inc., damaged a six-inch plastic gas main line operated by the City of Richmond, located at or near the intersection of Fifth Street and Tredegar Street, Richmond, Virginia, while excavating;

(8) On the occasions set out in paragraphs (5) through (7) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code; and

(9) On the occasion set out in paragraph (6) above, the Company failed to use all information necessary to mark their facilities accurately, in violation of 20 VAC 5-309-110 M of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Nine Thousand Four Hundred Fifty Dollars (\$9,450) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Nine Thousand Four Hundred Fifty Dollars (\$9,450) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00197
AUGUST 22, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION
v.
PROMARK UTILITY LOCATORS, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) Promark Utility Locators, Inc. ("Company"), is a contract locator as that term is defined in § 56-265.15 of the Code, and as a contract locator acting on behalf of an operator, if the Company fails to perform the duties imposed by Chapter 10.3 of Title 56 of the Code, it is subject to the civil penalties set out in § 56-265.32 of the Code pursuant to § 56-265.19 D of the Code;

(2) On or about December 19, 2010, H. T. Bowling, Inc., damaged a one-and-one-quarter-inch steel gas service line operated by Roanoke Gas Company, located at or near 3095 Colonial Avenue, Roanoke County, Virginia, while excavating;

(3) On the occasion set out in paragraph (2) above, the Company failed to report the marking status to the excavator-operator information exchange system by no later than 7:00 a.m. on the third day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code;

(4) On or about January 14, 2011, Oakenshield Development Company, Inc., damaged an electric secondary line operated by Southside Electric Cooperative, located at or near 303 Tulip Tree Lane, Bedford County, Virginia, while excavating;

(5) On the occasion set out in paragraph (4) above, the Company failed to mark the underground utility line by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code;

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(6) On or about January 14, 2011, C. L. Garbee Construction Company, Inc., damaged a four-inch plastic gas main line operated by Columbia Gas of Virginia, Inc., located at or near Burnt Bridge Road, Lynchburg, Virginia, while excavating;

(7) On or about January 19, 2011, R. R. Mann Fencing Co., Inc., damaged an electric primary line operated by Southside Electric Cooperative, located at or near Rose Wood Lane, Bedford County, Virginia, while excavating;

(8) On or about April 27, 2011, Western Virginia Water Authority damaged a one-and-one-quarter-inch plastic gas main line operated by Roanoke Gas Company, located at or near 2733 Floraland Drive, N.W., Roanoke County, Virginia, while excavating;

(9) On the occasions set out in paragraphs (6) through (8) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Six Thousand Six Hundred Fifty Dollars (\$6,650) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Six Thousand Six Hundred Fifty Dollars (\$6,650) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00199
SEPTEMBER 14, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

VIRGINIA NATURAL GAS, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) On or about January 6, 2011, Asphalt Roads and Materials Company, Incorporated, damaged a three-quarter-inch plastic gas service line operated by Virginia Natural Gas, Inc. ("Company"), located at or near 4948 Broad Street, Virginia Beach, Virginia, while excavating;

(2) On or about January 19, 2011, Jethro Byrd Electrical & Plumbing Contractor, Inc., damaged a three-quarter-inch plastic gas service line operated by the Company, located at or near 11006 Warwick Boulevard, Newport News, Virginia, while excavating;

(3) On or about February 15, 2011, R. G. Construction Services, Inc., damaged a one-half-inch copper gas service line operated by the Company, located at or near 1603 16th Street, Virginia Beach, Virginia, while excavating;

(4) On or about March 16, 2011, A & W Contracting Corporation damaged a one-half-inch plastic gas service line operated by the Company, located at or near 528 South Gladstone Drive, Virginia Beach, Virginia, while excavating;

(5) On or about April 15, 2011, Southeast Connections LLC damaged a two-inch steel gas main line operated by the Company, located at or near East Weaver Road, Hampton, Virginia, while excavating;

(6) On or about April 26, 2011, Newport News Waterworks damaged a three-quarter-inch plastic gas service line operated by the Company, located at or near 461 Seaboard Avenue, Hampton, Virginia, while excavating; and

(7) On the occasions set out in paragraphs (1) through (6) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code.

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that:

(1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of Seven Thousand Eight Hundred Fifty Dollars (\$7,850) to be paid contemporaneously with the entry of this Order. This payment will be made by check payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

(2) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the journal entries made to record such amounts with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Seven Thousand Eight Hundred Fifty Dollars (\$7,850) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00201
NOVEMBER 8, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

HENDERSON CONSTRUCTION CO. INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265 .30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act ("Act"), Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) On or about April 21, 2011, Henderson Construction Co. Inc. ("Defendant") damaged a twenty-four strand telecommunications fiber operated by Verizon Virginia Inc. ("Verizon"), located at or near the intersection of Plank Road and Carol Lane, Spotsylvania County, Virginia, while excavating;

(2) On or about May 24, 2011, the Defendant damaged a forty-four strand telecommunications fiber operated by Verizon, located at or near 5030 Plank Road, Spotsylvania County, Virginia, while excavating;

(3) On or about May 24, 2011, the Defendant damaged a forty-four strand telecommunications fiber operated by Verizon, located at or near 4806 Plank Road, Spotsylvania County, Virginia, while excavating;

(4) On or about June 1, 2011, the Defendant damaged a 300 pair copper telecommunications cable operated by Verizon, located at or near the intersection of Plank Road and Carol Lane, Spotsylvania County, Virginia, while excavating;

(5) On or about June 1, 2011, the Defendant damaged a one-inch plastic gas service line operated by Columbia Gas of Virginia, Inc., located at or near 4806 Plank Road, Spotsylvania County, Virginia;

(6) On or about June 2, 2011, the Defendant damaged a forty-four strand telecommunications fiber operated by Verizon, located at or near the intersection of Plank Road and Carol Lane, Spotsylvania County, Virginia;

(7) On or about June 14, 2011, the Defendant excavated within two feet on either side of the marked location of a four-inch gas main operated by Columbia Gas of Virginia, Inc., located at or near the intersection of Plank Road and Carol Lane, Spotsylvania County, Virginia;

(8) On or about June 14, 2011, the Defendant excavated within two feet on either side of the marked location of a 300 pair copper telecommunications cable operated by Verizon, located at or near the intersection of Plank Road and Carol Lane, Spotsylvania County, Virginia;

(9) On or about June 16, 2011, the Defendant damaged a 300 pair copper telecommunications cable operated by Verizon, located at or near the intersection of Plank Road and Carol Lane, Spotsylvania County, Virginia;

(10) On or about July 8, 2011, the Defendant damaged a forty-four strand telecommunications fiber operated by Verizon, located at or near 4620 Plank Road, Spotsylvania County, Virginia;

(11) On or about July 11, 2011, the Defendant damaged a forty-four strand telecommunications fiber operated by Verizon, located at or near 5100 Plank Road, Spotsylvania County, Virginia;

(12) On the occasions referred to in paragraphs (1), (2),(4),(6),(9), and (10) above, the Defendant failed to exercise due care at all times to protect underground utility lines, in violation of § 56-265.24 A of the Code;

(13) On the occasions referred to in paragraphs (3) and (11) above, the Defendant failed to take all reasonable steps necessary to properly protect, support, and backfill the underground utility line, in violation of § 56-265.24 A of the Code;

(14) On the occasions referred to in paragraphs (2), (5), and (9) above, the Defendant failed to immediately notify the operator of the damage, in violation of § 56-265.24 D of the Code; and

(15) On the occasions referred to in paragraphs (7) and (8) above, the Defendant failed to hand dig at reasonable distances along the line of excavation, in violation of § 56-265.24 A of the Code.

On August 22, 2011, the Commission issued a Rule to Show Cause ("Rule") against the Defendant for the alleged violations of §§ 56-265.24 A and 56-265.24 D of the Code. The Rule directed the Defendant to file a pleading responsive to the Rule on or before October 3, 2011; scheduled a hearing on October 27, 2011; and assigned a Hearing Examiner to the proceeding.

Prior to the hearing, the Defendant's representative spoke with the Division Staff indicating a willingness to settle the alleged violations. The Defendant executed an Admission and Consent form whereby the Defendant neither admitted nor denied these allegations but admitted the Commission's jurisdiction and authority in this matter and consented to the form, substance, and entry of a settlement order. The Defendant represented and undertook that it would pay a civil penalty to the Commonwealth of Virginia in the amount of Sixteen Thousand Six Hundred Dollars (\$16,600) to be paid contemporaneously with the entry of this Order. The Defendant tendered payment by cashier's check, payable to the Treasurer of Virginia, with the Admission and Consent.

As evidenced in the attached Admission and Consent document, the Defendant neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

On October 26, 2011, the Division, by counsel, filed a Motion to Accept Settlement ("Motion") in this case. In support of its Motion, the Division avers that the Defendant and the Division finalized conditions of settlement in resolution of the allegations made herein, which each, respectively, finds acceptable.

On October 26, 2011, the Hearing Examiner issued a Report recommending that the Commission enter an order that grants the Division's Motion, approves the proposed settlement, and dismisses the case from the Commission's docket of active proceedings.

NOW THE COMMISSION, being sufficiently advised, and considering the findings and recommendations of the Hearing Examiner's Report, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

- (1) The findings and recommendations of the October 26, 2011 Hearing Examiner's Report are hereby adopted.
- (2) The Motion to Accept Settlement be, and hereby is, granted.
- (3) The sum of Sixteen Thousand Six Hundred Dollars (\$16,600) tendered contemporaneously with the entry of this Order is accepted.
- (4) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement is accepted.
- (5) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00252
SEPTEMBER 27, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
VIRGINIA NATURAL GAS, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

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(1) On or about March 8, 2011, W. R. Hall, Inc., damaged a one-half-inch plastic gas service line operated by Virginia Natural Gas, Inc. ("Company"), located at or near 2417 Bruce Street, Norfolk, Virginia, while excavating;

(2) On or about April 13, 2011, WB&E Construction, Inc., damaged a three-quarter-inch plastic gas service line operated by the Company, located at or near 8000 Marshall Avenue, Newport News, Virginia, while excavating;

(3) On the occasions set out in paragraphs (1) and (2) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code;

(4) On or about March 18, 2011, the City of Newport News damaged a one-and-one-quarter-inch steel gas service line operated by the Company, located at or near 139 Maple Avenue, Newport News, Virginia, while excavating;

(5) On or about May 12, 2011, the City of Norfolk damaged a two-inch plastic gas main line operated by the Company, located at or near 4816 Denver Avenue, Norfolk, Virginia, while excavating;

(6) On or about May 5, 2011, Art-Ray Corporation damaged a one-half-inch plastic gas service line operated by the Company, located at or near Bangor Avenue, Norfolk, Virginia, while excavating;

(7) On or about May 16, 2011, Southeast Connections LLC damaged a one-and-one-quarter-inch plastic gas service line operated by the Company, located at or near 4115 West Mercury Boulevard, Hampton, Virginia, while excavating;

(8) On the occasions set out in paragraphs (4) through (7) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code; and

(9) On the occasions set out in paragraphs (6) and (7) above, the Company failed to prepare and maintain reasonably accurate installation records of the underground utility lines, in violation of 20 VAC 5-309-160 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that:

(1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of Seven Thousand Five Hundred Dollars (\$7,500) to be paid contemporaneously with the entry of this Order. This payment will be made by check payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

(2) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the journal entries made to record such amounts with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Seven Thousand Five Hundred Dollars (\$7,500) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00274
DECEMBER 13, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
DEBOSE & SONS CONSTRUCTION COMPANY, INC.,
Defendant

ORDER ACCEPTING OFFER OF SETTLEMENT AND DISMISSING PROCEEDING

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(1) On or about June 13, 2011, Debose & Sons Construction Company, Inc. ("Company"), damaged a four-inch plastic gas main line operated by Virginia Natural Gas, Inc., located at or near Henry Street and East Patrick Street, Hanover County, Virginia, while excavating;

(2) On the occasion set out in paragraph (1) above, the Company failed to provide notice to the notification center (Miss Utility) with proper information, in violation of § 56-265.18 of the Code;

(3) On the occasion set out in paragraph (1) above, the Company failed to hand dig at reasonable distances along the line of excavation, in violation of § 56-265.24 A of the Code;

(4) On the occasion set out in paragraph (1) above, the Company failed to maintain a reasonable clearance between the marked or staked location of an underground utility line and the cutting edge or point of any mechanized equipment, in violation of 20 VAC 5-309-140 4 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act;

(5) On the occasion set out in paragraph (1) above, the Company failed to expose all utility lines which were in the bore path by hand digging to establish the underground utility line's location prior to commencing bore, in violation of 20 VAC 5-309-150 6 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act; and

(6) On the occasion set out in paragraph (1) above, the Company failed to visually check the drill head as it passed through potholes, entrances, and exit pits, in violation of 20 VAC 5-309-150 8 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order Accepting Offer of Settlement and Dismissing Proceeding.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company has offered, and agreed to comply with, the following terms and undertakings:

(1) That it will pay a civil penalty to the Commonwealth of Virginia in the amount of Ten Thousand Two Hundred Dollars (\$10,200);

(2) That Three Thousand One Hundred Dollars (\$3,100) of said penalty will be vacated upon the condition that the Company conducts a training session for its employees on the subject of underground utility damage prevention and submits documentation evidencing the training session to the Commission contemporaneously with the entry of this Order; and

(3) That the Seven Thousand One Hundred Dollar (\$7,100) balance of said penalty will be paid contemporaneously with the entry of this Order by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

The Company has now complied fully with the terms and undertakings of the settlement as outlined herein. Documentation evidencing the training session on the subject of underground utility damage prevention has been submitted on a timely basis in accordance with the undertakings set forth above.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for acceptance of the Company's offer of settlement and evidence of training, hereby accepts this offer of settlement and evidence of training. Because the Company has complied with the terms and undertakings accepted herein, the remainder of the penalty should be vacated and this case dismissed.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The Company is hereby penalized in the amount of Ten Thousand Two Hundred Dollars (\$10,200).

(3) The sum of Seven Thousand One Hundred Dollars (\$7,100) tendered contemporaneously with the entry of this Order is accepted.

(4) The remainder of the penalty amount, Three Thousand One Hundred Dollars (\$3,100), shall be vacated.

(5) This case is hereby dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00287
OCTOBER 12, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
DAVIS H. ELLIOT COMPANY, INCORPORATED,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) On or about August 3, 2011, Davis H. Elliot Company, Incorporated ("Company"), excavated at or near Jefferson Davis Highway and Bells Road, Richmond, Virginia;

(2) On the occasion set out in paragraph (1) above, the Company failed to exercise due care at all times to protect underground utility lines, in violation of § 56-265.24 A of the Code;

(3) On the occasion set out in paragraph (1) above, the Company failed to ensure sufficient clearance was maintained between the bore path and any underground utility lines during pullback, in violation of 20 VAC 5-309-150 4 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act; and

(4) On the occasion set out in paragraph (1) above, the Company failed to visually check the drill head as it passes through potholes, entrances, and exit pits, in violation of 20 VAC 5-309-150 8 of the Commission's Rules for Enforcement of the Underground Utility Damage Prevention Act.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Five Thousand Two Hundred Fifty Dollars (\$5,250) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety. The Company will also accept training for all its employees currently working in Virginia and all of its employees who may work in Virginia who are involved with the Company's Miss Utility notification process and excavation activities.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Five Thousand Two Hundred Fifty Dollars (\$5,250) tendered contemporaneously with the entry of this Order is accepted.

(3) The Company fully comply with the aforesaid terms and undertakings of the settlement.

(4) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00324
NOVEMBER 2, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.
VIRGINIA NATURAL GAS, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265 .30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) On or about June 28, 2011, Nova Property Services LLC damaged a one-and-one-quarter-inch plastic gas service line operated by Virginia Natural Gas, Inc. ("Company"), located at or near 2325 Madison Avenue, Newport News, Virginia, while excavating;

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

(2) On the occasion set out in paragraph (1) above, the Company failed to mark the underground utility line by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code;

(3) On or about February 7, 2011, Precon Construction Company damaged a one-half-inch plastic gas service line operated by the Company, located at or near 612 Hilton Boulevard, Newport News, Virginia, while excavating;

(4) On or about June 13, 2011, Debose & Sons Construction Company, Inc., damaged a four-inch plastic gas main line operated by the Company located at or near Henry Street and East Patrick Street, Hanover County, Virginia, while excavating;

(5) On or about June 14, 2011, Tidewater Utility Construction, Inc., damaged a three-quarter-inch steel gas service line operated by the Company, located at or near Granby Street and Suburban Parkway, Norfolk, Virginia, while excavating; and

(6) On the occasions set out in paragraphs (3) through (5) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As an offer to settle all matters before the Commission arising from the Division's allegations made herein, the Company represents and undertakes that:

(1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of Five Thousand Fifty Dollars (\$5,050) to be paid contemporaneously with the entry of this Order. This payment will be made by check payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

(2) Any amounts paid in accordance with this Order shall not be recovered in the Company's rates as part of the cost of service. Any such amounts shall be booked in Uniform System of Account No. 426.3. The Company shall verify its booking by filing a copy of the journal entries made to record such amounts with the Commission's Division of Public Utility Accounting.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Five Thousand Fifty Dollars (\$5,050) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

**CASE NO. URS-2011-00404
DECEMBER 13, 2011**

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE CORPORATION COMMISSION

v.

PROMARK UTILITY LOCATORS, INC.,
Defendant

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia ("Code"), the State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, § 56-265.14 *et seq.* of the Code. The Commission's Division of Utility and Railroad Safety ("Division"), after having conducted an investigation of this matter, alleges that:

(1) Promark Utility Locators, Inc. ("Company"), is a contract locator as that term is defined in § 56-265.15 of the Code, and as a contract locator acting on behalf of an operator, if the Company fails to perform the duties imposed by Chapter 10.3 of Title 56 of the Code, it is subject to the civil penalties set out in § 56-265.32 of the Code pursuant to § 56-265.19 D of the Code;

(2) On or about April 7, 2011, Classic City Mechanical, Inc., damaged a one-inch plastic gas service line operated by the City of Danville, located at or near 837 Claiborne Street, Danville, Virginia, while excavating;

(3) On or about June 1, 2011, Rockingham Construction Company, Incorporated, damaged a copper telecommunications service line operated by Comcast Cable Communications, Inc., located at or near 2659 Barracks Road, Albemarle County, Virginia, while excavating;

(4) On or about July 16, 2011, A & A Plumbing damaged an electric secondary service line operated by Southside Electric Cooperative, located at or near 1405 West Tennessee Avenue, Nottoway County, Virginia, while excavating;

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(5) On or about August 17, 2011, J N A Excavating, Inc., damaged a two-inch plastic gas main line operated by Roanoke Gas Company, located at or near 6149 Castle View Court, S.W., Roanoke County, Virginia, while excavating;

(6) On the occasions set out in paragraphs (2) through (5) above, the Company failed to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines, in violation of § 56-265.19 A of the Code;

(7) On or about June 7, 2011, Rockingham Construction Company, Incorporated, notified the notification center of proposed excavation at or near Hickory Street, Albemarle County, Virginia;

(8) On or about June 8, 2011, Rockingham Construction Company, Incorporated, notified the notification center of proposed excavation at or near Belvedere Drive, Albemarle County, Virginia;

(9) On or about June 22, 2011, DLB, Inc., damaged a one-inch plastic gas service line operated by Roanoke Gas Company, located at or near 4004 West Main Street, Roanoke County, Virginia, while excavating; and

(10) On the occasions set out in paragraphs (7) through (9) above, the Company failed to mark the underground utility lines by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, in violation of § 56-265.19 A of the Code.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations but admits the Commission's jurisdiction and authority to enter this Order.

As a proposal to settle all matters before the Commission arising from the Division's allegations herein, the Company represents and undertakes that it will pay a civil penalty to the Commonwealth of Virginia in the amount of Nine Thousand Five Hundred Fifty Dollars (\$9,550) to be paid contemporaneously with the entry of this Order. The payment will be made by cashier's check or money order payable to the Treasurer of Virginia and directed to the attention of the Director of the Division of Utility and Railroad Safety.

NOW THE COMMISSION, being advised by the Division and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to the authority granted to the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company is hereby accepted.

(2) The sum of Nine Thousand Five Hundred Fifty Dollars (\$9,550) tendered contemporaneously with the entry of this Order is accepted.

(3) This case is hereby dismissed, and the papers filed herein shall be placed in the Commission's file for ended causes.

TABLES

CLERK'S OFFICE

Summary of the changes in the number of Virginia and foreign corporations and other types of business entities licensed to do business in Virginia, and of amendments and other filings related to the organizational documents of Virginia and foreign business entities during 2010 and 2011.

| CORPORATIONS | | |
|----------------------------------------------------------------------|-----------------|-----------------|
| <u>Virginia Corporations</u> | <u>12/31/10</u> | <u>12/31/11</u> |
| Certificates of Incorporation issued | 13,455 | 13,324 |
| Voluntary terminations | 3,136 | 3,168 |
| Involuntary terminations | 0 | 0 |
| Automatic terminations (Assessment/AR/RA Resignation)..... | 15,083 | 15,438 |
| Reinstatement of terminated corporations..... | 4,916 | 4,940 |
| Charters amended | 2,433 | 2,548 |
| On Record | | |
| Active Stock Corporations | 136,983 | 134,230 |
| Active Non-Stock Corporations..... | 40,123 | 41,122 |
| Total Active Virginia Corporations..... | 177,106 | 175,352 |
| <u>Foreign Corporations</u> | | |
| Certificates of Authority to do business in Virginia issued..... | 3,344 | 3,494 |
| Voluntary withdrawals from Virginia..... | 1,194 | 1,033 |
| Automatic Revocations (Assessment/AR/RA Resignation)..... | 2,250 | 2,248 |
| Reentry of surrendered or revoked certificates..... | 914 | 867 |
| Charters amended..... | 793 | 642 |
| On Record | | |
| Active Stock Corporations..... | 35,403 | 35,949 |
| Active Non-Stock Corporations..... | 2,519 | 2,580 |
| Total Active Foreign Corporations..... | 37,922 | 38,529 |
| Total Active Corporations (Virginia and Foreign)..... | 215,028 | 213,881 |
| VIRGINIA LIMITED LIABILITY COMPANIES | | |
| Certificates of Organization issued | 34,515 | 39,047 |
| Voluntary cancellations | 3,824 | 3,544 |
| Automatic cancellations (Assessment/RA Resignation)..... | 22,854 | 5,785* |
| Reinstatement of canceled certificates | 4,179 | 4,636 |
| Articles of Organization amended..... | 2,403 | 2,120 |
| On Record | | |
| Active Virginia Limited Liability Companies..... | 186,576 | 202,855 |
| <u>Foreign Limited Liability Companies</u> | | |
| Certificates of Registration issued..... | 2,869 | 3,438 |
| Voluntary cancellations..... | 666 | 665 |
| Automatic cancellations (Assessment/RA Resignation)..... | 1,528 | 391* |
| Reinstatement of canceled certificates | 341 | 395 |
| Certificates of Registration amended | 0 | 0 |
| On Record | | |
| Total Active Foreign Limited Liability Companies | 17,605 | 18,731 |
| Total Active Limited Liability Companies (Virginia and Foreign)..... | 204,181 | 221,586 |

*Beginning July 1, 2011, the occurrences of automatic cancellations for nonpayment of annual registration fee assessments changed from once a year (on December 31) to monthly (on the last day of each month).

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

BUSINESS TRUSTSVirginia Business Trusts

| | | |
|----------------------------------------------------------|----|----|
| Certificates of Trust issued..... | 41 | 45 |
| Voluntary cancellations..... | 3 | 5 |
| Automatic cancellations (Assessment/RA Resignation)..... | 22 | 9 |
| Reinstatement of canceled certificates..... | 6 | 3 |
| Articles of Trust amended..... | 15 | 0 |

On Record

| | | |
|--------------------------------------|-----|-----|
| Active Virginia Business Trusts..... | 149 | 180 |
|--------------------------------------|-----|-----|

Foreign Business Trusts

| | | |
|----------------------------------------------------------|---|----|
| Certificates of Registration issued..... | 4 | 10 |
| Voluntary cancellations..... | 1 | 2 |
| Automatic cancellations (Assessment/RA Resignation)..... | 4 | 1 |
| Reinstatement of canceled certificates..... | 1 | 1 |
| Certificates of Registration amended..... | 0 | 0 |

On Record

| | | |
|-------------------------------------|----|----|
| Active Foreign Business Trusts..... | 47 | 55 |
|-------------------------------------|----|----|

| | | |
|----------------------------------------------------------|-----|-----|
| Total Active Business Trusts (Virginia and Foreign)..... | 196 | 235 |
|----------------------------------------------------------|-----|-----|

LIMITED PARTNERSHIPSVirginia Limited Partnerships

| | | |
|----------------------------------------------------------|-----|-----|
| Certificates of Limited Partnership filed..... | 210 | 198 |
| Voluntary cancellations..... | 103 | 83 |
| Automatic cancellations (Assessment/RA Resignation)..... | 277 | 328 |
| Reinstatement of canceled certificates..... | 108 | 94 |
| Certificates of Limited Partnership amended..... | 183 | 254 |

On Record

| | | |
|-------------------------------------------|-------|-------|
| Active Virginia Limited Partnerships..... | 5,718 | 5,582 |
|-------------------------------------------|-------|-------|

Foreign Limited Partnerships

| | | |
|----------------------------------------------------------|----|-----|
| Certificates of Registration issued..... | 98 | 119 |
| Voluntary cancellations..... | 67 | 78 |
| Automatic cancellations (Assessment/RA Resignation)..... | 56 | 91 |
| Reinstatement of canceled certificates..... | 19 | 17 |
| Certificates of Registration amended..... | 0 | |

On Record

| | | |
|------------------------------------------|-------|-------|
| Active Foreign Limited Partnerships..... | 1,677 | 1,633 |
|------------------------------------------|-------|-------|

| | | |
|---------------------------------------------------------------|-------|-------|
| Total Active Limited Partnerships (Virginia and Foreign)..... | 7,395 | 7,215 |
|---------------------------------------------------------------|-------|-------|

GENERAL PARTNERSHIPS

| | | |
|-------------------------------------------|-----|-----|
| General Partnership Statements filed..... | 179 | 172 |
|-------------------------------------------|-----|-----|

On Record

| | | |
|-------------------------------------------|-------|-------|
| Active Virginia General Partnerships..... | 1,070 | 1,007 |
| Active Foreign General Partnerships..... | 98 | 102 |

| | | |
|---------------------------------------------------------------|-------|-------|
| Total Active General Partnerships (Virginia and Foreign)..... | 1,168 | 1,109 |
|---------------------------------------------------------------|-------|-------|

REGISTERED LIMITED LIABILITY PARTNERSHIPS

| | | |
|---------------------------------------------------------------|-----|----|
| Virginia Registered Limited Liability Partnerships filed..... | 108 | 92 |
| Foreign Registered Limited Liability Partnerships filed..... | 14 | 23 |

| | | |
|------------------------------------------------------------------------------------|-------|-------|
| Total Active Registered Limited Liability Partnerships (Virginia and Foreign)..... | 1,385 | 1,389 |
|------------------------------------------------------------------------------------|-------|-------|

**COMPARISON OF REVENUES DEPOSITED BY THE CLERK'S OFFICE
FOR THE FISCAL YEAR ENDING JUNE 30, 2010, AND JUNE 30, 2011**

| <u>General Fund</u> | <u>2010</u> | <u>2011</u> | <u>(Difference)</u> |
|--------------------------------------------|----------------------------|----------------------------|---------------------------|
| Securities Application Fees-Utilities | \$8,650.00 | \$10,925.00 | \$2,275.00 |
| Charter Fees | 1,246,580.00 | 1,225,072.80 | (21,507.20) |
| Entrance Fees | 1,198,468.00 | 1,289,390.00 | 90,922.00 |
| Filing Fees | 664,060.00 | 657,120.00 | (6,940.00) |
| Registered Name | 2,640.00 | 2,870.00 | 230.00 |
| Registered Office and Agent | 0.00 | 0.00 | 0.00 |
| Service of Process | 60,900.00 | 70,560.00 | 9,660.00 |
| Copy and Recording Fees | 354,145.26 | 0.00 | (354,145.26) |
| SCC Annual Report Sales | 1,304.00 | 932.25 | (371.75) |
| Uniform Commercial Code Revenues | 1,456,659.00 | 1,471,457.00 | 14,798.00 |
| Excess Fees Paid into State Treasury | 284,951.40 | 259,640.63 | (25,310.77) |
| Miscellaneous Sales | .00 | 6,000.00 | 6,000.00 |
| TOTAL | <u>\$5,278,357.66</u> | <u>\$4,993,967.68</u> | <u>(\$284,389.98)</u> |
| | | | |
| <u>Special Fund</u> | | | |
| Domestic-Foreign Corp. Registration Fee | \$31,715,910.64 | \$32,123,765.05 | \$407,854.41 |
| Limited Partnership Registration Fee | 376,899.99 | 368,125.00 | (8,774.99) |
| Reserved Name - Limited Partnership | 10,950.00 | 10,575.00 | (375.00) |
| Certificate Limited Partnership | 27,200.00 | 25,825.00 | (1,375.00) |
| Application Reg. Foreign LP | 10,500.00 | 12,200.00 | 1,700.00 |
| Reinstatement LP | 16,950.00 | 14,500.00 | (2,450.00) |
| Registration Fee LLC | 8,236,445.01 | 9,402,244.44 | 1,165,799.43 |
| Application For. Reg. LLC | 271,550.00 | 323,450.00 | 51,900.00 |
| Art of Org. Dom. LLC | 3,355,950.00 | 3,611,122.00 | 255,172.00 |
| AMEND, CANC, CORR. RAC, Etc. LLC | 245,905.00 | 225,805.00 | (20,100.00) |
| SCC Bad Check Fee | 21,496.00 | 22,364.00 | 868.00 |
| Interest on Del. Tax | 0.00 | 0.00 | 0.00 |
| Penalty on Non-Pay Fees by Due Date | 1,188,290.00 | 1,214,973.82 | 26,683.82 |
| Statement of Reg. As Domestic LLP | 6,800.00 | 6,600.00 | (200.00) |
| LLP Annual Continuation | 64,950.00 | 66,150.00 | 1,200.00 |
| Statement of Partnership Authority GP Dom | 4,025.00 | 4,525.00 | 500.00 |
| Statement of Partnership Authority GP For | 300.00 | 250.00 | (50.00) |
| Statement of Amendments - GP | 1,800.00 | 1,700.00 | (100.00) |
| Statement of Reg. As Foreign LLP | 1,600.00 | 1,400.00 | (200.00) |
| Statement of Amendment LLP | 700.00 | 450.00 | (250.00) |
| Reinstatement/Reentry LLC | 418,155.00 | 480,050.00 | 61,895.00 |
| Tape Sales, Misc Fees | 45,000.00 | 36,000.00 | (9,000.00) |
| Copies, Recording Fees | 0.00 | 388,622.75 | 388,622.75 |
| Recovery of Prior Yr Expenses | 0.00 | 0.00 | 0.00 |
| LLP Reinstatement | 50.00 | 0.00 | (50.00) |
| Expedite Fee Collected | <u>1,514,282.00</u> | <u>1,517,795.00</u> | <u>3,513.00</u> |
| TOTAL | <u>\$47,535,708.64</u> | <u>\$49,858,492.06</u> | <u>\$2,322,783.42</u> |
| | | | |
| <u>Valuation Fund</u> | | | |
| Corp Operations Rec. of Copy and Cert Fees | \$879.12 | \$1,219.50 | \$340.38 |
| Recovery of Prior Yr Expenses | <u>0.00</u> | <u>127,961.50</u> | <u>127,961.50</u> |
| TOTAL | <u>\$879.12</u> | <u>\$129,181.00</u> | <u>\$128,301.88</u> |
| | | | |
| <u>Trust & Agency Fund</u> | | | |
| Fines imposed and Collected by SCC: | \$1,306,213.41 | \$346,825.00 | \$(959,388.41) |
| Debt Set Off Collections: | <u>0.00</u> | <u>0.00</u> | <u>0.00</u> |
| TOTAL | <u>\$1,306,213.41</u> | <u>\$346,825.00</u> | <u>\$(959,388.41)</u> |
| GRAND TOTAL | <u>\$54,121,158.83</u> | <u>\$55,328,465.74</u> | <u>\$1,207,306.91</u> |

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

**COMPARISON OF FEES COLLECTED BY THE BUREAU OF FINANCIAL INSTITUTIONS
FOR FISCAL YEARS ENDING JUNE 30, 2010 AND JUNE 30, 2011**

| | <u>2010</u> | <u>2011</u> |
|----------------------------------------|-----------------|------------------|
| Banks | \$7,428,428 | \$8,224,329 |
| Savings Institutions and Savings Banks | 9,178 | 9,461 |
| Consumer Finance Licensees | 758,288 | 530,066 |
| Credit Unions | 1,217,039 | 1,270,996 |
| Trust subsidiaries and Trust Companies | 43,560 | 43,312 |
| Industrial Loan Associations | 9,046 | 11,399 |
| Money Order Sellers and Transmitters | 21,000 | 529,861 |
| Credit Counseling Agency Licensees | 139,585 | 114,945 |
| Mortgage Lenders and Mortgage Brokers | 1,413,265 | 1,242,817 |
| Mortgage Loan Originators | 903,600 | 889,990 |
| Check Cashers | 94,400 | 90,500 |
| Payday Lenders | 602,878 | 167,262 |
| Miscellaneous Collections | <u>(32,121)</u> | <u>(251,981)</u> |
| TOTAL | \$12,608,146 | \$12,872,957 |

CONSUMER SERVICES

The Bureau received and acted upon 649 formal written complaints during 2011 and recovered \$649,724 on behalf of Virginia consumers.

**COMPARISON OF FEES AND TAXES COLLECTED BY THE BUREAU OF INSURANCE
FOR THE FISCAL YEARS ENDING JUNE 30, 2010, AND JUNE 30, 2011**

| <u>Kind</u> | <u>2010</u> | <u>2011</u> | <u>Increase or Decrease</u> |
|----------------------------------------------------------------------------------|------------------|------------------|---------------------------------|
| <u>General Fund</u> | | | |
| Gross Premium Taxes of Insurance Companies | \$390,982,941.03 | \$411,890,403.17 | \$20,907,462.14 |
| Fraternal Benefit Societies Licenses | 480.00 | 500.00 | 20.00 |
| Interest on Delinquent Taxes | 198,102.37 | 92,700.92 | (105,401.45) |
| Penalty on non-payment of taxes by due date | 261,187.07 | 184,959.86 | (76,227.21) |
| <u>Special Fund</u> | | | |
| Company License Application Fee | 18,000.00 | 16,000.00 | (2,000.00) |
| Health Maintenance Organization License Fee | 0.00 | 0.00 | 0.00 |
| Automobile Club/ Agent Licenses | 6,900.00 | 6,500.00 | (400.00) |
| Insurance Premium Finance Companies Licenses | 16,300.00 | 16,000.00 | (300.00) |
| Agents Appointment Fees | 15,780,000.00 | 15,516,403.00 | (263,597.00) |
| Surplus Lines Broker Licenses | 91,850.00 | 99,750.00 | 7,900.00 |
| Home Service Contract Providers License Fee | 4,000.00 | 5,000.00 | 1,000.00 |
| Title Settlement Agents Fee | 84,125.00 | 17,840.00 | (66,285.00) |
| Producer License Application Fees | 809,415.00 | 896,640.00 | 87,225.00 |
| Surety Bail Bondsmen License Fee | 0.00 | 0.00 | 0.00 |
| P&C Consultant License Fees | 68,350.00 | 68,500.00 | 150.00 |
| Recording, Copying, and Certifying | | | |
| Public Records Fee | 12,412.00 | 8,728.50 | (3,683.50) |
| SCC Bad Check Fee | 70.00 | 70.00 | 0.00 |
| Managed Care Health Ins. Plan Appeals Fee | 2,500.00 | 1,800.00 | (700.00) |
| Administrative Penalty Payment | 240,000.00 | 13,000.00 | (227,000.00) |
| State Publication Sales | 0.00 | 0.00 | 0.00 |
| Assessments To Insurance Companies for Maintenance of the Bureau of Insurance | 7,712,339.11 | 7,665,521.17 | (46,817.94) |
| Reinsurance Intermediary Broker Fees | 1,000.00 | 1,000.00 | 0.00 |
| Reinsurance Intermediary Managers Fee | 0.00 | 0.00 | 0.00 |
| Managing General Agent Fees | 9,000.00 | 8,000.00 | (1,000.00) |
| Viatical Settlement Provider Lic Fees | 10,400.00 | 10,450.00 | 50.00 |
| Viatical Settlement Broker Lic Fees | 16,350.00 | 11,650.00 | (4,700.00) |
| MCHIP Assessment | 0.00 | 0.00 | 0.00 |
| Appointment Fee Penalty | 87,650.00 | 90,375.00 | 2,725.00 |
| Miscellaneous Revenue | (271.00) | 56.00 | 327.00 |
| Recovery of Prior Year Expenses | 74,934.27 | 124,557.49 | 49,623.22 |
| Fire Programs Fund | 29,214,705.09 | 29,640,900.19 | 426,195.10 |
| Fire Programs Fund Interest | 2,183.15 | 0.00 | (2,183.15) |
| DMV Uninsured Motorist Transfer | 7,325,220.74 | 6,180,241.95 | (1,144,978.79) |

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

| | | | |
|-----------------------------------------------|------------------|------------------|-------------------|
| Flood Assessment Fund | 276,589.08 | 192,452.55 | (84,136.53) |
| Heat Assessment Fund | 1,611,735.02 | 1,603,391.90 | (8,343.12) |
| Fines Imposed by State Corporation Commission | 892,450.00 | 1,267,081.81 | 374,631.81 |
| Fraud Assessment Fund | 4,986,528.44 | 4,967,343.01 | (19,185.43) |
| Fraud Assessment Interest | <u>3,359.29</u> | <u>0.00</u> | <u>(3,359.29)</u> |
| TOTAL | \$460,800,805.66 | \$480,597,816.52 | \$19,797,010.86 |

**COMPARISON OF ASSESSMENT OF PUBLIC SERVICE COMPANIES
FOR THE YEARS 2010 AND 2011**

Value of all Taxable Property
Including Rolling Stock

| <u>Class of Company</u> | <u>2010</u> | <u>2011</u> | <u>Increase or (Decrease)</u> |
|---------------------------------------------|-----------------------|-----------------------|-----------------------------------|
| Electric Light & Power Corporations | \$23,697,876,855.00 | \$23,781,258,070.00 | \$83,381,215.00 |
| Gas Corporations | 1,814,804,166.00 | 1,925,786,130.00 | 110,981,964.00 |
| Motor Vehicle Carriers (Rolling Stock only) | 42,875,902.00 | 37,210,451.00 | (5,665,451.00) |
| Telecommunications Companies | 9,463,059,277.00 | 9,147,800,581.00 | (315,258,696.00) |
| Water Corporations | <u>212,119,171.00</u> | <u>238,204,974.00</u> | <u>26,085,803.00</u> |
| TOTAL | \$35,230,735,371.00 | \$35,130,260,206.00 | (\$100,475,165.00) |

**COMPARISON OF ASSESSMENT OF STATE TAXES OF PUBLIC SERVICE
COMPANIES FOR THE YEARS 2010 AND 2011**

The Yearly License Tax

| <u>Class of Company</u> | <u>2010</u> | <u>2011</u> | <u>Increase or (Decrease)</u> |
|-------------------------------------|-----------------------|-----------------------|-----------------------------------|
| Electric Light & Power Corporations | \$0.00 | | |
| Water Corporations | <u>\$1,768,413.00</u> | <u>\$1,683,088.00</u> | <u>(\$85,325.00)</u> |
| TOTAL | \$1,768,413.00 | \$1,683,088.00 | (\$85,325.00) |

**COMPARISON OF ASSESSMENT OF ADDITIONAL ANNUAL STATE TAX
FOR VALUATION AND RATE MAKING OF CERTAIN CLASSES OF
UTILITY COMPANIES FOR THE YEARS 2010 AND 2011**

| <u>Class of Company</u> | <u>2010</u> | <u>2011</u> | <u>Increase or (Decrease)</u> |
|------------------------------------|------------------|-------------------|-----------------------------------|
| Electric Light & Power Corporation | \$0.00 | \$0.00 | \$0.00 |
| Motor Vehicle Carriers | \$29,673.00 | \$61,099.00 | \$31,426.00 |
| Railroad Companies | 1,180,803.00 | 1,459,535.00 | 278,732.00 |
| Telecommunications Companies | 6,066,985.00 | 11,958,637.00 | 5,891,652.00 |
| Virginia Pilots Association | 20,341.00 | 42,637.00 | 22,296.00 |
| Water Corporations | <u>88,420.00</u> | <u>168,309.00</u> | <u>79,889.00</u> |
| TOTAL | \$7,386,222.00 | \$13,690,217.00 | \$6,303,995.00 |

Railroad Companies assessed at seven-hundredths of one percent and all other companies at one-tenth of one percent for Tax Year 2010.

Railroad Companies assessed at seven-hundredths of one percent and all other companies at two-tenths of one percent for Tax Year 2011.

**COMPARATIVE STATEMENT OF ASSESSED VALUES OF
PROPERTIES OF PUBLIC SERVICE CORPORATIONS
AS ASSESSED BY THE STATE CORPORATION COMMISSION**

| <u>Cities</u> | <u>2010</u> | <u>2011</u> | <u>Increase or (Decrease)</u> |
|---------------|------------------|------------------|-----------------------------------|
| Alexandria | \$704,656,660.00 | \$687,766,453.00 | \$(16,890,207.00) |
| Bedford | 5,877,597.00 | 6,240,194.00 | 362,597.00 |
| Bristol | 12,737,168.00 | 12,209,545.00 | (527,623.00) |
| Buena Vista | 12,445,554.00 | 12,142,631.00 | (302,923.00) |

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

| | | | |
|---------------------|---------------------------|---------------------------|------------------------|
| Charlottesville | 121,179,435.00 | 120,795,223.00 | (384,212.00) |
| Chesapeake | 968,157,935.00 | 935,952,354.00 | (32,205,581.00) |
| Colonial Heights | 31,256,234.00 | 32,690,707.00 | 1,434,473.00 |
| Covington | 20,139,417.00 | 20,915,400.00 | 775,983.00 |
| Danville | 43,828,878.00 | 39,973,911.00 | (3,854,967.00) |
| Emporia | 16,557,298.00 | 15,972,870.00 | (584,428.00) |
| Fairfax | 109,684,977.00 | 110,913,773.00 | 1,228,796.00 |
| Falls Church | 21,900,674.00 | 23,654,038.00 | 1,753,364.00 |
| Franklin | 6,119,319.00 | 5,659,944.00 | (459,375.00) |
| Fredericksburg | 101,895,368.00 | 116,979,341.00 | 15,083,973.00 |
| Galax | 13,802,126.00 | 14,483,951.00 | 681,825.00 |
| Hampton | 304,874,326.00 | 302,841,069.00 | (2,033,257.00) |
| Harrisonburg | 42,790,626.00 | 41,799,126.00 | (991,500.00) |
| Hopewell | 387,279,492.00 | 338,963,986.00 | (48,315,506.00) |
| Lexington | 15,070,389.00 | 16,167,682.00 | 1,097,293.00 |
| Lynchburg | 191,731,744.00 | 186,479,729.00 | (5,252,015.00) |
| Manassas | 63,172,691.00 | 61,975,451.00 | (1,197,240.00) |
| Manassas Park | 27,492,400.00 | 26,131,153.00 | (1,361,247.00) |
| Martinsville | 21,580,234.00 | 22,088,145.00 | 507,911.00 |
| Newport News | 464,539,782.00 | 468,164,949.00 | 3,625,167.00 |
| Norfolk | 692,114,003.00 | 673,520,829.00 | (18,593,174.00) |
| Norton | 19,531,467.00 | 19,107,912.00 | (423,555.00) |
| Petersburg | 84,578,709.00 | 89,872,844.00 | 5,294,135.00 |
| Poquoson | 16,603,593.00 | 19,219,232.00 | 2,615,639.00 |
| Portsmouth | 315,044,320.00 | 393,574,478.00 | 78,530,158.00 |
| Radford | 16,235,718.00 | 17,343,121.00 | 1,107,403.00 |
| Richmond | 873,852,688.00 | 909,849,544.00 | 35,996,856.00 |
| Roanoke | 255,662,012.00 | 257,181,902.00 | 1,519,890.00 |
| Salem | 27,284,770.00 | 26,401,174.00 | (883,596.00) |
| Staunton | 59,680,856.00 | 60,631,717.00 | 950,861.00 |
| Suffolk | 225,581,479.00 | 241,339,508.00 | 15,758,029.00 |
| Virginia Beach | 927,249,666.00 | 937,066,352.00 | 9,816,686.00 |
| Waynesboro | 77,222,671.00 | 79,557,359.00 | 2,334,688.00 |
| Williamsburg | 54,263,485.00 | 53,916,134.00 | (347,351.00) |
| Winchester | 63,826,780.00 | 61,419,075.00 | (2,407,705.00) |
| Total Cities | \$7,417,502,541.00 | \$7,460,962,806.00 | \$43,460,265.00 |

**COMPARATIVE STATEMENT OF ASSESSED VALUES OF
PROPERTIES OF PUBLIC SERVICE CORPORATIONS
AS ASSESSED BY THE STATE CORPORATION COMMISSION**

| Counties | 2010 | 2011 | Increase or (Decrease) |
|--------------|------------------|------------------|---------------------------|
| Accomack | \$322,543,159.00 | \$315,339,012.00 | \$ (7,204,147.00) |
| Albemarle | 256,462,826.00 | 272,229,604.00 | 15,766,778.00 |
| Alleghany | 81,848,890.00 | 86,572,784.00 | 4,723,894.00 |
| Amelia | 27,653,448.00 | 29,605,945.00 | 1,952,497.00 |
| Amherst | 75,648,030.00 | 75,901,781.00 | 253,751.00 |
| Appomattox | 39,495,257.00 | 39,781,433.00 | 286,176.00 |
| Arlington | 673,865,109.00 | 737,011,680.00 | 63,146,571.00 |
| Augusta | 235,257,260.00 | 249,319,081.00 | 14,061,821.00 |
| Bath | 1,269,971,081.00 | 1,430,756,972.00 | 160,785,891.00 |
| Bedford | 216,575,054.00 | 217,967,261.00 | 1,392,207.00 |
| Bland | 67,478,296.00 | 64,969,827.00 | (2,508,469.00) |
| Botetourt | 162,783,671.00 | 158,371,055.00 | (4,412,616.00) |
| Brunswick | 49,754,397.00 | 53,440,570.00 | 3,686,173.00 |
| Buchanan | 77,652,251.00 | 75,440,355.00 | (2,211,896.00) |
| Buckingham | 238,186,099.00 | 426,402,497.00 | 188,216,398.00 |
| Campbell | 185,081,211.00 | 172,725,086.00 | (12,356,125.00) |
| Caroline | 418,276,923.00 | 417,095,669.00 | (1,181,254.00) |
| Carroll | 85,870,503.00 | 89,037,376.00 | 3,166,873.00 |
| Charles City | 51,896,856.00 | 57,452,562.00 | 5,555,706.00 |
| Charlotte | 35,220,961.00 | 39,943,099.00 | 4,722,138.00 |
| Chesterfield | 1,891,901,688.00 | 1,280,350,061.00 | (611,551,627.00) |
| Clarke | 49,825,457.00 | 54,516,251.00 | 4,690,794.00 |
| Craig | 12,789,391.00 | 12,697,499.00 | (91,892.00) |
| Culpeper | 163,213,494.00 | 170,811,535.00 | 7,598,041.00 |
| Cumberland | 31,537,643.00 | 33,417,297.00 | 1,879,654.00 |
| Dickenson | 34,138,047.00 | 33,674,129.00 | (463,918.00) |
| Dinwiddie | 103,769,594.00 | 116,637,956.00 | 12,868,362.00 |
| Essex | 39,202,856.00 | 37,524,719.00 | (1,678,137.00) |
| Fairfax | 3,316,166,774.00 | 3,354,123,939.00 | 37,957,165.00 |
| Fauquier | 595,948,086.00 | 614,637,743.00 | 18,689,657.00 |
| Floyd | 49,902,587.00 | 56,075,544.00 | 6,172,957.00 |
| Fluvanna | 510,898,918.00 | 501,112,818.00 | (9,786,100.00) |

ANNUAL REPORT OF THE STATE CORPORATION COMMISSION

| | | | |
|------------------------------------|----------------------------|----------------------------|---------------------------|
| Franklin | 142,303,298.00 | 154,020,860.00 | 11,717,562.00 |
| Frederick | 360,426,207.00 | 264,476,069.00 | (95,950,138.00) |
| Giles | 175,679,818.00 | 142,939,358.00 | (32,740,460.00) |
| Gloucester | 80,613,575.00 | 87,981,942.00 | 7,368,367.00 |
| Goochland | 95,608,322.00 | 94,053,527.00 | (1,554,795.00) |
| Grayson | 35,501,087.00 | 38,962,216.00 | 3,461,129.00 |
| Greene | 32,637,383.00 | 33,763,346.00 | 1,125,963.00 |
| Greensville | 33,123,969.00 | 34,980,354.00 | 1,856,385.00 |
| Halifax | 1,150,882,600.00 | 884,125,631.00 | (266,756,969.00) |
| Hanover | 614,931,621.00 | 590,588,119.00 | (24,343,502.00) |
| Henrico | 927,806,491.00 | 936,498,764.00 | 8,692,273.00 |
| Henry | 131,389,395.00 | 124,982,493.00 | (6,406,902.00) |
| Highland | 16,978,531.00 | 14,380,562.00 | (2,597,969.00) |
| Isle of Wight | 225,259,662.00 | 111,296,250.00 | (113,963,412.00) |
| James City | 194,443,745.00 | 205,567,460.00 | 11,123,715.00 |
| King and Queen | 18,456,486.00 | 22,917,533.00 | 4,461,047.00 |
| King George | 295,188,324.00 | 259,564,804.00 | (35,623,520.00) |
| King William | 41,588,964.00 | 44,077,349.00 | 2,488,385.00 |
| 00Lancaster | 44,516,230.00 | 44,173,669.00 | (342,561.00) |
| Lee | 49,787,664.00 | 46,568,297.00 | (3,219,367.00) |
| Loudoun | 1,571,783,932.00 | 1,706,192,363.00 | 134,408,431.00 |
| Louisa | 2,371,420,503.00 | 2,478,968,523.00 | 107,548,020.00 |
| Lunenburg | 34,644,657.00 | 39,334,414.00 | 4,689,757.00 |
| Madison | 41,245,507.00 | 45,943,355.00 | 4,697,848.00 |
| Mathews | 14,710,448.00 | 19,445,694.00 | 4,735,246.00 |
| Mecklenburg | 217,391,865.00 | 238,762,851.00 | 21,370,986.00 |
| Middlesex | 32,479,120.00 | 38,933,549.00 | 6,454,429.00 |
| Montgomery | 156,971,515.00 | 163,636,718.00 | 6,665,203.00 |
| Nelson | 79,219,524.00 | 78,137,174.00 | (1,082,350.00) |
| New Kent | 75,497,669.00 | 87,658,023.00 | 12,160,354.00 |
| Northampton | 52,835,777.00 | 52,038,739.00 | (797,038.00) |
| Northumberland | 36,317,490.00 | 45,441,422.00 | 9,123,932.00 |
| Nottoway | 43,565,251.00 | 49,837,391.00 | 6,272,140.00 |
| Orange | 100,592,609.00 | 95,902,406.00 | (4,690,203.00) |
| Page | 53,711,073.00 | 57,076,232.00 | 3,365,159.00 |
| Patrick | 49,168,157.00 | 51,711,665.00 | 2,543,508.00 |
| Pittsylvania | 256,698,086.00 | 245,029,000.00 | (11,669,086.00) |
| Powhatan | 85,662,933.00 | 85,038,204.00 | (624,729.00) |
| Prince Edward | 51,803,056.00 | 51,043,695.00 | (759,361.00) |
| Prince George | 84,321,168.00 | 86,928,033.00 | 2,606,865.00 |
| Prince William | 1,411,421,490.00 | 1,414,624,212.00 | 3,202,722.00 |
| Pulaski | 113,096,580.00 | 111,604,299.00 | (1,492,281.00) |
| Rappahannock | 22,594,963.00 | 29,025,579.00 | 6,430,616.00 |
| Richmond | 28,708,750.00 | 46,877,505.00 | 18,168,755.00 |
| Roanoke | 219,597,207.00 | 236,165,532.00 | 16,568,325.00 |
| Rockbridge | 92,749,086.00 | 96,430,577.00 | 3,681,491.00 |
| Rockingham | 195,568,533.00 | 206,531,952.00 | 10,963,419.00 |
| Russell | 304,952,354.00 | 189,480,948.00 | (115,471,406.00) |
| Scott | 68,524,900.00 | 69,493,614.00 | 968,714.00 |
| Shenandoah | 161,514,712.00 | 155,276,575.00 | (6,238,137.00) |
| Smyth | 86,995,140.00 | 84,806,314.00 | (2,188,826.00) |
| Southampton | 99,278,427.00 | 97,956,134.00 | (1,322,293.00) |
| Spotsylvania | 278,593,281.00 | 285,440,151.00 | 6,846,870.00 |
| Stafford | 243,400,077.00 | 315,225,111.00 | 71,825,034.00 |
| Surry | 1,551,539,183.00 | 1,667,966,811.00 | 116,427,628.00 |
| Sussex | 36,568,514.00 | 44,391,050.00 | 7,822,536.00 |
| Tazewell | 110,295,987.00 | 107,721,351.00 | (2,574,636.00) |
| Warren | 80,658,747.00 | 76,956,620.00 | (3,702,127.00) |
| Washington | 150,254,447.00 | 150,036,422.00 | (218,025.00) |
| Westmoreland | 54,041,999.00 | 54,780,495.00 | 738,496.00 |
| Wise | 451,581,120.00 | 560,708,231.00 | 109,127,111.00 |
| Wythe | 116,344,451.00 | 116,133,374.00 | (211,077.00) |
| York | 444,097,451.00 | 386,532,898.00 | (57,564,553.00) |
| Total Counties | \$27,770,356,928.00 | \$27,632,086,949.00 | (\$138,269,979.00) |
| Total Cities & Counties | \$35,187,859,469.00 | \$35,093,049,755.00 | (\$94,809,714) |

*Certified Pollution Control Equipment and Facilities are not taxable pursuant to § 58.1-3660 of the Code of Virginia and not included in above values for Tax Year 2011.

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**COMPARISON OF FEES COLLECTED BY THE DIVISION OF SECURITIES AND RETAIL
FRANCHISING FOR THE YEARS ENDING DECEMBER 31, 2010, AND DECEMBER 31, 2011**

| Increase or <u>Kind</u> | <u>2010</u> | <u>2011</u> | <u>Decrease</u> |
|-----------------------------|--------------------|--------------------|----------------------|
| Securities Act | \$9,109,799.03 | \$9,426,234.11 | \$316,435.08 |
| Retail Franchising Act | \$460,350.00 | \$463,100.00 | \$2,750.00 |
| Trademarks-Service Marks | \$27,660.00 | \$26,190.00 | (\$1,470.00) |
| Penalties | \$242,550.01 | \$100,005.77 | (\$142,544.24) |
| Global Settlement Penalties | \$2,362,411.61 | \$358,734.98 | (\$2,003,676.63) |
| Cost of Investigations | <u>\$78,725.01</u> | <u>\$50,850.00</u> | <u>(\$27,875.01)</u> |
| TOTAL | \$12,281,495.66 | \$10,425,114.86 | (\$1,856,380.80) |

PROCEEDINGS AND ACTIVITIES BY DIVISIONS DURING THE YEAR 2011

DIVISION OF UTILITY ACCOUNTING AND FINANCE

The Division of Utility Accounting and Finance (Division) assists the Commission with its review and analysis of accounting and financial information in utility regulatory matters. The Division conducts audits and prepares testimony and reports in rate proceedings, as well as in applications involving performance-based regulatory plans, affiliate transactions, mergers and acquisitions, financing plans, and certificates of public convenience and necessity. The Division also conducts audits of electric utility fuel costs and analyzes depreciation studies of electric, gas, and water and sewer utilities.

Below is a listing of major rate proceedings, certificate cases and financial review filings analyzed by the Division during 2011.

General Rate Cases/Biennial Reviews

| | |
|--------------------------------------------------|----------|
| Electric Companies | 3 |
| Electric Cooperatives | 2 |
| Gas Companies | 2 |
| Water Companies | <u>3</u> |
| Total General Rate Cases/Biennial Reviews | 10 |

Expedited Rate Cases

| | |
|-----------------------------------|----------|
| Gas Companies | 2 |
| Total Expedited Rate Cases | <u>2</u> |

Total Rate Cases 12

Certificate/License Cases

| | |
|-------------------------------|---|
| Water Companies | 1 |
| Competitive Service Providers | 6 |

Rate Adjustment Clauses/Demand Side Management Programs

| | |
|--------------------|---|
| Electric Companies | 9 |
|--------------------|---|

Steps to Advance Virginia's Energy (SAVE) Plans

| | |
|---------------|---|
| Gas Companies | 3 |
|---------------|---|

Annual Informational Filings/Earnings Tests

| | |
|----------------------------------------------------------|----------|
| Electric Companies | 1 |
| Gas Companies | 6 |
| Water and Sewer Companies | <u>2</u> |
| Total Annual Informational Filings/Earnings Tests | 9 |

Fuel Factor Cases

| | |
|--------------------|---|
| Electric Companies | 2 |
|--------------------|---|

Depreciation Studies

| | |
|-----------------------------------|----------|
| Electric Companies | 1 |
| Gas Companies | <u>3</u> |
| Total Depreciation Studies | 4 |

Ex Parte/Pilot Program/Rules to Show Cause Cases

6

Special Studies

| | |
|------------------------------|----------|
| Electric | <u>1</u> |
| Total Special Studies | 1 |

Other

| | |
|--------------------|---|
| Electric Companies | 2 |
| Gas Companies | 1 |

Affiliate Act and Utility Transfers Act:

During 2011 the Division submitted reports recommending action in applications filed pursuant to Chapters 3 (Issuances of Utility Securities), 4 (Affiliates Act), and 5 (Utility Transfers Act) of Title 56 of the Code of Virginia as follows:

Utility Transfer Act Cases

| | |
|-----------------------------------|----|
| Transfer of Assets | 10 |
| Transfer of Securities or Control | 15 |

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| | |
|-------------------------------------|------------------|
| <u>Affiliate Act Cases</u> | |
| Storage Agreements | 2 |
| Services Agreements | 21 |
| Asset Management Agreements | 3 |
| Billing Agreements | 2 |
| Compensation Agreements | 2 |
| Tax Sharing Agreements | 2 |
| Reimbursement Agreements | 3 |
| Lease Agreements | 3 |
| Power Purchase Agreements | <u>3</u> |
| <u>Issuance of Securities Cases</u> | <u>17</u> |
| Total | <u>83</u> |

The Average number of days to process and issue orders for applications filed under the Affiliates Act and the Utility Transfers Act for cases without hearings were as follows:

| | |
|--------------------|----|
| Electric | 93 |
| Gas | 75 |
| Water and Sewer | 85 |
| Telecommunications | 43 |

Personnel:

The Commission's Division of Utility Accounting and Finance consisted of the following personnel on December 31, 2011:

| <u>Filled</u> | <u>Vacant</u> | <u>Description</u> |
|---------------|---------------|--------------------------------------------------|
| 1 | | Director |
| 3 | | Deputy Directors |
| 4 | | Manager of Audits |
| 1 | | Systems Supervisor |
| | 1 | Administrative Supervisor |
| 1 | | Senior Office Technician |
| 1 | | Office Supervisor |
| 2 | | Principal Financial Analyst |
| 1 | | Senior Financial Analyst |
| 1 | | Principal Research Analyst |
| 2 | | Principal Public Utility Accountants |
| 5 | 1 | Senior Public Utility Accounts |
| <u>6</u> | | Public Utility Accountants |
| 27 | <u>2</u> | Total Authorized: 29 |
| 1 | | Administrative Assistant II (temporary employee) |

DIVISION OF COMMUNICATIONS

The Division of Communications assists the Commission in carrying out its duties as prescribed by the Code of Virginia. It oversees and monitors the continued implementation of competition in landline telecommunications markets with the goal of achieving an effective regulatory environment that balances the advancement of competition with the protection of consumers. The Division assists the Commission in developing, implementing, and enforcing alternatives to traditional forms of regulation as competition evolves. It monitors, enforces, and makes interpretations on certain rates, tariffs, and operating procedures of investor-owned telecommunications utilities. The Division enforces service standards, assures compliance with tariff regulations, coordinates extended area service studies, enforces pay telephone regulations, and assists in carrying out provisions of the Federal Telecommunications Act of 1996. The Staff testifies in rate, service, and generic hearings, and meets with the public on communications issues and problems. The Division maintains territorial maps, performs special studies, monitors construction programs, and investigates and resolves consumer inquiries and complaints. The Staff also monitors developments at the federal level, and prepares Commission responses where appropriate.

At the end of 2011 there were subject to the regulatory oversight of the Division:

| | |
|-----|-------------------------------------------------------------|
| 14 | Incumbent Investor-Owned Local Exchange Telephone Companies |
| 149 | Competitive Local Exchange Telephone Companies |
| 104 | Long Distance Telephone Companies |
| 91 | Payphone Service Providers |
| 11 | Operator Service Providers for Payphones |

SUMMARY OF 2011 ACTIVITIES

| | |
|-----------------------------------|-------|
| Consumer Complaints Investigated: | 5,909 |
| Wireline Complaints | 5,582 |

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| | |
|-----------------------------------------------------------------------|-----------|
| Wireless Complaints | 327 |
| Total Consumer Credit Adjustments: | \$475,862 |
| Wireline Credit Adjustments | \$457,962 |
| Wireless Credit Adjustments | \$17,900 |
| Service Quality Oversight: | |
| Network Access Lines (reported as of June 30, 2011) | 4,297,233 |
| Tariff revisions received: | |
| Incumbent Local Exchange Companies | 102 |
| Competitive Local Exchange Companies | 88 |
| Interexchange Companies | 44 |
| Tariff sheets filed: | |
| Incumbent Local Exchange Companies | 597 |
| Competitive Local Exchange Companies | 1,398 |
| Interexchange Companies | 587 |
| Promotional Filings: | |
| Incumbent Local Exchange Companies | 32 |
| Competitive Local Exchange Companies | 87 |
| Interexchange Companies | 0 |
| Cases in which staff members prepared testimony, reports, or comments | 19 |
| Certificates of Convenience and Necessity: | |
| Competitive Local Exchange Companies | |
| Granted | 8 |
| Amended | 2 |
| Canceled | 12 |
| Interexchange Companies | |
| Granted | 6 |
| Amended | 2 |
| Canceled | 8 |
| Interconnection Agreements or Amendments approved or dismissed | 42 |
| Payphone registration and rules enforcement provided on: | |
| Local Exchange Company payphone service providers | 8 |
| Local Exchange Company payphones | 4,120 |
| Private payphone service providers | 83 |
| Private payphones | 4,191 |
| Payphone audits | 498 |
| General Network/Infrastructure Field Reviews | 51 |

OTHER:

Assisted the Commission in the continued implementation and operation of the Federal Telecommunications Act of 1996.
Continued the Collaborative Committee on local competition market-opening measures.
Monitored Verizon Virginia's Performance Assurance Plan.
Assisted Commission counsel with respect to formal rate, service, and generic matters.
Participated in matters affecting communications policy with federal agencies.
Pursued various activities relating to the Commission's alternative plans for regulating telephone companies.
Continued outreach activities by making presentations to trade and citizen groups, associations, and telephone companies.
Represented the Commission during the General Assembly session on matters relating to telecommunications legislation.
Responded to questionnaires and inquiries from the National Association of Regulatory Utility Commissioners ("NARUC") and others with respect to telecommunications matters.
Submitted comments to the FCC on proposed rules to prevent cramming, and regarding universal service, intercarrier compensation and potential preemption.
Managed Virginia's telephone number utilization program.
Monitored Virginia Universal Service Plan Participation.
Staff member serves on the NARUC Staff Subcommittee on Communications.

DIVISION OF ENERGY REGULATION**Activities for Calendar Year 2011**

The Division of Energy Regulation assists the Commission in fulfilling its statutory responsibilities pursuant to Title 56, Chapter 10 of the Code of Virginia. Activities include reviewing investor-owned electric, natural gas and water/sewer utilities' cost of service studies; reviewing cost allocation methodology and rate design philosophies; reviewing long term utility resource plans; and providing expert testimony in these matters.

The Division provides expert testimony in certificate cases for service areas and major facility construction of public utilities and independent power producers. After such certificates are granted, the Division is responsible for maintaining the official certificates and associated maps.

The Division has monitoring responsibilities relative to: the collection of gas costs by gas utilities, the incurrence of wholesale purchased power expenses by electric cooperatives, and the recovery of fuel expenses and the construction and operation of major facilities by the investor-owned utilities. It also reviews extraordinary costs and policies related to nuclear power, including decommissioning of nuclear power plants and the storage of spent nuclear fuel.

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The Division investigates and resolves informal consumer complaints/inquiries relative to regulated utilities and licensed electricity and natural gas suppliers.

Finally, the Division develops annual energy related financial forecasts, and provides the Commission with technical expertise pertaining to regulatory policy, regional transmission organizations, and utility mergers and acquisitions.

Summary of Activities for Calendar Year 2011

| | |
|----------------------------------------------------------------------------|-------|
| Consumer Complaints and Inquiries Received | 3,058 |
| Written Public Comments Relative to Commission Cases Received | 4,026 |
| Testimony and Reports Filed by Staff | 70 |
| Certificates of Convenience and Necessity Granted, Transferred, or Revised | 13 |
| Affiliates Applications | 14 |
| Meter Tests Witnessed | 5 |
| Community Meetings and Presentations | 5 |

BUREAU OF FINANCIAL INSTITUTIONS

The Bureau of Financial Institutions is responsible under Title 6.2 of the Code of Virginia for the regulation and supervision of the following types of institutions: state chartered banks, independent trust companies, state chartered savings institutions, state chartered credit unions, industrial loan associations, consumer finance licensees, money transmitter licensees, mortgage lenders and brokers, mortgage loan originators, credit counseling agencies, check cashers, motor vehicle title lenders, and payday lenders. Financial institutions domiciled outside of Virginia that have deposit taking subsidiaries within the Commonwealth are also subject to the Bureau regulatory authority, as are out-of-state deposit taking subsidiaries of financial holding companies domiciled in Virginia.

During the calendar year, the Bureau of Financial Institutions received, investigated, and processed 3,338 applications for various certificates of authority as shown below:

APPLICATIONS RECEIVED AND/OR ACTED UPON BY THE BUREAU OF FINANCIAL INSTITUTIONS IN 2011

| | |
|---------------------------------------------------------------|-------|
| Bank Branches | 31 |
| Bank Branch Office Relocations | 10 |
| New Bank Conversion from National Bank | 1 |
| Bank Acquisitions Pursuant to § 6.2-704 A | 2 |
| Bank Acquisitions Pursuant to § 6.2-704 C | 1 |
| Out of State Bank Merger | 2 |
| Establish a Branch (out-of-the state Bank) | 10 |
| Establish a Trust Company Branch (out-of-state trust Company) | 1 |
| Out-of-State Branch Move (Bank) | 3 |
| New Credit Union | 1 |
| Credit Union Mergers | 3 |
| Credit Union Service Facilities | 5 |
| Credit Union Office Relocations | 2 |
| New Consumer Finance | 5 |
| Consumer Finance Offices | 68 |
| Consumer Finance Other Business | 14 |
| Consumer Finance Office Relocations | 2 |
| New Mortgage Lenders and/or Brokers | 129 |
| Acquisitions of Mortgage Lenders/Brokers | 23 |
| Mortgage Additional Offices | 447 |
| Mortgage Office Relocations | 105 |
| Mortgage Loan Originator Licensees | 2,178 |
| New Motor Vehicle Title Lender | 8 |
| Acquire a Motor Vehicle Title Lender | 2 |
| Motor Vehicle Title Lender Additional Offices | 65 |
| Motor Vehicle Title Lender Office Relocations | 8 |
| Motor Vehicle Title Lender Other Business | 13 |
| New Money Order Sellers/Money Transmitters | 15 |
| Acquisitions of Money Order Sellers/Money Transmitters | 7 |
| Credit Counseling Agency Additional Offices | 53 |
| Credit Counseling Office Relocations | 33 |
| New Credit Counseling Agencies | 2 |
| New Check Cashers | 67 |
| New Payday Lenders | 2 |
| Payday Office Relocations | 8 |
| Payday Lender Additional Offices | 2 |

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| | |
|------------------------------|---|
| Payday Lender Other Business | 8 |
| Acquire a Payday Lender | 2 |

At the end of 2011, there were under the supervision of the Bureau 80 banks with 967 branches, 68 Virginia bank holding companies, 16 non-Virginia bank holding companies with banking offices in Virginia, 3 subsidiary trust companies, 1 savings institution, 55 credit unions, 5 industrial loan associations, 22 consumer finance companies with 148 Virginia offices, 74 money transmitters, 39 credit counseling agencies, 525 check cashers, 105 mortgage lenders with 335 offices, 394 mortgage brokers with 694 offices, 218 mortgage lender/brokers with 885 offices, 6,612 mortgage loan originators, 4 private trust companies, 26 motor vehicle title lenders with 371 offices, and 27 payday lenders with 267 offices.

BUREAU OF INSURANCE REGULATION ACTIVITIES FOR THE FISCAL YEAR ENDING JUNE 30, 2011

The regulation of insurance was transferred to the State Corporation Commission from the Auditor of Public Accounts in 1906. The Bureau of Insurance (Bureau) has licensed and examined the affairs of insurance companies since that time. Here in the Commonwealth of Virginia, the functions of the Bureau have increased with the complexity and importance of insurance in our daily lives. In keeping with the Commission's mission, Bureau staff strives to balance the interests of insurance consumers with its duty to regulate Virginia's business responsibility.

The Bureau of Insurance is divided into the following four divisions: The Financial Regulation Division licenses, analyzes, and examines insurance companies and, if necessary, takes steps to resolve financial problems before a company becomes unable to meet its obligations; the Life and Health Market Regulation Division regulates the activities of life, and accident and sickness insurers, health service plans and health maintenance organizations; the Property and Casualty Market Regulation Division regulates the activities of property and casualty insurers (automobile and homeowners); and the Agent Regulation and Administration Division regulates the activities of insurance agents, collects various special taxes and assessments on insurance companies and works in an auxiliary role in support of the Bureau's other divisions.

The regulatory functions of the Bureau of Insurance include: (1) Agent Investigations staff monitor the activities of insurance agents and agencies to ensure their actions comply with state law; (2) Consumer Services staff answer questions and assist consumers with problems concerning insurance companies or agents by investigating consumer complaints; (3) Market Regulation staff conduct on-site field examinations of insurance company practices in Virginia to ensure compliance with state law, to verify whether a company pays claims timely, to ensure that underwriting decisions are not unfairly discriminatory, and to evaluate marketing materials to ensure that they are not misleading; (4) the Office of the Managed Care Ombudsman promotes and protects the interests of covered persons under managed care health insurance plans (MCHIP) and assists consumers in understanding and exercising their rights of appeal of adverse decisions made by MCHIPs; and (5) Policy Forms and Rates Filing staff evaluate insurance policies and rates to ensure compliance with state law, that policies are written in understandable language, and that premiums charged are reasonable and not unfairly discriminatory.

SUMMARY OF 2011 ACTIVITIES

| | |
|-------------------------------------------------------------------------------------|---------|
| New insurance companies licensed to do business in Virginia | 23 |
| Insurance company financial statements analyzed | 863 |
| Financial examinations of insurance companies conducted | 27 |
| Property and Casualty insurance rules, rates and form submissions | 4,434 |
| Life and Health insurance policy forms and rates submissions | 3,828 |
| Property and Casualty insurance complaints received | 2,346 |
| Life and Health insurance complaints received | 1,936 |
| Market conduct examinations completed by the Life and Health Division | 3 |
| Market Regulation Continuum Actions completed by the Life and Health Division | 29 |
| Market conduct examinations completed by the Property and Casualty Division | 10 |
| Market Regulation Continuum Actions completed by the Property and Casualty Division | 210 |
| Insurance agents and agencies licensed | 188,820 |
| Tax and assessment audits | 8,198 |
| Ombudsman Office inquiries received | 683 |
| Individuals assisted by Ombudsman Office in appealing MCHIP denials | 135 |

EXTERNAL APPEAL FISCAL YEAR 2011

| | |
|-----------------------------------------------|-------------|
| Number of Cases Reviewed | 156 |
| Eligible Appeals | 110 |
| Ineligible Appeals | 46 |
| Eligibility Pending | 0 |
| Final Adverse Decision Upheld By Reviewer | 58 |
| Final Adverse Decision Overturned by Reviewer | 37 |
| Final Adverse Decision Modified | 4 |
| MCHIP Reversed Itself | 7 |
| Appeal Decisions Pending | 0 |
| Approximate Cost Savings to Appellants | \$1,286,185 |

NOTICE OF INSURANCE-RELATED ENTITIES IN RECEIVERSHIP

Pursuant to Virginia Code § 38.2-1517, please TAKE NOTICE that the following insurance-related entities are in receivership under authority of various provisions of Title 38.2 of the Code of Virginia:

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Fidelity Bankers Life Insurance Company d/b/a First Dominion Life Insurance (FBL/FD). Date of receivership: May 13, 1991. The company will not resume the transaction of the business of insurance. For more information/updates you can e-mail www.fblic.com.

HOW Insurance Company, a Risk Retention Group, Home Owners Warranty Corporation and Home Warranty Corporation (the HOW Companies). Date of receivership: October 7, 1994. The company will not resume the transaction of the business of insurance. For more information/updates you can e-mail www.howcorp.com.

The Commission is the Receiver, and Commissioner of Insurance Jacqueline Cunningham is the Deputy receiver, of FBL/FD and the HOW Companies. Any inquiries concerning the conduct of the receivership of First Dominion Life Insurance Company and the HOW Companies may be directed to their Special Deputy Receiver, Patrick H. Cantilo, Esquire, Cantilo & Bennett, LLP, Suite 300, 11401 Century Oaks Terrace, Austin, Texas 78758.

Reciprocal of America (ROA) and The Reciprocal Group (TRG). Date of receivership: January 29, 2003. An Order of Liquidation with a Finding of Insolvency and Directing the Cancellation of Direct Insurance Policies was entered on June 20, 2003, and on October 28, 2003, the proposed plan of liquidation was approved by entry of an Order Setting Final Bar Date and Granting the Deputy Receiver Continuing Authority to Liquidate Companies.

The Commission is the Receiver, and the Commissioner of Insurance, Jacqueline K. Cunningham, is the Deputy Receiver of ROA and TRG. Any inquiries concerning the conduct of the receivership of ROA and TRG may be directed to Mike R. Parker, Special Deputy Receiver, 4200 Innsbrook Drive, Glen Allen, Virginia, or P.O. Box 85058, Richmond, Virginia 23285-5058 or by e-mail at www.reciprocalgroup.com.

Shenandoah Life Insurance Company (SLIC). Date of receivership: February 12, 2009. The State Corporation Commission was named receiver for SLIC by the Circuit Court of the City of Richmond.

The Commission is the Receiver, and the Commissioner of Insurance, Jacqueline K. Cunningham, is the Deputy Receiver of SLIC. Any inquiries concerning the conduct of the receivership of SLIC may be directed to Donald Beatty with the Commission's Office of General Counsel, the Receivership Manager for SLIC.

Southern Title Insurance Corporation (STIC). Date of receivership: December 20, 2011. The State Corporation Commission was named receiver for STIC by the Circuit Court of the City of Richmond.

The Commission is the Receiver, and the Commissioner of Insurance, Jacqueline K. Cunningham, is the Deputy Receiver of STIC. Any inquiries concerning the conduct of the receivership of STIC may be directed to Donald Beatty with the Commission's Office of General Counsel, Special Deputy Receiver of STIC

DIVISION OF SECURITIES AND RETAIL FRANCHISING

The Division of Securities and Retail Franchising of the State Corporation Commission is charged with the administration of the following laws:

- Virginia Securities Act (known as the "Blue Sky" Law), Virginia Code §§ 13.1-501 through 13.1-527.3.
- Virginia Trademark and Service Mark Act, Virginia Code §§ 59.1-92.1 through 59.1-92.21.
- Virginia Retail Franchising Act, Virginia Code §§ 13.1-557 through 13.1-574.

UNDER THE VIRGINIA SECURITIES ACT:

| | |
|---------|-----------------------------------------------------------------------------------------------|
| 36 | securities registrations approved |
| 23 | securities registrations denied, withdrawn, or terminated |
| 3,129 | investment company notice filings originals and renewals accepted |
| 431 | investment company notice filings originals and renewals denied, withdrawn, or terminated |
| 36 | exemptions from registration approved |
| 2 | exemptions from registration denied, withdrawn, or terminated |
| 1,611 | exemption notice filings for federal-covered securities accepted |
| 18 | exemption notice filings for federal-covered securities denied, withdrawn, or terminated |
| 2,356 | broker-dealer registrations and renewals approved |
| 187 | broker-dealer registrations and renewals denied, withdrawn, or terminated |
| 98 | broker-dealer audits completed |
| 197,774 | broker-dealer agent registrations and renewals approved |
| 31,358 | broker-dealer agent registrations and renewals denied, withdrawn, or terminated |
| 5 | investment advisor other amendments approved |
| 2,734 | investment advisor registrations, renewals, and amendments approved |
| 391 | investment advisor registrations, renewals, and amendments denied, withdrawn, or terminated |
| 85 | investment advisor audits completed |
| 498 | audit violation deficiencies resolved |
| 13,415 | investment advisor representative registrations and renewals approved |
| 2,442 | investment advisor representative registrations and renewals denied, withdrawn, or terminated |
| 80 | agent of issuer registrations and renewals approved |
| 21 | agent of issuer registrations and renewals denied, withdrawn, or terminated |
| 160 | investigations completed |

UNDER THE VIRGINIA TRADEMARK AND SERVICE MARK ACT:

| | |
|-----|--------------------------------------------------------------------------|
| 746 | trademarks and/or service marks approved, renewed, or assigned |
| 468 | trademarks and/or service marks denied, abandoned, expired, or withdrawn |

UNDER THE VIRGINIA RETAIL FRANCHISING ACT:

| | |
|-------|---------------------------------------------------------------------------------------------------------------|
| 1,548 | franchise registrations, renewals, or post-effective amendments approved |
| 365 | franchise registrations, renewals, or post-effective amendments denied, withdrawn, non-renewed, or terminated |
| 21 | investigations completed |

ORDERS, JUDGMENTS AND SETTLEMENTS:

| | |
|----|------------------------------------------------------------------------|
| 17 | orders granting exemptions and/or official interpretations |
| 71 | orders for subpoena of records by banks, corporations, and individuals |
| 13 | orders of show cause |
| 39 | judgments of compromise and settlement |
| 35 | final orders and/or judgments |
| 0 | temporary injunctions |
| 0 | special supervision |

TELEPHONE CALLS, E-MAILS AND COMPLAINTS:

| | |
|--------|--------------------------------------------------------------|
| 90 | investigation general inquiry calls/e-mails |
| 828 | calls/e-mails regarding pending investigations |
| 325 | enforcement general inquiry calls/e-mails |
| 2,239 | calls/e-mails regarding pending enforcements |
| 486 | calls/e-mails regarding pending registrations |
| 15,547 | registration general inquiry calls/e-mails |
| 276 | calls/e-mails regarding pending audits |
| 219 | audit general inquiry calls/e-mails |
| 5,876 | examination general inquiry calls/e-mails |
| 440 | calls/e-mails regarding pending examinations |
| 165 | complaints resulting in investigations |
| 51 | complaints referred |
| 10 | complaints with no authority to investigate |
| 26 | complaints with no violation of Securities or Franchise Acts |

UNIFORM COMMERCIAL CODE

The Clerk's Office is the central filing office in the Commonwealth for financing statements, amendments, assignments and terminations filed under the Uniform Commercial Code – Secured Transactions. The Clerk's Office is the filing office in the Commonwealth for notices and certificates applicable to the personal property of corporations and partnerships filed under the Uniform Federal Lien Registration Act.

SUMMARY OF CALENDAR YEAR ACTIVITIES

| | <u>12/31/10</u> | <u>12/31/11</u> |
|------------------------------------------|-----------------|-----------------|
| Financing/Subsequent Statements Filed | 65,693 | 68,020 |
| Federal Tax Liens/Subsequent Liens Filed | 7,495 | 7,255 |
| Reels of Microfilmed documents sold | 404 | 416 |

DIVISION OF UTILITY AND RAILROAD SAFETY

The Division of Utility and Railroad Safety assists the Commission in administering three safety programs: Gas and Hazardous Liquid Pipeline Safety, Railroad Safety and Underground Utility Damage Prevention.

The Pipeline Safety Section of the Division helps ensure the safe operation of gas and hazardous liquid pipeline facilities, through inspections of facilities and new constructions, review of safety records, and investigation of incidents. In 2011, the Division's pipeline safety activities involved 10 natural gas companies, with a total of 20,602 miles of pipelines serving 1,191,768 customers, 103 master-metered operators, 33 propane systems and 4 hazardous liquid pipeline companies with a total of 897 miles of pipelines.

Summary of 2011 Activities

| | |
|-------------------------------------------------------|-------|
| Gas Safety Inspection Man-days Conducted | 665 |
| Hazardous Liquid Safety Inspection Man-days Conducted | 82 |
| Number of Counts of Probable Violations Cited | 1,121 |
| Pipeline Accidents Investigated | 53 |
| Pipeline Safety Trainings Conducted | 16 |
| Testimony and Reports Prepared | 3 |

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The Rail Safety Section of the Division helps ensure the safe operation of jurisdictional railroads by conducting inspections of tracks and motive power and equipment and investigations of certain accidents. The Division's inspections involve more than 3,600 miles of track and thousands of cars and locomotives.

Summary of 2011 Activities

| | |
|-----------------------------------------------------------|--------|
| Number of Track Units ¹ Inspected | 6,343 |
| Number of Locomotive and Car Units ² Inspected | 19,026 |
| Number of Operating Practice Units ³ Inspected | 1,401 |
| Number of Defects Noted | 7,807 |
| Number of Violations Cited | 125 |
| Number of Accidents Investigated | 147 |
| Number of Complaints Investigated | 33 |

The Damage Prevention Section of the Division investigates all reports of "probable violations" of the Underground Utility Damage Prevention Act ("Act") and on a monthly basis presents its findings and recommendations to an Advisory Committee appointed in accordance with the Act. This Committee then makes enforcement recommendations to the Commission. The Division provides free training relative to the Act and safe digging practices to excavators, utilities and others, conducts public education campaigns and promotes partnership among the stakeholders to further underground utility damage prevention in Virginia.

Summary of 2011 Activities

| | |
|------------------------------------------------------------------|---------|
| Underground Utility Damage Reports Investigated | 1,203 |
| Number of Individuals Having Received Damage Prevention Training | 2,816 |
| Number of Damage Prevention Educational Material Disseminated | 114,406 |
| Number of Damage Prevention Field Audits Conducted | 286 |

¹ Each mile of track, record, crossing at grade, among other things, is considered a track unit.

² Each locomotive, car, motive power equipment record, among other things, is considered a unit.

³ Each location where operations are or may occur such as switchyards, field offices, yard offices, trains, yard crew locations and dispatching are considered an operating practice unit.

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| BAN20110005 | Royal Sales and Service of Madison Heights, LLC d/b/a United Check Cashing - To open a check casher at 4454 South Amherst Highway, Madison Heights, VA |
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| BAN20110011 | Express Check Advance of Virginia, LLC - To open a motor vehicle title lender office at 1605 Williamson Road, Roanoke, VA |
| BAN20110012 | Express Check Advance of Virginia, LLC - To open a motor vehicle title lender office at 1413 Tappahannock Boulevard, Tappahannock, VA |
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| BAN20110024 | Super Latin Grocery / Deli, LLC - To open a check casher at 46000 Old Ox Road, Sterling, VA |
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| BAN20110045 | New Peoples Bank, Inc. - To relocate office from 20445 Riverside Drive, Grundy, VA to 20487 Riverside Drive, Grundy, VA |
| BAN20110046 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 7401 Midlothian Turnpike, Richmond, VA |
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| BAN20110056 | Community Capital Bank of Virginia - To open a branch at 100 West Franklin Street, Suite 301, Richmond, VA |
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| BAN20110060 | El Paisa LLC - To open a check casher at 270 Dingledine Lane, Dayton, VA |
| BAN20110062 | QC E-Services, Inc. d/b/a The Loan Store - To open a check casher at 12917 Jefferson Avenue, Suite A, Newport News, VA |
| BAN20110064 | Fast Auto Loans, Inc. - To relocate motor vehicle title lender office from 1 Roanoke Street, Christiansburg, VA to 2100 Roanoke Street, Suite 1, Christiansburg, VA |
| BAN20110065 | Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 6541 Arlington Boulevard, Falls Church, VA |
| BAN20110066 | Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 1507 Apperson Drive, Salem, VA |
| BAN20110067 | Virginia Auto Loans, Inc. - To open a consumer finance office at 6541 Arlington Boulevard, Falls Church, VA |
| BAN20110068 | Virginia Auto Loans, Inc. - To conduct consumer finance business where a third party will conduct motor vehicle title lending business |

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BAN20110069 Virginia Auto Loans, Inc. - To open a consumer finance office at 336 S. Washington Street, Falls Church, VA
 BAN20110070 ACE Cash Express, Inc. - To open a payday lender's office at 4337 Dale Boulevard, Dale City, VA
 BAN20110071 American National Bankshares Inc. - To acquire MidCarolina Bank
 BAN20110072 Union First Market Bank - To open a branch at 400 Gateway Drive, Frederick County, VA
 BAN20110073 Union First Market Bank - To open a branch at 437 Tiffany Drive, Waynesboro, VA
 BAN20110074 Union First Market Bank - To open a branch at 240 Elizabeth Drive, Stephens City, VA
 BAN20110075 Union First Market Bank - To open a branch at 200 Rivendall Court, Frederick County, VA
 BAN20110076 Union First Market Bank - To open a branch at 2035 East Market Street, Harrisonburg, VA
 BAN20110077 Union First Market Bank - To open a branch at 1015 Richmond Road, Staunton, VA
 BAN20110078 Union First Market Bank - To open a branch at 15371 Montanus Drive, Culpeper, VA
 BAN20110079 The Shed Auto Parts, Incorporated - To open a check casher at 29661 N. James Madison Highway, New Canton, VA
 BAN20110081 Cash-2-U Financial Services of Virginia, LLC d/b/a Cash-2-U Title Loans - To relocate motor vehicle title lender office from 1424 Chamberlayne Avenue, Richmond, VA to 2501 Chamberlayne Avenue, Richmond, VA
 BAN20110082 F & L Marketing Enterprises LLC d/b/a Cash-2-U Payday Loans - To relocate payday lender's office from 1424 Chamberlayne Avenue, Richmond, VA to 2501 Chamberlayne Avenue, Richmond, VA
 BAN20110084 Sandy Spring Bank - To open a branch at 550 North Quincy Street, Arlington, VA
 BAN20110085 Carmen Rivera Moreno d/b/a Moreno Envios - To open a check casher at 3414 Mt. Vernon Avenue, Alexandria, VA
 BAN20110090 VCC Credit Services, Inc. d/b/a Check City Title Loans - For authority for other business operator to conduct payday lending business from the licensee's motor vehicle title lending offices
 BAN20110091 VCC Credit Services, Inc. d/b/a Check City Title Loans - For authority for other business operator to conduct payday lending business from the licensee's motor vehicle title lending offices
 BAN20110092 Anykind Check Cashing, LC - For authority for other business operator to conduct a motor vehicle title lending business in its payday lending offices
 BAN20110093 Tosh of Utah, Inc. (Used in VA by: Tosh, Inc.) d/b/a Check City Check Cashing - For authority for other business operator to conduct a motor vehicle title lending business in its payday lending offices
 BAN20110094 VCC Credit Services, Inc. d/b/a Check City Title Loans - For a motor vehicle title lender license
 BAN20110097 Timothy L. Hilton - To acquire 25 percent or more of Ameritrust Mortgage of North Carolina, Inc.
 BAN20110098 Dominion/America, LLC - To acquire 25 percent or more of Americas Lending, LLC.
 BAN20110099 Dominion/America, LLC - To acquire 25 percent or more of Dominion Residential Mortgage, LLC
 BAN20110100 Ace Cash Express Inc. - For authority for other business operator to conduct a motor vehicle title lending business in its payday lending offices
 BAN20110101 Vishwakarma Inc. d/b/a Easy Mart - To open a check casher at 507 Stewart Street, Charlottesville, VA
 BAN20110102 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 7031 Richmond Road, Williamsburg, VA
 BAN20110106 Doody Mart Inc. - To open a check casher at 932 W. Atlantic Street, Emporia, VA
 BAN20110111 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 10603 Ned Court, Apt. 19, Charlotte, NC
 BAN20110112 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4600 Waterfall Court, Apt. J, Owings Mills, MD
 BAN20110113 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3242 Mary Street, Suite 316, Miami, FL
 BAN20110114 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2215 Hawthorne Road, Baltimore, MD
 BAN20110115 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 9 Thurmont Court, Apt. 1A, Nottingham, MD
 BAN20110116 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 31 W. Lamington Road, Hampton, VA
 BAN20110117 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 14 Lynnbrook Court, Easton, MD to 617 N. Rosedale Avenue, Baltimore, MD
 BAN20110119 Cheque Cashing, Inc. - To relocate payday lender's office from 4337 Dale Boulevard, Dale City, VA to 10323 7th Regiment Drive, Suite 102, Manassas, VA
 BAN20110120 Shellpoint Mortgage LLC - To acquire 25 percent or more of New Penn Financial, LLC
 BAN20110121 P.W.C. Employees Credit Union - To relocate credit union office from 2080 Old Bridge Road, Suite 101, Woodbridge, VA to 12715 Ridgefield Village Drive, Woodbridge, VA
 BAN20110123 Nuestro Mundo Latino LLC - To open a check casher at 5759 Hull Street Road, Richmond, VA
 BAN20110124 Kipling Financial Services, LLC d/b/a MoneyMax Title Loans - To open a motor vehicle title lender office at 7605 W. Broad Street, Richmond, VA
 BAN20110125 Kipling Financial Services, LLC d/b/a MoneyMax Title Loans - To open a motor vehicle title lender office at 4300 S. Laburnum Avenue, Richmond, VA
 BAN20110126 Anderson Financial Services, LLC LoanMax (Used in VA by: Anderson Financial Services, LLC) d/b/a LoanMax - To open a motor vehicle title lender office at 1314 North Royal Avenue, Front Royal, VA
 BAN20110127 Anderson Financial Services, LLC LoanMax (Used in VA by: Anderson Financial Services, LLC) d/b/a LoanMax - To open a motor vehicle title lender office at 4100 W. Mercury Boulevard, Hampton, VA
 BAN20110128 Anderson Financial Services, LLC LoanMax (Used in VA by: Anderson Financial Services, LLC) d/b/a LoanMax - To open a motor vehicle title lender office at 902 W. Mercury Boulevard, Hampton, VA
 BAN20110132 Amira Enterprises, Inc. d/b/a SuperMart - To open a check casher at 2133 Chesapeake Drive, Chesapeake, VA
 BAN20110136 Miners Exchange Bank - To open a branch at 309 Vanover Avenue, N.E., Wise County, VA
 BAN20110137 Global Check Xpress Inc. - To open a check casher at 13813 Foulger Square, Woodbridge, VA
 BAN20110138 OneMain Financial, Inc. - To open a consumer finance office
 BAN20110139 OneMain Financial, Inc. - To open a consumer finance office at 2035-75 East Market Street, Skyline Village, Harrisonburg, VA
 BAN20110140 OneMain Financial, Inc. - To open a consumer finance office at 2541 Greensboro Road, Highway 220 South, Henry County, VA
 BAN20110141 OneMain Financial, Inc. - To open a consumer finance office at 850 Statler Square, Suite 108, Staunton, VA
 BAN20110142 OneMain Financial, Inc. - To open a consumer finance office at 244 Commonwealth Drive, Wytheville Commons, Wytheville, VA
 BAN20110143 OneMain Financial, Inc. - To open a consumer finance office at 203 West Main Street, Abingdon, VA
 BAN20110144 OneMain Financial, Inc. - To open a consumer finance office at 3700 Candler's Mountain Road, Suite 540, Lynchburg, VA

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| BAN20110145 | OneMain Financial, Inc. - To open a consumer finance office at 1447-49 North Main Street, Suffolk, VA |
| BAN20110146 | OneMain Financial, Inc. - To open a consumer finance office at 5606 Portsmouth Boulevard, Elmhurst Square, Portsmouth, VA |
| BAN20110147 | OneMain Financial, Inc. - To open a consumer finance office at 3330 South Crater Road, Suite 9A, South Crater Shopping Center, Petersburg, VA |
| BAN20110148 | OneMain Financial, Inc. - To open a consumer finance office at 1465 W Main Street, Spartan Square, Salem, VA |
| BAN20110149 | OneMain Financial, Inc. - To open a consumer finance office at 13265 Worth Avenue, Woodbridge, VA |
| BAN20110150 | OneMain Financial, Inc. - To open a consumer finance office at 20 Plantation Drive, Suite 134, Spring Knoll Plaza, Fredericksburg, VA |
| BAN20110151 | OneMain Financial, Inc. - To open a consumer finance office at 4000 Virginia Beach Boulevard, Suite 132, Virginia Beach, VA |
| BAN20110152 | OneMain Financial, Inc. - To open a consumer finance office at 1324 Front Street, Richlands, VA |
| BAN20110153 | OneMain Financial, Inc. - To open a consumer finance office at 12785 Jefferson Avenue, Newport News, VA |
| BAN20110154 | OneMain Financial, Inc. - To open a consumer finance office at 2710 Enterprise Parkway, Henrico County, VA |
| BAN20110155 | OneMain Financial, Inc. - To open a consumer finance office at 411-E South Street, Front Royal, VA |
| BAN20110156 | OneMain Financial, Inc. - To open a consumer finance office at 6011 Centreville Crest Lane, Suite 51, Centreville Square II, Centreville, VA |
| BAN20110157 | OneMain Financial, Inc. - To open a consumer finance office at 329-B Southgate Shopping Center, Culpeper, VA |
| BAN20110158 | OneMain Financial, Inc. - To open a consumer finance office at 2189 Cunningham Drive, Coliseum Corner, Hampton, VA |
| BAN20110159 | OneMain Financial, Inc. - To open a consumer finance office at 6131 Harbourside Center Loop, Midlothian, VA |
| BAN20110160 | OneMain Financial, Inc. - To open a consumer finance office at 798 Southpark Boulevard, Colonial Heights, VA |
| BAN20110161 | OneMain Financial, Inc. - To open a consumer finance office at 247 Commonwealth Boulevard, West, Suite 6, Liberty Fair Convenience Center, Martinsville, VA |
| BAN20110162 | OneMain Financial, Inc. - To open a consumer finance office at 1506 S. Main Street, Suite 10, Farmville, VA |
| BAN20110163 | OneMain Financial, Inc. - To open a consumer finance office at 3130 Halifax Road, Suite A, Halifax Square Shopping Center, South Boston, VA |
| BAN20110164 | OneMain Financial, Inc. - To open a consumer finance office at 5802 E. Virginia Beach Boulevard, Suite 150, The Shops at Janaf, Norfolk, VA |
| BAN20110165 | OneMain Financial, Inc. - To open a consumer finance office at 1100 Armory Drive, Franklin, VA |
| BAN20110166 | OneMain Financial, Inc. - To open a consumer finance office at 204 Westover Drive, Danville, VA |
| BAN20110167 | OneMain Financial, Inc. - To open a consumer finance office at 6328 Richmond Highway, Suite J, Fairfax County, VA |
| BAN20110168 | OneMain Financial, Inc. - To open a consumer finance office at 707 East Atlantic Street, South Hill, VA |
| BAN20110169 | OneMain Financial, Inc. - To open a consumer finance office at 1632 B Tappahannock Boulevard, Tappahannock, VA |
| BAN20110170 | OneMain Financial, Inc. - To open a consumer finance office at 11940 Iron Bridge Plaza, Shops at Riverforest, Chester, VA |
| BAN20110171 | OneMain Financial, Inc. - To open a consumer finance office at 1155 Piney Forest Road, Suite E, Danville, VA |
| BAN20110172 | OneMain Financial, Inc. - To open a consumer finance office at 8367 Sudley Road, Manaport Plaza, Manassas, VA |
| BAN20110173 | OneMain Financial, Inc. - To open a consumer finance office at 3325 Taylor Road, Suite 114, Taylor Road Plaza, Chesapeake, VA |
| BAN20110174 | OneMain Financial, Inc. - To open a consumer finance office at 12639 Jeff Davis Highway, Chester, VA |
| BAN20110175 | OneMain Financial, Inc. - To open a consumer finance office at 6610-L Mooretown Road, Williamsburg Market Center, York County, VA |
| BAN20110176 | OneMain Financial, Inc. - To open a consumer finance office at 4500 Plank Road, Suite 1010, Spotsylvania County, VA |
| BAN20110177 | OneMain Financial, Inc. - To open a consumer finance office at 967 Providence Square, Suite 16, Providence Square Shopping Center, Virginia Beach, VA |
| BAN20110178 | OneMain Financial, Inc. - To open a consumer finance office at 1200 North Battlefield Boulevard, Suite 122, Chesapeake, VA |
| BAN20110179 | OneMain Financial, Inc. - To open a consumer finance office at 381 Gateway Drive, Suite 2, Frederick County, VA |
| BAN20110180 | OneMain Financial, Inc. - To open a consumer finance office at 1580 N. Franklin Street, Suite 2, Foothills Plaza, Christiansburg, VA |
| BAN20110181 | OneMain Financial, Inc. - To open a consumer finance office at 969 East Stuart Drive, Galax, VA |
| BAN20110182 | OneMain Financial, Inc. - To open a consumer finance office at 1060 Memorial Drive, Memorial Square, Unit 16, Pulaski, VA |
| BAN20110183 | OneMain Financial, Inc. - To open a consumer finance office at 3352 Princess Anne Road, Suite 909, Landstown Commons, Virginia Beach, VA |
| BAN20110184 | OneMain Financial, Inc. - To open a consumer finance office at 7219 Commerce Street, Springfield Plaza Shopping Center, Springfield, VA |
| BAN20110185 | OneMain Financial, Inc. - To open a consumer finance office at 6701 Peters Creek Road, Suite 107, Northpark, Roanoke, VA |
| BAN20110186 | OneMain Financial, Inc. - To open a consumer finance office at 2600 Dearing Ford Road, Suite B, Turn One Center, Altavista, VA |
| BAN20110187 | OneMain Financial, Inc. - To open a consumer finance office at 531-C East Market Street, Bellewood Commons Shopping Center, Leesburg, VA |
| BAN20110188 | OneMain Financial, Inc. - To open a consumer finance office at 1820 Rio Hill Center, Suite B3-4, Rio Hill Center, Charlottesville, VA |
| BAN20110189 | Ibrahim Amayra d/b/a Sunrise Mart #3 - To open a check casher at 2305 N. Main Street, Danville, VA |
| BAN20110191 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 604 Newton Road, Virginia Beach, VA |
| BAN20110192 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 2716 South Crater Road, Petersburg, VA |
| BAN20110194 | Golden Express Inc. d/b/a Golden Express - To open a check casher at 100 S. 15th Avenue, Hopewell, VA |
| BAN20110195 | Consumer Credit Counseling Service of San Francisco - To open an additional credit counseling office at 70 Stony Point Road, Suite C, Santa Rosa, CA |
| BAN20110197 | Latino Market International Food, Inc. - To open a check casher at 2026 Plank Road, Fredericksburg, VA |
| BAN20110198 | Lexicon Lending Corporation d/b/a Lexicon Military Loans - To relocate consumer finance office from 4445 Corporation Lane, Virginia Beach, VA to 1206 Laskin Road, Suite 201, Virginia Beach, VA |
| BAN20110200 | Community Credit Counseling Corp. - To relocate a credit counseling office from 5 Professional Circle, Route 34, Colts Neck, NJ to 3301 C Route 66, Neptune, NJ |
| BAN20110203 | National Budget Planners of South Florida, Inc. - To open a credit counseling office |
| BAN20110204 | El Toro Mexican Store, Inc. - To open a check casher at 21120 Timberlake Road, Lynchburg, VA |
| BAN20110206 | Branch Banking and Trust Company - To open a branch at 135 Crooked Run Plaza, Front Royal, VA |
| BAN20110208 | R S Brothers, LLC d/b/a West Point One Stop - To open a check casher at 1503 Main Street, West Point, VA |

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| BAN20110211 | OneMain Financial, Inc. - To conduct consumer finance business where mortgage lending will also be conducted |
| BAN20110212 | OneMain Financial, Inc. - To conduct consumer finance business where auto club memberships will also be sold |
| BAN20110213 | OneMain Financial, Inc. - To conduct consumer finance business where home security plans will also be sold |
| BAN20110214 | Jessica M. Cabrera d/b/a Oficina Multi Servicios de Taxes - To open a check casher at 5700 Jefferson Davis Highway, Suite A29, Richmond, VA |
| BAN20110217 | Virginia Company Bank - To relocate office from 601 Thimble Shoals Boulevard, Newport News, VA to 11801 Merchants Walk, Newport News, VA |
| BAN20110218 | Anderson Financial Services, LLC LoanMax (Used in VA by: Anderson Financial Services, LLC) d/b/a LoanMax - To open a motor vehicle title lender office at 4004 Walney Road, Chantilly, VA |
| BAN20110219 | University of Virginia Community Credit Union, Inc. - To open a credit union service office at 409 East Main Street, Louisa, VA |
| BAN20110220 | Pop & Pap, Inc. d/b/a Glenside Mobil - To open a check casher at 5401 Glenside Drive, Henrico, VA |
| BAN20110223 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 712 Alameda Street, Altadena, CA |
| BAN20110224 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 6801 Corybus Street, Chino, CA |
| BAN20110225 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1354 Reed Avenue, Suite 1, San Diego, CA |
| BAN20110227 | Friendly Trading Services, Inc. d/b/a El Latino-African Market - To open a check casher at 4611 Columbia Pike, Arlington, VA |
| BAN20110228 | Beaver Dam Market, Incorporated - To open a check casher at 1505 Richmond Road, Troy, VA |
| BAN20110229 | CareOne Services, Inc. d/b/a CareOne - To relocate a credit counseling office from 8808 Hunting Lane, Apt. T2, Laurel, MD to 4501 Hedley Way, Suite 201, Charlotte, NC |
| BAN20110232 | CashEdge, Inc. - For a money order license |
| BAN20110233 | VCC Credit Services, Inc. d/b/a Check City Title Loans - For authority for other business operator to conduct tax preparation and electronic filing services from the licensee's motor vehicle title lending offices |
| BAN20110234 | VCC Credit Services, Inc. d/b/a Check City Title Loans - For authority for other business operator to facilitate or arrange tax refund anticipation loans or tax refund payments from the licensee's motor vehicle title lending offices |
| BAN20110235 | VCC Credit Services, Inc. d/b/a Check City Title Loans - For authority for other business operator to conduct money transmission business from the licensee's motor vehicle title lending offices |
| BAN20110236 | Middleburg Bank - To relocate office from 8383 West Main Street, Marshall, VA to 8331 West Main Street, Marshall, VA |
| BAN20110237 | Small World Financial Services Group, Ltd. - To acquire 25 percent or more of Giro Express, Inc. |
| BAN20110238 | Cheque Cashing, Inc. - To open a payday lender's office at 10440 Colonel Court, Manassas, VA |
| BAN20110241 | NoteWorld LLC - For a money order license |
| BAN20110242 | Congressional Bank - To open a branch at 150 Elden Street, Herndon, VA |
| BAN20110245 | MJ's Check Cashing LLC - To open a check casher at 13734 Jefferson Davis Highway, Woodbridge, VA |
| BAN20110246 | First Community Bank d/b/a People's Community Bank (In Certain Offices) - To convert to a state bank |
| BAN20110248 | First Community Bancshares, Inc. - To acquire First Community Bank Bluefield, VA |
| BAN20110252 | E & R Solutions, LLC - To open a check casher at 5129 Lee Highway, Arlington, VA |
| BAN20110253 | M & R Gift Shop Inc. d/b/a/ Arlington Cell Phone & Gift Store - To open a check casher at 2724 Washington Boulevard, Arlington, VA |
| BAN20110255 | F & L Marketing Enterprises LLC d/b/a Cash-2-U Payday Loans - To relocate payday lender's office from 3600 South Crater Road, Unit D, Petersburg, VA to 3323-C South Crater Road, Petersburg, VA |
| BAN20110256 | Dhruhi Inc. d/b/a Shell Food Mart - To open a check casher at 3328 W. Mercury Boulevard, Hampton, VA |
| BAN20110259 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 6325 Richmond Highway, Alexandria, VA |
| BAN20110260 | Eric T. Reeps - To acquire 25 percent or more of Continental Home Loans Inc. |
| BAN20110261 | Sara Warner - To acquire 25 percent or more of Continental Home Loans Inc. |
| BAN20110262 | Monarch Bank - To relocate office from 150 Boush Street, Suite 100, Norfolk, VA to 101 West Main Street, Suite 1000, Norfolk, VA |
| BAN20110265 | Valley Industrial Credit Union - To merge into it Klann Employees Credit Union, Incorporated Waynesboro, VA |
| BAN20110268 | Peter Parker - To acquire 25 percent or more of Monroe Mortgage Company, A Virginia Corporation |
| BAN20110269 | Cash-2-U Financial Services of Virginia, LLC d/b/a Cash-2-U Title Loans - To relocate motor vehicle title lender office from 3600 S. Crater Road, Unit D, Petersburg, VA to 3323-C S. Crater Road, Petersburg, VA |
| BAN20110270 | Covenant Trust, LLC - To open a new independent trust company branch at 11626 Coeburn-Norton Road, Coeburn, VA |
| BAN20110271 | Park N Shop 8 LLC - To open a check casher at 301 E. 2nd Avenue, Franklin, VA |
| BAN20110275 | Car Title Loans, Inc. - To relocate motor vehicle title lender office from 10323 7th Regiment Drive, Suite 102, Manassas, VA to 18059 Triangle Shopping Plaza, Dumfries, VA |
| BAN20110276 | Mariner Finance of Virginia, LLC - To open a consumer finance office at 2217 Plank Road, Fredericksburg, VA |
| BAN20110277 | Mariner Finance of Virginia, LLC - To conduct consumer finance business where auto club memberships will also be sold |
| BAN20110278 | Mariner Finance of Virginia, LLC - To conduct consumer finance business where accidental death and dismemberment insurance will also be sold |
| BAN20110279 | Mariner Finance of Virginia, LLC - To conduct consumer finance business where sales finance business will also be conducted |
| BAN20110281 | Carter Bank & Trust - To relocate office from 118 North Main Street, Galax, VA to 543 East Stuart Drive, Galax, VA |
| BAN20110286 | Heritage Bank - To open a branch at 1403 Greenbrier Parkway, Suite 110, Chesapeake, VA |
| BAN20110292 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 2 Computer Drive West, Albany, NY |
| BAN20110293 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 5794 Widewaters Parkway, Syracuse, NY |
| BAN20110294 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 289 Genesee Street, Utica, NY |
| BAN20110295 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 215 Washington Street, Watertown, NY |
| BAN20110296 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 49 Court Street, Binghamton, NY |
| BAN20110297 | Walter Investment Holding Company - To acquire 25 percent or more of Green Tree Servicing LLC |
| BAN20110299 | Xenith Bank - To open a branch at 6806 Paragon Place, Henrico County, VA |

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| BAN20110300 | Richard C. Phillippi d/b/a In & Out Check Cashing - To open a check casher at 5B Fort Evans Road, Leesburg, VA |
| BAN20110301 | Middleburg Bank - To open a branch at 821 East Main Street, Richmond, VA |
| BAN20110302 | Yamunaji, LLC d/b/a Belt Boulevard Express - To open a check casher at 237 East Belt Boulevard, Richmond, VA |
| BAN20110303 | El Rey International Supermarket, Inc. - To open a check casher at 6006 W. Broad Street, Henrico, VA |
| BAN20110304 | Main St. Personal Finance, Inc. - To acquire 25 percent or more of Express Check Advance of Virginia, LLC |
| BAN20110305 | Main St. Personal Finance, Inc. - To acquire 25 percent or more of Express Check Advance of Virginia, LLC |
| BAN20110306 | Creditcorp of Virginia, LLC d/b/a Check into Cash - For authority for other business operator to conduct an open-end credit business from the licensee's motor vehicle title lending offices |
| BAN20110307 | Entrust Financial Credit Union - To open a credit union office |
| BAN20110308 | Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 14496 Jefferson Davis Highway, Woodbridge, VA |
| BAN20110309 | Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 1599 Briarfield Road, Hampton, VA |
| BAN20110310 | Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 10051 Midlothian Turnpike, Richmond, VA |
| BAN20110311 | Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 9911 Three Chopt Road, Henrico, VA |
| BAN20110312 | Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 3617 Jefferson Davis Highway, Richmond, VA |
| BAN20110315 | The Business Bank - To open a branch at 697 North Washington Street, Alexandria, VA |
| BAN20110316 | A & C Market, Inc. d/b/a Tios Market - To open a check casher at 14215Q Centreville Square, Centreville, VA |
| BAN20110317 | Jefferson Davis Market Place, Inc. - To open a check casher at 7933 Jefferson Davis Highway, Richmond, VA |
| BAN20110319 | EagleBank, Inc. (Used in VA by: EagleBank) - To open a branch at 12011 Sunset Hills Road, Suite 100, Reston, VA |
| BAN20110321 | ACE Virginia Title Loans LLC - To open a motor vehicle title lender office at 3819 Kecoughtan Road, Hampton, VA |
| BAN20110327 | Community Choice Financial, Inc. - To acquire 25 percent or more of Buckeye Check Cashing of Virginia, Inc. |
| BAN20110328 | Community Choice Financial, Inc. - To acquire 25 percent or more of Buckeye Title Loans of Virginia, Inc. |
| BAN20110329 | Community Choice Financial, Inc. - To acquire 25 percent or more of Insight Capital, LLC |
| BAN20110330 | C & R Grocery Latino Inc. - To open a check casher at 1812 Patterson Avenue, S.W., Roanoke, VA |
| BAN20110331 | Warren Lending Group, LLC - To acquire 25 percent or more of Mortgage Harmony Lending, LLC |
| BAN20110334 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 975 South Durkin Drive, Springfield, IL to 1999 Wabash Avenue, Suite 202, Springfield, IL |
| BAN20110335 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 2291 W. March Lane, Suite A110, Stockton, CA to 1024 West Robinhood Drive, Suite 2, Stockton, CA |
| BAN20110336 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 6047 Tyvola Glen Circle, Suite 243, Charlotte, NC to 4421 Stuart Andrew Boulevard, Suite 303, Charlotte, NC |
| BAN20110337 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 9344 Lanham Severn Road, Suite 205, Lanham, MD to 10104 Senate Drive, Suite 236, Lanham, MD |
| BAN20110338 | The Page Valley Bank - To open a branch at 204 Albemarle Square, Albemarle County, VA |
| BAN20110339 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 1092 Lynnhaven Parkway, Virginia Beach, VA |
| BAN20110340 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 3645 Virginia Beach Boulevard, Virginia Beach, VA |
| BAN20110341 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 202 South Battlefield Boulevard, Chesapeake, VA |
| BAN20110342 | High- Up Food Mart - To open a check casher at 428 Sterling Park Shop Mall, Sterling, VA |
| BAN20110343 | Patrick Thomas Magee - To acquire 25 percent or more of Bridgewater Capital, Inc. |
| BAN20110344 | Springleaf Financial Services of America, Inc. - To relocate consumer finance office from 518 North Main Street, Chase City, VA to 851 E 2nd Street, Chase City, VA |
| BAN20110345 | Sonabank - To open a branch at 13804 Hull Street Road, Midlothian, VA |
| BAN20110350 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 26741 Portola Parkway, 1E 683, Foothill Ranch, CA |
| BAN20110351 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 5150 Balboa Arms Drive, Apt. F1, San Diego, CA |
| BAN20110352 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 120 West Slifer Street, Suite 11, Portage, WI |
| BAN20110353 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 107 Stirrup Road, Clayton, DE |
| BAN20110354 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 15245 Olive Lane, Syhmar, CA to 5925 Canterbury Drive, Suite 304, Culver City, CA |
| BAN20110355 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 14217 E. Constitution Way, Fontana, CA to 10221 King Henry, Unit 204, Las Vegas, NV |
| BAN20110356 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 7801 Calibre Crossing Drive, Charlotte, NC to 12324 Danby Road, Pineville, NC |
| BAN20110357 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 2732 Millers Way Drive, Ellicott City, MD to 10450 Faulkner Ridge Circle, Columbia, MD |
| BAN20110358 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 980 Oleander Drive, SE, Winter Haven, FL to 1014 Inman Terrace, Winter Haven, FL |
| BAN20110359 | Miguel Rodriguez d/b/a Taqueria Las Delicias - To open a check casher at 21152 Cardinal Acres Drive, Parksley, VA |
| BAN20110360 | Xenith Bank - To open a branch at 9020 Stony Point Parkway, Suite 225, Richmond, VA |
| BAN20110361 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 1330 Old Bridge Road, Woodbridge, VA |
| BAN20110362 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 21430 Cedar Drive, Suite 110, Sterling, VA |
| BAN20110363 | University of Virginia Community Credit Union, Inc. - To relocate credit union office from 1932 Arlington Boulevard, Charlottesville, VA to 1936 Arlington Boulevard, Charlottesville, VA |
| BAN20110364 | Ricardo A. Ortiz d/b/a El Crucero Tienda Hispana - To open a check casher at 12164 Lankford Highway, Hallwood, VA |
| BAN20110365 | ACAC, Inc. - For authority for other business operator to conduct a tax preparation and electronic filing services business from the licensee's motor vehicle title lending offices |
| BAN20110366 | ACAC, Inc. - For authority for other business operator to conduct a payday lending business from the licensee's motor vehicle title lending offices |
| BAN20110367 | ACAC, Inc. - For a motor vehicle title lender license |

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BAN20110368 Anderson Financial Services, LLC LoanMax (Used in VA by: Anderson Financial Services, LLC) d/b/a LoanMax - To relocate motor vehicle title lender office from 1710 Seminole Trail, Suite 4, Charlottesville, VA to 1640 Seminole Trail, Charlottesville, VA

BAN20110369 Anderson Financial Services, LLC LoanMax (Used in VA by: Anderson Financial Services, LLC) d/b/a LoanMax - To open a motor vehicle title lender office at 1361 S. Military Highway, Chesapeake, VA

BAN20110370 TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 6221 Hull Street Road, Richmond, VA

BAN20110371 TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 5870 Leesburg Pike, Falls Church, VA

BAN20110372 First Community Bank d/b/a People's Community Bank (in certain offices) - To open a branch at 9020 Stony Point Parkway, Richmond, VA

BAN20110373 Ruth Y. Lopez - To open a check casher at 6230-A North Kings Highway, Alexandria, VA

BAN20110374 TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 8016 Centreville Road, Manassas, VA

BAN20110375 Federal Financial Services, Inc. - To open a consumer finance office

BAN20110377 Branch Banking and Trust Company - To relocate office from 120 North Maple Avenue, Purcellville, VA to 126 North Maple Avenue, Purcellville, VA

BAN20110378 Branch Banking and Trust Company - To open a branch at 608 Potomac Station Drive, N.E., Leesburg, VA

BAN20110379 Union First Market Bank - To open a branch at Three James Center, 1051 East Cary Street, Suite 103, Richmond, VA

BAN20110380 QuickClick Loans of Virginia, LLC - To conduct consumer finance business where a third party will conduct motor vehicle title lending business

BAN20110381 QuickClick Loans of Virginia, LLC - To open a consumer finance office at 1112 South Lynnhaven Parkway, Virginia Beach, VA

BAN20110382 PNC Bank, National Association - To merge into it RBC Bank (USA)

BAN20110383 Bentley Financial Services Inc. - To open a check casher at 508 E. Market Street, Leesburg, VA

BAN20110384 Mauricio A. Romero d/b/a La Tiendona - To open a check casher at 3819 Jefferson Davis Highway, Richmond, VA

BAN20110385 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 10825 E. Keswick Road, Suite 275, Philadelphia, PA

BAN20110386 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 6229 Highland Gardens, North Las Vegas, NV

BAN20110387 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 8005 Indian Palms Trail, McKinney, TX

BAN20110388 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1002 W. Isleta Avenue, Mesa, AZ

BAN20110389 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1637 Franklin Park South, Columbus, OH

BAN20110390 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4759 Grenoble Circle, Mesa, AZ

BAN20110391 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 12154 Kennedale Drive, Frisco, TX

BAN20110392 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 10603 Ned Court, Apt. 19, Charlotte, NC to 1118 Gretna Green Lane, Charlotte, NC

BAN20110393 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 11980 T Little Patuxent Parkway, Columbia, MD to 960 Stebbing Way, Apt. I, Laurel, MD

BAN20110394 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 1141 E. Bennett Avenue, Glendora, CA to 676 5th Street, Apt. D, Hermosa Beach, CA

BAN20110395 Creditcorp of Virginia, LLC d/b/a Check into Cash - To relocate motor vehicle title lender office from 1437 Sam's Club Drive, Suite 109, Chesapeake, VA to 1200 North Battlefield Boulevard, Suite 103-104, Chesapeake, VA

BAN20110396 Eastman Credit Union - To open a credit union service office at the corner of Lee Highway and Highlands Court Boulevard, Bristol, VA

BAN20110397 Quik Lend, Inc. - To open a check casher at 7637 Granby Street, Norfolk, VA

BAN20110398 Capital Bank, N.A. - To merge into it GreenBank

BAN20110400 Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 1803 W. Main Street, Salem, VA

BAN20110401 Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 8368 Richmond Highway, Alexandria, VA

BAN20110402 Cash-2-U Financial Services of Virginia, LLC d/b/a Cash-2-U Title Loans - To relocate motor vehicle title lender office from 4920 B West Broad Street, Richmond, VA to 4118 West Broad Street, Richmond, VA

BAN20110403 F & L Marketing Enterprises LLC d/b/a Cash-2-U Payday Loans - To relocate payday lender's office from 3600 South Crater Road, Unit D, Petersburg, VA to 3323-C South Crater Road, Petersburg, VA

BAN20110404 F & L Marketing Enterprises LLC d/b/a Cash-2-U Payday Loans - To relocate payday lender's office from 4920 B West Broad Street, Richmond, VA to 4118 West Broad Street, Richmond, VA

BAN20110405 GreenPath, Inc. d/b/a GreenPath Debt Solutions - To relocate credit counseling office from 1227-9 NW 16th Avenue, Gainesville, FL to 2622 NW 43rd Street, Suite C-4, Gainesville, FL

BAN20110406 MEHTASB, LLC - To acquire 25 percent or more of LenderLive Network, Inc.

BAN20110408 R & J Petro, Inc. - To open a check casher at 717 South Military Highway, Virginia Beach, VA

BAN20110409 Variedades Dolores Inc. - To open a check casher at 3805 Mount Vernon Avenue, Suite G, Alexandria, VA

BAN20110410 Accenture Credit Services, LLC - To acquire 25 percent or more of Zenta Mortgage Services, LLC

BAN20110411 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 10489 Tenth Alabama Way, Bristow, VA to 9713 Native Rocks, Bristow, VA

BAN20110412 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 8975 West Warm Springs Road, Apt. 2036, Las Vegas, NV

BAN20110413 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 535 Monica Rose Drive, Suite 732, Apopka, FL

BAN20110414 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1229 Settlers Way, Lewisville, TX

BAN20110415 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4911 Charleston Drive, Charlotte, NC

BAN20110416 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3555 Grove Street, Unit 132, Lemon Grove, CA

BAN20110417 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 2627 Valley View Avenue, Norco, CA

BAN20110418 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 6715 Dana Avenue, Mira Loma, CA

BAN20110419 High-Up Food Mart Corp. - To open a check casher at 93 Sugarland Run Drive, Sterling, VA

BAN20110420 High Up Food Market - To open a check casher at 46970 Community Plaza, Suite 104, Sterling, VA

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| BAN20110421 | Discount Mart - To open a check casher at 224 S. King Street, Leesburg, VA |
| BAN20110422 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 242 E. Airport Drive, Suite 107, San Bernardino, CA to 242 E. Airport Drive, Suite 210, San Bernardino, CA |
| BAN20110423 | Michael C. Ronca - To acquire 25 percent or more of Old Virginia Mortgage, Inc. |
| BAN20110424 | Xenith Bank - To open a branch at 1011 Boulder Springs Drive, Suite 410, Chesterfield County, VA |
| BAN20110426 | GreenPath, Inc. d/b/a GreenPath Debt Solutions - To relocate credit counseling office from 27555 Farmington Road, Suite 200, Farmington Hills, MI to 36500 Corporate Drive, Farmington Hills, MI |
| BAN20110427 | Fast Auto Loans, Inc. - To open a motor vehicle title lender office at 722 Merrimac Trail, Williamsburg, VA |
| BAN20110428 | Fulton Bank, National Association - To relocate office from 735 Thimble Shoals Boulevard, Newport News, VA to 601 Thimble Shoals Boulevard, Newport News, VA |
| BAN20110429 | First Bank of Virginia (Used in VA by: First Bank) - To open a branch at 1406 S. Colorado Street, Salem, VA |
| BAN20110430 | InteliSpend Prepaid Solutions, LLC - For a money order license |
| BAN20110431 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 841 North Central, Suite C-213, Kent, WA to 10116 36th Avenue Ct. SW, Suite 106, Lakewood, WA |
| BAN20110432 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 1101 Standiford Avenue, Suite D4, Modesto, CA to 1101 Sylvan Avenue, Suite C101, Modesto, CA |
| BAN20110434 | First Bank of Virginia (Used in VA by: First Bank) - To relocate office from 131 Ivanhoe Road, Unit 131D, Max Meadows, VA to 145 Ivanhoe Road, Max Meadows, VA |
| BAN20110435 | TMX Finance of Virginia, Inc. - To conduct consumer finance business where a third party will conduct motor vehicle title lending business |
| BAN20110436 | TitleMax of Virginia, Inc. - For authority for other business operator to conduct consumer finance business from the licensee's motor vehicle title lending offices |
| BAN20110437 | TMX Finance of Virginia, Inc. - To open a consumer finance office |
| BAN20110438 | Scott E. Jones - To acquire 25 percent or more of Foundation Mortgage Funding Corp. |
| BAN20110439 | La Tapatia, Inc. - To open a check casher at 17210 Jefferson Davis Highway, Colonial Heights, VA |
| BAN20110440 | TEMPUS CONSULTING, Inc. - For a money order license |
| BAN20110441 | WashingtonFirst Bank - To relocate office from 11636 Plaza America Drive, Reston, VA to 11921 Freedom Drive, Suite 250, Reston, VA |
| BAN20110442 | Tripura LLC d/b/a Dinwiddie BP - To open a check casher at 4928 Boydtown Plank Road, Petersburg, VA |
| BAN20110443 | JPay Inc. - For a money order license |
| BAN20110444 | Eagle Bancorp, Inc. - To acquire Alliance Bankshares Corporation |
| BAN20110445 | Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance - For authority for other business operator to conduct a motor vehicle title lending business in its payday lending offices |
| BAN20110446 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 3930 Prince William Parkway, Woodbridge, VA |
| BAN20110448 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 2605 Moses Grandy Trail, Suite 101-D, Chesapeake, VA |
| BAN20110449 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 4416 Portsmouth Boulevard, Suite A, Chesapeake, VA |
| BAN20110450 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 1421 Kempsville Road, Suites D and E, Chesapeake, VA |
| BAN20110451 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 2981 South Military Highway, Suite 6, Chesapeake, VA |
| BAN20110452 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 3133 Western Branch Boulevard, Chesapeake, VA |
| BAN20110453 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 1508 Sam's Circle, Chesapeake, VA |
| BAN20110454 | Towne Bank - To relocate office from 5531 N. Croatan Highway, Southern Shores, NC to 2 Juniper Trail, Southern Shores, NC |
| BAN20110455 | Financial Exchange Company of Virginia, Inc. d/b/a MoneyMart - For authority for other business operator to conduct a precious metals business in its payday lending offices |
| BAN20110456 | Anderson Financial Services, LLC LoanMax (Used in VA by: Anderson Financial Services, LLC) d/b/a LoanMax - To open a motor vehicle title lender office at 3102 Columbia Pike, Arlington, VA |
| BAN20110457 | Virginia Credit Union, Inc. - To merge into it Fifth Street Baptist Church Federal Credit Union |
| BAN20110458 | Advance America, Cash Advance Centers of Virginia, Inc. - For authority for other business operator to conduct a tax preparation business in its payday lending offices |
| BAN20110461 | Beacon Credit Union, Incorporated - To open a credit union service office at Amelon Shopping Square, Madison Heights, VA |
| BAN20110462 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1307 Liriope Court, Apt. 202, Belcamp, MD |
| BAN20110463 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1523 Rivercrest Boulevard, Allen, TX |
| BAN20110464 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 1531 W. Lemon Street, Tampa, FL |
| BAN20110465 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3943 East Cat Balue Drive, Phoenix, AZ |
| BAN20110466 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 7534 S. Cregnier, Chicago, IL |
| BAN20110467 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4608 Dillon Street, Baltimore, MD |
| BAN20110468 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 37090 Club House Road, Ocean View, DE |
| BAN20110469 | CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 14 Hamiltons Bay Court, Apt. 516, Clover, SC |
| BAN20110470 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 3631A Kutztown Road, Reading, PA to 4216 12th Avenue, Temple, PA |
| BAN20110471 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 826 Medinah Circle, Westminster, MD to 4724 Trail Court, Westminster, MD |
| BAN20110472 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 212 Midpines Court, Apartment 1C, Owings Mills, MD to 5854 Tybalt Lane, Indianapolis, IN |
| BAN20110473 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 211 Preston Court, Catonsville, MD to 1208 South Clinton Street, Baltimore, MD |
| BAN20110474 | CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 7936 Belridge Road, Apt. J, Nottingham, MD to 1212 B Old Mountain Road, North, Joppa, MD |
| BAN20110475 | Washington Insurance Agency Inc. - To open a check casher at 5881 Leesburg Pike, Suite B1-B, Falls Church, VA |

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BAN20110476 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 314 E. Highland Mall Boulevard, Suite 306, Austin, TX

BAN20110477 TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 2947 S. Military Highway, Suites 105-106, Chesapeake, VA

BAN20110478 TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 1903 S. Military Highway, Suites 105 and 110, Chesapeake, VA

BAN20110479 TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 1128 N. Battlefield Boulevard, Suites 101-102, Chesapeake, VA

BAN20110480 Basma LLC d/b/a River Street Mart - To open a check casher at 180 River Street, Danville, VA

BAN20110481 Jay Shree Krishna, LLC - To open a check casher at 16025 Harrowgate Road, Chester, VA

BAN20110482 Kaival Krupa, Inc. d/b/a Exmore Tru Blu - To open a check casher at 4015 Main Street, Exmore, VA

BAN20110483 Anderson Financial Services, LLC LoanMax (Used in VA by: Anderson Financial Services, LLC) d/b/a LoanMax - To open a motor vehicle title lender office at 1051 N. Main Street, Marion, VA

BAN20110484 Federal Financial Services, Inc. - To conduct consumer finance business where closed end installment loans by sellers of goods and services will also be made

BAN20110485 Cashwell Express LLC. - To acquire 25 percent or more of MEMO Money Order Company, Inc.

BAN20110486 Cashwell Financial of VA LLC - To open a consumer finance office

BAN20110487 Cashwell Financial of VA LLC - To open a consumer finance office at 8535 Centreville Road, Prince William, Manassas, VA

BAN20110488 Cashwell Financial of VA LLC - To open a consumer finance office at 156 Carlton Road, Suite 102, Charlottesville, VA

BAN20110489 Cashwell Financial of VA LLC - To open a consumer finance office at 36 Weems Lane, Frederick County, Winchester, VA

BAN20110490 Cashwell Financial of VA LLC - To open a consumer finance office at 1082 Elden Street, Herndon, VA

BAN20110491 Cashwell Financial of VA LLC - To open a consumer finance office at 1790-104 East Market, Harrisonburg, VA

BAN20110492 Cashwell Financial of VA LLC - To open a consumer finance office at 1423-A S. Main Street, Prince Edward County, Farmville, VA

BAN20110493 Cashwell Financial of VA LLC - To open a consumer finance office at 6529 Auburn Drive, College Park II, Virginia Beach, VA

BAN20110494 Cashwell Financial of VA LLC - To open a consumer finance office at 3330-12 South Crater Road, South Crater Square, Petersburg, VA

BAN20110495 Cashwell Financial of VA LLC - To open a consumer finance office at #7 Pittman Plaza, 2332 Memorial Avenue, Lynchburg, VA

BAN20110496 Cashwell Financial of VA LLC - To open a consumer finance office at 123 Mall Road, Alleghany County, Covington, VA

BAN20110497 USForex Inc. - For a money order license

BAN20110498 Guaranteed Payday Loans L.L.C. - For a payday lender license

BAN20110499 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 1417 N. Battlefield Blvd., Suite 295, Chesapeake, VA to 860 Greenbrier Circle, Suite 303, Chesapeake, VA

BAN20110500 Thomas E. Pyne - To acquire 25 percent or more of Intercoastal Mortgage Company

BAN20110501 Virginia Finance, LLC - To conduct consumer finance business where car club memberships will also be sold

BAN20110502 EagleBank, Inc. (Used in VA by: EagleBank) - To open a branch at 2905 District Avenue, Suite 190, Fairfax County, VA

BAN20110503 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 300 E. Round Grove Road, Suite 2021, Lewisville, TX

BAN20110504 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 4640 Ringgold Lane, Plano, TX

BAN20110505 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 9316 Crescent Loop Circle, Suite 208, Tampa, FL

BAN20110506 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 3445 Johnson Ferry Road, Roswell, GA

BAN20110507 CareOne Services, Inc. d/b/a CareOne - To open an additional credit counseling office at 16 North Star Court, Pikesville, MD

BAN20110508 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 1170 Courtney Trace Drive, Apt. 304, Brandon, FL to 1115 Lumsden Point Boulevard, Valrico, FL

BAN20110509 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 548 Retreat Court, Apt. F, Odenton, MD to 2741 Cecil Drive, Chester, MD

BAN20110510 Tienda El Sol Latino Inc. - To open a check casher at 4102 Plantation Road, Roanoke, VA

BAN20110511 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 9709 3rd Avenue, Northeast, Suite 210, Seattle, WA to 9725 3rd Avenue, Northeast, Suite 400, Seattle, WA

BAN20110512 ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To relocate credit counseling office from 4636 Watt Avenue, 2nd Floor, North Highlands, CA to 1750 Howe Street, Suite 125, Sacramento, CA

BAN20110513 Capital Markets Cooperative, LLC - To acquire 25 percent or more of Cunningham & Company

BAN20110514 Jose F. Nina - To open a check casher at 5739 Hull Street Road, Suite 13, Richmond, VA

BAN20110515 Union First Market Bank - To relocate office from 111 Virginia Street, Suite 200, Richmond, VA to 1051 East Cary Street, Suite 1200, Richmond, VA

BAN20110516 The Pay Store, Inc. - For a money order license

BAN20110517 Yong & Kyung, Inc. d/b/a MAIL PLUS - To open a check casher at 850 N. Randolph Street, Arlington, VA

BAN20110518 Mariner Finance of Virginia, LLC - To open a consumer finance office at 5802 E. Virginia Beach Boulevard, Suite 121, Norfolk, VA

BAN20110519 Mariner Finance of Virginia, LLC - To conduct consumer finance business where accidental death and dismemberment insurance will also be sold

BAN20110520 Mariner Finance of Virginia, LLC - To conduct consumer finance business where auto club memberships will also be sold

BAN20110521 Mariner Finance of Virginia, LLC - To conduct consumer finance business where sales finance business will also be conducted

BAN20110522 Tienda Joana, Inc. - To open a check casher at 5746 Hopkins Road, Richmond, VA

BAN20110523 DPE, INC. d/b/a Tu Tienda and Gifts - To open a check casher at 1221 Waller Mill Road, Williamsburg, VA

BAN20110524 Vision 2036, Inc. d/b/a Miller's Market - To open a check casher at 628 Mineral Avenue, Mineral, VA

BAN20110525 CareOne Services, Inc. d/b/a CareOne - To relocate credit counseling office from 120 West Slifer Street, Suite 11, Portage, WI to N8597 Harry Road, Wisconsin Dells, WI

BAN20110526 Arco Iris Latino Market III, Inc. - To open a check casher at 6517 Ironbridge Place, Richmond, VA

BAN20110527 P. R. A. G. Enterprises Inc. - To open a check casher at 1913 Anderson Highway, Cumberland, VA

BAN20110528 Garden State Consumer Credit Counseling, Inc. d/b/a NovaDebt - To open an additional credit counseling office at Commerce Bank Building, 416 Main Street, Suite 800, Peoria, IL

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| BAN20110529 | CarFinance Capital LLC - To open a consumer finance office |
| BAN20110530 | Productos Latinos La Victoria Inc. - To open a check casher at 4309 Nine Mile Road, Richmond, VA |
| BAN20110531 | Pioneer Bank - To open a branch at 1710 Seminole Trail, Suite 4, Albemarle County, VA |
| BAN20110532 | S.R. Express Incorporated - To open a check casher at 2724 Washington Boulevard, Arlington, VA |
| BAN20110533 | Financial Exchange Company of Virginia, Inc. d/b/a Money Mart - For authority for other business operator to conduct a cash for debit business in its payday lending offices |
| BAN20110534 | Azzaam, Inc. d/b/a Al's Marketplace - To open a check casher at 3440 Anderson Highway, Powhatan, VA |
| BAN20110535 | Joban Dhillon Inc. d/b/a Joban Dhillon Inc. - To open a check casher at 1518 Martinsburg Pike, Winchester, VA |
| BAN20110536 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 2635 Camino Del Rio, South, Suite 101, San Diego, CA |
| BAN20110537 | ClearPoint Financial Solutions, Inc. d/b/a ClearPoint Credit Counseling Solutions - To open an additional credit counseling office at 4800 Griffith Drive, Suite 102, Beaverton, OR |
| BAN20110538 | Consumer Credit and Budget Counseling, Inc. - To open an additional credit counseling office at 14104 58th Street, North, Clearwater, FL |
| BAN20110539 | Consumer Credit and Budget Counseling, Inc. - To open an additional credit counseling office at 2000 NE 44th Street, Suite 103, Lighthouse Point, FL |
| BAN20110540 | Sandy Spring Bank - To open a branch at 5250 Port Royal Road, Springfield, VA |
| BAN20110541 | Tiger Enterprise Inc. d/b/a Raceway Express - To open a check casher at 898 Azalea Avenue, Richmond, VA |
| BAN20110542 | StellarOne Bank - To open a branch at 300 Preston Avenue, Charlottesville, VA |
| BAN20110543 | Pronto Money Transfer Inc. - For a money order license |
| BAN20110544 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 7807 W. Broad Street, Richmond, VA |
| BAN20110545 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 8723A Cooper Road, Alexandria, VA |
| BAN20110546 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 660 J. Clyde Morris Boulevard, Newport News, VA |
| BAN20110547 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 1943 Victory Boulevard, Portsmouth, VA |
| BAN20110548 | TitleMax of Virginia, Inc. - To open a motor vehicle title lender office at 2554 Airline Boulevard, Portsmouth, VA |
| BAN20110549 | Patty Chin - To acquire 25 percent or more of Aspen Home Mortgage Group, Inc. |
| BAN20110550 | ACAC, Inc. - For authority for other business operator to conduct a tax preparation business in its proposed payday lending offices |
| BAN20110551 | ACAC, Inc. - For authority for other business operator to conduct a motor vehicle title lending business in its proposed payday lending offices |
| BAN20110552 | ACAC, Inc. - For a payday lender license |
| BAN20110553 | Anum LLC d/b/a All In One Convenience Store - To open a check casher at 101 Craig Street, Craigsville, VA |
| BAN20110554 | Balli Jeeti Inc. - To open a check casher at 608 N. Delphine Avenue, Waynesboro, VA |
| BAN20110555 | Virginia Credit Union, Inc. - To open a credit union service office at 9498 West Broad Street, Richmond, VA |
| BAN20110556 | Virginia Heritage Bank - To relocate office from 11166 Fairfax Boulevard, Suite 100, Fairfax, VA to 8245 Boone Boulevard, Suite 820, Vienna, VA |
| BAN20110557 | Nina A. Friedman - To acquire 25 percent or more of Mortgage.Shop LLC |
| BAN20110558 | MainStreet Bank - To open a branch at 10089 Fairfax Boulevard, Fairfax, VA |
| BAN20110559 | Debtwave Credit Counseling, Inc. - To open a credit counseling office |
| BFI-2009-00137 | City Wide Mortgage Limited Liability Company - Alleged violation of VA Code § 6.1-418 |
| BFI-2009-00142 | Crystal Funding, LLC - Alleged violation of VA Code § 6.1-418 |
| BFI-2009-00166 | Five Star American Mortgage, Inc. - Alleged violation of VA Code § 6.1-418 |
| BFI-2009-00215 | Mortgage America Bankers, LLC - Alleged violation of VA Code § 6.1-418 |
| BFI-2009-00243 | Residential Mortgage Center, Inc. - Alleged violation of VA Code § 6.1-418 |
| BFI-2009-00274 | Washington Home Mortgage, LLC - Alleged violation of VA Code § 6.1-418 |
| BFI-2010-00022 | Credit Card Management Services, Inc. d/b/a Debthelper.com - Alleged violation of VA Code § 6.1-363.3 A |
| BFI-2010-00028 | Custom House (USA) Ltd. d/b/a Custom House - Alleged violation of VA Code § 6.1-371 |
| BFI-2010-00074 | Circle Square Group, Inc. d/b/a Circle Square Mortgage - Alleged violation of VA Code § 6.1-418 |
| BFI-2010-00084 | Euclid Mortgage Services, LLC - Alleged violation of VA Code § 6.1-418 |
| BFI-2010-00087 | Executive Mortgage Services, Inc. - Alleged violation of VA Code § 6.1-418 |
| BFI-2010-00103 | Innovative Lending Solutions, LLC - Alleged violation of VA Code § 6.1-418 |
| BFI-2010-00113 | Mortgage America Bankers, L.L.C. - Alleged violation of VA Code § 6.1-418 |
| BFI-2010-00131 | United Capital Lenders, LLC - Alleged violation of VA Code § 6.1-418 |
| BFI-2010-00139 | Washington Home Mortgage, LLC - Alleged violation of VA Code § 6.1-418 |
| BFI-2010-00159 | <i>In re:</i> Annual Assessment of industrial loan associations under Chapter 5 of Title 6.1 of the Code of Virginia |
| BFI-2010-00170 | National Foundation for Debt Management, Inc. d/b/a Alternative Credit Solutions - Alleged violations of VA Code §§ 6.1-363.8 C, 6.1-363.10 A, 6.1-363.16, 6.1-363.17 and 6.1-363.18 |
| BFI-2010-00239 | Annual Assessment of licensees under Chapter 18 of Title 6.1 of the Code of Virginia |
| BFI-2010-00246 | Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance - Alleged violation of VA Code §§ 6.1-451 A, 6.1-459 (1), <i>et al.</i> |
| BFI-2010-00248 | John Shunnarah - Alleged violation of VA Code § 6.1-416.1 |
| BFI-2010-00250 | Stuart Wolpoff - Alleged violation of VA Code § 6.1-416.1 |
| BFI-2010-00256 | First Commonwealth Mortgage Corp. - Alleged violation of VA Code §§ 6.1-422 B 4, 6.1-2.9:5 2 and 10 VAC 5-160-20 5 |
| BFI-2010-00258 | Executive Mortgage Services, Inc. - Alleged violation of VA Code § 6.2-1604 |
| BFI-2010-00259 | Metstar Mortgage Corp. - Alleged violation of VA Code § 6.2-1604 |
| BFI-2010-00260 | Independence Mortgage Corporation - Alleged violation of VA Code § 6.2-1604 |
| BFI-2010-00262 | GPal, Inc. - Alleged violation of VA Code § 6.2-1901 |
| BFI-2011-00002 | All Financial Services, Inc. - Alleged violation of VA Code § 6.2-1604 |
| BFI-2011-00004 | Augusto Villa - For approval of mortgage loan originator license |
| BFI-2011-00005 | Metavante Holdings, LLC - Alleged violation of VA Code § 6.2-1914 |
| BFI-2011-00006 | EOS Lending Services, LLC - Alleged violation of 10 VAC 5-160-50 |

BFI-2011-00007 Deri Financial, LLC - Alleged violation of VA Code § 6.2-1604
 BFI-2011-00008 United Financial Management Group, Inc. - Alleged violation of VA Code § 6.2-1604
 BFI-2011-00013 *In re: annual assessment of credit unions under Chapter 13 of Title 6.2 of the Code of Virginia*
 BFI-2011-00017 Brar, Inc. - Alleged violation of VA Code § 6.2-2201
 BFI-2010-00059 American Mortgage Finance, Inc - Alleged violation of VA Code § 6.1-418
 BFI-2011-00019 Mortgage Access Group d/b/a Weichert Financial - Alleged violation of VA Code §§ 6.1-409 *et seq.*
 BFI-2011-00023 Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart - Alleged violations of VA Code §§ 6.1-459 (1), 6.1-459 (6), *et al.*
 BFI-2011-00025 *Ex Parte: In re: amendments to motor vehicle title lending regulations*
 BFI-2011-00030 Appomattox Mortgage, LLC - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00033 Briner, Incorporated - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00035 Capital Financial Mortgage Corp. - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00036 Capitol Financing LLC (used in VA by: Capitol Funding, LLC - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00038 Consumer Funding, Inc. - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00041 Flagship Financial Group, LLC - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00042 FutureSafe Financial Corporation - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00044 Ikon Mortgage, Inc. - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00046 Irige Inc. - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00053 The Mortgage Corporation - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00054 MortgageClose.com, Inc. - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00056 National Future Mortgage, Inc. - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00061 Omar Mortgage Inc. - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00064 Saver's Choice Mortgage and Funding of Ohio Inc. - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00067 Smith-Myers Corporation d/b/a Smith-Myers Mortgage Group - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00069 U.S. Mortgage Finance Corp. - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00077 Logical Mortgage Solutions, LLC - Alleged violation of VA Code § 6.2-1604
 BFI-2011-00081 American Home Loans I LLC - Alleged violation of VA Code § 6.2-1604
 BFI-2011-00082 EZ Loan Look Up, Inc. - Alleged violation of VA Code § 6.2-2201 (2)
 BFI-2011-00085 *Ex Parte: In re: annual fees paid by licensed payday lenders*
 BFI-2011-00086 1st Class Mortgage, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00096 American Mortgage & Loan, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00097 American Mortgage and Investment Services, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00098 American Mortgage Brokers, LLC - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00105 Blue Ridge Finance Corporation - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00109 Brunswick Mortgage Company, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00111 Capital Mortgage Corp. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00122 DAVLAW Enterprises, Inc. d/b/a Union First Mortgage - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00123 Dominion First, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00125 Dream America, LLC d/b/a Dream Mortgage - Alleged violation of VA Code §§ 6.2-1604, 6.2-1703,10, VAC 5-160-90 and 10 VAC 5-161-50
 BFI-2011-00126 Edith A. Inzaina t/a Advantage Mortgage Group - Alleged violation of 5 VAC 10-160-90
 BFI-2011-00130 eWiz Mortgage Corporation - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00132 Fairfax Trust Mortgage LLC - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00139 Greater Washington Mortgage, LLC - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00145 Integrity Mortgage Funding, L.L.C. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00152 LoanPoint Mortgage Group, Inc.- Alleged violation of 10 VAC 5-160-90
 BFI-2011-00155 Main Line-Tavistock Mortgage, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00157 Marine 1 Mortgage Lenders, LLC d/b/a Marine 1 Mortgage - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00159 Mortgage America Companies, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00160 Mortgage Choice, LLC - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00161 Mortgage Concepts, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00163 Mortgage Enterprises, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00165 NationsFirst Mortgage of Virginia, LLC - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00190 The Perpetual Financial Group, Inc. - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00193 University Mortgage LLC - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00194 US Mortgage Network L.P. (Used in VA by: US Mortgage Network) - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00196 Zeshan Financial Services, LLC - Alleged violation of 10 VAC 5-160-90
 BFI-2011-00197 *In re: annual assessment of licensees under Chapter 19 of Title 6.2 of the Code of Virginia*
 BFI-2011-00198 United Mutual Funding Corp.- Alleged violation of VA Code § 6.2-1601
 BFI-2011-00199 Keeffe Commissary Network, L.L.C. d/b/a Access Corrections - Alleged violation of VA Code § 6.2-1901
 BFI-2011-00208 Virginia Business Bank - Order closing bank
 BFI-2011-00209 Commonwealth Mortgage Corporation - Alleged violation of 10 VAC 5-160-50
 BFI-2011-00210 Michael Miller - For approval of mortgage loan originator license
 BFI-2011-00211 F & L Marketing Enterprises, LLC d/b/a Cash-2-U Payday Loans - Alleged violation of VA Code §§ 6.2-1816 (6), 6.2-1816 (7), *et al.*
 BFI-2011-00212 GMS Funding LLC - Alleged violation of VA Code § 6.2-1610
 BFI-2011-00221 Javier Siveroni - Alleged violation of VA Code §§ 6.2-1716, *et al.*
 BFI-2011-00222 Gateway Funding Diversified Mortgage Services, L.P. - Alleged violation of VA Code §§ 6.2-406, *et al.*
 BFI-2011-00223 Bank of the Commonwealth - Order closing Bank
 BFI-2011-00225 Bankers Financial Group, Inc. - Alleged violation of VA Code § 6.2-1604
 BFI-2011-00235 *In re: low-income designated credit unions*

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CLK: CLERK'S OFFICE

CLK-2010-00009 *In re:* annual registration fees for limited liability companies
 CLK-2011-00001 In the matter concerning revised State Corporation Commission Rules of Practice and Procedure
 CLK-2011-00002 Election of Commission Chairman pursuant to VA Code § 12.1-7
 CLK-2011-00003 *In re:* Uniform Commercial Code Filing Rules
 CLK-2011-00004 Women in Need, Inc. - To vacate Certificate of Merger pursuant to VA Code § 13.1-813
 CLK-2011-00005 Khris, Inc., *et al.* - For order of corporate dissolution pursuant to VA Code § 13.1-749 A
 CLK-2011-00006 Trustees of St. John Baptist Church, Petitioner v. The St. John Baptist Church, Respondent - For Orders Revoking Reinstatement and Certificate of Good Standing, and for removal from the rolls of the Commission Pertaining to The Saint John Baptist Church
 CLK-2011-00007 Jones & Jones, Inc. of Virginia - For involuntary dissolution pursuant to VA Code § 13.1-749 A
 CLK-2011-00008 *In re:* Nickerson Landscapes, Inc. - For termination of corporate existence
 CLK-2011-00009 Industrial Steam Cleaning of Virginia, Inc. - To vacate Certificate of Dissolution pursuant to VA Code § 13.1-1004 E
 CLK-2011-00010 The Sierras Life, L.L.C. - For cancellation of corporate existence pursuant to VA Code § 13.1-1047
 CLK-2011-00011 *Ex Parte:* In the matter concerning temporary loss of e-filing capability
 CLK-2011-00012 Terrain, Inc. - For order of involuntary dissolution

INS: BUREAU OF INSURANCE

INS-2010-00064 Ace Insurance & Financial Group, Inc., Unyong Kathy Kim and Charlie Joseph Shin - Alleged violation of VA Code §§ 38.2-310, 38.2-503, 38.2-504, *et al.*
 NS-2010-00070 Vespers Financial, LLC - Alleged violation of VA Code § 38.2-6004 A and 14 VAC 5-71-70 A
 INS-2010-00179 Farrukh Siddiqui - Alleged violation of VA Code § 38.2-4809 A
 INS-2010-00203 Conseco Senior Health Insurance Company and Conseco Life Insurance Company - Alleged violation of VA Code §§ 38.2-316 A, 38.2-316 B, *et al.*
 INS-2010-00229 Michael P. Schellbach - Alleged violation of VA Code § 38.2-1826 C
 INS-2010-00232 American Alternative Insurance Corporation - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00233 American Interstate Insurance Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00234 Amerisure Insurance Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00235 Amerisure Mutual Insurance Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00236 Capital City Insurance Company Inc. - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00237 Clarendon National Insurance Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00238 Fairmont Premier Insurance Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00239 Fairmont Specialty Insurance Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00240 Homesite Insurance Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00241 Riverport Insurance Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00242 Starr Indemnity & Liability Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00243 TIG Indemnity Company - For alleged violation of VA Code §§ 38.2-1611.1 and 38.2-1024
 INS-2010-00247 William Leslie Young and The Young Insurance Agency Group, Inc. - Alleged violation of VA Code § 38.2-1813 and Final Order entered in Case No. INS-2005-00282
 INS-2010-00254 Choice Home Warranty - Alleged violation of VA Code § 38.2-2619
 INS-2010-00257 Herman Glover III and Insurance Security Associates, LLC - Alleged violation of VA Code § 38.2-1813
 INS-2010-00258 Loretta L. Wade - Alleged violation of VA Code §§ 38.2-1812 and 38.2-1822
 INS-2010-00259 Jeffrey Tyndall - Alleged violation of VA Code § 38.2-1826 C
 INS-2010-00260 Robert Goff - Alleged violation of VA Code § 38.2-1826 C
 INS-2010-00261 Paul R. Cooper, Jr. - Alleged violation of VA Code § 38.2-1826 C
 INS-2011-00001 Joseph Benedetto - Alleged violation of VA Code § 38.2-1826 C
 INS-2011-00003 Salmons Specialized Hauling, Inc., Petitioner v. National Council on Compensation Insurance, Respondent - For review of a decision by the National Council on Compensation Insurance pursuant to VA Code §§ 38.2-1923 and 38.2-2018
 INS-2011-00004 Allison K. Battino - Alleged violation of VA Code § 38.2-512
 INS-2011-00005 Arthur Gattsek - Alleged violation of VA Code §§ 55-525.27 (formerly 6.1-2.24), 38.2-1809 and 14 VAC 5-395-70
 INS-2011-00006 Della Underwood Ramey, Petitioner v. Virginia Property Insurance Association, Respondent - For review of a decision by the Virginia Property Insurance Association pursuant to VA Code § 38.2-2712
 INS-2011-00007 REO America Abstract, Inc. - Alleged violation of VA Code § 55-525.30
 INS-2011-00008 Harold B. Reniere - Alleged violation of VA Code § 38.2-1809
 INS-2011-00009 Lucius Wayne Hensley - Alleged violation of VA Code § 38.2-1822
 INS-2011-00010 Cross Country Settlements, LLC - Alleged violation of VA Code § 55-525.30
 INS-2011-00011 Michael Wayne Baumstark - Alleged violation of VA Code §§ 38.2-1812.2 and 38.2-1838
 INS-2011-00012 In the matter of refunding overpayments of the premium license tax on direct gross premium income of insurance companies for the taxable year 2009
 INS-2011-00013 In the matter of refunding overpayments of the retaliatory tax of insurance companies for the taxable year 2009
 INS-2011-00014 In the matter of refunding overpayments of the retaliatory tax of insurance companies for the taxable year 2008
 INS-2011-00015 In the matter of refunding overpayments of the assessment for the maintenance of the Bureau of Insurance on direct gross premium income of insurance companies for the assessable year 2009
 INS-2011-00016 Annette Toms Dickenson - Alleged violation of VA Code § 38.2-1826 C
 INS-2011-00017 Justin A. Lemal - Alleged violation of VA Code § 38.2-1826 C
 INS-2011-00018 Michael Nava - Alleged violation of VA Code § 38.2-1826 C
 INS-2011-00020 Johna Kay Thornley - Alleged violation of VA Code § 38.2-1826 C
 INS-2011-00021 Real Estate Titles, Inc. and W. Dunlop White Jr. - Alleged violation of VA Code § 38.2-1822
 INS-2011-00022 Bobby J. Collins - Alleged violation of VA Code §§ 38.2-613.2 and 38.2-1809

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| INS-2011-00023 | American International Group, Inc., AIU Insurance Company, American Home Assurance Company, Chartis Casualty Company, Chartis Property Casualty Company, Commerce and Industry Insurance Company, Granite State Insurance Company, Illinois National Insurance Company, Landmark Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, New Hampshire Insurance Company, The Insurance Company of the State of Pennsylvania - For approval and acceptance of a multi-state Regulatory Settlement Agreement |
| INS-2011-00024 | George Levon Gunter - Alleged violation of subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00025 | TAFCO, Inc. - Alleged violation of VA Code § 38.2-4705, 14 VAC 5-390-20 F and 14 VAC 5-390-70 C |
| INS-2011-00026 | Worldwide Settlements, Inc. - Alleged violation of VA Code §§ 55-525.24 and 55-525.30 |
| INS-2011-00027 | Lawyers Advantage Title Group, Inc. - Alleged violation of VA Code §§ 55-525.1 and 55-525.24 |
| INS-2011-00028 | Frank Richard Minkewicz Jr. - Alleged violation of VA Code § 38.2-512 |
| INS-2011-00029 | David Jason Landers - Alleged violation of VA Code §§ 38.2-1826 C and subsection 1 of 38.2-1831 |
| INS-2011-00030 | Financial West Investment Group, Inc. - Alleged violation of VA Code §§ 38.2-1826 C and 38.2-1831.1 |
| INS-2011-00031 | Governor Hendley - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831 |
| INS-2011-00032 | Unified Life Insurance Company - For approval of an assumption reinsurance agreement pursuant to VA Code § 38.2-136 C |
| INS-2011-00033 | Edith L. Mechling - Alleged violation of VA Code § 38.2-512 |
| INS-2011-00035 | Selective Insurance Company of America, Selective Insurance Company of South Carolina, Selective Insurance Company of the Southeast and Selective Way Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00036 | State Farm Mutual Automobile Insurance Company and State Farm Fire and Casualty Insurance Company - Alleged violation of VA Code §§ 38.2-1904 D, 38.2-1905 A and 38.2-2234 B |
| INS-2011-00037 | Anthem Health Plans of Virginia Inc. and HealthKeepers, Inc. - For approval to provide claims processing, customer service and provider services for high deductible products from a location outside of Virginia |
| INS-2011-00038 | Michael W. Hanna - Alleged violation of VA Code § 38.2-502 |
| INS-2011-00039 | Rajistree Ramsammy - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00040 | Christopher G. Ritchie - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00041 | Alliance Settlement Services Company - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00043 | Nicky Joe Root - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00044 | Justin Boruff - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00045 | CapitalCare, Inc. - Alleged violation of VA Code §§ 38.2-510 A 2, 38.2-510 A 3, 38.2-510 A 5, <i>et al.</i> |
| INS-2011-00046 | CareFirst BlueChoice, Inc. - Alleged violation of VA Code §§ 38.2-4306.1 B, 38.2-510 A 15, 38.2-316 B, <i>et al.</i> |
| INS-2011-00048 | Reciprocal of America and The Reciprocal Group - For Approval to Increase Payment Percentage from 25% to 95% |
| INS-2011-00049 | In the matter of Repealing the Rules Governing Surplus Lines Insurance |
| INS-2011-00050 | Horace Mann Insurance Company, Horace Mann Property & Casualty Insurance Company and Teachers Insurance Company - Alleged violation of VA Code §§ 38.2-304, 38.2-2112 A, 38.2-305 A, <i>et al.</i> |
| INS-2011-00052 | Sharon Ann Cobb - Alleged violation of subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00054 | Hugh Wood, Inc. - Alleged violation of subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00055 | Marc Grossman - Alleged violation of subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00056 | Universal Casualty Company - To eliminate impairment and restore surplus to the minimum amount required by law |
| INS-2011-00057 | <i>Ex Parte:</i> In the matter of examining the National Council on Compensation Insurance, Inc.'s allocation of the Administrative and General ("A&G") expenses to the Virginia residual market |
| INS-2011-00059 | Ryan Nicholas Shubin - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00060 | James W. Patterson - Alleged violation of VA Code §§ 38.2-1826 C and subsection 1 of 38.2-1831 |
| INS-2011-00061 | Derrick D. Porter - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00062 | Satya Brata Shaw - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00063 | Matthew C. Njoku - Alleged violation of subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00064 | David Dieudonne Stanton - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831 |
| INS-2011-00065 | Victoria Fire & Casualty Insurance Company and Victoria Select Insurance Company - Alleged violation of VA Code § 38.2-2220 |
| INS-2011-00066 | Hiscox Insurance Company, Inc. - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00067 | Twin City Fire Insurance Company - Alleged violation of VA Code § 38.2-317 |
| INS-2011-00068 | Southern Insurance Company - Alleged violation of VA Code § 38.2-317 |
| INS-2011-00069 | Marla J. Messenger and M & R Title, Inc. - Alleged violation of Va. Code §§ 55-525.24, 55-525.11, <i>et al.</i> |
| INS-2011-00071 | Sparta Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00072 | American Modern Home Insurance Company - Alleged violation of VA Code § 38.2-317 |
| INS-2011-00073 | Capitol Indemnity Corporation - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00074 | Bernerd Franklin Kurit - Alleged violation subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00075 | Philip Graham Stebbins - Alleged violation of VA Code § 38.2-512 |
| INS-2011-00076 | Progressive Northern Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00077 | Gregory Lewis Wade - Alleged violation of subsections 1, 3 and 10 of VA Code § 38.2-1831 |
| INS-2011-00078 | Anita W. Campbell - Alleged violation of VA Code §§ 38.2-1809 and subsection 1 of 38.2-1831 |
| INS-2011-00079 | Grain Dealers Mutual Insurance Company - Alleged violation of VA Code §§ 38.2-1906 D and 38.2-1927 |
| INS-2011-00080 | Empire Fire and Marine Insurance Company - Alleged violation of VA Code §§ 38.2-305 B, 38.2-604 B, 38.2-610 A, <i>et al.</i> |
| INS-2011-00081 | Michael Barry Young - Alleged violation of VA Code §§ 38.2-1809, 38.2-1813 and 38.2-1826 C |
| INS-2011-00082 | Kenneth Eric Phillips - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00083 | Auto-Owners Insurance Company and Owners Insurance Company - Alleged violation of VA Code § 38.2-2220 |
| INS-2011-00084 | Sentinel Insurance Company Limited - Alleged violation of VA Code § 38.2-317 |
| INS-2011-00085 | American Reliable Insurance Company - Alleged violation of VA Code § 38.2-2220 |
| INS-2011-00086 | National Union Fire Insurance Company of Pittsburgh, PA - Alleged violation of 14 VAC 5-335-10 <i>et seq.</i> |
| INS-2011-00087 | Southcoast Title & Escrow, Inc. - Alleged violation of VA Code § 55-525.20 |
| INS-2011-00088 | Anthem Health Plans of Virginia, Inc. and HealthKeepers, Inc. - For approval to provide quality management services for HealthKeepers Medicaid products from a location outside of Virginia |
| INS-2011-00089 | Carol Ann Smith - Alleged violation of VA Code § 38.2-512 |

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| INS-2011-00090 | Florist's Mutual Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00091 | Kimberly Ann Smallwood - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00092 | Chris J. Delgado - Alleged violation of VA Code §§ 38.2-1826 C and subsection 1 of 38.2-1831 |
| INS-2011-00093 | Amber D. Helmuth - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00094 | Carl L. Rykard, Jr. - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00095 | Automotive Risk Management & Insurance Services, Inc. - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00097 | Arthur John Prieston - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00098 | Rodney Neil Taylor - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00099 | Savich Insurance Services, Inc. - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00100 | George Brown & Sons, Inc. - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00101 | Courtney W. Wade - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00102 | Stephen James Black - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00103 | Citon Agency of Indiana, LLC - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00104 | Genatt Associates, Inc. - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00106 | Electric Insurance Company - Alleged violation of VA Code §§ 38.2-305 A, 38.2-610 A, <i>et al.</i> |
| INS-2011-00107 | Property & Casualty Insurance Company of Hartford and Trumbull Insurance Company - Alleged violation of VA Code §§ 38.2-305, 38.2-610 A, 38.2-2118, <i>et al.</i> |
| INS-2011-00108 | Walter Scott McCabe and Mid Atlantic Consulting Group, PLLC - Alleged violation of VA Code §§ 38.2-310, <i>et al.</i> |
| INS-2011-00109 | Leonardo Garcia - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00110 | Daniel Edward Jewusiak - Alleged violation of VA Code §§ 38.2-512, 38.2-1812.2, 38.2-1813 and subsection 10 of 38.2-1831 |
| INS-2011-00111 | Heritage Title, LTD - Alleged violation of VA Code §§ 38.2-1812 and 55-525.24 |
| INS-2011-00112 | ACE American Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00113 | Laurel R. Rogers - Alleged violation of VA Code § 38.2-1812 |
| INS-2011-00114 | Carolina Casualty Insurance Company - Alleged violation 14 VAC 5-335-10 <i>et seq.</i> |
| INS-2011-00115 | National Union Fire Insurance Company of Pittsburgh, PA and The Insurance Company of the State of Pennsylvania - Alleged violation of VA Code § 38.2-317 |
| INS-2011-00116 | American Guarantee and Liability Insurance Company - Alleged violation of VA Code § 38.2-317 |
| INS-2011-00118 | Angela Denise Harris and Cole Insurance Agency of Richlands, Inc. - Alleged violation of VA Code §§ 38.2-1809 and 38.2-1813 |
| INS-2011-00119 | <i>Ex Parte:</i> In the matter of Amending Rules Governing Health Maintenance Organizations |
| INS-2011-00123 | <i>Ex Parte:</i> In the matter of refunding overpayments of the assessment for the maintenance of the Bureau of Insurance on direct gross premium income of surplus lines brokers for the assessable year 2010 |
| INS-2011-00120 | Michael W. Hanna - Alleged violation of VA Code §§ 38.2-502 and 38.2-1826 A |
| INS-2011-00121 | National Indemnity Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00122 | <i>Ex Parte:</i> In the matter of refunding overpayments of the premium license tax on direct gross premium income of surplus lines brokers for the taxable year 2010 |
| INS-2011-00124 | United Prosperity Life Insurance Company - For approval of acquisition of control of a domestic insurer pursuant to VA Code § 38.2-1323 |
| INS-2011-00125 | John Mario Golliozo - Alleged violation of subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00126 | Richard Lee Robinson - Alleged violation of subsection 10 of VA Code § 38.2-1831 |
| INS-2011-00127 | Michael E. Muterspaugh and Muterspaugh Insurance Agency, Inc. - Alleged violation of VA Code §§ 38.2-512 and 38.2-1813 |
| INS-2011-00128 | Allied Property & Casualty Insurance Company, AMCO Insurance Company and Depositors Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00129 | Nationwide Mutual Fire Insurance Company, Nationwide Mutual Insurance Company and Nationwide Property & Casualty Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00130 | Victoria Automobile Insurance Company and Victoria Select Insurance Company - Alleged violation of VA Code § 38.2-2220 |
| INS-2011-00131 | Thomas Jack Sain II - Alleged violation of VA Code §§ 38.2-502, 38.2-503 and 38.2-512 |
| INS-2011-00132 | Shironda ReKay Habib - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00133 | Daniel Robert Robinson - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831 |
| INS-2011-00134 | Guggenheim Life and Annuity Company - For approval of an assumption reinsurance agreement pursuant to VA Code § 38.2-136 C |
| INS-2011-00135 | <i>Ex Parte:</i> In the matter of refunding overpayments of the Fire Programs Fund assessment based on direct gross premium income of insurance companies for the assessable year 2009 |
| INS-2011-00136 | <i>Ex Parte:</i> In the matter of refunding overpayments of the Virginia State Police, Insurance Fraud Fund assessment based on direct gross premium income of insurance companies for the assessable year 2010 |
| INS-2011-00137 | <i>Ex Parte:</i> In the matter of refunding overpayments of the Help Eliminate Automobile Theft (HEAT) Fund assessment based on direct gross premium income of insurance companies for the assessable year 2010 |
| INS-2011-00138 | <i>Ex Parte:</i> In the matter of refunding overpayments of the Virginia State Police, Insurance Fraud Fund assessment based on direct gross premium income of insurance companies for the assessable year 2009 |
| INS-2011-00139 | <i>Ex Parte:</i> In the matter of refunding overpayments of the Fire Programs Fund assessment based on direct gross premium income of insurance companies for the assessable year 2010 |
| INS-2011-00140 | Anchor Bay Insurance Managers, Inc. - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00141 | Patricia Ann Harrell - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00142 | SHG Insurance Services, LLC - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00144 | F. Darrell Lindsey - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00146 | Joseph John George - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00147 | JL Von Arx & Associates - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00148 | Brad T. Hogan - Alleged violation of VA Code § 38.2-4807 A |
| INS-2011-00151 | Janetta Gail Cunningham - Alleged violation of subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00152 | Majestic Insurance Company - For suspension of license pursuant to VA Code §§ 38.2-1040 and 38.2-1041 |
| INS-2011-00155 | Shenandoah Life Insurance Company - For final order approving rehabilitation plan including plan of conversion and acquisition of control and granting related relief and a final order terminating rehabilitation proceeding |

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| INS-2011-00156 | Premier Brokers, Inc. - Alleged violation of VA Code §§ 38.2-503, 38.2-1809 and 38.2-1813 |
| INS-2011-00157 | American Automobile Insurance Company, Associated Indemnity Corporation, Fireman's Fund Insurance Company, National Surety Corporation and The American Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00158 | Delta Dental Plan of Virginia - Alleged violation of subsection 1 of VA Code § 38.2-502 and 38.2-503, as well as 14 VAC 5-90-50 B 14, <i>et al.</i> |
| INS-2011-00159 | Sheehan Insurance Group, Inc. and William P. Sheehan - Alleged violation of VA Code §§ 38.2-512, 38.2-1809 and 38.2-1813 |
| INS-2011-00160 | Daniel Fogle - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00161 | Lisa Giacomino - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831 |
| INS-2011-00162 | Anthony J. Mazzali - Alleged violation of subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00163 | National Council on Compensation Insurance, Inc. - For revisions of advisory loss costs and assigned risk workers' compensation insurance rates |
| INS-2011-00164 | Joann Valadez - Alleged violation of VA Code §§ 38.2-1809, 38.2-1822 and 38.2-1826 |
| INS-2011-00165 | Abonar Title Company, LLC - Alleged violation of VA Code § 55-525.30 |
| INS-2011-00166 | Pinnacle Title Corp - Alleged violation of VA Code § 55-525.20 |
| INS-2011-00167 | Barrington A. Lawrence - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal |
| INS-2011-00169 | National Union Fire Insurance Company of Pittsburgh, PA - Alleged violation of VA Code §§ 38.2-1812 and 38.2-1822 |
| INS-2011-00070 | In the matter of Amending Rules Governing Independent External Review of Final Adverse Utilization Review Decisions and Adopting New Rules Governing Internal Appeal and External Review |
| INS-2011-00170 | All Pro Title & Escrow, LLC - Alleged violation of VA Code §§ 55-525.11, 55-525.24 and 55-525.27 |
| INS-2011-00171 | Titleserv of Virginia, Inc. - Alleged violation of VA Code § 55-525.27 |
| INS-2011-00173 | Dong Sic Lee - Alleged violation of VA Code §§ 38.2-512, 38.2-1812 and 38.2-1822 |
| INS-2011-00175 | Adolphus Nolan - Alleged violation of VA Code § 38.2-1826 A and subsection 1 of 38.2-1831 |
| INS-2011-00176 | Josephine Anne Connolly - Alleged violation of subsection 1 of VA Code § 38.2-1831 |
| INS-2011-00177 | Marshall Scott Heron - Alleged violation of VA Code § 38.2-1826 C and subsection 1 of 38.2-1831 |
| INS-2011-00179 | Federation of American Consumers and Travelers - Alleged violation of 14 VAC 5-410-40 D |
| INS-2011-00180 | National Development Corporation - Alleged violation of 14 VAC 5-410-40 D |
| INS-2011-00181 | Jeffrey Robert O'Brien - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00182 | Grayson-Carroll-Wythe Mutual Insurance Company - Alleged violation of VA Code §§ 38.2-1812 and 38.2-1833 |
| INS-2011-00184 | Atlantic Coast Title, Inc. - Alleged violation of VA Code §§ 55-525.30 and 38.2-1826 |
| INS-2011-00185 | Aetna Health, Inc. - Alleged violation of VA Code § 38.2-510 A 1 |
| INS-2011-00186 | Scott Paul Tenbrook - Alleged violation of VA Code §§ 38.2-1809 and 38.2-1813 |
| INS-2011-00187 | Wilma R. Hills - Alleged violation of VA Code § 38.2-1822 |
| INS-2011-00188 | Jonathan A. Frazer - Alleged violation of VA Code § 38.2-512 |
| INS-2011-00189 | Latoya Leshae Hills - Alleged violation of VA Code § 38.2-1822 |
| INS-2011-00190 | Charles Anthony Eissa - Alleged violation of VA Code § 38.2-512 A |
| INS-2011-00191 | DSD Inc./Hole-In-One Clearing House - Alleged violation of VA Code §§ 38.2-1802 and 38.2-1024 |
| INS-2011-00192 | Tournament Pros, Inc., Robert Rough and Global Sports Marketing, Inc. - Alleged violation of VA Code §§ 38.2-1802 and 38.2-1812 |
| INS-2011-00193 | Hole In One, Inc. - Alleged violation of VA Code §§ 38.2-1802 and 38.2-1812 |
| INS-2011-00194 | Susan B. Tedrow - Alleged violation of VA Code § 38.2-1812 F |
| INS-2011-00195 | Sheila Diane Batemen - Alleged violation of VA Code § 38.2-502 |
| INS-2011-00196 | Western Insurance Company - To eliminate impairment and restore surplus to the minimum amount required by law |
| INS-2011-00197 | Emanuel Francisco Cid - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00198 | Luke T. Williamson - Alleged violation of VA Code § 38.2-1809 |
| INS-2011-00199 | Jason Alan Painter - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00200 | <i>Ex Parte:</i> In the matter of Repealing the Rules Governing Independent External Review of Final Adverse Utilization Review Decisions and Amending the Rules Governing Internal Appeal and External Review |
| INS-2011-00201 | Bristol West Insurance Company and Bristol West Casualty Insurance Company - Alleged violation of VA Code §§ 38.2-305 A, 38.2-502, 38.2-1905 C, <i>et al.</i> |
| INS-2011-00202 | Stephanie Marie Sullivan - Alleged violation of VA Code §§ 38.2-1809 and 38.2-1826 |
| INS-2011-00203 | Unitrin Direct Property & Casualty Insurance Company - Alleged violation of VA Code §§ 38.2-1906 D, 38.2-2212 D, 38.2-2212 E and 38.2-2212 F |
| INS-2011-00204 | Southern Title Insurance Corporation - Alleged violation of VA Code § 38.2-1040 |
| INS-2011-00206 | <i>Ex Parte:</i> In the matter of refunding overpayments of the premium license tax on direct gross premium income of insurance companies for the taxable year 2009 |
| INS-2011-00207 | International Bond & Marine Brokerage, Ltd. - Alleged violation of VA Code §§ 38.2-1812 and 38.2-1822 |
| INS-2011-00208 | Republic Mortgage Insurance Company - Alleged violation of VA Code §§ 38.2-1038, 38.2-1040, 38.2-1041 and 14 VAC 5-290-10, <i>et seq.</i> |
| INS-2011-00209 | Republic Mortgage Insurance Company of North Carolina - Alleged violation of VA Code §§ 38.2-1038, 38.2-1040, 38.2-1041 and 10 VAC 5-290-10, <i>et seq.</i> |
| INS-2011-00210 | PMI Mortgage Insurance Company - Alleged violation of VA Code §§ 38.2-1040 and 38.2-1041 |
| INS-2011-00211 | PMI Insurance Company - Alleged violation of VA Code §§ 38.2-1040 and 38.2-1041 |
| INS-2011-00212 | Peerless Indemnity Insurance Co., Peerless Insurance Co., Excelsior Insurance Co., Montgomery Mutual Insurance Co., The Netherlands Insurance Co., American Economy Insurance Co., American States Insurance Co., First National Insurance Co. of America, American Fire & Casualty Co., Ohio Casualty Insurance Co. and West American Insurance Co. - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00213 | Graphic Arts Mutual Insurance Company, Republic-Franklin Insurance Company and Utica Mutual Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00214 | Montgomery Mutual Insurance Company and Ohio Casualty Insurance Company - Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00215 | Sara E. Zawacki and Engel Agency, Inc. - Alleged violation of VA Code § 38.2-1822 |
| INS-2011-00216 | Chase Title, Inc. and Mitchell Stuart Hyatt - Alleged violation of VA Code § 5-525.25 and 14 VAC 5-395-60 |

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| INS-2011-00217 | Steven Craig Reed - Alleged violation of VA Code § 38.2-1813 |
| INS-2011-00218 | Catherine A Fanning and Fanning & Associates Insurance Services, Inc. - Alleged violation of VA Code §§ 38.2-1809, 38.2-1812, 38.2-1813 and 38.2-1822 |
| INS-2011-00219 | Harry A. Robertson and Affordable Benefits Group, Inc. - Alleged violation of VA Code §§ 38.2-1809, 38.2-1813 and 38.2-1826 A |
| INS-2011-00221 | Alexandria Priftis West - Alleged violation of VA Code § 38.2-1826 C |
| INS-2011-00222 | Optima Health Plan - Alleged violation of VA Code §§ 38.2-510 A 5, <i>et al.</i> |
| INS-2011-00223 | Craig Allen Nash - Alleged violation of VA Code §§ 38.2-512, 38.2-1813 and 38.2-1822 |
| INS-2011-00225 | Drew William Pelton - Alleged violation of VA Code § 38.2-1813 |
| INS-2011-00227 | <i>Ex Parte, In re:</i> Assessment upon certain companies and surplus lines brokers to pay the expense of the Bureau of Insurance for the calendar year 2012 |
| INS-2011-00229 | Esther Lavinia Walker - Alleged violation of VA Code §§ 38.2-512, 38.2-1809 and 38.2-1826 |
| INS-2011-00230 | Adam Brett Green - Alleged violation of VA Code § 38.2-1813 |
| INS-2011-00231 | Health Care Service Corporation, A Mutual Legal Reserve Company - Alleged violation of VA Code §§ 38.2-1040, <i>et al.</i> |
| INS-2011-00236 | American Economy Insurance Company, American States Insurance Company, General Insurance Company of America, First National Insurance Company of America, Safeco Insurance Company of America, Montgomery Mutual Insurance Company, Peerless Insurance Company, Peerless Indemnity Insurance Company, The Netherlands Insurance Company, The Ohio Casualty Insurance Company, West American Insurance Company and American Fire and Casualty Company – Alleged violation of VA Code § 38.2-1906 D |
| INS-2011-00237 | Selective Way Insurance Company - Alleged violation of VA Code § 38.2-317 |
| INS-2011-00238 | John J. Franko - For review of Shenandoah Life Insurance Company Deputy Receiver's Determination of Appeal |
| INS-2011-00239 | Southern Title Insurance Corporation - For appointment of a receiver to conserve assets of the Defendant and to determine whether Defendant should be rehabilitated or liquidated |

PST: DIVISION OF PUBLIC SERVICE TAXATION

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| PST-2010-00041 | Verizon South Inc. - For review and correction of the equalized assessment of value of property subject to local taxation - Tax Year 2010 |
| PST-2010-00042 | Verizon Virginia Inc. - For review and correction of the equalized assessment of value of property subject to local taxation - Tax Year 2010 |
| PST-2010-00043 | Birchwood Power Partners, L.P. - For review and correction of the equalized assessment of value of property subject to local taxation - Tax Year 2010 |

PUC: DIVISION OF COMMUNICATIONS

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| PUC-2010-00069 | In the Matter of Revoking Rules Governing Telecommunications Relay Service, 20 VAC 5-415-10 <i>et seq.</i> |
| PUC-2010-00072 | Conversent Communications Resale L.L.C. - For cancellation of its certificate to provide local exchange telecommunications services |
| PUC-2010-00075 | Allied Telecom Group, LLC - For certificates to provide local exchange and interexchange telecommunications services |
| PUC-2010-00078 | Voxbeam Telecommunications, Inc. - For certificates to provide local exchange and interexchange telecommunications services |
| PUC-2010-00079 | Syniverse Technologies of Virginia, Inc. - For cancellation of its certificate to provide local exchange telecommunications services |
| PUC-2011-00001 | Verizon South Inc. - To Expand the Competitive Determination and Deregulation of Retail Services Throughout its Incumbent Territory |
| PUC-2011-00002 | In the Matter of Implementing VA Code § 56-235.5:1.B 1 (ii), to determine a schedule for the elimination of the carrier common line charge |
| PUC-2011-00003 | CommPartners, LLC - For cancellation of certificates to provide local exchange and interexchange telecommunications services |
| PUC-2011-00004 | CTC Communications of Virginia, Inc., CTC Communications Corp., One Communications Corp. and EarthLink, Inc. - For approval of indirect transfer of control of CTC Communications of Virginia, Inc. to EarthLink, Inc. pursuant to VA Code § 56-88 <i>et seq.</i> |
| PUC-2011-00005 | DukeNet OpCo, LLC - For amended and reissued certificates to reflect new name: DukeNet Communications, LLC |
| PUC-2011-00006 | DukeNet Communications, LLC - For cancellation of certificates to provide local exchange and interexchange telecommunications services |
| PUC-2011-00008 | Pelzer Communications of Virginia, Inc. - For cancellation of certificates to provide local exchange and interexchange telecommunications services |
| PUC-2011-00009 | Verizon South Inc. and Cincinnati Bell Any Distance of Virginia LLC – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996 |
| PUC-2011-00010 | Verizon Virginia Inc. and Cincinnati Bell Any Distance of Virginia LLC – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996 |
| PUC-2011-00011 | Verizon Virginia Inc. and Birch Communications of Virginia Inc. d/b/a Birch Communications - For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996 |
| PUC-2011-00012 | Verizon South Inc. and Birch Communications of Virginia Inc. d/b/a Birch Communications – For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996 |
| PUC-2011-00014 | Zayo Group, LLC - For certificates to provide local exchange and interexchange telecommunications services |
| PUC-2011-00015 | MGW Telephone Company and Verizon Wireless – For approval of a Traffic Exchange Agreement |
| PUC-2011-00016 | MGW Telephone Company and Virginia PCS Alliance, L.C. d/b/a NTELOS – For approval of a Traffic Exchange Agreement |
| PUC-2011-00017 | Network Billing Systems, L.L.C. - For a certificate to provide local exchange telecommunications services |
| PUC-2011-00018 | Zayo Bandwidth, LLC and Zayo Group, LLC - For approval of an intra-corporate transaction, pursuant to VA Code § 56-88 <i>et seq.</i> |
| PUC-2011-00019 | Peoples Mutual Telephone Company - For authority to enter into an intercompany note and intercompany subordinated agreement with an affiliate |
| PUC-2011-00020 | Infotecom, LLC - For certificates to provide local exchange and interexchange telecommunications services |
| PUC-2011-00023 | AT&T Communications of Virginia, LLC - For orders suspending and rejecting proposed revisions to Virginia S.C.C. Tariff No. 2 of Level 3 Communications, LLC |
| PUC-2011-00025 | NTELOS Holdings Corp., NTELOS Inc., Quadrangle Capital Partners LP, Quadrangle NTELOS Holding II LP, NTELOS Wireline One Inc., NTELOS Wireline Two Inc., NTELOS Telephone Inc., Roanoke & Botetourt Telephone Company, NTELOS Network Inc., |

- NA Communications Inc., R&B Network, Inc. and FiberNet of Virginia, Inc. - For an Order Authorizing Transfer of Control pursuant to VA Code § 56-88 *et seq.*
- PUC-2011-00026 Jacqui Electric Co. - Alleged violation of 20 VAC 5-407-40
- PUC-2011-00027 Cavalier Broadband LLC, Robert Hamlin and Helix Computer Systems, Inc. - For approval of the transfer of control of Cavalier Broadband LLC to Helix Computer Systems, Inc. pursuant to VA Code § 56-88 *et seq.*
- PUC-2011-00029 GC Pivotal, LLC - For certificates to provide local exchange and interexchange telecommunications services
- PUC-2011-00030 Shenandoah Telephone Company - For cancellation of certificate for the provision of interexchange telecommunications services and for cancellation of certificate for the provision of local exchange telecommunications services and reissuance in new name
- PUC-2011-00031 Crexendo Business Solutions of Virginia, Inc. - For certificates to provide local exchange and interexchange telecommunications services
- PUC-2011-00032 FairPoint Communications Solutions Corp. - Virginia - For cancellation of certificates for the provision of local exchange and interexchange telecommunications services
- PUC-2011-00033 Global Capacity Direct, LLC, Global Capacity Group, Inc., Global Capacity Holdco, LLC, Capital Growth Systems, Inc., GC Pivotal, LLC and FFN Investments, LLC - For approval of transfer of control of Global Capacity Direct, LLC to GC Pivotal, LLC pursuant to VA Code § 56-88 *et seq.*
- PUC-2011-00034 Mosaic Network LLC - For certificates to provide local exchange and interexchange telecommunications services
- PUC-2011-00035 Peoples Mutual Telephone Company d/b/a FairPoint Communications and ShenTel Communications Company - For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
- PUC-2011-00037 Global Crossing Telemanagement VA, LLC, Global Crossing Limited and Level 3 Communications, Inc. - For approval of the transfer of control of Global Crossing Telemanagement VA, LLC and Related Transactions pursuant to VA Code § 56-88 *et seq.*
- PUC-2011-00039 Roanoke & Botetourt Telephone Company - For approval of an amendment to an Affiliates Agreement pursuant to the Affiliates Act, VA Code § 56-76 *et seq.*
- PUC-2011-00040 NTELOS Telephone Inc. - For approval of an amendment to an Affiliates Agreement pursuant to the Affiliates Act, VA Code § 56-76 *et seq.*
- PUC-2011-00041 Verizon South Inc. and MCC Telephony of the Mid-Atlantic, LLC - For approval of Amendment No. 1 to the interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
- PUC-2011-00042 Shenandoah Telephone Company - To extend the deadline to eliminate its carrier common line charge
- PUC-2011-00043 Verizon South Inc. and Halo Wireless Services, Inc. - For approval of an interconnection agreement and Amendment No. 1 pursuant to § 252(e) of the Telecommunications Act of 1996
- PUC-2011-00044 Verizon Virginia Inc. and Halo Wireless Services, Inc. - For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
- PUC-2011-00045 CloseCall America, Inc. of Virginia - For cancellation of certificates to provide local exchange and interexchange telecommunication services
- PUC-2011-00046 KDL of Virginia Inc. - To amend its certificates to provide local and interexchange telecommunications services to reflect a new corporate name
- PUC-2011-00047 SBC Long Distance LLC d/b/a SBC Long Distance d/b/a AT&T Long Distance - For cancellation of certificate to provide local exchange telecommunications services
- PUC-2011-00048 *Ex Parte: In re:* Amending the rules governing the certification and regulation of competitive local exchange carriers
- PUC-2011-00049 Global Capacity Direct, LLC - For cancellation of a certificate to provide local exchange telecommunications services
- PUC-2011-00050 LTS of Rocky Mount, LLC, Mid-State Ventures, LLC, William Kloss and Thomas Armstrong - For approval of the acquisition of control of LTS of Rocky Mount, LLC by William Kloss and Thomas Armstrong pursuant to VA Code § 56-88 *et seq.*
- PUC-2011-00051 Birch Communications of Virginia, Inc. d/b/a Birch Communications, Birch Communications, Inc., Birch Communications Holdings, Inc., Cordia Communications Corp. of Virginia, Cordia Communications Corp. and Cordia Corporation - For approval of the transfer of customers and assets of Cordia Communications Corp. of Virginia to Birch Communications of Virginia, Inc. d/b/a Birch Communications pursuant to VA Code § 56-88 *et seq.*
- PUC-2011-00053 Zayo Bandwidth, LLC - For cancellation of certificates for the provision of local exchange and interexchange telecommunications services
- PUC-2011-00055 Liberty Bell Telecom, LLC - For a certificate to provide local exchange telecommunications services
- PUC-2011-00057 PAETEC Holding Corp., Paetec Communications of Virginia, Inc., US LEC of Virginia, L.L.C., Talk America of Virginia, Inc., Cavalier Telephone, LLC, Intellifiber Networks, Inc. and Windstream Corporation - For approval of the indirect transfer of control of the PAETEC Regulated Entities to Windstream Corporation pursuant to VA Code § 56-88 *et seq.*
- PUC-2011-00058 Down Under Communications, LLC - For certificates provide local exchange and interexchange telecommunications services
- PUC-2011-00059 Shenandoah Telephone Company, Shenandoah Telecommunications Company, Shenandoah Cable Television Company, Shentel Cable Company, Shentel Service Company, Shenandoah Valley Leasing Company, Shenandoah Mobile Company, Shenandoah Long Distance Company, Shenandoah Network Company, Shentel Foundation, Shenandoah Personal Communications Company, Shentel Communications Company, Shentel Management Company, Shentel Converged Services, Inc. and Shentel Converged Services of West Virginia, Inc. - For approval of an amendment to an Affiliates Agreement pursuant to the Affiliates Act, VA Code § 56-76 *et seq.*
- PUC-2011-00061 Verizon Virginia Inc. and Peerless Network of Virginia, LLC. - For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
- PUC-2011-00062 Verizon South Inc. and Peerless Network of Virginia, LLC. - For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
- PUC-2011-00063 XO Virginia LLC - Informational Filing Regarding the Discontinuance of Postpaid Calling Card Services
- PUC-2011-00064 Cordia Communications Corp. of Virginia - For cancellation of certificates for the provision of local exchange and interexchange telecommunications services and of the associated bond and tariffs
- PUC-2011-00065 Verizon South Inc. and 365 Wireless, LLC - For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
- PUC-2011-00066 Verizon Virginia Inc. and 365 Wireless, LLC - For approval of an interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996
- PUC-2011-00067 Waterford Telephone Company - For a certificate to provide local exchange telecommunications services
- PUC-2011-00069 Unite Private Networks, L.L.C. - For certificates to provide local exchange and interexchange telecommunications services

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| PUC-2011-00070 | DSLnet Communications VA, Inc. and DIECA Communications, Inc. - For authority to complete certain intra-corporate transactions pursuant to VA Code §§ 56-88.1 and 56.90 |
| PUC-2011-00071 | IntelePeer Virginia, Inc. and IntelePeer, Inc. - For authority to complete certain pro forma intra-corporate transactions |
| PUC-2011-00072 | DSLnet Communications VA, Inc. - For cancellation of certificates upon notification of completion of proposed merger |
| PUC-2011-00073 | Verizon South Inc. f/k/a GTE South Incorporated and Qwest Communications Corporation of Virginia - For approval of Amendment No. 1 to the interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996 |
| PUC-2011-00074 | First Communications ,LLC, First Communications, Inc., Gores FC Holdings, LLC, The Gores Group, LLC and Alec E. Gores - For approval of the indirect transfer of control of First Communications, LLC pursuant to VA Code 56-88 <i>et seq.</i> |
| PUC-2011-00075 | Payphone Manager Inc. - Alleged violation of 20 VAC 5-407-50 L, <i>et al.</i> |
| PUC-2011-00076 | Verizon Virginia Inc. and RNK VA, LLC - For approval of Amendment No. to the interconnection agreement pursuant to § 252(e) of the Telecommunications Act of 1996 |
| PUC-2011-00078 | VA-CLEC LLC - For cancellation of certificate to provide local exchange telecommunications services |
| PUC-2011-00080 | Cavalier Telephone, LLC d/b/a PAETEC Business Services - For authority to partially discontinue local exchange services |
| PUC-2011-00081 | Talk America of Virginia, Inc. d/b/a Cavalier Telephone d/b/a PAETEC Business Services - For authority to partially discontinue local exchange services |
| PUC-2011-00086 | MGW Telephone Company and USCOC of Virginia RSA #3, Inc. - For approval of a Traffic Exchange Agreement |

PUE: DIVISION OF ENERGY REGULATION

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| PUE-2010-00137 | Columbia Gas of Virginia - For an order on public utility line crossing a railroad and for certification of public necessity or essential public convenience in the exercise of authority of eminent domain with regard to certain interests in the real property owned by Norfolk Southern Corporation |
| PUE-2010-00139 | Washington Gas Light Company - For a general increase in rates and charges and to revise its terms and conditions for gas service |
| PUE-2010-00142 | Virginia Natural Gas, Inc. - For an increase in base rates and for authority to revise the terms and conditions applicable to natural gas service pursuant to Chapter 10 (§ 56-232 <i>et seq.</i>) of Title 56 of the Code of Virginia |
| PUE-2010-00146 | Mark A. Van Malssen v. Virginia Electric and Power Company d/b/a Dominion Virginia Power - Formal complaint requesting a hearing |
| PUE-2010-00147 | Virginia American Water Company - Annual Informational Filing |
| PUE-2011-00001 | Appalachian Power Company - Pursuant to Chapters 752 and 855 of the 2009 Acts of the Virginia General Assembly, for approval of demand response programs to be offered to its retail customers |
| PUE-2011-00002 | Captain's Cove Utility Company, Inc. and CCUC Note, LLC - For approval of acquisition of a public utility |
| PUE-2011-00003 | Virginia Electric and Power Company d/b/a Dominion Virginia Power - For approval and certification of electric facilities: Mt. Storm - Doubts 500 kV transmission line rebuild |
| PUE-2011-00004 | Southside Electric Cooperative - For approval of revisions to its existing terms and conditions, including a request to be allowed to implement a late fee |
| PUE-2011-00005 | Columbia Gas of Virginia, Inc. - For an Annual Informational Filing |
| PUE-2011-00006 | Southside Electric Cooperative - For authority to issue long-term debt |
| PUE-2011-00007 | Mecklenburg Electric Cooperative - For authority to incur indebtedness |
| PUE-2011-00008 | A&N Electric Cooperative - For authority to issue long-term debt |
| PUE-2011-00010 | Washington Gas Light Company - Annual Informational Filing 2010 |
| PUE-2011-00011 | Virginia Electric and Power Co. d/b/a Dominion Virginia Power - For approval and certification of electric transmission facilities in Prince William county and City of Manassas: Cannon Branch-Cloverhill 230 kV Transmission Line and Cloverhill Substation |
| PUE-2011-00013 | Kentucky Utilities Company d/b/a Old Dominion Power Company - For an adjustment of electric base rates |
| PUE-2011-00014 | Virginia Electric and Power Company - For approval to establish an electric vehicle pilot program pursuant to VA Code § 56-234 |
| PUE-2011-00015 | Virginia Electric and Power Company d/b/a Dominion Virginia Power - For approval and certification of electric facilities: Hollymead 230 kV double circuit transmission line project |
| PUE-2011-00016 | Atmos Energy Corporation - For an Annual Informational Filing |
| PUE-2011-00017 | Washington Gas Light Company - For authority to engage in an affiliate transaction pursuant to § 56-76, <i>et seq.</i> of the Code of Virginia |
| PUE-2011-00018 | Atmos Energy Corporation and Atmos Energy Marketing, LLC - For authority to enter into a Gas Supply and Asset Management Agreement under the Affiliates Act, VA Code § 56-76 <i>et seq.</i> |
| PUE-2011-00019 | Kentucky Utilities Company d/b/a Old Dominion Power Company - To revise its fuel factor pursuant to VA Code § 56-249.6 |
| PUE-2011-00020 | Shenandoah Valley Electric Cooperative - For approval to borrow long-term debt under Chapter 3 of Title 56 of the Code of Virginia |
| PUE-2011-00021 | A&N Electric Cooperative, BARC Electric Cooperative, Community Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative and Southside Electric Cooperative - For approval for customers to participate in demand response programs |
| PUE-2011-00023 | Appalachian Power Company, AEP Generating Company and American Electric Power Company Inc. - For authority to enter into affiliate transactions under Title 56, Chapter 4 of the Code of Virginia |
| PUE-2011-00024 | Roanoke Gas Company - For approval of certain transactions pursuant to the Affiliates Act of Title 56 of the Code of Virginia |
| PUE-2011-00026 | Glacial Energy, Inc. - For a license to conduct business as a competitive service provider for electricity |
| PUE-2011-00028 | Commerce Energy, Inc. - For a license to conduct business as a competitive service provider of natural gas and electric services |
| PUE-2011-00029 | Atmos Energy Corporation - For authority to issue common stock |
| PUE-2011-00031 | Virginia Electric and Power Company d/b/a Dominion Virginia Power and Southside Electric Cooperative - For revision of certificates under the Utility Facilities Act |
| PUE-2011-00032 | Virginia-American Water Company and AAET, L.P. - For authority to enter into a lease agreement pursuant to the Affiliates Act |
| PUE-2011-00033 | In the matter of determining appropriate regulation of pole attachments and cost sharing in Virginia |
| PUE-2011-00034 | Appalachian Power Company - For approval of a rate adjustment clause, RPS-RAC, to recover the incremental costs of participation in the Virginia renewable energy portfolio standard program pursuant to VA Code §§ 56-585.1 A 5 d and 56-585.2 E |
| PUE-2011-00035 | Appalachian Power Company - For approval of a rate adjustment clause, E-RAC, to recover costs incurred in complying with state and federal environmental laws and regulations, pursuant to VA Code § 56-585.1 A 5 e |

- PUE-2011-00036 Appalachian Power Company - For approval of a rate adjustment clause pursuant to § 56-585.1 A 6 of the Code of Virginia to recover the costs of the Dresden Generating Plant
- PUE-2011-00037 Appalachian Power Company - For a 2011 biennial review of the rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to § 56-585.1 A of the Code of Virginia
- PUE-2011-00038 Columbia Gas of Virginia, Inc. - For approval to provide billing and billing related services to NiSource Retail Services, Inc. pursuant to Chapter 4 of Title 56 of the Code of Virginia
- PUE-2011-00039 Virginia Electric and Power Company d/b/a Dominion Virginia Power - For approval and certification of electric facilities: Dooms - Brems 230 kV Transmission Line Rebuild
- PUE-2011-00040 Columbia Gas of Virginia, Inc. - For approval of accounting transactions with NiSource Inc. pursuant to Chapter 4 Title 56 of the Code of Virginia
- PUE-2011-00041 Massanutten Public Service Corporation - Annual Informational Filing for period ended December 31, 2010
- PUE-2011-00042 Virginia Electric and Power Co. - For approval and certification of the proposed Warren County Power Station electric generation and related transmission facilities under §§ 56-580 D, 56-265.2 and 56-46.1 of the Code of Virginia and for approval of a rate adjustment clause, designated as Rider W under § 56-585.1 A 6 of the Code of Virginia
- PUE-2011-00043 Dale Service Corporation and Interstate Management, Inc. for and on behalf of Mapledale Plaza LLC - For extension of authority for lease agreement between affiliates
- PUE-2011-00044 Virginia Electric and Power Company - For approval of rate adjustment clause pursuant to § 56-585.1 A 4 of the Code of Virginia
- PUE-2011-00045 Virginia Electric and Power Company - To revise its fuel factor pursuant to VA Code § 56-249.6
- PUE-2011-00046 Dale Service Corporation - 2010 Annual Informational Filing
- PUE-2011-00048 Aqua Virginia, Inc. - For extension of time to file Annual Informational Filing
- PUE-2011-00049 Columbia Gas of Virginia, Inc. - For approval of a SAVE plan and rider as provided by VA Code § 56-604
- PUE-2011-00050 Virginia-American Water Company - For approval of a Tax Sharing Policy pursuant to Chapter 4 of Title 56 of the Code of Virginia
- PUE-2011-00051 Virginia Electric and Power Company d/b/a Dominion Virginia Power and Northern Neck Electric Cooperative - For revision of certificates under the Utility Facilities Act
- PUE-2011-00052 Appalachian Natural Gas Distribution Company - Annual Informational Filing for the calendar year ended 12/31/10
- PUE-2011-00053 Po River Water and Sewer Company and The Carlyle Group, Inc. - For approval of agreement pursuant to the Affiliates Act, VA Code § 56-76 *e seq.*
- PUE-2011-00054 Caroline Water Company, Inc. d/b/a Ladysmith Water Company – For changes in rates, rules and regulations and Caroline Water Company d/b/a Ladysmith Water Company and William Seltzer - For approval of Affiliate Agreement
- PUE-2011-00055 Virginia Electric and Power Company d/b/a Dominion Virginia Power and Rappahannock Electric Cooperative - For revision of certificates under the Utility Facilities Act
- PUE-2011-00056 Virginia-American Water Company and American Water Works Service Company - For approval of a services agreement under Chapter 4 of Title 56 of the Code of Virginia
- PUE-2011-00057 Appalachian Power Company and Central Virginia Electric Cooperative - For revision of certificates under the Utility Facilities Act
- PUE-2011-00058 Appalachian Power Company - For consent to and approval of an extension and modification of an existing Amended and Restated Inter-Company Power Agreement with Ohio Valley Electric Corporation and other affiliates pursuant to Chapter 4 of Title 56 of the Code of Virginia
- PUE-2011-00059 Lake Forest Homeowners' Water Company, Lake Forest Homeowners' Association and Bedford County Public Service Authority - For approval of a transfer of a public utility pursuant to Chapter 5 of Title 56 of the Code of Virginia
- PUE-2011-00060 *In re:* Establishing rules providing limitations on disconnection of electric and water service for persons with serious medical conditions
- PUE-2011-00062 Northern Virginia Electric Cooperative and South Boston Energy, LLC - For approval of a Power Purchase Agreement between Affiliated Interests pursuant to VA Code § 56-76 *et seq.*
- PUE-2011-00063 Northern Virginia Electric Cooperative and South Boston Energy, LLC - For approval of a Services Agreement under Chapter 4 of Title 56 of the Code of Virginia, § 56-76 *et seq.*
- PUE-2011-00064 Gateway Cogeneration I - For approval to construct, own, and operate an electric generating facility in Prince George County pursuant to VA Code § 56-580 D
- PUE-2011-00065 Columbia Gas of Virginia, Inc. - For authorization to amend and extend its gas cost hedging program
- PUE-2011-00066 Virginia Electric & Power Co. - For revision of rate adjustment clause: Rider R, Bear Garden Generating Station for the rate year commencing April 1, 2012
- PUE-2011-00067 Virginia Electric & Power Co - For revision of rate adjustment clause: Rider S, Virginia City Hybrid Energy Center, for the rate year commencing April 1, 2012
- PUE-2011-00069 A&N Electric Cooperative - For authority to incur indebtedness under a line of credit
- PUE-2011-00070 ZTA LLC d/b/a Energy-Tel, LLC - For a license to conduct business as an electric and natural gas aggregator
- PUE-2011-00071 Washington Gas Light Company - For authority to engage in an affiliate transaction pursuant to VA Code § 56-76 *et seq.*
- PUE-2011-00072 C&P Isle of Wight Water Co. -For approval of the disposition of the water supply facilities serving the subdivisions known as Ashby, Carrollton Forest, Brewers Creek, Cedar Grove, Quail Meadows, Ballard Creek, Smithneck, Poplar Harbor, and Rushmere Shores to Isle of Wight County and approval to amend C & P Isle of Wight Water Co.'s certificate
- PUE-2011-00073 Virginia Electric and Power Company - For approval and certification of the proposed biomass conversion of the Altavista Power Station under VA Code §§ 56-580 D and 56-46.1 and for approval of a rate adjustment clause, designated as Rider B, under VA Code § 56-585.1 A 6
- PUE-2011-00074 Virginia Electric and Power Company - For approval and certification of the proposed biomass conversion of the Hopewell Power Station under VA Code §§ 56-580 D and 56-46.1 and for approval of a rate adjustment clause, designated as Rider B, under VA Code § 56-585.1 A 6
- PUE-2011-00075 Virginia Electric and Power Company - For approval and certification of the proposed biomass conversion of the Southampton Power Station under VA Code §§ 56-580 D and 56-46.1 and for approval of a rate adjustment clause, designated as Rider B, under VA Code § 56-585.1 A 6
- PUE-2011-00076 Craig-Botetourt Electric Cooperative - For authority to incur additional long-term debt
- PUE-2011-00077 James River Genco, LLC - To amend and reissue certificate
- PUE-2011-00078 Portsmouth Genco, LLC - To amend and reissue certificate

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| PUE-2011-00079 | <i>Ex Parte</i> : In the matter of amending regulations governing net energy metering |
| PUE-2011-00080 | Roanoke Gas Company - For authority to incur short-term debt |
| PUE-2011-00081 | Roanoke Gas Company - For an expedited increase in rates |
| PUE-2011-00082 | Virginia Electric and Power Company - For approval and certification of electric facilities: Northwest-Lakeside 230 kV Transmission Line |
| PUE-2011-00083 | Aubon Water Company, Inc., David G. Petrus and Edward Park III - For approval of a transfer of assets of a Virginia water public utility |
| PUE-2011-00084 | T. A. Hall v. Virginia Electric and Power Company - For review of a billing dispute for electric service |
| PUE-2011-00085 | Keswick Utilities - For approval of the transfer of utility assets from Keswick Corporation to Keswick Utilities |
| PUE-2011-00027 | Virginia Electric and Power Company - For a 2011 biennial review of rates, terms and conditions for the provision of generation, distribution and transmission services pursuant to VA Code § 56-585.1 A |
| PUE-2011-00086 | Northern Virginia Electric Cooperative - For authority to incur debt |
| PUE-2011-00087 | Washington Gas Light Company - For authority to issue securities |
| PUE-2011-00088 | Virginia Electric and Power Company - For approval of a standby charge and methodology and revisions to its tariff and terms and conditions of service pursuant to VA Code § 56-594 F |
| PUE-2011-00089 | Virginia Natural Gas, Inc. and Sequent Energy Management, L.P. - For approval of an asset management agreement under Chapter 4 of Title 56 of the Code of Virginia |
| PUE-2011-00090 | Steve Hypes and Christine Hypes v. Appalachian Power Company - Complaint ("petition") concerning tree trimming on right-of-way maintained by Appalachian Power Company |
| PUE-2011-00091 | Rappahannock Electric Cooperative - For approval of prepaid electric service tariffs |
| PUE-2011-00092 | <i>In re</i> : Virginia Electric and Power Company's Integrated Resource Plan filing pursuant to VA Code § 56-597 <i>et seq.</i> |
| PUE-2011-00093 | Virginia Electric and Power Company - For approval to implement new demand-side management programs and for approval of two updated rate adjustment clauses pursuant to § 56-585.1 A 5 of the Code of Virginia |
| PUE-2011-00094 | Virginia Electric and Power Company d/b/a Dominion Virginia Power and Mecklenburg Electric Cooperative - For revision of certificates under the Utility Facilities Act |
| PUE-2011-00095 | Kentucky Utilities Company d/b/a Old Dominion Power Company, Louisville Gas and Electric Company, LG&E and KU Services Company, LG&E and KU Energy LLC, LG&E and KU Capital LLC, PPL Corporation, PPL Electric Utilities Corporation and PPL Services Corporation - For authority to engage in affiliate transactions and to enter into Utility Services Agreement pursuant to Chapter 4 of Title 56 of the Code of Virginia, § 56-76 <i>et seq.</i> |
| PUE-2011-00096 | A & N Electric Cooperative – For a revenue-neutral adjustment of its electric rates and consolidation of tariffs |
| PUE-2011-00097 | <i>In re</i> : Kentucky Utilities Company d/b/a Old Dominion Power Company's Integrated Resource Plan filing pursuant to VA Code § 56-597 <i>et seq.</i> |
| PUE-2011-00099 | Aqua Virginia, Inc. and Sydnor Hydrodynamics, Inc. – For an increase in water and sewer rates |
| PUE-2011-00100 | <i>In re</i> : Appalachian Power Company's Integrated Resource Plan filing pursuant to VA Code § 56-597 <i>et seq.</i> |
| PUE-2011-00101 | Washington Gas Light Company - For approval to implement the SAVE Rider for calendar year 2012 in accordance with Washington Gas's Commission-approved SAVE Plan |
| PUE-2011-00102 | Secure Futures, L.L.C. - For a license to conduct business as a competitive service provider of 100% renewable electric service in Virginia |
| PUE-2011-00104 | Columbia Gas of Virginia, Inc. - For approval of a Reimbursement Agreement with Columbia Gas Transmission, LLC pursuant to Chapter 4 of Title 56 of the Code of Virginia |
| PUE-2011-00105 | Rappahannock Electric Cooperative - For authority to incur indebtedness |
| PUE-2011-00106 | Northern Virginia Electric Cooperative and South Boston Energy, LLC - For approval of a financing agreement under Chapter 4 of Title 56 of the Code of Virginia |
| PUE-2011-00107 | Secure Futures LLC, Lexington Solar, LLC and Washington & Lee University - For a declaratory judgment |
| PUE-2011-00108 | Appalachian Power Company - For authority to issue long-term debt securities |
| PUE-2011-00109 | Prince George Electric Cooperative - For authority to issue long-term debt |
| PUE-2011-00110 | Kentucky Utilities Company d/b/a Old Dominion Power Company - For authority under Chapter 4 of Title 56 of the Code of Virginia to execute an amended affiliate agreement |
| PUE-2011-00111 | Virginia Electric and Power Company and Dominion Energy, Inc. - For expedited consideration and approval of an Amended and Restated Parts Reimbursement Agreement pursuant to Chapter 4, Title 56 of the Code of Virginia |
| PUE-2011-00112 | Massanutten Public Service Corporation and Massanutten Public Service Corporation and Great Eastern Resort Corporation - To amend certificates and for authority to acquire and dispose of utility assets |
| PUE-2011-00113 | Virginia Electric and Power Company - For approval and certification of electric facilities: Dahlgren 230 kV double circuit transmission line and 230 kV-34.5 Dahlgren substation |
| PUE-2011-00114 | Atmos Energy Corporation and Atmos Energy Holdings Inc. - For authority to incur short-term debt and to lend and borrow short-term funds to and with its affiliate |
| PUE-2011-00115 | Integrus Energy Services - Natural Gas, L.L.C. - For a license as a competitive service provider of natural gas |
| PUE-2011-00116 | Aqua Virginia Inc., Aqua Virginia Water Utilities, Inc., Fox Run Water Co., Inc. and Moseley-Nash Enterprises, Inc. - For approval of a transfer of utility assets, transfer of a certificate, an affiliate arrangement, and proposed rates |
| PUE-2011-00117 | Virginia Electric and Power Company - For approval of a Community Solar Power Program and for certification of proposed distributed solar generation facilities pursuant to Chapter 771 of the 2011 Virginia Acts of Assembly, and §§ 56-46.1 and 56-580 D of the Code of Virginia |
| PUE-2011-00118 | Virginia-American Water Company and American Water Capital Corp. - To continue participation in a financial services agreement with an affiliate |
| PUE-2011-00119 | Southwestern Virginia Gas Company - For an Annual Informational Filing |
| PUE-2011-00120 | Columbia Gas of Virginia, Inc. - For approval of a LNG Truck Loading Agreement with Columbia Gas Transmission, LLC |
| PUE-2011-00121 | Aqua Virginia Inc. and Sydnor Hydrodynamics, Inc. - For approval of a change in control and the transfer of assets pursuant to §§ 56-88.1 and 56-89 of the Utility Transfers Act and for the amendment of a certificate pursuant to the Utility Facilities Act |
| PUE-2011-00123 | Virginia Natural Gas Inc., AGL Resources Inc. and AGL Services Company - For authority to issue short-term debt, long-term debt and common stock to an affiliate |

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| PUE-2011-00124 | Columbia Gas of Virginia, Inc. - For approval of a modification of the calculation of the 2011 Annual Allowed Distribution True-Up within the Company's Revenue Normalization Adjustment |
| PUE-2011-00125 | Appalachian Power Company - For authority to enter into affiliates transaction under Title 56, Chapter 4 of the Code of Virginia |
| PUE-2011-00129 | Virginia Electric and Power Company - For approval and certification of electric facilities: Waxpool 230 kV Double Circuit Transmission Line, Brambleton-BECO 230 kV Transmission Line and 230-34.5 kV Waxpool Substation |
| PUE-2011-00130 | Reston Lake Anne Air Conditioning Corporation - For an increase in rates |

SEC: DIVISION OF SECURITIES AND RETAIL FRANCHISING

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| SEC-2009-00093 | Donna P. McCoy - Alleged violation of VA Code §§ 13.1-504 A, 13.1-504 B and 13.1-507 |
| SEC-2009-00094 | H. Pate McCoy - Alleged violation of VA Code §§ 13.1-504 A, 13.1-504 B and 13.1-507 |
| SEC-2009-00095 | Donna P. McCoy and H. Pate McCoy d/b/a Porta Office Cyber Cafe', LLC and Donna P. McCoy and H. Pate McCoy d/b/a Morgan Communications Media, Inc. - Alleged violation of VA Code §§ 13.1-504 A, 13.1-504 B and 13.1-507 |
| SEC-2009-00097 | Donna P. McCoy d/b/a Morgan Communications Media, Inc. and H. Pate McCoy d/b/a Morgan Communications Media, Inc. - Alleged violation of VA Code §§ 13.1-502, 13.1-504 AND 13.1-507 |
| SEC-2009-00108 | Roger Jay Mandigo - Alleged violation of VA Code §§ 13.1-502 (2), 13.1-504 A (i) and 13.1-507 |
| SEC-2009-00137 | Area Real Estate Investors, LLC, William Stanley Armstrong, Area Finance, LLC, 1116 Florida Ave NE LP and 1118 Florida Ave NE LP - Alleged violation of VA Code §§ 13.1-504 B and 13.1-507 |
| SEC-2010-00001 | Summit Wealth Management, LLC - Alleged violation of 21 VAC 5-80-200 A (16) and 21 VAC 5-80-170 B |
| SEC-2010-00046 | TecSec, Inc. - Alleged violation of VA Code §§ 13.1-502 (2), <i>et al.</i> |
| SEC-2010-00047 | John R. Petty - Alleged violation of VA Code §§ 13.1-502 (2), <i>et al.</i> |
| SEC-2010-00048 | Polk Run, LLC - Alleged violation of VA Code §§ 13.1-502 (2), <i>et al.</i> |
| SEC-2010-00049 | Edward M. Scheidt - Alleged violation of VA Code § 13.1-502 (2) |
| SEC-2010-00051 | Carl Joseph Wack - Alleged violation of VA Code § 13.1-502 (2) |
| SEC-2010-00056 | Goldman, Sachs & Co. - Alleged violation of 21 VAC 5-20-260 A and B and 21 VAC 5-20-280 A 3 and E 12 |
| SEC-2010-00061 | Steven K. Morales - Alleged violation of VA Code §§ 13.1-504 A (i) and 13.1-507 |
| SEC-2010-00080 | David Krehbiel and Lamken Enterprises, Inc. - Alleged violation of VA Code § 13.1-563(2) |
| SEC-2010-00082 | BOTJ Investment Group, Inc. - Alleged violation of VA Code §§ 13.1-502 (3), <i>et al.</i> |
| SEC-2010-00090 | J. Blaine Saltzer d/b/a Retirement Investments Counseling - Alleged violation of VA Code §§ 13.1-501 A (ii) and 13.1-504 C (i) |
| SEC-2010-00091 | Scott & Stringfellow, LLC and Charles P. Peebles, Jr. - Alleged violation of Rule 21 VAC 5-20-280 A (3) and Rules 21 VAC 5-20-260 B and 21 VAC 5-20-280 B 6 |
| SEC-2011-00002 | Robert Clifford II and Aurora Financial, LLC - Alleged violation of VA Code §§ 13.1-504 A (ii) and 13.1-504 C (i) |
| SEC-2011-00003 | Enterprise Community Loan Fund, Inc. - For an Order of Exemption under VA Code § 13.1-514.1 B |
| SEC-2011-00004 | Enterprise Community Partners, Inc. - For an Order of Exemption under VA Code § 13.1-514.1 B |
| SEC-2011-00005 | Segregated Account of Ambac Assurance Corporation - For an official interpretation pursuant to VA Code § 13.1-525 |
| SEC-2011-00006 | Veritrax Corporation and Dale Toler - Alleged violation of VA Code § 13.1-518 |
| SEC-2011-00008 | Pete Frese, Jr. and Stratus Franchising, LLC - Alleged violation of VA Code § 13.1-563(2) |
| SEC-2011-00009 | American Hockey Denver, LLC, Rams Associates, LP and John Charles Sabo - Alleged violation of VA Code §§ 13.1-502(2) and 13.1-502(3) |
| SEC-2011-00010 | William M. Somerindyke, Jr. - Alleged violation of VA Code §§ 13.1-502(3), <i>et al.</i> |
| SEC-2011-00011 | Anita C. Tribble - Alleged violation of VA Code §§ 13.1-502(3), <i>et al.</i> |
| SEC-2011-00012 | The Woodland, Inc. - Alleged violation of VA Code § 13.1-507 |
| SEC-2011-00013 | Paul Mann and Fetch! Pet Care, Inc. - Alleged violation of VA Code §§ 13.1-560, 13.1-563 (2) and 13.1-563 (4) |
| SEC-2011-00014 | Ashbridge Investment Management, LLC - Alleged violation of VA Code § 13.1-503 A (4), 21 VAC 5-80-200 A (1) and 21 VAC 5-80-200 A (8) |
| SEC-2011-00015 | National Covenant Properties - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00016 | Baptist General Conference Cornerstone Fund, d/b/a Converge Cornerstone Fund - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00017 | Columbia Union Revolving Fund - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00018 | Exmovere Holdings, Inc. - Alleged violation of VA Code § 13.1-501 <i>et seq.</i> |
| SEC-2011-00022 | Mission Investment Fund of the Evangelical Lutheran Church in America - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00023 | The Buffalo Extension, LLP and Richard F. Reynolds - Alleged violation of VA Code §§ 13.1-504 A (i), 13.1-504 B and 13.1-507 |
| SEC-2011-00024 | Harnett Health System, Inc. - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00029 | Kid's Closet Connection, LLC and Chris Smitka - Alleged violation of VA Code §§ 13.1-560 and 13.1-563 |
| SEC-2011-00031 | United Methodist Development Fund - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00032 | Heritage Investment Services Fund, Inc. - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00034 | <i>Ex Parte:</i> In the matter of Adopting a Revision to the Rules Governing the Virginia Securities Act |
| SEC-2011-00036 | Xymogen, Inc. and Brian Blackburn - Alleged violation of VA Code §§ 13.1-504 A (i), 13.1-504 B and 13.1-507 |
| SEC-2011-00038 | Harry T. Gaskins d/b/a G G & M Financial Goals - Alleged violation of VA Code §§ 13.1-504 A(ii) and 13.1-504 C(i) |
| SEC-2011-00039 | Raymond James & Associates, Inc. and Raymond James Financial Services, Inc. - Alleged violation of 21 VAC 5-20-260 and 21 VAC 5-20-280 |
| SEC-2011-00045 | Calvert Social Investment Foundation - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00046 | Hernando Chovil - Alleged violation of VA Code §§ 13.1-504, 13.1-503A(1),(2), and (4), and 13.1-503C(1) |
| SEC-2011-00047 | Craigs Baptist Church - For Order of exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00048 | Lutheran Church Extension Fund-Missouri Synod - For Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00050 | United Pentecostal Church Development Fund, Inc. - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00051 | James City Community Church, Inc. - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |
| SEC-2011-00053 | NAI BlueStone Real Estate Capital, LLC - Alleged violation of VA Code §§ 13.1-504 (A) and 13.1-502 (2), <i>et al.</i> |
| SEC-2011-00054 | Christian Service Foundation, Inc. - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B |

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SEC-2011-00057 Green Bay Packers, Inc. - For an Order of Exemption pursuant to VA Code § 13.1-514.1 B

URS: DIVISION OF UTILITY AND RAILROAD SAFETY

URS-2005-00296 Hercules Fence Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00015 Riggs Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00078 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2010-00116 J E S Services - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00147 Accent Landscaping, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00155 Lawrence B. Fanton, Individually and t/a Fanton & Sons, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00185 Gerald L. Allman, "LLC" - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00195 Roy Burton, Individually and t/a Burtons Plumbing - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00213 RC Labor & Erosion Control, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00224 JCB Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 D
 URS-2010-00237 Miguel Galeas - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00238 Rick Payne Construction LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00269 Roto Rooter - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00276 Sayers Construction Co. - Alleged violation of VA Code § 56-265.17 D
 URS-2010-00288 B/F Stephens Excavating, L.L.C. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00289 Cable Protection Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00290 Creative Landscapes by Gregory, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00302 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00310 NuStar Terminals Operations Partnership L.P. - Alleged violation of Federal Pipeline Safety Standards
 URS-2010-00325 Robert Byron Prescott - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00327 Jones & Sons Excavating, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2010-00334 Denison Landscaping, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00339 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00346 Mastec North America, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00348 Branscome Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2010-00350 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00353 The Fishel Company - Alleged violation of VA Code § 56-265.24 A
 URS-2010-00359 PCI Contractors, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2010-00360 Peanut City Vegetable Oil Co. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2010-00361 Seabreeze Landscaping, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00365 WCC Cable, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2010-00368 C.J. Construction LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00369 Concrete Foundations, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00370 CR Phillips Electrical Contractors, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00374 P. B. Perry Enterprises LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00375 Paragon General Construction LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00380 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2010-00382 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00387 Emerald Excavation Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00388 Washington Gas Light Company - Alleged violation of Federal Pipeline Safety Standards
 URS-2010-00389 Columbia Gas of Virginia, Inc. - Alleged violation of Federal Pipeline Safety Standards
 URS-2010-00390 Virginia Natural Gas, Inc. - Alleged violation of Federal Pipeline Safety Standards
 URS-2010-00391 Appalachian Natural Gas Distribution Company - Alleged violation of Federal Pipeline Safety Standards
 URS-2010-00392 Dominion Transmission, Inc. - Alleged violation of Federal Pipeline Safety Standards
 URS-2010-00393 Grahams Facility Services - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00394 Pitman Construction Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00395 Unique Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00396 Atkins Excavating, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 3
 URS-2010-00397 Atlas Plumbing, LLC - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2010-00399 Foley Plumbing, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2010-00400 Henkels & McCoy, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2010-00401 Randolph & Son, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00402 S&N Locating Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00404 Atlantic Cable, LLC - Alleged violation of VA Code § 56-265.24 A
 URS-2010-00405 Atlantic Foundations, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2010-00406 Charles V. Bremerman Co. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00407 Custom Concrete - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00408 David McDaniel General Contractor - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00409 Ironhorse Const. Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 3 and 20 VAC 5-309-150 3
 URS-2010-00410 M & W Construction Corp. - Alleged violation of VA Code § 56-265.24 A
 URS-2010-00411 Precon Construction Company - Alleged violation of VA Code § 56-265.24 A
 URS-2010-00412 Virginia Electric and Power Company - Alleged violation of VA Code § 56-265.24 A
 URS-2010-00413 William Wills Contractor, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00414 Biase Corp. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00415 Blue Valley Landscaping, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00416 Enchanted Lawns Landscaping - Alleged violation of VA Code § 56-265.17 A

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URS-2010-00417 Ground Up, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00418 Joseph E. Kent Excavating Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00419 KM Construction - Alleged violation of VA Code § 56-265.17 A
 URS-2010-00420 Mastec North America, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-150 6
 URS-2010-00423 Columbia Gas of Virginia Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00424 Commonwealth Excavating and Pipeline Company - Alleged violation of VA Code § 56-265.24 A
 URS-2010-00425 One Vision Utility Services, LLC - Alleged violations of VA Code § 56-265.19 A
 URS-2010-00426 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00427 Peters and White Construction Company - Alleged violation of VA Code § 56-265.17 D
 URS-2010-00428 River House Enterprises LC - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2010-00429 Roanoke Gas Company - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-90 1
 URS-2010-00430 Utiliquist, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00431 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2010-00432 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00001 Norfolk Southern Railway Company - For a protective order
 URS-2011-00003 BBV Building Companies, Inc. - Alleged violation of VA Code §§ 56-265.17 A, *et al.*
 URS-2011-00004 Curtis W. Key Plumbing Contractors, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2011-00005 D&F Construction, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00006 G & V Tree Service, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00007 Garcia & Sons Concrete - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00008 H. T. Bowling, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2011-00009 Innerview, Ltd. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00010 Lallande Asphalt Paving Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00011 Long Fence Company, Inc. - Alleged violation of VA Code §§ 56-265.18, *et al.*
 URS-2011-00012 Loudoun Land Works, LLC - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2011-00013 Precon Construction Company - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00015 Jack St. Clair, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00016 James R. Jones, Builder, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00017 S. A. Crane Construction Co., Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00018 Julio C. Gonzalez t/a JED Concrete - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00020 Liberty Plumbing, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00021 MCI Communications Services, Inc. - Alleged violation of VA Code § 56-265.19 B
 URS-2011-00022 Roanoke Gas Company - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00023 Calypso Projects LLC t/a Spartan Excavating & Utilities - Alleged violation of VA Code §§ 56-265.17 B, 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00024 Warren H. Boyer, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00025 Spinello Companies, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00026 The Collier Companies, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00027 RayBar Construction, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00029 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00030 General Excavation, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 3
 URS-2011-00031 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-110 M
 URS-2011-00032 Casper Colosimo & Son, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00033 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-110 M
 URS-2011-00034 Charles Higgs Excavating Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00036 Utiliquist, LLC - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-110 M
 URS-2011-00037 Virginia Natural Gas, Inc. - Alleged violation of VA Code §§ 56-265.19 A and 56-265.17 C
 URS-2011-00038 Concrete Foundations, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00039 WB&E Construction, Inc. - Alleged violation of VA Code § 56-265.24 A, 56-265.24 C, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4
 URS-2011-00040 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00041 CR Phillips Electrical Contractors, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00042 G. L. Howard, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00043 Henkels & McCoy, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00044 M. W. Wood, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00045 Miller Construction, LLC t/a Miller Custom Homes - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00046 Pembroke Construction Company, Incorporated - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00047 Peters and White Construction Company - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00049 Williams Mechanical Contracting Corporation - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00050 A & W Contractors, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00051 Affordable Septic, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00052 Bisette Construction Corporation - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00053 Computer Cabling and Telephone Services, Inc. t/a Computer Cabling & Technology Services - Alleged violation of VA Code § 56-265.17 D, 56-265.24 A and 20 VAC 5-309-140 3
 URS-2011-00054 Genesis Masonry Construction Inc. - Alleged violation of VA Code §§ 56-265.17 A, 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00055 Green Vision Construction, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00056 Kevcor Contracting Corporation - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2011-00057 Fiber Technologies, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-150 3 and 20 VAC 5-209-150 6
 URS-2011-00058 A & W Contractors, Inc. - Alleged violation of VA Code § 56-265.18 and 20 VAC 5-309-180
 URS-2011-00059 C & L Electric Company Incorporated - Alleged violation of VA Code §§ 56-265.17 A, 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4

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URS-2011-00060 Precon Construction Company - Alleged violation of VA Code § 56-265.24, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4
 URS-2011-00061 R C Paving LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00062 A-Team Construction, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00063 Bissette Construction Corporation - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00065 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00067 Lakeside Concrete Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00068 Masonry Repairs & Restoration - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00069 Richard L. Crowder Construction, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00070 Richardson-Wayland Electrical Company LLC - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00071 Rick Carney Irrigation, Inc. - Alleged violation of VA Code § 56-265.17 D
 URS-2011-00072 Suburban Grading & Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00073 Tidewater Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00074 Boulevard Flowers, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00075 Cave Spring Excavating, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00076 Darrell's Lawn & Tree Service - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00077 Hall Mechanical & Associates, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00079 J.A. Snyder Entities, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00080 Lakeside Concrete, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00082 Ironhorse Const. Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 3
 URS-2011-00083 Leo Construction Company - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00085 Ross & Sons Utility Contractor, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00086 The Collier Companies, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00087 Tipton Electric, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00088 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00089 Joseph E. Kent Excavating Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00090 M & W Construction Corp. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00091 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00092 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-110 M
 URS-2011-00093 Roanoke Gas Company - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00094 Smith Construction Services, LLC - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00095 Southern Construction Utilities, Inc. t/a Southern Construction Co. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4
 URS-2011-00096 Utiliquest, LLC - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-110 M
 URS-2011-00097 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00098 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00099 Oil Equipment Sales and Services Company, Incorporated - Alleged violation of VA Code §§ 56-265.17 A, *et al.*
 URS-2011-00102 William Romero - Alleged violation of VA Code §§ 56-265.24 A and 56-265.24 D
 URS-2011-00103 A-1 Plumbing & Heating Company - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00105 E. V. Williams, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4
 URS-2011-00106 HMS Plumbing, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00107 J.L. Kent & Sons, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4
 URS-2011-00108 Old Dominion Demolition Corp. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00109 S&N Locating Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00110 W.E. (Billy) Curling Welding Service, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00111 A&W Contracting Corporation - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00113 Casper Colosimo & Son, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00114 Diversified Investments Corporation t/a Groundeffects Construction Company - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00115 Industrial Turnaround Corporation t/a ITAC (Hopewell City) - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00116 Jerome Lee Bouey - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00117 K & E Fire Sprinkler, Inc. - Alleged violation of VA Code §§ 56-265.24 A, 56-265.17 B and 20 VAC 5-309-140 4
 URS-2011-00118 Peanut City Vegetable Oil Co. - Alleged violation of VA Code § 56-265.17 D
 URS-2011-00119 Peters and White Construction Company - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00120 RER Underground LLC - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00121 Special Plumbing & Mechanical Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 5
 URS-2011-00122 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00123 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00124 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00125 Utiliquest, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00126 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00127 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00128 Columbia Gas of Virginia, Inc. - Alleged violation of Federal pipeline safety standards
 URS-2011-00130 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00131 Denbigh Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00132 District Contractors, Inc. - Alleged violation of VA Code § 56-265.18
 URS-2011-00133 G. L. Howard, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00134 G. R. Mann & Co., Inc. - Alleged violation of VA Code § 56-265.17 B
 URS-2011-00137 Roanoke Gas Company - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00139 Sharp Haulers & Backhoe Services, LLC - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00140 American Lighting and Signalization, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00141 Branscome Inc. - Alleged violation of VA Code § 56-265.17 A

URS-2011-00142 Suburban Grading & Utilities, Inc. - Alleged violation of VA Code §§ 56-265.18 A, *et al.*
 URS-2011-00143 Virginia Electric and Power Company - Alleged violation of VA Code § 56-265.17 B and 20 VAC 5-309-90 3 e
 URS-2011-00144 Ayers Grading and Footing Services, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00145 Catron's Pump Sales & Service, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00146 G. L. Pruett, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00147 T. A. Sheets Mechanical General Contractor, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00148 Tidewater Landworks, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00149 Total Development Solutions, L.L.C. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00150 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00151 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2011-00152 F. L. Showalter, Incorporated - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00153 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00154 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00155 Tidewater Utility Construction, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2011-00157 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00158 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00160 Windstream KDL-VA, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 4, 20 VAC 5-309-150 4, 20 VAC 5-309-150 6 and 20 VAC 5-309-150 8

 URS-2011-00161 ADDO Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00163 J. A. Walder, Incorporated - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00164 KT Enterprises, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00165 Miller Pipeline Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00166 R & P Lucas Underground Utilities, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00167 Richard L. Crowder Construction, Inc. - Alleged violation of VA Code § 56-265.24 C
 URS-2011-00168 Roanoke Gas Company - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00171 W. E. (Billy) Curling Welding Service, Inc. - Alleged violation of VA Code § 56-265.19 A, 56-265.24 A and 20 VAC 5-309-140 3
 URS-2011-00172 S&N Locating Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00173 Craven's Nursery LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00174 Infrasource Construction Services, LLC - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4

 URS-2011-00177 L. H. Sawyer Paving Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00178 Lee Electrical Construction, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00179 Leo Construction Company - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4
 URS-2011-00180 Peters and White Construction Company - Alleged violation of VA Code §§ 56-265.17 D and 56-265.24 A
 URS-2011-00181 Ron's Plumbing & Restoration Services - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00182 Southeast Connections LLC - Alleged violation of VA Code § 56-264.24 A and 20 VAC 5-309-140 3
 URS-2011-00183 Tidewater Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4
 URS-2011-00184 Worley Turf & Irrigation, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00185 All Jobs, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00186 Gum Springs, L.L.C. t/a Don Beyer Volvo - Alexandria - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00187 Lighting Maintenance Incorporated - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-150 6
 URS-2011-00188 Southern Landscape Group, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00190 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00191 Chesapeake Bay Contractors, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-209-140 4
 URS-2011-00192 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00193 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-110 M
 URS-2011-00196 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00197 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00199 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00200 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00201 Henderson Construction Co. Inc. - Alleged violation of VA Code §§ 56-265.24 A and 56-265.24 D
 URS-2011-00202 Stealth Construction, Incorporated - Alleged violation of VA Code §§ 56-265.24 A and 56-265.24 C
 URS-2011-00206 Roanoke Gas Company - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00207 American Infrastructure-VA, Inc. - Alleged violation of VA Code § 56-265.140.4, 24A
 URS-2011-00208 Baird Petroleum Equipment, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00209 Basic Construction Company, L.L.C. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4
 URS-2011-00210 Branham Electric Corporation - Alleged violation of VA Code §§ 56-265.17 A and 56-265.24 A
 URS-2011-00211 E.V. Williams, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00212 English Construction Company, Incorporated - Alleged violation of VA Code § 56-265.17A and 56-265.24A
 URS-2011-00214 Hall Bros. - Electrical Contractors, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00216 L.H. Sawyer Paving Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00217 Marshall Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00218 Perry Engineering Company Incorporated - Alleged violation of VA Code § 56-265.24 C
 URS-2011-00219 Piedmont Electrical Company - Alleged violation of VA Code §§ 56-265.17 A, 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00220 Sharpeson Services Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00221 Somerset Landscaping Company - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00223 Windstream KDL-VA, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 3 and 20 VAC 5-309-150 8
 URS-2011-00224 Comcast Cable Communications, Inc - Alleged violation of VA Code § 56-265.26:1
 URS-2011-00226 Plumbright Plumbing, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00228 Southside Concrete Services, Inc. - Alleged violation of VA Code §§ 56-265.17 A and 56-265.24 A

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URS-2011-00230 W. M. Jordan Company, Incorporated - Alleged violation of VA Code §§ 56-265.17 A, 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4

URS-2011-00231 Southeast Connections LLC - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00232 Bissette Construction Corporation - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00233 Bluestone Builders, LLC - Alleged violation of VA Code § 56-265.24 A

URS-2011-00234 C. W. Wright Construction Company, Incorporated - Alleged violation of VA Code § 56-265.17 A

URS-2011-00235 Drainage & Erosion Solutions, LLC - Alleged violation of VA Code § 56-265.17 A

URS-2011-00236 J. Perkins Construction, Inc. - Alleged violation of VA Code § 56-265.17 A

URS-2011-00237 KS Communication, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00240 Precon Construction Company - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00241 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A

URS-2011-00242 R. E. Lee Electric Company, Incorporated - Alleged violation of VA Code § 56-265.17 A

URS-2011-00243 Ricky L. Brown, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-209-140 3

URS-2011-00244 T. A. Sheets Mechanical General Contractor, Inc. - Alleged violation of VA Code § 56-265.24 B

URS-2011-00245 Toano Contractors, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00246 Lakeside Concrete Enterprises, Inc. - Alleged violation of VA Code §§ 56-265.17 A, 56-265. 24 A and 20 VAC 5-309-140 4

URS-2011-00247 Tidewater Utility Construction, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4

URS-2011-00249 S&N Locating Services, LLC - Alleged violation of VA Code § 56-265.19 A

URS-2011-00250 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A

URS-2011-00251 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A

URS-2011-00252 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A

URS-2011-00254 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-110 M

URS-2011-00256 W. E. (Billy) Curling Welding Service, Inc. - Alleged violations of VA Code §§ 56-265.19 A, 56-265.19 E and 20 VAC 5-309-110 M

URS-2011-00257 Lyttle Service Company, L.L.C. t/a Starnie E. Lyttle Company - Alleged violation of VA Code § 56-265.24 A

URS-2011-00258 Cascade Contracting, Inc. - Alleged violation of VA Code § 56-265.24 A

URS-2011-00260 Martin and Gas Incorporated - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4

URS-2011-00262 Ace Remodeling and Handyman Services - Alleged violation of VA Code § 56-265.17 A

URS-2011-00263 Anchor Construction Corporation of DC t/a Anchor Construction Corporation - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00264 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A

URS-2011-00266 Benny Ridpath - Alleged violation of VA Code § 56-265.17 A

URS-2011-00268 Four Points Excavating, Inc. - Alleged violation of VA Code § 56-265.24 A

URS-2011-00269 Argosy Electric, Inc. - Alleged violation of VA Code § 56-265.17 A

URS-2011-00271 Breeden Mechanical, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 3

URS-2011-00272 Custom Landscaping Curbs, Inc. t/a CLC Concrete - Alleged violation of VA Code § 56-265.17 A

URS-2011-00273 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A

URS-2011-00274 Debose & Sons Construction Co., Inc. - Alleged violation of VA Code §§ 56-265.18, 56-265.24 A, 20 VAC 5-309-140 4, 20 VAC 5-309-150 6 and 20 VAC 5-309-150 8

URS-2011-00276 Glen H. Sullivan Excavating - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00277 J. E. Liesfeld Contractor, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 509-140 4

URS-2011-00278 J.R. Pierce, Inc. - Alleged violation of VA Code § 56-265.17 A

URS-2011-00279 Lyttle Service Company, L.L.C. t/a Starnie E. Lyttle Company - Alleged violation of VA Code § 56-265.17 A

URS-2011-00280 Parsons Construction Co. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 4

URS-2011-00281 RB's Contracting - Alleged violation of VA Code § 56-265.17 A

URS-2011-00282 Stockner's Rockville Nurseries, Inc. t/a Stockner's Nursery - Alleged violation of VA Code § 56-265.17 A

URS-2011-00284 Bradley & Sons Plumbing, LLC - Alleged violation of VA Code § 56-265.17 A

URS-2011-00285 Bush Construction Corporation - Alleged violation of VA Code § 56-265.24 A

URS-2011-00286 D&F Construction, Inc. - Alleged violation of VA Code § 56-265.17 A

URS-2011-00287 Davis H. Elliot Company, Incorporated - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-150 4 and 5-309-150 8

URS-2011-00288 Down Below, LLC - Alleged violation of VA Code § 56-265.17 B

URS-2011-00289 Extreme Gravity Contractor, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00291 Leo Construction Company - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00292 PM Electric, Inc. - Alleged violation of VA Code § 56-265.17 A

URS-2011-00293 Shamrock Construction Corporation - Alleged violation of VA Code § 56-265.24 A

URS-2011-00294 Soil Tech, Inc. - Alleged violation of VA Code § 56-265.17 A

URS-2011-00295 Strittmatter Contracting, L.L.C. - Alleged violation of VA Code § 56-265.24 B

URS-2011-00297 Top Builders, LLC - Alleged violation of VA Code § 56-265.17 A

URS-2011-00298 Vico Construction Corporation - Alleged violation of VA Code § 56-265.24 B

URS-2011-00299 W. R. Hall, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 3

URS-2011-00300 A Murphy Fence Company - Alleged violation of VA Code § 56-265.17 A

URS-2011-00302 Branch Highways, Inc. - Alleged violation of VA Code § 56-265.17 B and 20 VAC 5-309-170

URS-2011-00303 Gatwick Properties, L.L.C. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00304 Godsey & Son, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 5

URS-2011-00305 Green Air, Inc. - Alleged violation of VA Code § 56-265.17 A

URS-2011-00307 Ironhorse Const. Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00308 J & J Home Improvement - Alleged violation of VA Code § 56-265.17 A

URS-2011-00309 R. Wendall Presgrave, Inc. t/a My Plumber - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00310 Peed Plumbing, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

URS-2011-00311 Piedmont Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 3

URS-2011-00312 PowerSecure, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2

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URS-2011-00318 Stephen Edmundson - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00321 Perkinson Construction, L.L.C. - Alleged violation of VA Code §§ 56-265.17 A, 56-265.24 A and 20 VAC 5-309-140 3
 URS-2011-00322 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-110 M
 URS-2011-00324 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00325 Washington Gas Light Company - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00329 West Winds Nursery, LLC t/a Shade Tree Farm - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00330 Columbia Gas of Virginia, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00331 G. L. Howard, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00332 Rick Carney Irrigation, Inc. - Alleged violation of VA Code §§ 56-265.24 A, *et al.*
 URS-2011-00333 Bay Concrete Construction Company - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00335 MEB General Contractors, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00336 Universal Stone, Inc. - Alleged violation of VA Code §§ 56-265.24 C and 56-265.24 D
 URS-2011-00337 Branscome, Inc. - Alleged violation of VA Code §§ 56-265.24 A and 56-265.24 D
 URS-2011-00338 Cable Associates, Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-150 4 and 20 VAC 5-309-150 6
 URS-2011-00340 Fielder's Choice Enterprises, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00341 Hercules Fence Company, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00342 Linco Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00343 MBJ Contracting, Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00345 Smith Plumbing, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00346 Southside Concrete Services Inc. - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00347 De-Tech Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00350 Promark Utility Locators, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00352 Spinello Companies, Inc. - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00354 Trafford Corporation - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00355 Virginia Construction Co, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 3
 URS-2011-00356 Virginia Natural Gas, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00357 Arthur Construction Co., Inc. - Alleged violation of VA Code § 56-265.24 A, 20 VAC 5-309-140 2 and 20 VAC 5-309-140 4
 URS-2011-00359 One Vision Utility Services, LLC - Alleged violation of VA Code § 56-265.19 A and 20 VAC 5-309-110 H
 URS-2011-00360 A & A Plumbing - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00362 CMI Companies - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00364 Trafford Corporation - Alleged violation of VA Code § 56-265.17A
 URS-2011-00366 Atmos Energy Corporation - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00368 Cahall Construction, LLC - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00370 Dynasty Equipment Corporation - Alleged violation of VA Code §§ 56-265.17 A, *et al.*
 URS-2011-00371 G. L. Howard, Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00372 Ironhorse Const. Inc. - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00376 Reliance Concrete Contractors, Inc. - Alleged violation of VA Code §§ 56-265.17 A, 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00377 Roanoke Gas Company - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00379 T. and S. Concrete Inc - Alleged violation of VA Code §§ 56-265.17 A, 56-265.24 and 20 VAC 5-309-140 2
 URS-2011-00385 Phoenix Renovation Corp - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00388 De-Tech Services Inc - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00389 Dirt Peddlers Trucking Co Inc - Alleged violation of VA Code § 56-265.24 A
 URS-2011-00390 FCCC Corporation - Alleged violation of VA Code §§ 56-265.18, 265.24 C and 20 VAC 5-309-180
 URS-2011-00392 Lanning Construction Company Inc - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00395 Rickmond General Contracting, Inc - Alleged violation of VA Code § 56-265.17 A
 URS-2011-00396 Southeast Connections LLC - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140 2
 URS-2011-00399 Valentine Construction Company, Incorporated - Alleged violation of VA Code § 56-265.24 A and 20 VAC 5-309-140
 URS-2011-00401 Waco, Inc. - Alleged violation of VA Code § 56-265.17 D
 URS-2011-00402 Columbia Gas of Virginia, Inc - Alleged violation of VA Code §§ 56-265.19A, 56-265.19 A and 20 VAC 5-309-160
 URS-2011-00403 One Vision Utility Services, LLC - Alleged violation of VA Code §§ 56-265.19 A, *et al.*
 URS-2011-00404 Promark Utility Locators, Inc. c/o Consolidated Utility Services, Inc. - Alleged violation of VA Code § 56-265.19 A
 URS-2011-00406 Virginia Electric and Power Company - Alleged violation of VA Code §§ 56-265.19 A, 56-265.24 B and 20 VAC 5-309-130
 URS-2011-00481 Washington County, Virginia, Board of Supervisors - For order pursuant to VA Code § 56-414 requiring train locomotives to sound whistle or horn at the private crossing of Old Trail Road located in Washington County, Virginia